

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE UNITED STATES ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT  
AND  
THE COASTAL PROTECTION AND RESTORATION AUTHORITY  
AND  
GHD, INC.  
FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into this 7th day of August 2019, by and between the United States Army Corps of Engineers, New Orleans District (hereinafter "USACE"), represented by the District Engineer, Col. Stephen F. Murphy, New Orleans District (hereinafter "CEMVN"); the State of Louisiana, through the Coastal Protection and Restoration Authority (hereinafter "CPRA"), represented by its Executive Director, Lawrence B. Haase; and the third party contractor, GHD, Inc. (hereinafter "TPC") represented by Steven Davie.

**ARTICLE I- INTRODUCTION**

A. The CPRA has submitted a Joint Permit Application for Department of Army ("DA") permits under the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Appropriation Act of 1899, as amended (33 U.S.C. 403) (hereinafter collectively referred to as "Section 10/404"), and a request for permission under Section 14 of the Rivers and Harbors Appropriation Act of 1899, as amended (33 U.S.C. 408) (hereinafter "Section 408") to USACE for CPRA's proposed Mid-Breton Sound Sediment Diversion ("Proposed Action").

B. An Environmental Impact Statement ("EIS") is a detailed written statement required by the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, et seq. ("NEPA") and implementing regulations established by the Council on Environmental Quality ("CEQ") for a major federal action significantly affecting the quality of the human environment. See 40 C.F.R. §1500 – §1508 and USACE procedures at 33 C.F.R. Part 325, Appendix B and 33 C.F.R. Part 230. The CEQ Regulations for Implementing the Procedural Provisions of the NEPA of 1969, have defined "major federal action" as actions with effects that may be major and which are potentially subject to Federal control and responsibility. 40 C.F.R. §1508.18.

C. USACE has determined that an EIS must be prepared regarding the Proposed Action to be used in conjunction with other relevant materials, prior to making a decision on the CPRA Section 10/404 and Section 408 requests for permits and a permission ("CPRA Applications") for the Proposed Action. USACE will file a Notice of Intent to prepare an EIS for the Proposed Action in the Federal Register.

D. Government-wide regulations implementing NEPA, promulgated by the CEQ, expressly permit the use of third-party contractors in the preparation of an Environmental Assessment or an EIS. 40 CFR 1506.5(c); USACE Regulatory Guidance Letter No. 05-08 dated December 7, 2005, "*Environmental Impact Statements- Third Party Contracting*"; 33 C.F.R. 325, Appendix B, paragraph 8(f); and Question 16 of the CEQ's Forty Most Asked Questions Concerning CEQ's Environmental Policy Act Regulations. CEQ regulations provide that agencies using third-party contractors to aid in the preparation of environmental documents will select the third-party contractors, will provide the third party contractors with guidance, will participate in the preparation of the document, will independently evaluate the document before approval and will take responsibility for its scope and content.

E. USACE, CPRA, and the TPC (collectively, "the parties") agree that the preparation and analyses of the EIS will utilize existing information and resource specialists to the greatest extent appropriate, will focus on the significant environmental issues and a reasonable range of alternatives, and will provide an opportunity for full participation by interested members of the public and governmental agencies consistent with all applicable legal requirements.

## ARTICLE II- PURPOSE

A. The purpose of this MOU is to outline the roles, responsibilities, terms, conditions, procedures, requirements, communication methods and protocols that the TPC, CPRA, and USACE, agree to follow in the preparation of the EIS to ensure there are no conflicts of interest; to preserve impartial decision-making; and to prevent any impropriety or undue influence or the appearance thereof, in order to maintain integrity of the EIS process.

B. In accordance with USACE Regulatory Guidance Letter No. 05-08 dated December 7, 2005, CEMVN provided CPRA with the required information, and minimum TPC personnel requirements for the preparation of the EIS by the TPC. CEMVN was not involved in CPRA's procurement and contracting process and procedures, did not review any proposal or bid lists, and did not specify or choose the method of procurement. The TPC was selected by CPRA in accordance with State of Louisiana bid law, with the concurrence of CEMVN and in conformance with USACE's Regulatory Guidance, policy, and requirements pertaining to third party contracting, and the TPC has been determined to be fully acceptable to both CPRA and CEMVN to prepare the EIS.

C. CPRA has entered into a contract with the TPC ("CPRA Contract") that is consistent with the terms of this MOU and the USACE-approved EIS Scope of Work ("SOW"). Pursuant to the CPRA Contract, CPRA shall pay the TPC for all services rendered in the preparation and development of the EIS. In the case of conflict between the terms in this MOU and the terms of the SOW, the SOW shall control.

D. For purposes of this MOU, the term "TPC" includes all agents, employees, representatives, independent contractors, consultants, subcontractors, and any other persons and entities performing any work or services or providing any labor or materials to the TPC for the work described in this MOU and in the CPRA Contract for the preparation of the EIS. All such persons and entities shall collectively be referred to herein as the "TPC".

E. The TPC shall conduct the environmental review process and prepare an EIS for the Proposed Action as an independent contractor working under the sole technical direction and supervision of USACE. The TPC will be directed and supervised by USACE to ensure that the requirements for the EIS are met and that there is no conflict of interest. The TPC's work product(s) must meet all requirements in a timely manner, and be produced to the satisfaction of USACE. USACE has the ultimate responsibility to set, maintain, and control the schedule for completion of the EIS and related work, and may direct the TPC as necessary to ensure the required tasks, timelines, and deliverables' quality are acceptable. USACE will have complete control over the scope and content of the TPC's work, shall independently evaluate the TPC's work products, and shall have the ownership of the final EIS and the contents of the Project File collected and compiled by the TPC in accordance with the CPRA Contract. CPRA shall be permitted to participate in the EIS preparation and drafting processes to the extent permitted by Corps regulations and policies, including, but not limited to: participation in calls and meetings with USACE, the TPC and any cooperating, commenting or coordinating agencies; development of the project purpose and need and the reasonable range of alternatives; development of the technical analyses supporting the EIS; review and comment on draft documents; participating as the applicant in the ESA and EFH consultations; participating as the applicant in the NHPA Section 106

consultation; and any other similar activities related to the development of the EIS and related consultations. Notwithstanding the foregoing, consistent with USACE regulations and guidance, USACE shall retain independent authority and responsibility for determining the adequacy of the EIS and ensuring that its content is accurate and objective, and for making USACE authorization decisions regarding the Proposed Action

### ARTICLE III- RIGHTS & RESPONSIBILITIES OF THE PARTIES

#### A. TPC Responsibilities.

(1) The TPC, under the direction of USACE, is responsible for successfully performing and completing all work and tasks identified in the SOW approved by USACE and as specified in the CPRA Contract, unless otherwise expressly provided herein and in the SOW. The SOW is attached hereto as **Attachment "A"** and is incorporated by reference as if fully set forth herein.

(2) Pursuant to the CEQ Regulations at 40 CFR 1506.5, third party contractors who will prepare an EIS must execute a disclosure statement specifying that the third party contractor does not have financial or other interest in the outcome of the permit application process. As part of its procurement, CPRA has required all proposers to submit a Proposer's Organizational Conflicts of Interest Disclosure Certification ("OCI Disclosure Certification") in which each proposer specifies, consistent with NEPA regulations, that the proposer has no financial or other interest in the outcome of the Section 10/404 permit application and/or Section 408 request process, except for remuneration specifically for preparing the EIS. The TPC has executed an Organizational Conflict of Interest ("OCI") Certification, a copy of which is attached hereto within **Attachment "B"** (Organizational Conflicts of Interest), which is incorporated by reference in its entirety as if fully set forth herein. In addition, the TPC shall, contemporaneous with the execution of this MOU, execute an "On-Going OCI Obligations Certification". The form of the Certification is attached hereto as **Attachment "C"** and the substance of the Certification is incorporated by reference as if fully set forth herein.

(3) In order to maintain and ensure impartiality in the EIS preparation, all data and information submitted by CPRA and any other person or entity shall pass through USACE before or concurrent with transmittal to the TPC unless otherwise agreed in writing by the TPC and USACE, and such writing shall be included in the Project File. Any information posted by CPRA to the TPC-maintained SharePoint site, identified in Article III.A.6 below, shall be considered compliant with this paragraph.

(4) The TPC shall follow the communications protocols outlined in Article V herein.

(5) Throughout the effective period of the MOU and the CPRA Contract, the TPC will establish and maintain a dedicated, password-protected call-in number for use during regularly-scheduled management and technical calls. USACE shall be able to use this call-in number if necessary for all calls even if the TPC does not participate. No other Project which is the subject of another proposed action by CPRA or a third party may use the same call-in number and password.

(6) Throughout the effective period of this MOU and the CPRA Contract, the TPC will establish and maintain a dedicated, password-protected SharePoint site for sharing information between USACE, the TPC, cooperating agencies, and CPRA. The TPC shall ensure the security of the information on this SharePoint site with limited access as approved by CEMVN. The TPC shall maintain the SharePoint site in a manner that allows cooperating agencies and CPRA to provide information and review or receive information, as approved by CEMVN.

(7) The key members of the TPC EIS Team are set forth in **Attachment “D”** and those personnel shall remain on the TPC EIS Team throughout the EIS preparation process and the issuance of a Record of Decision, unless USACE consents to a personnel change.

(8) The TPC shall produce an EIS that meets USACE regulations, including those found at 33 CFR Part 230 and at 33 CFR Part 325, Appendix B, and that includes a full and fair discussion of the potential significant environmental impacts of the Proposed Action. The EIS shall discuss impacts in proportion to their significance with only brief discussions of non-significant impacts. The EIS prepared by the TPC must conform to the CEQ NEPA regulations at 40 CFR §§ 1500 – 1508 and shall utilize the CEQ Guidance dated March 6, 2012, Subject: Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act.

(9) The TPC shall ensure consistency in usage, terminology, and formatting throughout the documents it prepares and shall use a writing standard or style guide provided by USACE. Documents that are not consistent or that do not meet environmental technical writing standards will be returned to the TPC for revision. The EIS shall be written in plain language, follow a clear format, and emphasize important impact analyses and information relevant to those analyses. The TPC will consider incorporating by reference materials into the EIS to avoid unnecessary discussion. When incorporating materials by reference, the TPC will provide appropriate citations to identify the incorporated materials and will briefly describe their content and author, creator or source.

(10) The TPC is responsible for, *inter alia*, reviewing information provided by CPRA, reviewing primary sources for technical information, seeking cooperating agency review/input, and seeking information from other government agencies and non-government sources during the scoping process and in preparation of the EIS, and other tasks as identified in the SOW, Attachment A. The TPC will use information provided by CPRA to the extent such information is relevant to the EIS and subject to verification of the accuracy, objectivity and completeness of such information. If not relevant or not accurate, the TPC will not use such information. If not complete, the TPC will supplement such information as necessary to ensure USACE has adequate information to take a hard, objective look at the environmental impacts of the project. If the TPC has concerns that the information may be potentially biased or subjective, the TPC will notify USACE of its concerns for USACE's determination whether the information may be used.

(11) The TPC will review and verify the relevance, accuracy, validity, objectivity, and completeness of all information used in the preparation of the EIS. On an on-going basis, the TPC will assess whether it needs additional information to perform the analyses required for the EIS. In the event the TPC determines that it needs additional information that it cannot obtain through its technical sources, the TPC will notify USACE in writing as appropriate: (a) that additional information is required to identify the significance of environmental impacts; (b) that additional information is required to verify or to supplement information provided by CPRA or cooperating agencies; (c) that additional information is required to respond to questions from federal, state and local agencies or from the public; and (d) that additional information is required to develop the alternatives analysis, including the “No Action” alternative. In the notification, the TPC will identify all data gaps for USACE review. When the necessary additional information may be obtained from CPRA or a cooperating agency, the TPC will draft requests for such additional information, which it will submit to USACE in writing. USACE will serve as the primary point of contact for all cooperating agencies regarding data gaps or information requests. The TPC will bring EIS related questions and issues to the attention of USACE in a timely manner for guidance from USACE.

(12) The TPC, under the direction of USACE, shall develop a Detailed EIS Schedule for the entire NEPA process for the Proposed Action in coordination with the cooperating agencies and the CPRA. The Proposed Action is included in the Fixing America's Surface Transportation Act, Title 41 (FAST-41) Permitting Dashboard. The TPC under the direction of USACE, will coordinate with CPRA and the cooperating agencies to revise, if necessary, the EIS schedule to incorporate the review requirements of FAST-41. The EIS Schedule will be developed and maintained in Microsoft Project® or another project software program as approved by USACE. The EIS Schedule shall include the 408 Review Plan Schedule as provided by USACE and should be consistent with Article II.E. The EIS Schedule shall set forth the milestones, concurrence points, phases, and critical path(s) of the tasks and deliverables and other efforts required to complete the EIS together with completion dates for each. The EIS Schedule, upon approval by USACE and concurrence by CPRA and the cooperating agencies, will be used by the TPC to manage work on the EIS and by USACE to monitor progress of the work completed by the TPC.

(13) All information, data, planning materials, studies, maps, files, reports, computer, audio or video tapes, and disks and other records created or obtained by the TPC and evaluated for potential use in the EIS will be compiled by the TPC into a project file ("Project File"). Records of personal communications, meeting notes, and phone logs created by the TPC pertaining to the EIS will be included in the Project File. Internet sources of information will be noted in the reference section of the EIS with the date the information was obtained and the person who obtained it; copies of such articles will be placed in the Project File. The TPC is responsible for compiling the Project File on an on-going basis and for maintaining an electronic database and index for the Project File in order to minimize the time and effort required to locate and retrieve record materials. Records will be included in their original formats, except that electronic scans of hard copy documents are acceptable. The Project File shall be organized in chronological order and will minimize duplication of materials. The electronic index will identify each record by date, by source, by agency, by type, by author, by recipient(s) and by subject as applicable. The TPC shall update the Project File continually throughout the MOU and the CPRA Contract term and shall transfer the Project File and index in electronic format to USACE upon request and within one week after the final EIS is completed and the Record of Decision is issued. USACE shall have full and final authority to determine the contents of the Administrative Record if an Administrative Record is prepared.

(14) The TPC shall identify conflicting environmental requirements among Federal and state(s) laws and recommend solutions to USACE, in writing, to resolve conflicts. If necessary, the TPC will identify reasonable mitigation measures to lessen potentially significant environmental impacts and will evaluate the costs and benefits associated with implementation of each mitigation measure and the degree to which significant environmental impacts would be avoided.

(15) During the process of finalizing the Scoping Report, identifying application deficiencies, and reviewing existing studies and documents, the TPC may discover tasks (e.g., additional technical reports required to support the EIS) that are necessary for the preparation of a complete, accurate, and unbiased EIS, but which are outside of the SOW as specified in the CPRA Contract. These tasks may arise from internal review, through coordination with cooperating Federal or state agencies, or via public comment. In such event, the TPC shall prepare and submit a draft amendment to the SOW to CEMVN which shall identify the additional task and contain an estimate of the impact on the schedule. The TPC shall not take any action on the task or tasks proposed to be added to the amended SOW. If CEMVN determines that the additional tasks are necessary to enable the TPC to prepare a complete, accurate, and unbiased EIS, CEMVN shall provide CPRA with the proposed amendment to the SOW and request CPRA to modify the CPRA Contract. Any alteration or modification of the CPRA Contract shall be made

at CPRA's discretion and only in accordance with the terms and conditions contained in the CPRA Contract.

(16) The TPC shall prepare maps, drawings, and other graphic and visual renderings as requested by USACE showing the location of all features and facilities of the Proposed Action and related areas of disturbance and pertinent biological data. USACE staff will identify the scale of the maps as they become necessary throughout the normal processing of the EIS. At this time, USACE anticipates requiring the normal quad sheet range of maps.

(17) The TPC is not an agent for or representative of USACE and it cannot make statements or commitments on behalf of USACE. The TPC will raise all issues related to tasks and work outlined in this MOU or in the SOW with USACE prior to discussing such issues with cooperating agencies, CPRA, or others.

(18) The description of the proposed action will be taken from CPRA's Application and Responses to any Requests for Additional Information. The purpose and need statement will be developed by USACE based on CPRA's stated purpose and need and in accordance with 33 CFR Part 325, App. B ¶(9)(b)(4) with input from CPRA and concurrence by coordinating agencies. All other information to be included in the EIS must be independently verified by the TPC using peer-reviewed source references. CPRA will provide all figures and tables from the CPRA Applications to USACE in electronic format suitable for editing. The source for each table and figure in the EIS will be indicated directly underneath that table or figure.

(19) The TPC will not use pre-decisional language in the EIS. All sentences that speak of the Proposed Action and/or potential impacts must use conditional language (i.e., "would" rather than "will").

(20) Because USACE generally does not state "no adverse impact" if there is a possibility, no matter how slight, of an impact, all preliminary findings of "no adverse impact" shall be brought to the attention of USACE in writing by the TPC.

(21) The TPC shall ensure the security of information obtained as part of preparing the EIS and shall not disclose any information or documents to any party except as provided in this MOU and Scope of Work. The TPC shall be responsible for obtaining any necessary signed confidentiality agreements from all persons, entities, and subcontractors performing any work on the EIS.

(22) The TPC may not talk to any third parties, including but not limited to members of the press and media, about the Proposed Action or the EIS outside of the public EIS processes (e.g., scoping meetings, public hearings regarding the DEIS, etc.). For purposes of this Agreement, third parties do not include employees of governmental agencies that are participating as cooperating agencies in the EIS process, or any subject matter experts relied upon by the TPC in preparing the EIS. The TPC may not publish articles, blogs, social media posts, or other publications about the Proposed Action or EIS or post comments on the EIS Proposed Action website without the prior written approval of USACE. The TPC may not make presentations about the EIS or the Proposed Action without the prior written approval of USACE.

(23) TPC shall observe, abide by, and comply with all USACE, NEPA, CEQ and other applicable federal laws, regulations, policies, guidance, and mutual written agreements of the parties pertaining to preparation of the EIS and all processes relating thereto, including the work covered by this MOU, the SOW, the TPC's Proposal and the CPRA Contract.

(24) The TPC shall indemnify and hold harmless the United States of America, the Department of the Army, the USACE, and all of their employees, agents, contractors, representatives, and personnel from and against any claims, judgments, or lawsuits arising from damages alleged to have been caused by, or attributed to the negligence and/or intentional misconduct of the TPC and/or its failure to comply with the provisions of this MOU and/or the SOW in the preparation of the EIS and/or with respect to any work performed or services provided directly or indirectly related to preparation of the EIS or for the other services described within this MOU, the SOW, and the CPRA Contract. The TPC will not be liable for damages due to the fault or negligence of the USACE or USACE contractors.

(25) The TPC shall indemnify and hold harmless the State of Louisiana and the CPRA, and all of their employees, agents, contractors, representatives, and personnel from and against any claims, judgments, or lawsuits arising from damages alleged to have been caused by, or attributed to the conduct of the TPC in connection with the preparation of the EIS and/or any work performed or services provided directly or indirectly related to the EIS or for the environmental services described within this MOU, the SOW, and the CPRA Contract, except for damages due to the fault or negligence of the CPRA or its employees, agents, contractors, representatives, and personnel.

#### B. USACE Responsibilities.

(1) USACE is the lead federal agency in the preparation of the EIS and is responsible for the management and coordination of the EIS and for assuring compliance with all requirements of NEPA, CEQ regulations, and other federal laws, regulations and Executive Orders, including EO 13807, applicable to the permit application review process and FAST-41 (42 USC §4370m et seq.). USACE is committed to making timely decisions with the goal of completing all Federal environmental reviews and permit and permission decisions within 2 years of the publication of the Notice of Intent to Prepare an EIS while ensuring that the EIS is properly scoped, addresses relevant and significant environmental concerns, and analyzes all reasonable alternatives. USACE will perform its roles, responsibilities, and tasks in accordance with the SOW as well as this MOU. Because the Proposed Action is included in the FAST-41 Permitting Dashboard, the USACE will be responsible for the management of the TPC and the Coordinated Project Plan (CPP) and will coordinate with CPRA and the cooperating agencies to, if necessary, revise the EIS schedule to incorporate the review requirements of FAST-41.

(2) USACE will direct, monitor, oversee and supervise the TPC in the preparation of the EIS including, but not limited to, public review of the EIS, preparation of responses to public comments, and preparation of the record of decision. In exercising this responsibility, USACE will endeavor to integrate NEPA requirements with other environmental review and consultation requirements and to avoid duplication of efforts with cooperating and consulting agencies. However, USACE will not delegate to any other agency its authority over the scope and content of the EIS, the analysis, or its approval authority.

(3) USACE shall be responsible for managing the permit application review process consistent with EO 13807, FAST-41 and applicable implementing agreements and guidance. The following guidance is attached hereto and is incorporated herein: 1) Director's Policy Memorandum 2018-12, dated September 26, 2018; and 2) Implementation Guidance for Regulatory Compliance with Executive Order 13807, dated September 26, 2018.

(4) USACE may establish an interdisciplinary team of USACE personnel to oversee the preparation of the EIS by the TPC. Although USACE staff will generally communicate with the TPC through the TPC's EIS project manager and deputy EIS project manager, USACE reserves the right to speak directly with any member of the TPC EIS team and to ask that TPC resource area leads participate in weekly or bi-weekly meetings to discuss specific issues.

- (5) In accordance with the SOW, USACE shall review CPRA's purpose and need statement and CPRA's stated needs and goals, to determine the basic and overall Proposed Action purposes. While generally focusing on CPRA's statement, USACE will exercise independent judgment in defining the purpose and need for the Proposed Action, and will be responsible for determining the environmental resources and reasonable alternatives to be carried forward for detailed analysis in the EIS as well as analyzing the environmental impacts of those alternatives.
- (6) In accordance with the SOW, USACE shall review CPRA's screening criteria for alternatives (if any are proposed) and the alternatives developed and/or evaluated by CPRA (i.e. Alternatives Report). USACE may suggest additional alternatives and/or suggest modifications to alternatives to be analyzed in the EIS. USACE has final approval authority for the draft and final range of alternatives and screening criteria in the EIS.
- (7) In accordance with the SOW, and as required by NEPA, USACE will give full consideration to a "No Action Alternative" and other identified alternatives that are technically and economically feasible, and that satisfy the purpose and need for the proposed project. CPRA's financing of the EIS will have no bearing on the consideration given to the "No Action" or other alternatives.
- (8) If necessary, USACE shall directly request information from CPRA that the TPC requires for the preparation of the EIS. USACE shall independently evaluate all information submitted for use in the EIS by CPRA and others. To the extent USACE determines that the information submitted is inadequate to enable the TPC to prepare a complete, accurate, and unbiased EIS, USACE, with assistance from the TPC, shall request that CPRA provide additional information. If CPRA does not provide such additional information as requested in a timely fashion, the TPC may gather such information, at the direction of USACE, necessary to prepare a complete, accurate, and unbiased EIS. For purposes of this section, a "complete, accurate, and unbiased EIS" shall be an EIS sufficient to enable USACE to take a hard, objective look at the environmental impacts of the project and reasonable alternatives and to comply with NEPA and applicable implementing regulations, as well as other applicable federal laws and regulations.
- (9) USACE will provide comprehensive oversight of the EIS preparation process to verify that the TPC thoroughly considers existing data, environmental descriptions, and analyses available from CPRA and other sources, and that the TPC does not duplicate work already completed unless USACE determines that the existing work is not adequate for the preparation of a complete, accurate, and unbiased EIS. USACE and the TPC will jointly assess whether existing work must be modified or redone. USACE will use the information provided by CPRA to the extent such information is determined to be relevant, accurate, complete, and unbiased and will supplement that information as needed to ensure adequate information is provided in the EIS to allow a hard, objective look at the environmental impacts of the project. USACE will require the TPC to provide adequate copies of all maps, reports, and draft documents to allow for a timely review.
- (10) USACE shall make the final determination on the inclusion or exclusion of material in the EIS and the relevance of any material, data, analyses, and conclusions in accordance with applicable policies, laws and regulations.
- (11) If appropriate, USACE may recommend modifications to the Proposed Action to avoid or reduce impacts to the human environment. Upon concurrence from CPRA, the Proposed Action will be so modified. If any means, measures, or practices recommended by USACE are not incorporated into the

Proposed Action by CPRA, USACE may elect to analyze in detail an alternative(s) that includes the suggested mitigation features.

(12) USACE will identify and invite cooperating agencies to participate in the development, consultation, and coordination of the EIS. If needed, the USACE, with assistance from the TPC, will coordinate, organize, and lead meetings with CPRA and cooperating agencies in order to raise concerns and to obtain recommendations regarding needed actions relating to the preparation of the EIS. At a minimum, USACE, with assistance from the TPC, will coordinate, organize, and lead a regularly-occurring monthly in-person meeting, between USACE, CPRA, the TPC, and cooperating agencies (to the extent cooperating agencies choose to attend) to identify environmental issues that need resolution and to keep preparation of the EIS on schedule. USACE, with assistance from the TPC, will coordinate and organize any additional meetings and conference calls between the parties to this MOU as outlined in the SOW.

(13) USACE will make effects determinations and undertake consultations as required by Section 7 of the Endangered Species Act of 1973, as amended, and by Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended. USACE, with the assistance of the TPC, will engage CPRA in these consultations. USACE will initiate and conduct consultation with Native American Tribes affected by the Proposed Action in compliance with the NHPA of 1966, as amended.

(14) USACE is solely responsible for making the final determination on the accuracy, adequacy and content of the EIS, including ensuring that all pertinent environmental issues and impacts and reasonable alternatives and their impacts are adequately addressed in the EIS. USACE will determine any necessary modifications to the EIS as a result of public, cooperating agency, or CPRA submitted comments.

### C. CPRA's Responsibilities.

(1) CPRA shall participate in the EIS preparation and drafting processes, including development of the EIS and the analysis supporting the EIS, to the extent permitted by USACE regulations and policies, including, but not limited to: participation in calls and meetings with USACE, the TPC and any cooperating, commenting or coordinating agencies; development of the project purpose and need and the reasonable range of alternatives; development of the technical analyses supporting the EIS; review and comment on draft documents; participating as the applicant in the ESA and EFH consultations; participating as the applicant in the NHPA Section 106 consultation; and any other similar activities related to the development of the EIS and related consultations.

(2) CPRA shall compensate the TPC for work satisfactorily performed in the EIS SOW in accordance with the terms and conditions of the CPRA Contract. The TPC and CPRA agree that USACE is not obligated financially for any services rendered by the TPC relating to the development of the EIS for the Proposed Action.

(3) CPRA will be financially responsible for the development, coordination and completion of all cultural and historic clearances and biological surveys associated with the EIS. All associated field data, electronic information, and reports will be provided to the USACE. The final decision for all determinations, procedures, recommendations, methods, clearances and surveys will be made by the USACE in consultation with other agencies that have jurisdiction by law.

(4) CPRA will provide a complete description of the Proposed Action that is the subject of the EIS, including scope, purpose and need, and any alternatives and screening criteria identified by CPRA for USACE review.

(5) CPRA will participate in meetings, site-visits and conference calls as requested by USACE and shall respond to data requests and provide review comments within the EIS schedule. CPRA will participate in the regularly scheduled monthly in-person meetings between USACE, the TPC, and cooperating agencies, (to the extent the cooperating agencies choose to participate) in order to identify environmental issues that need resolution and to keep preparation of the EIS on schedule. In addition, if requested by USACE, CPRA will participate in additional meetings and/or conference calls between the USACE, the TPC, and cooperating agencies, in order to identify environmental issues that need resolution and to keep preparation of the EIS on schedule. If CPRA fails to meet any deliverable in the EIS schedule, USACE may adjust and extend the EIS schedule to the extent necessary commensurate with the extent of CPRA's delay.

(6) CPRA will participate in the identification of means, including minor project modifications, measures, and practices that would avoid, minimize, repair, reduce and/or eliminate adverse impacts as requested by USACE (33 C.F.R. §320.4(r)) and will incorporate such means, measures or practices into its Proposed Action to the extent feasible and consistent with CPRA's purpose and need.

(7) CPRA will comply with all federal, state, and local laws and regulations and will obtain all required permits that apply to the Proposed Action that is the subject of the EIS.

(8) CPRA may not direct the interpretation, modification or inclusion of any data, evaluations, or other materials pertinent to the preparation of the EIS, either directly or indirectly through a third party. USACE will make the final determination on the inclusion or deletion of any material in the EIS.

(9) Consistent with Article V.A., CPRA may communicate directly with the TPC absent USACE personnel *only* on CPRA Contract issues such as required progress monitoring reports, invoicing, and payment-related matters; all other communications with the TPC must include USACE personnel. If billing or CPRA Contract issues involve EIS management or NEPA issues, USACE staff must participate in the discussion. Including USACE personnel on any email including the TPC is adequate to satisfy these provisions.

(10) CPRA will be responsible for providing technical and environmental information that is needed for EIS preparation to USACE. CPRA will provide an electronic Document Matrix and electronic copies of all documents included in the Document Matrix to both USACE and the TPC no later than the EIS Kickoff Meeting. As additional studies are completed, CPRA will provide electronic copies of those studies to USACE for review and distribution to the TPC. In accordance with the SOW, CPRA shall provide a series of studies and reports to support the preparation of the EIS.

(11) CPRA shall review and provide comments on EIS documents to USACE in writing per the agreed upon SOW. CPRA also agrees to provide other data necessary for preparation of the EIS or supporting materials to USACE as requested in a timely fashion.

(12) In the event of a challenge to the legality or adequacy of USACE's compliance with NEPA with respect to the third party contracting process, the CPRA Contract, and/or CPRA's procurement and selection of the TPC, the parties agree to make available to each other and the state or federal government, all pertinent non-privileged information under their control, and to the extent reasonable, discuss such information with each other, and to testify at depositions or trials regarding such

information, provided, however, that nothing in this paragraph shall prevent or limit in any way, any party's rights or interests under state or federal law.

(13) CPRA shall observe, abide by, and comply with all USACE, NEPA, CEQ and other applicable state and federal regulations, laws, policies and guidance pertaining to preparation of the EIS and all processes relating thereto, including the work covered by this MOU, the SOW, the TPC's Proposal and the CPRA Contract.

(14) CPRA shall indemnify and hold harmless the United States of America, the Department of the Army, the USACE, and all of their employees, agents, contractors, representatives, and personnel from and against any claims, judgments, or lawsuits arising from damages alleged to have been caused by, or attributed to, the conduct of CPRA, including any agents, independent contractors, and subcontractors of CPRA, in connection with the preparation of the EIS and/or any work performed or services provided directly or indirectly related to the EIS or for the environmental services described within this MOU, the SOW, and the CPRA Contract, except to the extent any such damages are due to the negligence of the USACE or its contractors or personnel.

(15) CPRA agrees to provide written notice of any CPRA Contract termination to USACE. Termination of the CPRA Contract may only be made in accordance with the terms and conditions therein.

#### **ARTICLE IV – PRIMARY POINTS OF CONTACTS**

Within thirty (30) calendar days after the execution of this MOU, each party shall designate a Principal Representative to serve as its primary point of contact on matters relating to this MOU and shall provide all other parties with his/her name, title/position, address, work telephone number, cell telephone number, fax number and email address. Additional representatives may also be appointed by the parties to serve as technical points of contact. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Unless this MOU requires notification by mail or hand-delivery, facsimile or electronic transmission of any document shall be the same as the delivery of an original document.

Any request, demand, or other communication required to be given under this MOU shall be deemed to have been duly given if in writing and delivered personally or mailed by first-class, registered, or certified mail, as follows:

If to the CPRA:            Executive Director  
Louisiana Coastal Protection and Restoration Authority  
P.O. Box 44027  
Baton Rouge, LA 70804-4027

If to the CEMVN:        District Engineer  
U.S. Army Corps of Engineers  
New Orleans District  
7400 Leake Avenue  
New Orleans, LA 70118

If to the TPC:            Steven Davie  
GHD, Inc.  
5551 Corporate Boulevard, Suite 200

A party may change the address to which such communications are to be directed by giving written notice to the other parties in the manner provided in this Article. Any request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven (7) calendar days after a paper copy is mailed.

## ARTICLE V - COMMUNICATION PROTOCOL

### A. Communication Generally:

Communication strategies and protocols are established in this MOU to ensure and maintain the integrity of the NEPA process, by precluding any source of bias in the formulation of the EIS, as well as by averting any potential appearance of improper influence. However, these protocols are not intended to be so restrictive as to eliminate efficiency from the information exchange process. The following is not an exhaustive list of communication limitations and documentation procedures, but includes the general policies and practices necessary to preserve the independence and integrity of the EIS preparation, evaluation and decision-making processes. The parties will follow the following communication protocols during the development of the EIS:

- (1) To the extent allowable by state or federal law, oral and written communications among USACE and the TPC shall be protected from disclosure consistent with the deliberative process privilege. Individuals who disclose these communications to the public and/or CPRA will be excluded from further participation in the analysis.
- (2) USACE has final authority to provide technical instructions and guidance to the TPC related to preparation of the EIS, compliance with federal laws, policies, regulations, and procedures, impact assessments, data interpretation, and conclusions. Direction to and of the TPC is the exclusive responsibility of USACE. The TPC may neither take nor request direction or guidance from CPRA, including any of CPRA's representatives, consultants, agents, and attorneys, other than as specified by the CPRA Contract and within this MOU or SOW, on any aspect of the EIS preparation.
- (3) Except as otherwise provided herein, USACE shall be solely responsible for directly communicating the status of the EIS to CPRA. Any type of contact or communication between the TPC and CPRA that does not include a member of USACE staff must be documented by the TPC through e-mail, memoranda, conversation records, or other notes as appropriate. This documentation is the responsibility of the TPC and is to be compiled in the Project File with dated copies provided to USACE and CPRA.
- (4) The TPC may communicate directly with CPRA absent USACE personnel only on matters concerning CPRA Contract-required deliverables such as progress monitoring reports, invoices, and payment-related matters, as long as such communications do not relate to the scope, content, or schedule for the EIS.
- (5) Unless otherwise agreed in writing by USACE, all other communications related to the Proposed Action between CPRA and the TPC must include USACE personnel. Prior to any such communication between the TPC and CPRA, the USACE Primary Point of Contact or his/her authorized designee must be notified in writing.

(6) If CPRA Contract matters involve EIS management or NEPA issues (EIS schedule, regulatory clock stop/start dates, outstanding data gaps, etc.), communication should not occur without USACE staff participation or prior notification and approval.

(7) Ex-parte communication refers to exchanges between CPRA and the TPC which are not otherwise disclosed, authorized or previously revealed to USACE. Ex-parte communications can be written or oral, are off-the-record, and deal with the merits of the EIS and the Proposed Action. Ex-parte communications between CPRA, non-governmental entities (e.g., NGOs, members of the public, industry stakeholders) and the TPC regarding the EIS and the permitting process are strictly prohibited. If an ex-parte communication occurs, the TPC shall immediately report the ex-parte communication in writing to USACE.

#### B. The EIS SOW Deliverable Review Process:

The following process shall be followed for all draft and final documents, deliverables, and work products, including but not limited to, agendas, minutes, notices, meeting and review plans, scoping reports, schedules, public and other notices, appendices, technical reports, supporting documents, and other publications, materials, and findings prepared by or on behalf of the TPC and prior to the finalization, approval and release of any document by USACE.

(1) The TPC must submit all draft and final documents, deliverables, and work products, including but not limited to, agendas, minutes, notices, meeting and review plans, scoping reports, schedules, public and other notices, appendices, technical reports, supporting documents, and other publications, materials, and findings prepared by or on behalf of the TPC directly to USACE without first filtering the information through others, specifically including but not limited to CPRA and cooperating agencies.

(2) The TPC shall revise all draft and final documents as necessary to address comments generated during USACE's independent review and shall submit the revised documents to USACE for its determination whether its comments and concerns have been adequately addressed. Once USACE is satisfied that its comments have been addressed, USACE will provide the revised draft document to CPRA and cooperating agencies for review and comment.

(3) CPRA and the cooperating agencies shall have a reasonable time based on the scope and complexity of the document to provide USACE with written comments and proposed revisions. The comment period will be established by USACE prior to the release of the document, including the means and methods to submit comments and the comment deadline. Comments and revisions not provided in writing will not be addressed or considered.

(4) Once USACE has received all comments from CPRA and cooperating agencies, USACE will provide the comments to the TPC to review and recommend how to address the comments. The TPC and USACE shall evaluate the written comments received and the TPC, under the direction of USACE, shall draft proposed responses and/or identify issues with any comment(s). If USACE issues written approval to do so, the TPC will incorporate or address CPRA and cooperating agency comments as appropriate in the document and will distribute the final document to USACE, CPRA, and cooperating agencies. If necessary, the TPC, in coordination with USACE, shall schedule a meeting with USACE, CPRA and the cooperating agencies to discuss comments and attempt to resolve any issues.

(5) Following such a meeting, the TPC in consultation with USACE, shall revise the document and

submit the revised document to USACE.

## **ARTICLE VI - DOCUMENTS AND DELIVERABLES CREATED IN THE DELIBERATIVE PROCESS AND THE PREPARATION OF THE FINAL EIS**

### **A. Public Disclosure of Documents and Materials:**

The Parties to this MOU acknowledge that there will be some notes, drafts, and other deliberative documents produced during the course of drafting the EIS and related NEPA documents that are exempt from public disclosure under the Freedom of Information Act ("FOIA"). Generally, during the drafting of an EIS, the USACE exercises its deliberative process exemption pursuant to 5 U.S.C. § 552(b)(5) for, but not limited to, the following documents: preliminary draft EIS chapters, comments to preliminary draft EIS chapters, draft documents relating to ESA consultation, and correspondence regarding ESA consultations. Pursuant to Policy Memorandum, USACE Initial Denial Authorities (IDAs) Use of FOIA Exemption 5, Deliberative Process Privilege for non-Federal Documents Received Pursuant to CWA §404 Permitting dated 14 June 2019, USACE IDAs in most cases are not to use Exemption 5 as a basis to withhold documents submitted by non-Federal sources pertaining to CWA §404 permitting. USACE will be responsible for responding to all public information requests pursuant to the FOIA and to the extent permitted by law, will maintain confidentiality of all information, documents, and materials used in the development of the EIS in accordance with FOIA, USACE policies, legal decisions, related regulations, and other applicable federal laws. If CPRA receives a public records request under Louisiana Public Records Act (La. R.S. 44:1, et seq.) for any documents covered under this paragraph, CPRA will provide written notice by mail and by electronic mail to USACE within 10 business days of receipt of such request and CPRA may release any such documents in its possession if required to do so under applicable law and regulations unless USACE has asserted any and all applicable deliberative process exemptions within 20 business days of the mailing of such notice.

### **B. Ownership of Documents and Materials:**

- (1) Except as provided in Art. VI(B)(2), all documents, materials, and work products prepared or created in conjunction with and/or in furtherance of the preparation of the EIS and the evaluation of the CPRA Applications and the other tasks outlined in this MOU and SOW, including but not limited to the EIS and its appendices and all drafts, data, reports, information, manuals, and computer programs, or other written, recorded, photographic, or visual materials or other deliverables shall be deemed U.S. Government works and shall not be subject to copyright under the Copyright Act (See 17 U.S.C. 105).
- (2) CPRA shall retain sole ownership and control over any CPRA Contract-required deliverables not related to the preparation of the EIS including but not limited to progress monitoring reports, invoices, and payment-related documents and materials. Public availability and release of such materials is subject to State public records laws.
- (3) No copyright or ownership rights of any kind will at any time arise or vest in the TPC in any work, documents or materials contemplated by or resulting from this MOU or SOW or the CPRA Contract.

## **ARTICLE VII - DISPUTE RESOLUTION**

The parties agree that, in the event a dispute arises as to the performance of any function under this MOU, they will use their best efforts to resolve the dispute by informal means, including without limitation, mutually agreeable, non-binding alternative dispute resolution processes. If the alternative dispute resolution process has been utilized and has been exhausted, the parties may avail themselves

of any remedies available at law or equity. The existence of a dispute shall not excuse the parties from performing their obligations under this MOU.

A. Dispute Resolution Points of Contact:

To ensure that the Parties can quickly identify and resolve any disagreements or disputes that might delay the permit evaluation and EIS preparation processes or result in duplication in the federal review processes for the Proposed Action, this MOU establishes a Primary Contact for dispute resolution for each Party. The Primary Contacts for dispute resolution shall be the same as identified in Article IV above. This MOU does not confer on these Primary Contacts any powers or authorities that these officials do not currently possess under the laws of the United States and the State, and is not in lieu of informal, regular communications to avoid disputes. Rather, the Primary Contacts will maintain regular contact with each other and will expeditiously identify and resolve issues elevated to them that may arise in the permitting process that could either delay the environmental review of the Proposed Action or lead to duplicative and wasteful permitting efforts.

B. Dispute resolution process per FAST-41 for disputes related to the CPP and permitting timetable will apply.

Consistent with FAST-41, unless otherwise provided by law, rule, regulation, guidance, or mutual agreement of the parties, any disputes related to the CPP shall first be mediated by CPRA, the Federal Permitting Improvement Steering Council (FPISC) Executive Director, and the Chief Environmental Review and Permitting Officer (CERPO) for the relevant Federal agency. If the dispute remains unresolved after 30 days, the Director of the Office of Management and Budget ("OMB"), in consultation with CEQ, shall seek to facilitate resolution of the dispute within 60 days of the date when the dispute was originally raised with the FPISC Executive Director. Any action taken by the Director of OMB shall be final and conclusive and not subject to judicial review pursuant to 42 U.S.C § 4370m-2(c)(2)(C)(iii). Dispute resolution process will also be consistent with the Memorandum of Understanding Implementing One Federal Decision and Executive Order 13807 including the attached Implementation Guidance for Regulatory Compliance with Executive Order 13807.

**ARTICLE VIII - MODIFICATION AND AMENDMENT**

In light of circumstances encountered during EIS development, modifications, amendments, and supplements to this MOU may be necessary. This MOU may be modified, amended, or supplemented in writing by mutual agreement of all three parties.

**ARTICLE IX - NON-FUND-OBLIGATING DOCUMENT**

This instrument is neither a fiscal nor a funds-obligation document. Any endeavor involving reimbursement or contribution of funds between the parties will be handled in accordance with applicable laws, regulations, and procedures including those for federal government procurement and printing. Such endeavors will be outlined in separate agreement(s) that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for non-competitive award of any contract or other agreement.

**ARTICLE X - RELATIONSHIP OF PARTIES**

In the exercise of their respective rights and obligations under this Agreement, the parties each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. No party shall provide any contractor with a release that waives or purports to waive any rights another party may have to seek relief or redress against that contractor.

#### **ARTICLE XI - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES**

This Agreement does not create any rights, confer any benefits, or relieve any liability of any kind whatsoever in any third person not a party to this Agreement.

#### **ARTICLE XII – OBLIGATIONS OF FUTURE APPROPRIATIONS**

The CPRA intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of Louisiana where creating such an obligation would be inconsistent with Article 3, Section 16(A) of the 1974 Constitution of the State of Louisiana, as applicable.

#### **ARTICLE XIII- EFFECT OF AGREEMENT**

This MOU does not in any manner affect statutory authorities and responsibilities of the signatory parties.

#### **ARTICLE XIV - EFFECTIVE DATE.**

This MOU shall take effect when signed by all parties. The effective date for this MOU shall be the date it is signed by the District Engineer for the New Orleans District on behalf of CEMVN, who shall be the last party to sign.

#### **ARTICLE XV – TERMINATION**

A. This MOU may be terminated by USACE or CPRA with thirty (30) calendar day's written notice to the other parties. During the intervening 30 calendar days, the parties agree to actively attempt to resolve any outstanding disputes or disagreements. This MOU may be terminated by the TPC only with the written consent of the USACE and CPRA.

B. This MOU shall automatically terminate upon CPRA's withdrawal of its Applications for the Proposed Action. In the event CPRA withdraws its Applications, USACE shall be under no obligation to continue preparation of the EIS or to take any other action regarding the Applications or compliance with NEPA and other applicable Federal laws and regulations. CPRA understands that withdrawal of any Application or proposal by CPRA for the Proposed Action will end the NEPA process and in such event, CPRA will be responsible for costs incurred by the TPC in terminating the NEPA process.

C. In the event of termination, the TPC shall deliver to USACE and to CPRA, all non-proprietary and non-confidential documentation developed by or in possession of the TPC in paper or electronic format. In addition, CPRA shall require the TPC to submit to USACE in paper or electronic format, the environmental work and analyses (i.e. field data, reports, GIS data etc.) done by the TPC prior to termination of the MOU and CPRA Contract.

D. USACE can recommend termination of this MOU and the CPRA Contract to CPRA, if the TPC, or any of its subcontractors: (a) Fails to commit sufficient resources for timely completion; (b) Fails or

refuses to complete work tasks as specified by the MOU, SOW, or in the CPRA Contract; or (c) Fails to identify any pre-existing or new OCI(s).

E. Any recommendation by USACE to CPRA for contract termination must be made in writing with a copy provided to the TPC. In the event that the CPRA Contract is terminated by CPRA, CPRA will submit a recommendation to USACE on execution of a new contract with another third party contractor. However, CPRA must solicit and select a new third party contractor in accordance with Louisiana public bid law.

F. In the event of a termination prior to complete performance of the CPRA Contract and the completion of the entire SOW, the TPC will immediately transfer all Project File materials and interim documents to USACE. If USACE has concerns related to performance of the TPC, USACE will submit those concerns in writing to CPRA for resolution. Any dispute resolution and termination of the CPRA Contract shall be made in accordance with the terms and conditions contained therein.

IN WITNESS WHEREOF, the parties have executed this MOU, which shall become effective upon the date it is signed by the District Engineer.

**THE U.S. ARMY CORPS OF ENGINEERS  
NEW ORLEANS DISTRICT**

BY:   
STEPHEN F. MURPHY  
Colonel, U.S. Army  
District Engineer

DATE: 8/16/19

**COASTAL PROTECTION AND  
RESTORATION AUTHORITY**

BY:   
LAWRENCE B. HAASE  
Executive Director

DATE: 8/12/19

**GHD, INC**

BY:   
Steven Davie

Title: Vice President

DATE: 8/9/2019

**ATTACHMENT "A"**

**SCOPE OF WORK**

# **SCOPE OF WORK FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT REQUIRED FOR DEPARTMENT OF THE ARMY PERMITS**

## **1. INTRODUCTION.**

The Coastal Protection and Restoration Authority Board of Louisiana, through the Coastal Protection and Restoration Authority (CPRA), has submitted a Joint Permit Application to the Department of the Army (DA) under the provisions of Section 404 of the Clean Water Act (33 USC 1344) (Section 404) and Section 10 of the Rivers and Harbors Appropriation Act of 1899, as amended (33 USC 403) (Section 10) and a permission request under Section 14 (33 USC 408) (Section 408) of the Rivers and Harbors Act of 1899 to the U.S. Army Corps of Engineers (USACE), New Orleans District (CEMVN) for CPRA's proposed Mid-Breton Sediment Diversion (Proposed Action).

An Environmental Impact Statement (EIS) will be prepared to disclose and analyze all significant environmental impacts of the Proposed Action as required under the National Environmental Policy Act (NEPA) in accordance with the Council on Environmental Quality's (CEQ) regulations found in 40 CFR 1500-1508. This EIS will address the Public Interest Review requirements of 33 CFR 320.4, NEPA regulations for the Regulatory Program at 33 CFR 325 App. B, impacts to USACE projects under 33 USC 408, and criteria to be evaluated pursuant to 40 CFR 230 (Section 404(b)(1) Guidelines), so that the EIS, when completed, will provide information required for an informed decision on the DA permit application and Section 408 permission request.

The Proposed Action generally consists of the placement of a sediment diversion through a portion of the federal Mississippi River and Tributaries (MR&T) Project mainline levee on the left descending bank of the Mississippi River (River) near River Mile 68, extending into the Breton Sound Basin in Plaquemines Parish, Louisiana. The Proposed Action is proposed to reconnect and reestablish the deltaic sediment deposition process between the Mississippi River and Breton Sound Basin to deliver sediment, freshwater, and nutrients to reduce land loss rates and sustain wetlands.

## **2. PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT REQUIRED; USE OF THIRD PARTY CONTRACTOR.**

Appendix B of 33 CFR 325 provides policy guidance on NEPA for the USACE Regulatory Program. The USACE's general regulatory policies are defined in 33 CFR 320-325 and 332. In its regulatory capacity, the USACE is neither a proponent nor an opponent of projects seeking federal approvals; rather, as identified in 33 CFR 320.4(a), USACE conducts a "public interest review" that seeks to balance a proposed project's favorable impacts against its detrimental impacts. Additionally, as identified in 33 CFR 325.2(a)(6), the USACE is also required to review projects in accordance with regulations developed by the United States Environmental Protection Agency (USEPA) under Section 404(b)(1) of the Clean Water Act (33 USC 1344[b][1]) and its implementing regulations. Based upon the description of the Proposed Action and other information provided by the CPRA and an initial assessment of the potential environmental impacts of the Proposed Action,

the USACE has determined that the permit and permission decisions for the Proposed Action constitute a “major federal action significantly affecting the quality of the human environment,” thereby requiring the preparation of an EIS.

CEMVN will file a Notice of Intent to prepare an EIS that will be published in the Federal Register in accordance with 40 CFR 1501.7 and 33 CFR 230, Appendix C.

The CEQ’s NEPA regulations expressly permit the use of third-party contractors in the preparation of an EIS. 40 CFR 1506.5(c); USACE Regulatory Guidance Letter No. 05-08 dated December 7, 2005, “*Environmental Impact Statements - Third Party Contracting*”; 33 CFR 325, Appendix B, paragraph 8(f); and CEQ July 23, 1983 Memorandum. CEQ regulations provide that agencies using third-party contractors to aid in the preparation of environmental documents will be responsible for selecting the third-party contractors, will provide the third party contractors with guidance and supervision in the preparation of the document, and will independently evaluate the document before approval. 40 CFR 1506.5(c) provides for use of third-party contracts in the preparation of an EIS by a USACE qualified contractor paid for by the Applicant (CPRA), but who is supervised directly by the USACE District Engineer or his/her designated representative.

USACE is responsible for independently reviewing the EIS prior to its approval and is responsible for its scope and content. Accordingly, USACE will independently review all documents prepared by the TPC prior to their public release, as required by 40 CFR 1506.5(a). The TPC must submit all draft and final documents, deliverables, work products, and other materials and findings prepared by or on behalf of the TPC directly to USACE, or to those that USACE directs, without first filtering the information through others.

This Scope of Work identifies the tasks and services to be performed by the TPC to prepare the EIS for the Proposed Action.

### **3. GENERAL INFORMATION ON THE PROPOSED ACTION.**

CPRA proposes to construct and operate the Mid-Breton Sediment Diversion, a riverine sediment diversion structure to be built through a portion of the federal MR&T Project mainline levee on the left descending bank of the Mississippi River, approximately at River Mile 68 above Head of Passes (AHP), in Plaquemines Parish, LA. The Proposed Action is anticipated to include an inlet channel, a gated structure at the Mississippi River Levee (MRL), a conveyance channel, interior drainage improvements, a connection through the non-federal back levee, and highway alignment accommodations. The diversion outfall would allow sediment-laden water from the Mississippi River to flow into the Breton Sound Basin. The Breton Sound Basin is suffering from significant land loss—approximately 105,267 acres (426 km<sup>2</sup>) between 1932 and 2016. Historically, the basin was flushed annually when large quantities of sediment and fresh water came down the Mississippi River in the spring. During the summer and early fall months, marine waters would enter, flushing out the basin with saline waters. As the hydrology of the basin

changed with construction of levees along the Mississippi River as far down as Bohemia, the annual process of fresh water flooding and the deposition of sediments and nutrients was broken. The loss of a sediment source to build and maintain wetlands has led to salt water intrusion, wetland loss, and subsidence.

The purpose of the Proposed Action is to build a large-scale sediment diversion consistent with the Louisiana Coastal Master Plan that will reconnect and reestablish the deltaic sediment deposition process between the Mississippi River and the Breton Sound Basin in a long-term and sustainable manner through the delivery of sediment, freshwater, and nutrients. The Proposed Action has been recommended for construction in the first implementation period of the approved Louisiana's Comprehensive Master Plan for a Sustainable Coast (2017 State Master Plan) as a large-scale, long-term restoration feature.

The TPC shall be required to refine and provide a detailed description of the Proposed Action as part of the preparation of the EIS based on project designs submitted by CPRA to CEMVN.

### **3.1. Purpose and Need of the Proposed Action.**

An EIS shall briefly specify the underlying Purpose and Need to which the agency is responding in proposing alternatives, including the Proposed Action. 40 CFR 1502.13. While generally focusing on CPRA's statement of Purpose and Need, the USACE will exercise independent judgment in defining the Purpose and Need from both the applicant's (CPRA's) and the public's perspective. 33 CFR 325, App. B 9(b)(4).

CPRA has developed the following preliminary statements of the Purpose and Need for the Proposed Action:

Purpose. The purpose of the Proposed Action is to reconnect and re-establish the deltaic sediment deposition process between the Mississippi River and the Breton Sound Basin through a large-scale sediment diversion that is consistent with the Louisiana Coastal Master Plan and will deliver sediment, freshwater, and nutrients in order to create, preserve, restore, and sustain wetlands and counteract the effects of subsidence, sea level rise, recent hurricane events, and the DWH oil spill.

Need. The Proposed Action is needed as a long-term resilient, sustainable strategy to reduce land loss rates and sustain and restore wetlands injured by subsidence, sea level rise, recent hurricane events, and the DWH oil spill.

Additionally, in accordance with the Section 404(b)(1) Guidelines, USACE is responsible for identifying the "basic" and "overall" project purposes. The "basic" project purpose is used to determine a project's water dependency (i.e., if the project requires access or proximity to, or siting within, a special aquatic site). The basic purpose of the proposed project is the fundamental, essential, or irreducible purpose of the proposed project. If the basic purpose is not water dependent, the presumption is that practicable alternative

sites or designs that do not affect special aquatic sites are available. USACE must also identify the “overall” project purpose to identify and evaluate practicable alternatives as part of the analysis done under the Section 404(b)(1) Guidelines. While NEPA requires the evaluation of reasonable alternatives, the 404(b)(1) Guidelines require USACE to evaluate practicable alternatives. “An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” [40 CFR 230.10(a)(2)]. USACE will use a reasonably and objectively formulated and stated project Purpose and Need, after taking into account the “Purpose and Need” provided by CPRA.

#### **4. GENERAL SCOPE OF WORK FOR ENVIRONMENTAL IMPACT STATEMENT.**

The TPC’s Scope of Work (SOW) is to prepare an EIS which evaluates the environmental effects<sup>1</sup> that could occur with the construction and implementation of the Proposed Action which can be used to inform CEMVN’s Record of Decision (ROD) for the Proposed Action. The TPC will work at the direction of CEMVN. All documents shall be sufficient to meet the requirements of the NEPA and all other applicable environmental laws, regulations, requirements and policies. The Proposed Action will require one or more RODs for the following federal actions: (1) Section 404 Clean Water Act Permit; (2) Section 10 Permit; and (3) Section 408 permission. Any additional information required for the Section 408 permission request beyond the completed final EIS will not be done by the TPC.

This SOW consists of the primary services that will be performed by the TPC to conduct the required level of environmental scoping, analyses, and evaluations to be used in developing a Draft and Final EIS and Draft ROD(s) for use by USACE in reaching final decisions on the requested permits and permissions. All incidental, ancillary, and necessary services required to support the primary services of the SOW are deemed to be included in the SOW without such services being expressly specified or enumerated. This SOW is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

The purpose of an EIS is to provide a full and fair discussion of the significant environmental impacts of a proposed project and inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. 40 CFR 1502.1. For USACE actions subject to NEPA, the analysis of environmental impacts in an EIS will in most cases provide the information for evaluating alternatives under the Section 404(b)(1) Guidelines. 40 CFR 230.10(a)(4). The impacts to be considered and discussed in the EIS must be done so in proportion to their significance. The EIS must include all known or reasonably foreseeable impacts (40 CFR 1508.7) and devote an appropriate level of effort to the evaluation of effects (adverse and beneficial) based on the context and intensity of such impacts. This effort includes the analysis, evaluation, and documentation of the proposed alternatives and their direct, indirect, and cumulative

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<sup>1</sup> “Effects” and “impacts” are synonymous for purposes of the CEQ regulations. 40 CFR 1508.8.

impacts, in accordance with the provisions of the NEPA, the Clean Water Act (CWA), 33 CFR 325 App. B, and all other applicable environmental/cultural resource laws, implementing regulations and Executive Orders. Additionally, this includes any environmental analyses, evaluations, and documentation for alternatives including but not limited to, all direct and indirect impacts of the Proposed Action, under all operational scenarios, and on an individual basis and on a cumulative basis, as outlined in EC 1165-2-220, Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408 (September 10, 2018).

In the preparation of the EIS, the TPC shall research and evaluate any and all information that could support the public interest review as identified in 33 CFR 320-332, as well as other environmental criteria set forth in CWA Section 404(b)(1) Guidelines, and any additional evaluation requirements in the EC 1165-2-220 and other applicable USACE guidance and regulations.

As set forth and detailed in this SOW and consistent with the terms of the MOU, the TPC is responsible for researching, obtaining, compiling, and reviewing the necessary data, analyses, documentation, literature, technical publications and previous environmental studies or reports and findings, including information for the EIS submitted by CPRA; conducting fieldwork and preparing technical studies in support of the EIS, if required; assisting USACE with public meetings/hearings; and preparing the draft and final NEPA documents, including reproduction, distribution/public posting and mailings. Any information furnished to USACE under this SOW may be subject to release under the Freedom of Information Act (5 USC 552). The TPC will not release any documents (including electronic documents and correspondence) that it receives, prepares or generates during the course of the work outlined in the TPC MOU and this SOW to any person or entity other than CEMVN, except invoices, receipts, requests for payment and billing-support documents may be provided to CPRA.

As set forth in various sections throughout this SOW, CPRA intends to provide significant portions of the information, data and analysis necessary to support preparation of the EIS (see e.g., various technical reports in Section 7). The TPC, under the supervision of USACE, shall be responsible for reviewing any information provided by CPRA and determining whether that information is adequate to enable the TPC to prepare a complete, accurate, and unbiased EIS. For purposes of this SOW, a “complete, accurate and unbiased EIS” shall be an EIS sufficient to enable USACE to take a hard, objective look at the environmental impacts of the project and a reasonable range of alternatives. To the extent the TPC or USACE determine that any materials provided by CPRA are inadequate to enable the TPC to prepare a complete, accurate, and unbiased EIS, the TPC shall request that CPRA provide additional information, data, or analysis. The TPC will be responsible for evaluating the adequacy of this additional information, and if necessary and directed by USACE, for researching, evaluating, and preparing any additional information, data, or analysis necessary to prepare a complete, accurate, and unbiased EIS.

USACE is responsible for independently reviewing the EIS prior to its approval and is responsible for its scope and content. Accordingly, USACE shall have ultimate responsibility for independently evaluating all information submitted for use in preparing the EIS or for inclusion in the EIS, and shall determine whether such information is adequate and accurate to enable USACE to take a hard, objective look at the public interest and environmental factors under the CWA and NEPA. The USACE will independently review all documents prepared by the TPC prior to their public release, as required by 40 C.F.R. § 1506.5(a). Final approval of all EIS language, evaluations, and analyses throughout the review process is the sole responsibility of USACE.

An Environmental Laws Table is attached hereto as **Exhibit "A"**. A short list of some of the key laws and regulations applicable to the EIS process, and documents provided by CPRA for USACE's consideration, are listed as follows:

1. National Environmental Policy Act, 1970 (NEPA) (42 USC 4321.)
2. Council on Environmental Quality (CEQ) Regulations (40 CFR 1500 - 1508)
3. Magnuson-Stevens Fishery Conservation and Management Act, 1976 (16 USC 1801, et seq.)
4. Endangered Species Act (16 USC 1531 et seq.)
5. The Clean Water Act (33 USC 1344, referred to as Section 404)
6. The Clean Air Act (42 USC 7401, et seq.)
7. Environmental Justice, Executive Order 12898, 11 February 1994
8. Department of Army, Engineer Regulation, ER 200-2-2 (33 CFR 230)
9. Coastal Zone Management Act of 1972 (6 USC 1451 et seq.)
10. Fish and Wildlife Coordination Act of 1958 (16 USC 661 et seq.)
11. National Historic Preservation Act (Section 106) (NHPA) of 1966 (16 USC 470 et seq.)
12. Marine Mammal Protection Act (16 USC 1362 et seq.) as modified by the Bipartisan Budget Act of 2018 (PL 115-123) § 20201 and the Marine Mammal Protection Act Waiver for the Mid-Breton Sound Sediment Diversion executed by Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs, NOAA Fisheries on March 15, 2018.
13. Executive Order 11988, Floodplain Management
14. Marine Protection, Research, and Sanctuaries Act of 1972 (33 USC 1401 et seq.)

15. Council on Environmental Quality guidance, March 6, 2012 (as may be amended from time to time) entitled *Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act*.

16. EC 1165-2-220 September 10, 2018, with Appendices A through L

17. USACE Memorandum dated May 27, 2015 SUBJECT: Alterations to Federally Constructed Projects within the Mississippi Valley Division to the extent it does not conflict with EC 1165-2-220. In case of conflict, EC 1165-2-220 controls.

18. USACE Memorandum for Commanders, MSC, and District Commands, dated September 2, 2015, SUBJECT: Updated Implementation Guidance for Section 1006 of the Water Resources Reform and Development Act of 2014 and Guidance on the Use of Funding Agreements within the Regulatory Program

19. Executive Order 13807, August 15, 2017, Environmental Review and Permitting Process for Infrastructure

20. USACE Memorandum dated September 26, 2018, SUBJECT: Implementation of Executive Order (EO) 13807 and One Federal Decision (OFD) within Civil Works Programs.

21. USACE Memorandum dated September 26, 2018, SUBJECT: Implementation Guidance for Regulatory Compliance with Executive Order 13807.

## **5. MODIFICATIONS TO SCOPE OF WORK.**

During the preparation of the EIS, if USACE determines that revisions to this SOW are necessary, USACE will provide written notification to CPRA of the revisions required and CPRA will be responsible for modifying the Contractor's Contract as needed. The TPC shall work under the direction and control of USACE, although CPRA shall fund the TPC's work. USACE will consider any comments provided by CPRA in the decision-making on the revised SOW; however, USACE is solely responsible for all final decisions in order to ensure the adequacy and content of the EIS. Should CPRA not make the modifications to the SOW requested by USACE, USACE, at its sole discretion, may suspend work on the EIS until such time as the modifications are made by CPRA.

## **6. MEMORANDUM OF UNDERSTANDING & CONFLICT OF INTEREST DISCLOSURE CERTIFICATIONS.**

The complexity and the independent nature of the NEPA process requires a common understanding of the roles of USACE, the CPRA, and the TPC. To ensure and maintain the integrity of the NEPA process, communication strategies and protocols have been formulated in a Memorandum of Understanding (MOU) to be executed by USACE, the CPRA and the TPC. The MOU will set forth general policies and practices necessary to

preserve the independence and integrity of the evaluation and decision-making processes. The MOU shall set forth, among others things, the method of communicating between the parties and the procedures for the submission, review, comment, revision, and approval of all documents to be prepared pursuant to this SOW.

Pursuant to the Council of Environmental Quality Regulations at 40 CFR 1506.5, all Proposers submitting proposals to prepare an EIS must execute an Organizational Conflict of Interest (OCI) Certification to be included with their proposal specifying that the Proposer does not have financial or other interest in the outcome of the permit application process.

A statement explaining the OCI, an OCI Questionnaire, and the OCI Certification forms must be signed by the TPC prior to the TPC commencing any work on the EIS.

## **7. DETAILED DESCRIPTION OF TASKS**

### **7.1 Project Management**

**Task 1.** The TPC Project Manager (PM) will be the primary point of contact to coordinate all activities related to preparation of the EIS and will clearly communicate task assignments including scope and milestone dates of the EIS schedule. The TPC PM will be responsible for assigning the technical expertise of the TPC team members to appropriate tasks associated with the EIS preparation.

The TPC will follow the review process outlined in the MOU.

7.1.1. USACE / TPC Initiation Meeting. The TPC will meet with USACE for introductions and initiation of the USACE EIS process and procedures within five business days following issuance of the NTP.

7.1.2 Monthly Progress Reports. The TPC will submit monthly progress reports (Reports) to USACE that will contain an accurate, up-to-date account of all major work accomplishments and outstanding issues. The Reports will include a list of remaining milestones to be accomplished as a reminder of upcoming participation requirements. The TPC will utilize Microsoft Project® software outputs, e.g., Gantt charts, as part of the monthly Progress Reports and will document the completion of work prescribed by this SOW. The Reports shall include, but not be limited to the following:

- A text summary of progress by task
- Problem areas/unresolved issues
- Variances
- Significant events scheduled for the next month
- Schedule time line
- Any additional comments
- Needs list
- Copy of updated Comments for the EIS, as necessary

- Copy of the updated Microsoft Project® Schedule
- Documents collected for potential inclusion into the Project File

7.1.3. Weekly Progress Reports. The TPC will submit weekly progress reports to the USACE. These reports will summarize the previous week's activities and outline the activities proposed for the upcoming week.

7.1.4. Weekly Meetings. Throughout the EIS process, the TPC will coordinate, organize and attend, either in person or by conference call, weekly meetings with USACE in order to be aware of, note, address, and provide resolution to needed actions or concerns relating to the preparation of the EIS and the tasks in this SOW. These meetings may, in some instances, include the cooperating agencies and/or CPRA, and, in some cases may be held bi-weekly to address actions or concerns.

7.1.5. Periodic Briefing Reports. The TPC may be required to prepare draft periodic briefing reports, as needed.

7.1.6. TPC Team Meetings. The TPC PM will hold internal regular meetings, as needed, during preparation of the EIS.

7.1.7. Detailed EIS Schedule/Permitting Timetable.

The TPC, with assistance and oversight from USACE and in coordination with cooperating agencies and CPRA, will develop a Detailed EIS Schedule that includes, but is not limited to, all major milestones and all items listed in the template Permitting Timetable in DPM 2018-12 for Implementation of Executive Order (EO) 13807 and One Federal Decision (OFD) within Civil Works Programs. This EIS Schedule will be for the entire NEPA process for the Proposed Action consistent with Executive Order 13807 which includes, but is not limited to, (1) determination of the intermediate and final dates once the project design has advanced enough to determine such dates; (2) consultation with all cooperating and/or participating agencies; and (3) consideration that the processing of major infrastructure projects be reduced to an average of approximately two years from issuance of the Notice of Intent to develop an EIS in the federal register by the lead federal agency while ensuring the requirements of all federal laws and regulations have been met.

The TPC will provide a draft of the EIS Schedule to the USACE for review and comments 20 business days prior to the EIS Kick-off Meeting. The TPC, with assistance and oversight from USACE, will prepare the draft for distribution. The USACE will distribute the draft EIS Schedule to the cooperating agencies and CPRA for review and approval 10 business days prior to the Kick-off Meeting or as otherwise agreed by USACE. Following the Kick-off Meeting, the cooperating agencies and CPRA will have 5 business days to finalize and submit all official comments back to USACE. The TPC, with assistance and oversight from USACE, will coordinate with the cooperating agencies and CPRA to address issues within 10 business days following the commenting

deadline. USACE will have five business days for an official decision on the EIS schedule.

The final USACE approved EIS Schedule shall set forth the milestones, phases, and critical path(s) of the tasks and deliverables and other efforts required to complete the EIS together with the associated dates. The final USACE approved EIS Schedule will be used by the TPC to manage work on the EIS and by the USACE to monitor the progress of the work of the TPC on a monthly basis.

The Proposed Action is included in the Fixing America's Surface Transportation Act, Title 41 (FAST-41) Permitting Dashboard. The TPC will provide assistance to the USACE, as needed, on revisions to the Coordinated Project Plan (CPP). The TPC will ensure that any date changes approved in the CPP are also reflected in the EIS schedule in order to incorporate the review requirements of FAST-41.

7.1.8. Interagency Meetings/Conference Calls/Working Groups. The TPC, with assistance and oversight from the USACE, will coordinate monthly interagency meetings or conference calls with the cooperating agencies, commenting agencies, and CPRA to be held at USACE's New Orleans District Office or another venue if approved by USACE. Each of these meetings will focus on: the overall progress of the EIS preparation and actions needed to further meet the schedule such as submission of various sections of the EIS for review, other documents such as the technical reports, preliminary drafts of the entire EIS, and/or subject-specific working groups. The TPC will prepare and distribute draft agendas to USACE prior to each meeting and draft meeting minutes following each meeting. The TPC will assist USACE in finalizing these documents for submission to the cooperating agencies and CPRA.

7.1.9. Other Periodic Meetings with USACE. The TPC will be required to attend up to 12 additional periodic 1-day meetings over the period of this SOW, in addition to the weekly internal USACE meetings and monthly EIS Coordination meetings, upon request by USACE to review and discuss the progress and/or any problems or concerns that may arise. The TPC may also request periodic meetings with USACE. In some cases, the TPC will be required to provide meeting minutes of a meeting that could be incorporated into the weekly progress reports.

7.1.10 SharePoint Site. Throughout the EIS process, the TPC will establish and maintain a dedicated, password-protected SharePoint site for sharing information between USACE, the TPC, cooperating agencies, and CPRA. The TPC shall ensure the security of the information on this SharePoint site with limited access as approved by CEMVN. The TPC shall maintain the SharePoint site in a manner that allows cooperating agencies and CPRA to provide information and review or receive information, as approved by CEMVN.

In order to maintain and ensure impartiality in the EIS preparation, all data and information submitted by CPRA and any other person or entity shall pass through USACE before or concurrent with transmittal to the TPC unless otherwise agreed in

writing by the TPC and USACE, and such writing shall be included in the Project File. This SharePoint Site shall be compliant with the provisions of the MOU.

## **7.2 EIS Kickoff Meeting**

**Task 2.** Following the issuance of the Notice to Proceed (NTP), the TPC will coordinate and moderate an EIS Preparation Kickoff Meeting to be held at the USACE Office in New Orleans, Louisiana. The Meeting will include TPC staff, USACE, CPRA, and any cooperating and commenting agencies. The meeting attendees will be identified by USACE in consultation with the TPC once the NTP has been issued. The TPC shall prepare draft letters and, upon approval, send letter(s) inviting cooperating agency(s) to participate in the EIS process and the kick-off meeting.

The TPC will develop a draft agenda for the Kickoff Meeting for review and approval by USACE in accordance with the MOU. The TPC will distribute the final approved agenda to all meeting participants a minimum of two business days prior to the Kickoff Meeting or as otherwise agreed to by the parties pursuant to the MOU. At the Kickoff Meeting, the TPC shall present a draft of the EIS Schedule. Within 20 business days after the Kickoff Meeting, the EIS Schedule shall be finalized in accordance with the review process set-forth in the MOU.

The topics to be discussed at the Kickoff Meeting shall include, but not be limited to: overview of the history and status of the proposed project (presented by CPRA, in addition to providing all information relied upon for development of the proposed project); the preliminary list of resources prepared by the TPC to be reviewed and/or utilized for the preparation of the EIS; comments on the EIS Schedule including the proposed location(s) and date(s) for the public scoping meetings; the preliminary identification of critical issues relative to the EIS; a discussion of EIS milestones and deliverables; and the identification of issues that could affect the EIS Schedule. The TPC must be prepared to ask for clarification on any of the requirements of this SOW, expectations for the EIS, requirements for the technical studies to support the EIS, and the intended scope of the Public Involvement Plan. The TPC will prepare minutes of the Kickoff meeting.

## **7.3. Data Gathering/Compilation and Data Gap Analysis**

**Task 3.** Prior to beginning work on the EIS, the TPC should become familiar with the CPRA, USACE, and other agency furnished materials. The TPC will follow the below requirements for Data Gathering/Compilations and development of a Data Gap Analysis.

Task 7.3.1 Data Gathering/Compilations. The TPC shall review any submittals by CPRA and the cooperating agencies for accuracy, relevancy, and completeness and determine whether such information should be utilized in preparing the EIS and/or included in the EIS. Potential submittals by CPRA include, but are not limited to: a draft alternatives report, a draft existing conditions report, a draft environmental consequences report, a draft cumulative impacts report, and a draft mitigation plan. Submittals provided by

CPRA shall include all data and information used to prepare the submittal. Any submittals by CPRA and cooperating agencies shall be included in the Project File (see Task 7.21).

The TPC shall review any document matrices prepared by CPRA cataloging submittals and underlying data and information. If necessary, the TPC shall independently collect and analyze data as directed by USACE, including baseline data identified by CPRA and/or other qualified governmental agencies, and any data or other outputs produced by CPRA or other qualified sources. This information may include previously published environmental documents, technical reports, studies, and other available information or documentation. The TPC will research, gather, and evaluate all available information on the Proposed Action and the surrounding area, the extent of which will be refined during the scoping process. This information shall include engineering, environmental, and alternatives analyses. The information on existing projects should include at a minimum, engineering design, operation plans, safety procedures, environmental assessments, and cumulative impact assessments which address the operation of diversions and other projects, individually and as a system, in coordination with all past, present, and reasonably foreseeable future projects, including but not limited to, navigation, flood risk management, hurricane storm damage risk reduction, and ecosystem restoration projects, over the full range of operational conditions. The TPC shall maintain communications with key resource and regulatory agencies and will compile and evaluate all data collected or provided by these agencies. If used to support the EIS, including any technical reports and appendices, these resources will be incorporated into the list of references and resources to be maintained for, and included if necessary, in the EIS.

The TPC shall lead and participate in bi-weekly modeling interagency meetings to review and discuss any modeling data and information provided by CPRA. The TPC shall review any modeling data and information provided for accuracy, relevance, and completeness, and shall provide recommendations to USACE and any modeling working group(s) as to information required from modeling efforts. The TPC may contact the Water Institute of the Gulf directly, provided CPRA and USACE are copied on any correspondence, to resolve outstanding model issues and improve the transparency, reporting, and understanding of the proposed Delft 3D model for representing existing conditions in the Breton Sound and modeling alternatives in the EIS. The TPC may not, however, authorize or direct any work by the Water Institute of the Gulf. The TPC will track modeling issues and their resolution. The TPC shall work closely with Delft 3D modelers on any subsequent ecological modeling necessary for the EIS (such as CASM/EwE and/or HSI, if necessary), in coordination with cooperating agencies and CPRA. USACE, as lead agency, will make final determinations as to the resolution of outstanding modeling issues.

As part of the data compilation process, the TPC will review existing documents to verify that CPRA's alternatives analysis has provided an explanation of alternatives previously considered including those alternatives previously eliminated and justification for doing so. This information may be used in the alternatives formulation and screening process.

Task 7.3.2 Data Gap Analysis: Following the submission of information by CPRA and, if applicable, the cooperating agencies, the TPC shall perform a data gap analysis to identify and request any additional applicant information that will be needed to inform the environmental review pursuant to 33 CFR 325.1(d)(10) and 33 CFR 325.1(e). The TPC shall conduct site visits to become familiar with the entire Project area and, if requested by USACE, to ground-truth any collected data used to support the EIS. The TPC will develop/procure and maintain GIS layers of the required rights-of-way and other layers needed for all alternatives.

The TPC will create and maintain a matrix segregated by topic which will identify data available, data gaps, entities from whom such information could be obtained, and items needed to resolve the data gap (if any). Data gaps are limited to information USACE needs to prepare a complete, accurate, and unbiased EIS for its decision-making. The TPC shall identify and review these data gaps with USACE and assist USACE in developing additional information requests to be sent to CPRA. USACE will provide the data gaps needs to CPRA, and CPRA will be provided a reasonable opportunity to provide the requested information prior to the TPC seeking it from other sources.

The TPC will serve as the repository for all reference documents throughout the EIS process. The information collected by the TPC shall be included in the Project File provided to USACE (see Task 7.21). The TPC will track progress and continue coordination with USACE and other data sources to obtain EIS-needed data on a timely basis. USACE, as necessary or appropriate, will provide assistance with agency coordination. USACE will advise the TPC of the information requirements and periodically meet to provide the USACE's views regarding the adequacy of the data that are being developed and the acceptability of the overall direction of the environmental analysis.

#### **7.4. Preparation of Purpose and Need statement**

**Task 4.** As the foundation for the development and analysis of alternatives under NEPA, the Purpose and Need statement will be prepared prior to issuing the Notice of Intent (NOI) and undertaking scoping. This will assist the public in providing scoping comments that focus on likely impacts of the proposed project as well as identifying alternatives to the proposed project.

Consistent with the process outlined in the MOU, the TPC shall draft a Purpose and Need statement to submit to the USACE for review. Once determined sufficient for review, USACE will submit this draft Purpose and Need statement to the cooperating agencies and the applicant for review. TPC will compile all comments and then draft preliminary responses to the comments. According to DPM 2018-12, agreement between USACE and the cooperating agencies on the Purpose and Need Statement is "Concurrence Point #1".

## **7.5 Issuance of Notice of Intent (NOI) to prepare the Draft EIS**

**Task 5.** Per DPM 2018-12, the NOI shall be issued after (1) receipt of a complete application, (2) receipt of applicant responses(s) to the requested additional information from the data gap analysis, (3) selection of a TPC, (4) designation of cooperating agencies, (5) preparation of a Permitting Timetable, and (6) concurrence on Project Purpose and Need statement. The NOI will clearly indicate the permit authority(s), as well as project element subject to relevant cooperating agency authorities. The NOI will advise the public that comments are most helpful to the lead and cooperating agencies with Federal authorization decisions when the comments focus on issues (impacts and alternatives) relevant to agency authorities. Completion of these process steps will best inform the NOI and thus best assist the public in providing relevant and focused scoping comments. The NOI will comply with 33 CFR Part 230, Appendix C and 40 CFR 1508.22.

## **7.6 Public Involvement Plan.**

**Task 6.** The TPC will closely coordinate with USACE in the preparation of a detailed Public Involvement Plan (PIP). USACE will provide the TPC with existing contact lists, the names of interested parties, and available mailing lists. The PIP must include a public participation strategy, an electronic public mailing list generation plan, and other details that will help ensure successful public involvement. The PIP should focus on the use of electronic media to minimize production of paper documents, but be cognizant of individuals and groups who do not have access to electronic media. Within 30 calendar days of the Kickoff Meeting, and/or as agreed upon in the EIS Schedule, the TPC will submit a Draft PIP to CEMVN for review in accordance with the MOU. CEMVN will provide the cooperating agencies and CPRA 14 calendar days in which to review and comment on the PIP. Once approved, the TPC will incorporate the PIP as an Appendix to the EIS. Details of sub-tasks to be implemented as part of the PIP are summarized below.

7.6.1 Identification of Stakeholders. The PIP shall include information in the public participation strategy on how the TPC will identify all interested stakeholders for inclusion in the electronic public mailing list and how the TPC will ensure that adequate cross-sections of the public are represented, including interested individuals, environmental organizations, non-governmental organizations, major industries and utilities, academic institutions, libraries, the general public, local agencies, state agencies, federal agencies, Native American tribes, and elected officials. The PIP will also identify how publications and website access will accommodate minority and low income populations. CEMVN will provide the TPC with existing contact lists, the names of interested parties, and available mailing lists. CPRA will also provide existing mailing lists, sign-in sheets, and contact information from CPRA Coastal Connection stakeholder meetings held in St. Bernard and Plaquemine parishes.

7.6.2 Electronic Public Mailing List. The PIP will describe the development and maintenance of an electronic mailing list.

7.6.3 Preparation of Meeting Plans for Public Scoping/Public Hearings. The PIP shall include a template to be used in the development of the Meeting Plans for public scoping meetings and public hearings. The PIP shall include a list of the types of information to be included in the Meeting Plans which shall include at a minimum, the proposed meeting dates, times, locations, draft agenda topics, list of suggested handouts and other meeting materials, identification of facilitators, detailed meeting logistics, diagrams of the meeting set-up, and a media public relations plan. For Meeting Plans associated with public scoping meetings and public hearings, the TPC shall review the Plans to determine if any additional information needs to be included in the PIP and/or in the Meeting Plans. Any presentation materials developed and/or delivered by or on behalf of the TPC must be reviewed and approved by USACE in advance of the scoping meeting/public hearings. CPRA may be asked by CEMVN to provide presentation information and graphics to support the public meetings and hearings.

7.6.4 Preparation of Public Notices for Public Scoping Meetings, Public Hearings and Filing of NEPA Documents. The PIP shall describe a process to be followed for issuing public notices throughout the EIS process. At a minimum, public notices will be issued concurrent with filing of the DEIS and FEIS, respectively. The DEIS public notice will include the Notice of Availability (NOA) of the NEPA document and the schedule and locations for DEIS public hearings, if known at the time of filing the NOA. The FEIS public notice will include the NOA of the FEIS. Public notices will be drafted by the TPC using a USACE template and submitted to USACE for review, approval, and release to the media by USACE. Draft public notices will be submitted in time to accommodate processing by USACE for publication (minimum 30 calendar days prior to scheduled meetings or release of NEPA documents). A minimum of five public notices will be prepared by the TPC and will be released: (1) three weeks prior to the public scoping meetings; (2) concurrent with filing of the DEIS; (3) concurrent with filing the FEIS; and (4) concurrent with issuance of the ROD(s). The TPC shall prepare draft newspaper notices prior to all public scoping and public comment meeting(s)/ hearing(s) and, upon approval by USACE, make arrangements to publish newspaper notices in newspapers local to the meeting/hearing venues. Drafts of public notices of public scoping and comment meeting(s) will be provided to the cooperating agencies and CPRA for review and comment prior to issuance of the notice. For cost purposes, assume at least three newspapers of general circulation in the vicinity of the Proposed Action and up to 15 notices in the Project area.

7.6.5 Public Scoping Meetings. The PIP will identify a strategy for conducting public scoping meetings; at a minimum, the public scoping meetings will follow the USACE format for public scoping meetings and will be held on dates, times, and at locations approved by USACE. Assume up to three scoping meetings will be held at different locations within the Project Area.

7.6.6 Periodic Meetings with Identified Stakeholders. The PIP will incorporate means and methods to engage with specific stakeholder groups, ex: navigation industry, commercial fishermen, etc., as directed by USACE. USACE will ask the cooperating agencies and CPRA for assistance in identifying stakeholders.

7.6.7 Conducting Public Hearings. The PIP will identify a strategy for conducting public hearings for the DEIS in accordance with 33 CFR 327. At a minimum, the public hearings will follow the USACE format for public hearings and will be held during the 45-day public comment period on the DEIS. Assume up to three public hearings will be held at different locations within the Project area.

7.6.8 Executive Order 12898, Environmental Justice Concerns. The PIP will incorporate means and methods to include minority and low income populations within the public involvement program. All public documents, notices, and meetings will be concise, understandable and readily accessible to the public. At a minimum, EIS-related public notices and handouts at public scoping meetings and public hearings will be translated into Vietnamese. Translation services will be offered at public scoping meetings and public hearings.

7.6.9 Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The PIP will comply with and incorporate the requirements of Executive Order 13045.

7.6.10 Section 508, Rehabilitation Act (as amended in 1998) Consideration of Accessibility. The PIP will comply with and incorporate Section 508 requirements regarding accessibility for making electronic and information technology accessible to people with disabilities.

## **7.7 Maintain Electronic Mailing Lists.**

**Task 7.** The TPC will establish and maintain an electronic public mailing list of all federal, state, and local agency points-of-contacts (POCs), other participating organization points of contact, and active public mailing lists for the EIS. The electronic public mailing list shall include all interested or affected agencies, names and addresses of adjacent property owners identified in the DA applications, interested parties, State legislative and federal Congressional representatives, news media, public libraries throughout the Project area, and individuals commenting during the scoping process and/or public review of the DEIS. The public mailing lists will be used for distribution of NOAs for the DEIS and FEIS, public hearing announcements, news releases, other notices to the public, and distribution of the DEIS and FEIS. The distribution lists for the DEIS and FEIS will denote whether these documents will be provided in hard copy or in electronic format (i.e., DVD). The mailing lists will be continually edited and updated by the TPC to include those individuals responding to the scoping publications, other correspondence, and those individuals who attend future public workshops or meetings; and to delete those requesting removal from the list, changes in addresses, undeliverable addresses, etc. Periodically (i.e., prior to each notice), the TPC will coordinate with USACE to ensure both the list maintained by USACE and the TPC's list are reconciled. The TPC will provide electronic versions of the mailing lists and printed mailing labels to USACE upon request. CPRA will provide a stakeholders and interested parties list to USACE.

## **7.8 Scoping Process and Scoping Report.**

**Task 8.** Under the supervision of the USACE, The TPC will execute the Scoping Process and develop the Scoping Report.

7.8.1 Scoping Process (definition). Scoping is the process of determining the extent of issues to be examined in an EIS and for identifying the significant issues that may need to be addressed. Scoping ends when issues and alternatives to be addressed in an EIS have been clearly defined, which could occur up through the final stages of preparing the draft EIS. During this time, there could be one or more scoping meetings to assist in this process. The TPC will document and maintain information about the entire scoping process.

7.8.2 Scoping Meetings. There will be up to three scoping meetings during the conduct of the EIS. See also Section 7.6 and the below subsections for additional information regarding scoping meetings.

The TPC will be responsible for all costs associated with the public scoping meetings such as venue renting/use, video and/or audio rental, printing/distribution of handouts/display boards, providing security, translators, and hiring facilitator/transcribers and other items identified in the Scoping Meeting Plan. The TPC will coordinate with USACE to implement the Scoping Meeting Plan.

7.8.3 Scoping Report. Following the conclusion of the formal scoping process, a draft Scoping Report shall be prepared by the TPC, within 30 calendar days from the close of scoping. The Scoping Report is used to document significant issues to be evaluated in the EIS and dismiss those that are not significant (refer to 40 CFR 1501.7(a)(2)). The Scoping Report shall summarize the meeting discussions, substantive issues raised, and all other public input obtained through the scoping coordination efforts. The Scoping Report shall include all written and verbal testimony (transcripts) offered into the record by the meeting participants. The Scoping Report is intended to provide a summary of the entire scoping process.

7.8.3.1 Scoping Report Outline. The TPC will use the USACE approved Scoping Report template. The Scoping Report will include a transcript of the meeting and tabulation of public comments received.

7.8.3.2 Scoping Report Review Process. The TPC will submit a draft Scoping Report to USACE for review in accordance with the review process in the TPC MOU. The draft Scoping Report will also be provided to the cooperating agencies and CPRA for review and comment. Once approved, the Scoping Report will be summarized in the EIS and the Scoping Report will be incorporated into the EIS as an Appendix. USACE will post the final Scoping Report on the EIS Proposed Action website.

7.8.4 Revised SOW for modification to Contract. Upon finalizing the Scoping Report, and reviewing existing studies and documents, the TPC will draft an amendment to the SOW if necessary, for such items as (but not limited to) identifying any additional technical reports determined to be necessary to support the EIS. The TPC will submit the draft amendment to the SOW to USACE for approval. USACE and CPRA will meet to discuss the draft amendment to the SOW and the level of effort needed to support additional tasks for the EIS, including whether any information could be provided by CPRA for review by the TPC. Once approved, USACE will provide a copy to CPRA and CPRA will be responsible for modifying the TPC's contract in accordance with this amendment to the SOW.

## **7.9 Preparation of Draft EIS Generally.**

**Task 9.** The TPC will prepare the EIS using information approved by USACE. The TPC will evaluate all information proposed for inclusion in the EIS for relevancy, accuracy, and completeness and include appropriate information into the EIS. This evaluation could include information provided by CPRA, including but not limited to the information and analysis contained in the various reports (e.g., alternatives, affected environment, environmental consequences, etc.), information contained in the Scoping Report, the supporting technical appendices, information provided by cooperating agencies, and any other information or analysis necessary for completion of the EIS.

An Executive Summary overview of the entire DEIS will be prepared that adequately and accurately summarizes the main sections of the DEIS. For example, the summary shall contain the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice of alternatives). The summary will identify the Proposed Action as a Corps permit action and state the authorities on which USACE relies to exert jurisdiction. It shall also include the Purpose and Need for the Proposed Action and shall briefly state the beneficial/adverse impacts of the Proposed Action.

CPRA will provide a detailed but concise description of the Proposed Action including but not limited to: the various components of the Proposed Action, the size of Proposed Action footprint, a description of how construction would take place, and activities associated with operation and maintenance. Maps and figures should include the layout of the Proposed Action, as well as other existing infrastructure including roads, railroads, pipelines, transmission lines, residences, recreational facilities, retail and commercial establishments, churches, schools, hospitals and other public buildings. Information on structure relocations will be identified and evaluated for all alternatives, as appropriate. The TPC will review, and under the supervision of USACE, independently evaluate the completeness and accuracy of CPRA's description of the Proposed Action. The TPC may supplement or modify CPRA's description of the Proposed Action at the direction of USACE.

The TPC will provide a draft Table of Contents to USACE for review in accordance with the review process in the TPC MOU. The TPC will provide a draft of the criteria for determining significance as defined by USACE, to ensure consistency in the TPC's evaluation of impacts. The review of this information will be in accordance with the review process in the MOU. Pre-decisional language is not permitted in the EIS. All sentences that speak of the Proposed Action and/or potential impacts must use conditional language (i.e., "would" rather than "will").

The TPC will develop a Writing Style Guide for the EIS for the purpose of ensuring consistency in terminology, references, and language style with regulatory requirements.

## **7.10 Development of Alternatives.**

**Task 10.** NEPA requires federal agencies to rigorously explore and objectively evaluate all reasonable alternatives in the EIS and, for alternatives eliminated from detailed study, to briefly discuss the reasons why they were eliminated (40 CFR 1502.14(a)). For USACE regulatory permit evaluations, the alternatives analysis should be thorough enough to use for both the public interest review and evaluation under the 404(b)(1) guidelines (40 CFR Part 230) where applicable. Alternatives should be evaluated to the extent necessary to allow a complete and objective evaluation of the public interest and a fully informed decision regarding the permit application. The EIS must also include an evaluation of the No Action Alternative, which serves as a basis for comparison for the evaluation of the Action alternatives.

The Alternatives Section of the EIS shall describe the process and methodology that was used to develop, evaluate, and eliminate potential alternatives based on the Purpose and Need of the Proposed Action.

The Alternatives Section shall include an explanation of how alternatives were selected for detailed analysis, the reasons why some alternatives were eliminated from consideration, and an explanation of how the alternatives meet the Purpose and Need for the Proposed Action. EISs are required to include alternative designs or locations for the Proposed Action that are reasonable.

The TPC shall review a draft alternatives analysis report prepared by CPRA for information to potentially include in an Alternatives Section of the draft EIS, which shall include but not be limited to: (1) a detailed description of the Proposed Action, including but not limited to the location, the manner of water diversion, the benefits expected in the near/intermediate and long-term; (2) a statement defining the Proposed Action as the CPRA's preferred alternative; (3) descriptions of other alternatives determined to be reasonable, feasible, and practicable; (4) description of the screening analysis used; (5) discussion of alternatives that were considered but eliminated from further consideration and reasons for elimination; (6) detailed discussion of the alternatives to be fully analyzed in the EIS; and (7) the design criteria for the Proposed Action and the final array of alternatives to the Proposed Action. The detailed description of the Proposed Action shall include a sufficient description of all features of the Proposed Action and also

include the sufficient details of the locations and dimensions of features and construction, operations and maintenance.

This task will include coordination meetings with USACE, all cooperating agencies, CPRA, and, if appropriate the commenting agencies, as approved by USACE. This task may involve revisiting and refining the “basic” and “overall” Purpose and Need of the Proposed Action. This task may also involve reviewing and refining, if necessary, the screening criteria for alternatives, the alternative methods of implementation, and the alternatives at other sites as appropriate, and documenting the logistical and technical reasons (constraints) that make an alternative not practicable or feasible.

## **7.11 Affected Environment and Environmental Consequences.**

**Task 11.** A detailed discussion of the affected environment and environmental consequences of the Proposed Action will follow requirements of 40 CFR 1502.15 and 1502.16 which shall include, but not be limited to, such matters as:

- Geology and soils (geography, topography, and geomorphology, mineral resources, soils, and prime farmland);
- Groundwater resources (aquifers, groundwater use, and groundwater quality);
- Surface water and coastal processes (watershed characterization, hydrology and hydrodynamics, storm surge and flooding, floodplains, storm water management, flood protection levees, and relative sea level rise and subsidence);
- Surface water and sediment quality (water quality and designated uses, ambient water quality, and sediment quality);
- Wetlands and waters of the US;
- Air quality (regulatory setting, conformity, climate change, and greenhouse gases);
- Noise;
- Terrestrial wildlife and habitat (historic context, vegetation, terrestrial wildlife, and invasive species);
- Aquatic resources (historic context, vegetation, benthic resources, essential fish habitat, fisheries, marine mammals, and invasive species);
- Threatened and endangered species (federal, state, and special status species);
- Socioeconomics (population, economy, employment, businesses, and industrial activity, commercial fisheries and ecotourism); property values; tax revenue; housing; public services; community cohesion; environmental justice; public health and safety; and protection of children);
- Cultural resources;
- Land use and land cover (historic and existing, zoning, and future land use);
- Recreational resources (recreational areas and activities; national wildlife refuges and wildlife management areas; and national and state parks);
- Aesthetic and visual resources;
- Public health and safety including flood and shoreline protection;
- Navigation (commercial and recreational);

- Land-based transportation;
- Utilities;
- Hazardous, toxic, and radioactive waste;
- Traffic and Transportation, if appropriate; and
- Climate (including sea-level rise).

The TPC shall be responsible for reviewing and, under the supervision of USACE, independently evaluating the relevancy, completeness and accuracy of any draft existing conditions report submitted by CPRA and the references used to develop that report. To the extent the TPC or USACE determine that CPRA's existing conditions report is inadequate to enable the TPC to prepare a complete, accurate and unbiased EIS, the TPC shall request that CPRA provide additional information. The TPC will be responsible for making a preliminary determination on the adequacy of this information and, if directed by USACE, researching and evaluating additional information to support this effort.

The TPC will prepare the affected environment section of the EIS based on CPRA's draft existing conditions report, if determined accurate and relevant, any input from any cooperating agency, and any additional information or analysis obtained or prepared by the TPC as set forth herein.

## **7.12 Environmental Consequences**

**Task 12.** The EIS shall disclose and analyze all significant environmental impacts of the Proposed Action and reasonable alternatives as required under the NEPA in accordance with the CEQ's regulations found in 40 CFR Parts 1500-1508. The three types of impacts to be addressed in the EIS include: (1) direct impacts which are those effects that are caused by the action and occur at the same time and place; (2) indirect impacts which are those effects that are caused by the action and occur later in time or farther removed in distance, but are still reasonably foreseeable. Indirect impacts may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. and (3) cumulative impacts which are the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions (40 CFR 1508.7).

Such discussion shall also include the information required by USACE to conduct its public interest review, which shall include, but not be limited to effect(s) on: (1) wetlands; (2) fish and wildlife; (3) water quality; (4) historic, cultural, scenic, and recreational values; (5) coastal zone; (6) socioeconomics (community cohesion, population, employment, public health and safety, economics, housing, and environmental justice); (7) navigation; (8) traffic and transportation (evaluate impacts on traffic, transportation, highways, bridges, roads, railways, etc., within the Project area); (9) public services, utilities and service systems (impacts on utilities such as electric power lines, water and sewer systems, inundation, needs for relocation, modification, alteration, abandonment,

relocation); (10) water supply and conservation; (11) prime and unique farmland; (12) climate change; (13) relative sea level rise; (14) sediment transport and channel bed stability; (15) storm surge survey and floodplain management and; (16) energy conservation and development.

The TPC shall review, and under the supervision of USACE, independently evaluate the relevancy, completeness, and accuracy of any draft environmental consequences reports, or sections thereof, submitted by CPRA along with all data and reference information used to develop that report. To the extent the TPC or USACE determine that CPRA's environmental consequences report is inadequate to enable the TPC to prepare a complete, accurate and unbiased EIS, the TPC shall request that CPRA provide additional information or analysis. The TPC will be responsible for making a preliminary determination on the adequacy of this information and, if directed by USACE, researching and evaluating additional information and/or conducting the necessary analyses to support this effort.

### **7.13 Identification and Analysis of Cumulative Impacts.**

**Task 13.** NEPA requires the inclusion of a cumulative effects analysis in an EIS. CEQ's guidelines for evaluating cumulative effects emphasize the growing evidence that "the most devastating environmental effects may result not from the direct effect of a particular action, but from the combination of individually minor effects of multiple actions over time" (CEQ, 1997). The purpose of the cumulative effects analysis is to ensure that a decision on action is not made in isolation without considering other past, present, and future influences on the affected resources. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.6).

If CPRA submits a draft cumulative impacts report, the TPC shall review and, under the supervision of USACE, independently evaluate the relevancy, completeness, and accuracy of a draft cumulative impacts report submitted by CPRA along with all data and reference information used to develop that report. To the extent the TPC or USACE determine that CPRA's cumulative impacts report is inadequate to enable the TPC to prepare a complete, accurate, and unbiased EIS, the TPC shall request that CPRA provide additional information or analysis. The TPC will be responsible for making a preliminary determination on the adequacy of this information and, if directed by USACE, researching and evaluating additional information and/or conducting the necessary analyses to support this effort.

A cumulative impacts analysis will be conducted that consists of a detailed quantitative and qualitative analysis of impacts. The Cumulative Impacts Analysis Section of the EIS will include a list of identified past, present, and reasonably foreseeable future actions. Reasonably foreseeable future actions to be identified include, but are not limited to, those actions for which DA permit applications have been submitted to USACE and/or any actions for which Engineering and Design (E&D) are being conducted. To help inform the District Commander's consideration under the Sections 404 and 10 regulatory

permitting processes, or the appropriate decision-maker's consideration under the Section 408 process, a public interest review will be conducted that consists of a qualitative analysis of impacts of past, present, and reasonably foreseeable future actions including diversions and ecosystem restoration actions. It is envisioned that this analysis will rely upon readily available information and will not likely require field data collection efforts.

As part of the cumulative impacts analysis, the EIS must identify area(s) in which the effects of the Proposed Action will be felt; the effects that are expected in the area(s) from the Proposed Action; past, present, and reasonably foreseeable future actions that have or that are expected to have impacts in the same area; the impacts or expected impacts from these other actions; and the overall impact(s) that can be expected if the individual impacts are combined to produce cumulative total impacts.

#### **7.14 Mitigation Measures.**

**Task 14.** The TPC shall review a draft mitigation plan submitted by CPRA for accuracy, relevance, and completeness. Appropriate mitigation for environmental impacts will be identified by USACE in coordination with cooperating agencies. Potential and appropriate mitigation measures shall be identified per 33 CFR 320.4. Depending on potential impacts, this scope of work may be modified to develop appropriate mitigation measures.

#### **7.15 Preparation of Supporting Technical Appendices.**

**Task 15.** In order to support the NEPA decision-making process, the TPC shall ensure that all technical documentation and materials necessary to address specific resource areas to support the EIS are accurate and acceptable. Additionally, for USACE's public interest review, probable impacts of the Proposed Action on the public interest must be considered with the benefits expected to accrue from the Proposed Action compared against reasonably foreseeable detriments. Impacts to be considered in the public interest determination include but are not limited to: conservation, economic development, historic properties and cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation. Once the scoping process is complete and prior to revising the TPC's SOW, a list of technical appendices will be proposed by the TPC and submitted for approval to USACE. During development of the technical appendices, critical path information needs shall be identified by the TPC and incorporated into the EIS Schedule.

CPRA intends to prepare and submit drafts of the technical appendices supporting any alternatives analysis report, existing conditions report, environmental consequences report, cumulative impacts report, and draft mitigation plan it provides. The TPC shall be responsible for reviewing and, under the supervision of USACE, independently evaluating the relevancy, completeness, and accuracy of this information. To the extent the TPC or USACE determine that CPRA's report(s) are inadequate to enable the TPC

to prepare a complete, accurate, and unbiased EIS, the TPC shall request that CPRA provide additional information or analysis. The TPC, under the direction of USACE, will be responsible for making a preliminary determination on the adequacy of this information and, if directed by USACE, researching and evaluating additional information and/or conducting the necessary analyses to support this effort.

Below is preliminary information on some of the technical appendices that will be required for the EIS:

7.15.1 Wetland Delineation Report and Analysis of Impacts on Water & Coastal Resources and Compliance with Executive Order 11990, Protection of Wetlands. For the project area, CPRA will obtain USACE-issued preliminary jurisdictional determination(s) (JD). The boundaries for the wetland delineation will be approved by the USACE, in consultation with the TPC and CPRA. CPRA will conduct delineation(s) for submission to USACE in accordance with the 1987 USACE Wetlands Delineation Manual and the new Regional Supplement to the Corps of Engineers Wetland Delineation Manual and will submit these delineations directly to the USACE Surveillance and Enforcement Section for a jurisdictional determination. CPRA will also prepare and submit a wetland impact analysis based on this JD. The TPC shall be responsible for reviewing and, under the supervision of USACE, independently evaluating the relevancy, completeness, and accuracy of the wetland impact analysis. To the extent the TPC or USACE determine that CPRA's report is inadequate to enable the TPC to prepare a complete, accurate, and unbiased EIS, the TPC shall request that CPRA provide additional information or analysis. The TPC will be responsible for making a preliminary determination on the adequacy of this information and, if directed by USACE, researching and evaluating additional information and/or conducting the necessary analyses to support this effort. For each alternative carried forward for detailed analysis within the EIS, CPRA will provide a USACE issued jurisdictional determination (JD) and its wetland delineation report. The TPC will incorporate this information into the EIS as an appendix and summarize the appendix in the main EIS document.

7.15.2 Cultural Resources Investigation Report. CPRA will provide a draft report and analysis, including existing documentation, data, and materials, regarding historic properties or properties potentially eligible for designation within the project area for the Proposed Action and the alternatives evaluated in the EIS. The TPC shall be responsible for reviewing and, under the supervision of USACE, independently evaluating the relevancy, completeness, and accuracy of this information. To the extent the TPC or USACE determine that CPRA's report and analysis are inadequate to enable the TPC to prepare a complete, accurate, and unbiased EIS, the TPC shall request that CPRA provide additional information or analysis. The TPC, under the direction of USACE, will be responsible for making a preliminary determination on the adequacy of this information and, if directed by USACE, researching and evaluating additional information and/or conducting the necessary analyses to support this effort.

This report will be completed in partial fulfillment of USACE responsibilities under Executive Order 13175, NEPA, and Section 106 of the National Historic Preservation

Act and meet the standards of the Division of Archaeology, Louisiana Office of Cultural Development. The area of potential effects to be investigated will be determined by USACE through consultation with the SHPO and federally-recognized Tribal Nations. Additional details regarding the cultural resources investigation and report preparation will be provided following the outcome of the scoping process.

7.15.3 Coordination with USACE's Tribal Liaison. USACE, as the Lead Federal Agency will conduct Government-to-Government consultations with federally-recognized Tribes in accordance with Executive Order 13175, NEPA, and Section 106 of the National Historic Preservation Act. USACE's Tribal Liaison shall be engaged early and often to ensure USACE's consultation obligations are fulfilled. The TPC will obtain and review specific information on the Proposed Action to provide to USACE's Tribal Liaison to facilitate the consultation with federally-recognized Tribes. Once data sufficient to support this coordination effort has been obtained, USACE will proceed with the consultation. The TPC will support USACE for this task, as needed.

7.15.4 Coordination with USACE's Archaeologist. USACE, as the Lead Federal Agency, will conduct consultations with the SHPO and federally-recognized Tribes, CPRA, and other consulting parties in accordance with NEPA and Section 106 of the National Historic Preservation Act. The USACE archaeologist shall be engaged early and often to ensure compliance with Section 106 of the National Historic Preservation Act and its implementing regulations. Once data sufficient to support this coordination effort has been obtained, USACE will proceed with the consultation. The TPC will support USACE for this task, as needed.

7.15.5 Endangered Species Act Biological Assessment Report. Under Section 7 of the Endangered Species Act (ESA) as amended, 50 CFR 402.12, and implementing regulations, Federal agencies are required to consult with US Fish and Wildlife Service (USFWS) and/or the NMFS to ensure their actions do not jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat. The evaluation of potential effects on Threatened and Endangered (T&E) species and/or designated critical habitat from the proposed alternatives shall be discussed.

CPRA will prepare and submit a Draft Biological Assessment (BA) in accordance with the ESA as well as all data and information used to develop this assessment. At a minimum, the BA will address all federally threatened, endangered, proposed, and candidate species and designated critical habitat potentially affected by the Proposed Action. The BA will be prepared based on currently collected field data and in accordance with the guidance and templates identified and/or provided by USACE, in consultation with USFWS and NMFS during the EIS process.

The TPC shall be responsible for reviewing and, under the supervision of USACE, independently evaluating the relevancy, completeness, and accuracy of this information. To the extent the TPC or USACE determine that CPRA's report and analysis are inadequate to enable the USACE to engage in consultation with USFWS or NMFS, the TPC shall request that CPRA provide additional information or analysis. The TPC, under

the direction of USACE, will be responsible for making a preliminary determination on the adequacy of this information and, if directed by USACE, researching and evaluating additional information and/or conducting the necessary analyses to support this effort. The TPC will incorporate the consultation documents into the EIS as an Appendix.

7.15.6 Essential Fish Habitat (EFH) Assessment. Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act requires Federal agencies to consult with NOAA Fisheries on actions that may adversely affect EFH. For this project, the federal action is a decision on an applicant's permit application. CPRA will prepare and submit an assessment that evaluates the impacts of the Proposed Action on, but not limited to, species type, life stage, and abundance; based upon existing, publicly available information, potential changes to habitat types and sizes; and assesses potential indirect impacts to fisheries that may result from changes in water movement and salinity, sediment transport, and shoreline erosion. More details on what will be needed may be provided following the outcome of the scoping process and/or coordination with NOAA. The TPC will evaluate the assessment provided by CPRA and, if determined appropriate, incorporate it into the official EFH assessment that will be conducted using either EFH Mapper or the GIS Data set provided by NOAA: (<http://www.habitat.noaa.gov/protection/efh/habitatmapper.html>) or any other resource provided by NOAA for this effort.

CPRA will provide a draft consultation letter, per guidance: ([http://www.habitat.noaa.gov/pdf/efhconsultationguidancecv1\\_1.pdf](http://www.habitat.noaa.gov/pdf/efhconsultationguidancecv1_1.pdf)) and templates provided by USACE. The TPC shall be responsible for reviewing the letter and providing USACE with a sufficiency determination. The TPC will be responsible for revising the letter and submitting to USACE for final review and approval. USACE will send the finalized letter with any necessary documentation to NMFS. The TPC will incorporate this letter, NMFS response letters, and subsequent correspondence into the EIS as an Appendix.

7.15.7 Hydrology/Hydraulic Report. CPRA will prepare and submit a draft hydrology/hydraulic report along with all data and reference information used to develop this report. In general, the report will include details of an analysis of the existing hydrologic features and the effects of the Proposed Action and the alternatives evaluated in the EIS on the natural hydrologic system. This report will be prepared by the TWIG using the Delft 3d model, version 3 or subsequent. This report will include an evaluation of LiDAR data and identifying drainage basins, as well as identifying the effects on any of the existing hydraulic structures. Also included in the report will be maps identifying specific hydrologic and hydraulic features unique to each alternative alignment. At a minimum, this Report shall look at both Basin and River side impacts, salinity, induced flooding of marsh and communities, and shoaling. More details on what will be needed for this Report will be provided following the outcome of the scoping process.

The TPC shall be responsible for reviewing and, under the supervision of USACE, independently evaluating the relevancy, completeness, and accuracy of this information. To the extent the TPC or USACE determine that CPRA's report and analysis are

inadequate to enable the TPC to prepare a complete, accurate, and unbiased EIS, the TPC shall request that CPRA provide additional information or analysis. The TPC, under the direction of USACE, will be responsible for making a preliminary determination on the adequacy of any additional information provided by CPRA and, if directed by USACE, researching and evaluating additional information and/or conducting the additional necessary analyses to support this effort. Once sufficient data has been obtained, USACE will direct the TPC to incorporate the additional data into the EIS as an appendix and to summarize the information in the main EIS document.

7.15.8 Commercial and Recreational Fisheries and Aquaculture Assessment. Coastal resources in the area of the Proposed Action include habitat for coastal fisheries and aquaculture. CPRA will prepare and submit a draft commercial and recreational fisheries and aquaculture assessment report along with all data and reference information used to develop this report. The details of this report will be informed by the scoping process. The TPC shall be responsible for reviewing and, under the supervision of USACE, independently evaluating the relevancy, completeness, and accuracy of CPRA's report. To the extent the TPC or USACE determine that CPRA's report and analysis are inadequate to enable the TPC to prepare a complete, accurate, and unbiased EIS, the TPC shall request that CPRA provide additional information or analysis. The TPC, under the direction of USACE, will be responsible for making a determination on the adequacy of any additional information provided by CPRA and, if directed by USACE, researching and evaluating additional information and/or conducting the additional necessary analyses to support this effort. Once sufficient data has been obtained, USACE will direct the TPC to incorporate the additional data into the EIS as an appendix and to summarize the information in the main EIS document.

7.15.9 Socioeconomic Analysis. CPRA will prepare and submit a draft socioeconomic analysis report along with all data and reference information used to develop this report. The details of this report will be informed by the scoping process. The TPC shall be responsible for reviewing and, under the supervision of USACE, independently evaluating the relevancy, completeness, and accuracy of this information. To the extent the TPC or USACE determine that CPRA's report and analysis are inadequate to enable the TPC to prepare a complete, accurate, and unbiased EIS, the TPC shall request that CPRA provide additional information or analysis. The TPC, under the direction of USACE, will be responsible for making a preliminary determination on the adequacy of any additional information provided by CPRA and, if directed by USACE, researching and evaluating additional information and/or conducting the additional necessary analyses to support this effort. Once sufficient data has been obtained, USACE will direct the TPC to incorporate the additional data into the EIS as an appendix and to summarize the information in the main EIS document. More details on what will be needed will be provided following the outcome of the scoping process.

7.15.10 Flood Hazards Evaluation Analysis. CPRA will prepare and submit a draft flood hazards evaluation report and analysis along with all data and reference information used to develop this report. The TPC shall be responsible for reviewing and, under the supervision of USACE, independently evaluating the relevancy, completeness, and accuracy of CPRA's report. To the extent the TPC or USACE determine that CPRA's

report and analysis are inadequate to enable the TPC to prepare a complete, accurate, and unbiased EIS, the TPC shall request that CPRA provide additional information or analysis. The TPC will be responsible for making a preliminary determination on the adequacy of any additional information provided by CPRA and, if directed by USACE, researching and evaluating additional information and/or conducting the additional necessary analyses to support this effort. Once data sufficient to support this report has been obtained, USACE will direct the TPC to incorporate the additional data into the EIS as an appendix and summarize the information in the main EIS document.

7.15.11 Water Quality Report. CPRA will prepare and submit a draft water quality report along with all data, analyses, and reference information used to develop this report. The TPC shall be responsible for reviewing and, under the supervision of USACE, independently evaluating the relevancy, completeness, and accuracy of CPRA's water quality report. To the extent the TPC or USACE determine that CPRA's report and analysis are inadequate to enable the TPC to prepare a complete, accurate, and unbiased EIS, the TPC shall request that CPRA provide additional information or analysis. The TPC, under the direction of USACE, will be responsible for making a preliminary determination on the adequacy of any additional information provided by CPRA and, if directed by USACE, researching and evaluating additional information and/or conducting the additional necessary analyses to support this effort. Once sufficient data has been obtained, USACE will direct the TPC to incorporate the additional data into the EIS as an appendix and to summarize the information in the main EIS document.

7.15.12 Hazardous, Toxic and Radioactive Waste Report. The TPC will use existing information (desktop review) to conduct the necessary HTRW analysis and prepare a report. Once approval is obtained from USACE, the TPC will incorporate the report into the EIS as an Appendix and will summarize the information in the main EIS document.

7.15.13 Environmental Justice (EJ) Report. Executive Order 12898, known as the Federal Environmental Justice Policy, requires that federal agencies identify and address disproportionately high and adverse human health or environmental effects on minority or low-income populations that result from their programs, policies, or activities. The Executive Order also tasks federal agencies with ensuring that public notifications regarding environmental issues are concise, understandable, and readily accessible. As stated in EPA guidance, disproportionately high and adverse effects encompass both human health and environmental effects. Informed judgment needs to be exercised as to what constitutes "disproportionate" as well as "high and adverse." Compliance with environmental justice requirements is also guided by Title VI of the Civil Rights Act, which prohibits discrimination on the basis of race, color, national origin, age, sex, or disability in programs and activities receiving federal financial assistance (Office of the Law Revision Counsel 2010). CPRA shall prepare an Environmental Justice Report using existing documentation, identifying and evaluating the EJ communities in the area and identify any potential impacts to those communities. The Report shall identify the methodology used by the CPRA in characterizing existing minority and low income population conditions in the area of the Proposed Action. The analysis shall identify the potential for the alternatives to result in disproportionately high and adverse effects on

minority or low-income populations. The analysis shall evaluate the potential effects of the Action alternatives and the No Action Alternative on environmental justice populations in and near the Project area. More details on what will be needed will be provided following the outcome of the scoping process. The TPC shall be responsible for reviewing and, under the supervision of USACE, independently evaluating the relevancy, completeness, and accuracy of CPRA's EJ report. To the extent the TPC or USACE determine that CPRA's report and analysis are inadequate to enable the TPC to prepare a complete, accurate, and unbiased EIS, the TPC shall request that CPRA provide additional information or analysis. The TPC, under the direction of USACE, will be responsible for making a preliminary determination on the adequacy of any additional information provided by CPRA and, if directed by USACE, researching and evaluating additional information and/or conducting the additional necessary analyses to support this effort. Once sufficient data has been obtained, USACE will direct the TPC to incorporate the additional data into the EIS as an appendix and to summarize the information in the main EIS document.

7.15.14 Traffic Study. CPRA will prepare and submit a draft traffic study report along with all data, analyses, and reference information used to develop this report. The TPC shall be responsible for reviewing and, under the supervision of USACE, independently evaluating the relevancy, completeness, and accuracy of CPRA's traffic study report. To the extent the TPC or USACE determine that CPRA's report and analysis are inadequate to enable the TPC to prepare a complete, accurate, and unbiased EIS, the TPC shall request that CPRA provide additional information or analysis. The TPC, under the direction of USACE, will be responsible for making a preliminary determination on the adequacy of any additional information provided by CPRA and, if directed by USACE, researching and evaluating additional information and/or conducting the additional necessary analyses to support this effort. Once sufficient data has been obtained, USACE will direct the TPC to incorporate the additional data into the EIS as an appendix and to summarize the information in the main EIS document.

7.15.15 Navigation Study. CPRA will prepare and submit a draft navigation report along with all data, analyses, and reference information used to develop this report. The TPC shall be responsible for reviewing and, under the supervision of USACE, independently evaluating the relevancy, completeness, and accuracy of CPRA's navigation report. To the extent the TPC or USACE determine that CPRA's report and analysis are inadequate to enable the TPC to prepare a complete, accurate, and unbiased EIS, the TPC shall request that CPRA provide additional information or analysis. The TPC, under the direction of USACE, will be responsible for making a preliminary determination on the adequacy of any additional information provided by CPRA and, if directed by USACE, researching and evaluating additional information and/or conducting the additional necessary analyses to support this effort. Once sufficient data has been obtained, USACE will direct the TPC to incorporate the additional data into the EIS as an appendix and to summarize the information in the main EIS document.

7.15.16 Other Supporting Reports. Green House Gas (GHG) emissions resulting from the Proposed Action and the alternatives evaluated in the EIS will be evaluated to

determine how they may impact global climate change. The EIS shall evaluate the assessment of the effect of sea level rise on the Project area and provide an evaluation of how these predicted climate change impacts would affect the Proposed Action and alternatives evaluated in the EIS.

USACE will identify any additional analyses or reports that may be needed to conduct an evaluation of other concerns identified during the scoping process for incorporation into this SOW. USACE will coordinate with CPRA for conducting these additional studies/reports. If the TPC is determined responsible for the additional studies, the scope will be reviewed and approved by USACE and included in the modified SOW submitted to CPRA.

#### **7.16 Preparation of Consultation and Coordination Chapter of EIS.**

**Task 16.** This Chapter describes how the EIS was developed in coordination with other state and federal agencies, tribal entities, and the public, and will include a distribution list of the individuals and organizations that will receive the EIS.

#### **7.17 Preparation of References Chapter of EIS.**

**Task 17.** This Chapter includes a list of references that were used during the evaluation and analysis for the EIS and which are cited in the EIS text.

#### **7.18 Preparation of Remaining Contents of EIS**

**Task 18.** Preparation of other Sections of the EIS. The format of the Draft EIS should follow the recommended format outline by 40 CFR 1502.10 and 33 CFR Part 325, App. B, ¶19 to include the preparation of an abstract; list of preparers; list of agencies, organizations, and persons to whom copies of the statement are sent; index; appendices; tables; and figures.

#### **7.19 Review, Approval, and Delivery of Draft EIS and Final EIS.**

**Task 19.** Under the supervision of the USACE, the TPC will produce the Draft EIS and Final EIS

7.19.1 Initial Chapter Reviews. The TPC will submit an electronic draft of each Chapter of the EIS to USACE for review in accordance with the review process in the TPC MOU. Once approved by USACE, the TPC will incorporate that section into the EIS.

7.19.2 Preliminary Draft EIS (PDEIS). The TPC will prepare and submit the PDEIS to USACE for a preliminary technical review in accordance with the review process as outlined in the MOU. The TPC will provide three hard-copies of the PDEIS, an electronic copy as an Adobe® Acrobat Portable Document Format (PDF) and an electronic copy in Microsoft® Word format. Following the incorporation of review comments on the revised (i.e., second version) Preliminary Draft EIS, the TPC will prepare and submit a pre-final

(camera-ready) DEIS to USACE for review and comment in accordance with the MOU. Upon the USACE's review and approval of the pre-final (camera-ready) Draft EIS, the TPC will produce a PDF version and hard copies (e.g., CDs or paper), as needed, in preparation for the official e-filing with EPA Headquarters and public circulation of the Draft EIS.

7.19.3 Submitting Draft EIS (DEIS). The TPC shall prepare and submit the DEIS for final approval to USACE after fully addressing all comments made on the PDEIS including comments made during the PDEIS Review Meetings. Once the DEIS is approved by USACE for distribution, the TPC will provide to USACE a finalized PDF(s) of the DEIS and Appendices in the format proscribed in "*e-NEPA Electronic Submittal of Environmental Impact Statements to EPA*" (<http://www.epa.gov/compliance/nepa/submiteis/e-nepa-guide-on-registration-and-preparing-an-eis-for-electronic-submission.pdf>). USACE will electronically upload the DEIS to the EPA website. USACE will also upload the DEIS to the EIS Proposed Action website. The TPC will prepare (print and burn CDs) and distribute the DEIS to those on the approved distribution list. EPA only publishes on Fridays and the DEIS must be received by EPA the Friday before it is published. The TPC shall follow the distribution requirements and guidelines identified in the approved PIP and in accordance with 40 CFR 1506.10(c) for circulating and distributing the DEIS for comment. It is estimated that the TPC may need to provide a minimum of 20 compact disks (CDs) for distribution to USACE, EPA Region 6 Office, cooperating and commenting agencies, CPRA, adjacent property owners, and up to 20 hard copies for libraries in the Project area contingent upon changes to the mailing list. Those on the distribution list must receive the DEIS by the date that the EPA publishes in the Federal Register. In addition, here are some subtasks that need to be accomplished before, during, and after the release of the DEIS.

7.19.3.1 DEIS Comment/Response Matrix. The TPC will facilitate the collection, tracking, and coding for all comments received regarding the DEIS. Comments collected through hard copy comment forms, by e-mail, or by regular mail will be scanned and input into the Project File using a consistent naming format that is easily searched electronically. The TPC will develop a Comment/Response Matrix (Matrix) using a spreadsheet format that allows for the insertion of a comment identifier, section number, line number, and a response. For each comment received during the public comment period for the DEIS, including those received as part of the public hearings, the TPC will provide a proposed response adjacent to that comment. The TPC shall, consistent with the review process in the MOU, provide copies of all comments received to CPRA and request additional information or responsive materials, as necessary, from CPRA to assist in preparing initial responses to comments. The TPC will submit the completed Matrix to USACE containing the proposed responses. USACE will distribute the completed Matrix to the cooperating agencies and CPRA for review and comment. As part of this process, the TPC will conduct a DEIS

Comment/Response Matrix Review Meeting following delivery of the document to provide a forum to discuss the proposed responses and request clarification. The TPC will compile all comments, revise the Matrix, and then conduct a final meeting with USACE, the cooperating agencies, and CPRA to resolve any outstanding issues. Once all issues are resolved, the TPC will submit the finalized Matrix to USACE for final approval.

7.19.4 Conducting DEIS Public Hearing(s). The TPC will coordinate with USACE to determine the number of public hearing(s) necessary, date, location, and specific needs for each public hearing, including hiring translators and court reporters. The goal of the hearings will be to solicit input from the public, stakeholders, non-governmental organizations, and federal, state, and local agencies regarding the DEIS. All of the actions involving the public hearings shall be defined in the PIP and will be in accordance to 33 CFR Part 327 and 40 CFR 1506.6. Some of the actions to be implemented are summarized below:

7.19.4.1 Logistics of Public Hearings. The public hearings will be held in the vicinity of the Project area at locations to be proposed by the TPC and approved by USACE. The TPC will issue a public notice announcing the public hearing and will schedule the public hearings to occur at least 30 calendar days after the release of the DEIS and at least 30 calendar days after the release of a public notice. The actual dates for the hearings will be approved by USACE. The TPC will arrange and secure meeting facilities for the public hearings, develop all meeting materials (e.g., agendas, handouts, presentations, posters), and conduct the public hearings as directed by USACE.

7.19.4.2 Pre-Brief of the Public Hearings. Prior to the public hearings, the TPC will present draft meeting plan and proposed presentations to USACE, the cooperating agencies, and CPRA. All other materials to be used at the public hearings will be described. The TPC will also summarize and be prepared to explain anticipated follow-up activities that will be pursued after the public hearings.

7.19.4.3 Facilitation of Public Hearing(s). The TPC will organize and coordinate the public hearings to solicit from the attendees comments regarding the DEIS. All stakeholders and parties who choose to be a part of the NEPA process shall have equal access to the information presented during a public hearing (or meeting) as well as be given a reasonable means to communicate testimony, statements and opinions to the USACE for inclusion in the public record. Based on the demographics of the participants expected to attend the public hearing/meeting, USACE will assess the need for an interpreter to be present at the hearing/meeting. If an interpreter is determined appropriate, the TPC shall be responsible for making all necessary arrangements, including contractual requirements and payments. The TPC will be responsible for all logistical arrangements related to the hearings, including the public address system, visual

aid projectors, displays, registration of attendees, and a court reporter. In lieu of a translator, headsets may be used for simultaneous translation.

7.19.4.4 Public Hearings Comments. The TPC will incorporate all comments received during the public comment period for the DEIS, including those received as part of the public hearings, into the DEIS Comment/Response Matrix and provide proposed responses for those comments consistent with the process set forth in Section 7.19.3.2 above. The TPC will provide USACE with the original copies of all the written comments and searchable digital transcripts of all verbal comments received and recorded at the public hearing. USACE will provide the cooperating agencies and CPRA with copies of all public comments.

7.19.4.5 Public Hearings Transcripts. The TPC will provide a hard and an electronic copy of the transcript(s) of the DEIS public hearings to USACE when completed. The TPC will make copies of written comments received and forward the originals to USACE. E-mails will be forwarded electronically to USACE in their original format (i.e., as attachments to emails). USACE will provide an electronic copy of the public hearing transcript to CPRA and cooperating agencies.

7.19.5 Preliminary Final EIS (PFEIS) and FEIS. The TPC will prepare a Preliminary FEIS incorporating comments as agreed to in meetings with USACE, CPRA, and cooperating agencies. Three copies and an electronic copy in Microsoft Word will be provided to USACE. Electronic copies will be provided to CPRA and cooperating agencies. The TPC will develop a Matrix using a spreadsheet format that allows for the insertion of a comment identifier, section number, line number, and a response. Following the incorporation of review comments on the revised (i.e., second version) Preliminary FEIS, the TPC will prepare a pre-final (camera-ready) FEIS.

The TPC shall prepare and submit the FEIS for final approval to USACE after fully addressing all comments made on the PFEIS. Once the FEIS is approved by USACE for distribution, the TPC will provide to USACE a finalized PDF(s) of the FEIS and Appendices in the format proscribed in “e-NEPA Electronic Submittal of Environmental Impact Statement to EPA” (<http://www.epa.gov/compliance/nepa/submiteis/e-nepa-guide-on-registration-and-preparing-an-eis-for-electronic-submission.pdf>). USACE will electronically upload the FEIS to the EPA website. USACE will also upload the FEIS to the EIS Proposed Action website. The TPC will prepare (print and burn CDs) and distribute the FEIS to those on the approved distribution list. EPA only publishes on Fridays and the FEIS must be received by EPA the Friday before it is published. The TPC will follow the distribution requirements and guidelines identified in the approved PIP for distributing the FEIS for comment. It is estimated that the TPC may need to provide approximately 50 CDs for distribution to USACE, EPA Region 6 Office, cooperating and commenting agencies, CPRA, adjacent property owners, and 20 hard copies to libraries in the Project area contingent upon changes to the mailing list. Those on the distribution list must receive the NOA and/or a copy of the FEIS by the date that the EPA publishes in the Federal Register. Please note that hard- copies of the FEIS

may require a CD for its appendices. The TPC will follow the same steps identified in the approved PIP for distributing the DEIS for comment.

7.19.5.1 Responses to FEIS Comments. Following the end of the FEIS comment period, any comments received on the FEIS will be addressed by the TPC, in draft and final format, after coordination with USACE. Final comments may be included with the USACE ROD.

7.19.5.2 Final Coordination Meeting. A Final Coordination Meeting will be held between the TPC, USACE, CPRA, and cooperating agencies, as appropriate, after the comment period for the FEIS has been completed to approve responses to comments and, if necessary, revisions to the FEIS, and to resolve any outstanding issues. If any, required changes to the FEIS will be made by the TPC within 30 calendar days of this final meeting. This meeting will also ensure that the documents prepared for potential inclusion in the Project File are fully documented, and all affected parties are in agreement.

## **7.20 Preparation of Preliminary Draft and Final Draft Records of Decision.**

**Task 20.** The TPC shall prepare one or more draft final ROD(s). USACE will prepare the final ROD in accordance with 40 CFR 1505.2 and 33 CFR Part 325, Appendix B, Part 18, and, if determined applicable, Executive Order 13807 and the One Federal Decision MOU, and will be responsible for issuing and releasing the final ROD to the public. The final ROD cannot be issued until 90 days after the publication of the DEIS or 30 days after the publication of the NOA of the FEIS whichever is later in time. The TPC shall draft two special public notices to be submitted to USACE at the Final Coordination meeting and the approved final special public notices shall be published on the EIS Proposed Action website. The TPC will email or mail a hard-copy of the issued ROD to each person and entity on the official mailing list.

## **7.21 Project File.**

**Task 21.** The Project File is the collection of all documents and materials directly or indirectly considered by USACE in making the decision to grant or deny a Section 10/404 permit or Section 408 permission for the Proposed Action. It includes all data, information and analyses, whether generated by the agency or obtained from other sources, considered directly or indirectly in making its decision. The Project File is the paper trail that documents the USACE's decision-making process and the basis for its decision. It demonstrates USACE complied with the relevant statutory, regulatory, and agency requirements and shows that USACE followed a reasoned decision-making process. Typically, the Project File is developed and maintained using a database application. The Project File is comprised of:

- Documents and records that were available to the decision-maker at the time the decision was made;

- Documents that do and do not support the final decision that were created or considered during the analysis of the decision;
- Privileged and non-privileged documents and records, policy documents, reference books and articles; and
- The Project File should also include any Freedom of Information Act requests and responses regarding the USACE's decision.

To support the preparation of the Project File, the TPC should organize all data and information created or prepared as part of preparing the EIS and consultations for the Proposed Action. The TPC shall develop, manage, and maintain the data and information for the Proposed Action based on direction provided by USACE for the design, organization, indexing, preparation, and maintenance of the Project File. The TPC should organize the data and information in a current, accessible file, indexed by topic; propose an initial index for review and approval by USACE with the first end-of-month progress report and before scoping occurs; include communications of all types (e.g., memoranda, internal notes, telephone conversation records, letters, e-mails, facsimiles, and minutes of meetings), as well as public outreach materials, such as newsletters, newspaper advertisements, and other public notices. All data and reference material should be included. All references cited in the EIS should be placed and maintained in the Project File. The TPC shall maintain and keep up-to-date the organization and indexing of the data and information throughout the entire EIS development process; and should submit the index and a summary of the organized and indexed contents as a part of each end-of-month progress report.

All planning data, maps, files, reports, computer, audio or video tapes, and disks and other records shall be included. The TPC (and subcontractors) shall document the sampling, testing, field observations, literature searches, analysis, recommendation, and other work which provides source material for the analysis, and any supplements to them. The TPC (and subcontractors) shall also document all of the USACE's records in a similar and compatible manner. The documentation shall be assembled in some organizational system which will make it possible for the responsible official to refer conveniently to specific documents or pages within documents. The source documents shall be listed. The list shall show the date, author, addresses, subject, and document or page number. The list shall be an appendix to the analysis and used to incorporate by reference the items on the list in the analysis. The list shall be prepared on a current basis throughout the environmental analysis and documentation processes so that it reflects the following information for each document: date, document number, page number, author, addressee, issue, sub-issue, and by page number. Provision should be made for printing reports of the sorted information.

Emails that contain factual information, substantive analysis, steps taken to prepare the EIS and associated evaluations, and/or that document elements of the USACE decision-making process are to be included in the Project File. All emails that are to or from the USACE and TPC team members, other agencies, stakeholders, interested parties or representatives from advocacy groups discussing the EIS (or parts thereof) should also be included. Emails that contain both relevant and non-relevant information **must** be

included. For example, emails that contain relevant information to the decision-making process and personal comments about the author's weekend **must** be included.

The TPC will prepare and maintain on an on-going basis a Project File index.

For every document in the Project File, the index should include:

- The date.
- Title (if applicable).
- Author's name and Agency (if applicable) or organization.
- Recipient's name and Agency (if applicable) or organization.
- Page numbers.
- Identify any enclosures (Describe what is being enclosed in case the transmittal document is separated from the enclosures).

With respect to draft documents to be included in the Project File:

- Include any documents circulated to the public for comments.
- DO NOT include multiple copies of draft documents showing "cosmetic" type changes (punctuation, layout, rewording).
- If something is considered but not used, it must be part of the Project File, including draft GIS coverage and metadata that was released to the public.
- Reviewer's or specialist's comments that change the "content" or show a change in direction of the analysis will be included in the Project File.

Data and information collected for and maintained in the Project File should also include:

Correspondence:

- Anything on letterhead is considered correspondence
- Hard copy with an actual signature and dated on the date it was signed (do not date correspondence until it is signed).
- All enclosures and attachments.
- Internal memos and emails.

Meeting Notes:

- Date of meeting.
- List of attendees.
- Name of note taker.
- Concerns, solutions, or follow-up.
- Decisions made or actions items.

Computer-based Decision Support Documents:

- Computer model runs.
- Copy of or summary report of any computer models used for analysis.
- Meta data for GIS analysis.

#### Specialist Reports:

- Bibliography of all literature cited (and know where an available copy is located in case a full copy is needed).
- Step-by-step documentation of analyses.
- All worksheets, field notes, field data, studies, reports, model runs and background information, etc.
- All relevant monitoring questions and protocols.
- Summary of effects determination and the analyses used to support them.
- All documents incorporated by reference or “tiered” to.

#### Reference Materials:

- Statutes, laws, and regulations citations.
- Bibliography of Literature cited.
- Related NEPA Documents.
- Maps.
- Photos.

#### Public Involvement:

- Telephone Call Records.
- Presentations to groups (printed or electronic PowerPoints including any video presentations).
- Meeting Notes or Transcripts.
- Lists of attendees.
- Mailing lists and related information.
- Public notices.

#### Environmental Compliance Documents:

- Scoping documents.
- Federal Register notices.
- Lists of individuals attending public or interagency meetings.
- Agreements with other cooperating agencies.

#### Endangered Species Act and National Historic Preservation Act Consultation Records:

- Meeting notes.
- Telephone records.
- Biological Assessments.
- Biological Opinions.
- Monitoring reports.
- Technical literature.
- Historic building surveys and reports.
- Archeological surveys and reports.
- If adverse effects to historic properties are present include effect determinations.

**The above list is not-inclusive.**

In the event of a challenge to the legality or adequacy of the USACE compliance with NEPA and/or the CWA with respect to the Proposed Action, the CPRA, the TPC and the TPC's professional personnel, and the subcontractors shall, at the CPRA's expense, make available to the USACE, all relevant non-privileged information under their control, and to the extent reasonable, discuss such information with the USACE, and testify at deposition or trial regarding such information. The TPC shall, as requested, be prepared to assist USACE should legal actions or challenges occur during or after the NEPA process. The SOW will be modified as necessary to accommodate the requirements of this section.

**ATTACHMENT "C"**

**TPC ON-GOING ORGANIZATIONAL CONFLICT OF INTEREST OBLIGATIONS CERTIFICATION**

**TPC ON-GOING ORGANIZATIONAL CONFLICT OF INTEREST OBLIGATIONS CERTIFICATION**

Parish/County of: Gwinnett

State of: Georgia

After being duly sworn, I Steven R. Davie, certify that as (title/position) and the authorized agent and representative of (name of third party contractor) ("Organization"), I have the express authority to execute this Certification on behalf of the Organization. I recognize that avoidance of Organizational Conflicts of Interest ("OCI") are an ongoing obligation of the Organization pursuant to the Council on Environmental Quality's National Environmental Policy Act regulation at 40 C.F.R. 1506.5 and the Coastal Protection and Restoration Authority ("CPRA") Contract No. [REDACTED] ("CPRA Contract"), which was awarded to my Organization for the preparation of an Environmental Impact Statement ("EIS") to evaluate CPRA's permit applications for the proposed Mid-Breton Sediment Diversion Project.

On behalf of the Organization, I shall ensure that during the period of the CPRA Contract, the Organization shall continue to regularly make diligent inquiries regarding the finances and work of the Organization, the employees of the Organization, and the subcontractors of the Organization who perform work under the CPRA Contract, to ensure that no person or entity working on the CPRA Contract and/or the EIS has any financial or other interest in the outcome of the permit review process or the CPRA Contract, and that the performance of the work pursuant to the CPRA Contract will not result in an unfair competitive advantage to the Organization and that no financial interest will impair the Organization's objectivity in performing the work of the CPRA Contract. Should I, or the Organization, become aware of any real or reasonably perceived potential OCIs during the performance of the CPRA Contract, either I or another authorized agent or representative of the Organization, will advise CPRA, the CPRA Board, and USACE in writing of the actual or potential OCI, and the Organization shall propose a plan for mitigation or explain why none is needed. **I have provided a detailed description of the internal controls for ensuring an OCI does not arise during the preparation of the EIS and the CPRA Contract period on the attached page(s).** I am submitting this Certification under penalty of perjury on behalf of myself, individually, and the Organization.

Signature: [REDACTED]

Printed Name: Steven R. Davie

Signed and sworn to before me this 9th day of August, 2019, by [REDACTED]

(Notary Seal) Notary Public

Printed Name: Debra Ann Andrews

Notary or Bar No: \_\_\_\_\_

My Commission Expires: October 01, 2020



**OTHER ATTACHMENTS**

Director's Policy Memorandum 2018-12, dated September 26, 2018

AND

Implementation Guidance for Regulatory Compliance with Executive Order 13807, dated  
September 26, 2018



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

SEP 26 2018

CECW-ZB

26 September 2018

DIRECTOR'S POLICY MEMORANDUM 2018-12

SUBJECT: Implementation of Executive Order (EO) 13807 and One Federal Decision (OFD) within Civil Works Programs

1. References.

a. Executive Order 13807 Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, 15 August 2017.

b. *Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807* (MOU), 9 April 2018.

2. Background. Executive Order 13807 requires federal agencies to process environmental reviews and authorization decisions for "major infrastructure projects" as One Federal Decision. One of the criteria for a "major infrastructure project" is that the lead agency has determined the need to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). The goals of One Federal Decision are to:

a. Reduce average time for environmental reviews, authorization decisions and consultations to an average of two years for all federal agencies;

b. Achieve One Federal Decision through preparation of a single EIS and single ROD for covered projects; and

c. Provide greater transparency, predictability and timeliness for federal review and authorization processes for major infrastructure projects.

3. Purpose. To establish policy pertaining to EO 13807 and "One Federal Decision" across all Civil Works functional areas, and direct broad implementation of the EO's concepts.

4. Applicability. This memorandum is applicable to all HQUSACE, Major Subordinate Commands (MSC), districts, and field operating activities with Civil Works functions which may include, but are not limited to feasibility studies, dam safety modification

CECW-ZB

SUBJECT: Implementation of Executive Order (EO) 13807 and One Federal Decision (OFD) within Civil Works Programs

studies, Section 408 permissions, and Regulatory permit decisions associated with major infrastructure projects.

5. Policy. EO 13807 applies to a variety of Civil Works actions which may include, but are not limited to, feasibility studies, dam safety modification studies, Section 408 permissions, and Regulatory permit decisions associated with major infrastructure projects. The EO applies to those actions that require the preparation of an EIS under NEPA, and for which a Notice of Intent was issued after 15 August 2017. USACE Civil Works will comply with EO 13807 across its functional areas and responsibilities.

a. Ongoing Civil Works lines of effort such as embracing and operationalizing risk-informed decision making; justifying, and documenting decisions at the most appropriate levels; and synchronizing Headquarters functions to support MSC and district project delivery further advance the goals of EO 13807.

b. EO 13807 is directed at improving accountability within environmental reviews for major infrastructure projects, its effects are broad reaching across multiple disciplines. All Civil Works functional areas including Planning, Engineering and Construction, Operations, and Programs and Project Management will coordinate and apply risk-informed decision making in order to better integrate environmental requirements and conduct environmental reviews to achieve the two-year timeline goal in EO 13807.

c. One of the foundational concepts behind EO 13807 is early, frequent, and meaningful coordination with federal agencies, state agencies, and tribes that may have special expertise or authority for review of major infrastructure projects. Meaningful engagement is an important tenet within SMART Planning and within the Regulatory Program and will be implemented broadly, including for those infrastructure projects requiring preparation of an Environmental Assessment.

6. Direction. USACE will pursue a variety of specific actions to fully implement EO 13807. Guidance attached to this memorandum will be aligned and conducted concurrently with the implementation plan developed for risk-informed decision making per the Director's Policy Memorandum issued on 3 May 2018.

a. Implementation guidance has been prepared for EO 13807 specific to Civil Works Programs, including the Regulatory Program. A memorandum providing guidance for Regulatory permit actions is attached to this memorandum as enclosure 1. Implementation guidance specific to feasibility and other planning studies is attached to this memorandum as enclosure 2.

b. EO 13807 directs the Chief Environmental Review and Permitting Officer (CERPO) to serve as the agency official responsible for compliance with EO 13807. To facilitate implementation and compliance for Regulatory Permit actions, each MSC will designate a Senior Environmental Review Officer for the respective USACE MSC (i.e.,

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SUBJECT: Implementation of Executive Order (EO) 13807 and One Federal Decision (OFD) within Civil Works Programs

senior agency official) for the purposes of elevation procedures, functional understanding and oversight of the application of this guidance, and interaction with the USACE CERPO.

c. Districts are responsible for identifying which Civil Works actions are "major infrastructure projects" in the context of EO 13807 and then notifying the MSC and HQUSACE of the determination. Districts are also primarily responsible for monitoring and executing project schedules consistent with EO 13807 requirements and reporting the status of milestones through the appropriate MSC to HQUSACE. Further guidance will be forthcoming from the Office of Management and Budget on how agencies will track major infrastructure projects on the Federal Agency Portal of the Permitting Dashboard and how OMB will review agency performance on a quarterly basis.

7. Proponent. The proponents for this memorandum are Thomas P. Smith, P.E., Chief, Operations and Regulatory Division, at (202) 761-1983 and Joseph Redican, Acting Chief of Planning and Policy Division, at 202-761-4523.



JAMES C. DALTON, P.E.  
Director of Civil Works

Encls



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

SEP 26 2018

CECW-CO-R

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: IMPLEMENTATION GUIDANCE FOR REGULATORY COMPLIANCE WITH EXECUTIVE ORDER 13807

### 1. References

- a. Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, 15 August 2017.
- b. Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807 (MOU), 9 April 2018.
- c. 40 CFR 1500-1508, CEQ Regulations for Implementing the Procedural Provisions of NEPA.
- d. Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (CEQ, 1986).

### 2. Purpose

This memorandum provides guidance to MSCs and districts on implementing EO 13807 for projects where USACE District Regulatory is a lead or cooperating agency involved in preparing an EIS and ROD for a covered major infrastructure project. This guidance does not replace or contradict requirements of the National Environmental Policy Act (NEPA) or USACE regulations.

### 3. USACE Involvement

Districts will be involved in projects subject to EO 13807 in two ways: 1) as a cooperating agency when another federal agency has determined to the applicability of EO 13807 for a project that includes regulated work in waters of the U.S., and 2) where USACE is the lead agency for the preparation of an EIS subject to EO 13807 for a major infrastructure project. Lead agencies make the determination whether to prepare an EIS, as well as whether a proposed project is a "major infrastructure project." Districts must carefully consider whether infrastructure projects will be subject to EO 13807, including a two-year Permitting Timetable and/or One Federal Decision that includes a single ROD prepared jointly by all involved Federal agencies. Note that when an infrastructure project has been determined subject to EO

**SUBJECT: IMPLEMENTATION GUIDANCE FOR REGULATORY COMPLIANCE WITH EXECUTIVE ORDER 13807**

13807 the two-year Permitting Timetable applies. One Federal Decision will also apply<sup>1</sup>, unless the required permit type is a Nationwide or Regional General Permit where the USACE NEPA obligation has already been met. USACE involvement and role will be based on the criteria below for lead and cooperating agency status.

Pre-application discussions with prospective applicants are likely and appropriate prior to a formal determination that a project is subject to EO 13807. For this reason, the pre-application phase is specifically identified below as an important environmental review process activity.

**A. USACE as lead agency:** Only major infrastructure projects are subject to EO 13807. To determine whether a project meets the definition of major infrastructure project, the criteria below must be met:

- (1) USACE as lead agency has received, or expects to receive, a complete permit application for an infrastructure project (see Definitions section) and determined that an EIS will be prepared;
- (2) USACE as lead agency has determined that multiple federal agency authorizations are required. Required Federal agency consultations to comply with ESA and EFH meet the definition of authorization;
- (3) USACE as lead agency has determined the permit applicant/project sponsor has identified the reasonable availability of funds to prepare the EIS and to construct the project. The burden of demonstrating the reasonable availability of funds is on the project sponsor. Project sponsors may meet this burden by submitting a finance plan showing the estimated costs of the project and the available sources<sup>2</sup> from which the project sponsor anticipates meeting the costs.

**B. USACE as cooperating agency:** When another federal agency has made a determination to prepare an EIS, has identified itself as the lead agency, has determined the project is subject to EO 13807, has requested USACE serve as a cooperating agency<sup>3</sup>, and when USACE has jurisdiction and/or special expertise:

- (1) USACE will agree to serve as a cooperating agency<sup>4</sup>, regardless of whether a complete application has been received;

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<sup>1</sup> Exceptions to the single ROD for multiple agencies are described in Section XIII of the MOU.

<sup>2</sup> Districts will accept at face value project sponsors' demonstration of the reasonable availability of funds, including consideration of sponsors' information regarding any 'specific' funds for construction as well as 'fund sources' likely to be available for construction.

<sup>3</sup> In the event that a district receives an application for a major infrastructure project that will require an Individual Permit, but for which the lead agency has not requested USACE to serve as a cooperating agency, districts must consult with the lead agency pursuant to the MOU (Section VI. Determination of Lead and Cooperating Agencies).

<sup>4</sup> The EO and MOU reference "participating" agency as established in surface transportation law (P.L. 6002 §139) and referenced in FAST-41. The Corps will be involved in preparation of an EIS only when the agency has jurisdiction by law and/or special expertise (40 CFR §1501.5 and §1501.6). On this basis, USACE will serve as lead or cooperating, but not participating agency.

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- (2) Districts will recognize that the lead federal agency has already considered criteria to determine the project represents a major infrastructure project subject to EO 13807;
- (3) The level of engagement as a cooperating agency should be commensurate with the scope of impacts subject to USACE authorities. When the applicant's proposed impacts to Waters of the U.S. will qualify for an existing Nationwide or Regional General Permit, USACE Regulatory obligations under NEPA have already been satisfied. On this basis, USACE contributions as a cooperating agency on the preparation of the EIS should be sufficient to assist the lead agency with accurate information concerning Waters of the U.S. to be presented in the EIS.

As described in the MOU and as applicable to requests from all Federal agencies, USACE will serve as a cooperating agency for Federal Energy Regulatory Commission (FERC) proceedings when requested, and may only decline a request when USACE has no jurisdiction by law.

For major infrastructure projects where Federal Highway Administration (FHWA) is the lead agency, USACE will serve as a cooperating agency pursuant to NEPA, the EO, and the MOU. On February 15, 2018, USACE entered in a Working Agreement<sup>5</sup> with FHWA which included a coordination process designed to meet the requirements of EO 13807. For such projects, USACE will cooperate with FHWA according to the process outlined in the Working Agreement.

**4. Environmental Review Process Activities: Define and Control Scope to Support Risk-Informed Decision Making**

One of the fundamental goals of EO 13807 is to reduce average time for environmental reviews and authorization decisions to an average of two years for all Federal agencies involved. To consistently achieve this goal, districts will incorporate risk-informed decision making processes in all phases of environmental review, including pre-application preparation, scoping, impact analyses and permit decisions. Risk-informed decision making does not mean simply accepting heightened legal risk as a way to hasten the overall process without careful consideration of agency obligation. Rather, it means critically considering the portions of a proposal that are within USACE authority, determining information needs and requesting information relevant to agency authority(s), and performing sufficient and timely analyses directly relevant to required USACE decisions. Importantly, this means making decisions not to undertake detailed analyses<sup>6</sup> that do not affect or relate to USACE permit decision

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<sup>5</sup> Working Agreement Among The United States Coast Guard, The United States Army Corps of Engineers, The United States Environmental Protection Agency, The United States Fish and Wildlife Service, The National Oceanic and Atmospheric Administration and The Federal Highway Administration To Coordinate and Improve Planning, Project Development, and the National Environmental Policy Act Review and Permitting for Major Infrastructure Projects Requiring the Preparation of an Environmental Impact Statement.

<sup>6</sup> Consistent with requirements in NEPA, the EIS must fulfill the obligation to identify and disclose any significant effects that are likely to result from the proposed project. However, identification and disclosure of likely effects

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processes. Therefore, even when the "single EIS" scope of analysis for all combined cooperating agencies extends to the applicant's entire project, USACE will focus on addressing scoping items relevant to agency responsibility.

The environmental review process activities in this section are broadly applicable when the applicant's proposed work will require an Individual Permit, and specifically when USACE is the lead agency. When acting in a cooperating agency role, districts will defer to the lead agency to accomplish NEPA process activities, while USACE-specific requirements for General and Individual Permits will remain district responsibilities.

- A. Pre-application phase – the pre-application phase is the appropriate time to consider whether the prospective project is likely to require an EIS, require multiple federal authorization decisions, and will have the reasonable availability of funds to be constructed should a favorable permit decision result. If these criteria are likely to be met, USACE should consider requesting relevant Federal agencies to be included in further pre-application meetings to facilitate the environmental review.

As part of pre-application meetings with the prospective applicant, district Regulatory will indicate USACE authorities based on the prospective applicant's description of the work to be proposed. After establishing a mutual project-specific understanding of the agency's authority and environmental review responsibilities, USACE should advise the prospective applicant of the type of information and level of detail required to fully inform the USACE evaluation. This important phase of information sharing will lead to applications being complete upon receipt, fewer information requests, and more efficient Permitting Timetables. Regulatory project managers will advise prospective applicants that proposed alterations or temporary or permanent occupation or use of any USACE federally authorized Civil Works project will require review and permission pursuant to Section 14 of the Rivers and Harbors Act (a.k.a. Section 408 review), and must engage district Section 408 counterparts to ensure their involvement in project review<sup>7</sup>. Similarly, if a project will involve Federal property owned or managed by USACE, review and approval for encroachment/ involvement will be required by the USACE Real Estate Division.

- B. Initial application review and scoping preparation phase – a public notice must be issued within 15 days after receipt of a complete permit application. The public notice does not have to state whether USACE has made a determination to prepare a Draft EIS. Rather, the public notice may state that the district engineer is considering whether an EIS should be prepared and will consider public comments in making the determination.

When USACE has agreed to serve as a cooperating agency on the preparation of an EIS and a complete application is received at the district, the public notice for an

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outside agency authority should be only briefly summarized, with no further detailed studies or analyses performed or included in the EIS.

<sup>7</sup> Regulatory and 408 Program coordination is required pursuant to the Director's Policy Memo #2018-10, "Strategy for Synchronization of the Regulatory and 408 Programs", dated 17 August 2018.

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Individual Permit can identify the lead agency and state that USACE is already cooperating. If the proposed work will qualify for a General Permit, Districts will review the application and finalize qualifying authorizations according to existing timeline requirements for Nationwide and Regional General Permits.

- C. Determination to Prepare an EIS – this determination will be made consistent with NEPA regulations at 40 CFR 1501.4 and USACE regulations at 33 CFR 325 Appendix B. After a determination has been made to prepare an EIS as the lead agency, USACE must notify the applicant in writing, including notification that the project is subject to EO 13807 and establishing that third party contract procedures described at 33 CFR 325 Appendix B apply<sup>8</sup>.

When USACE is a cooperating agency, the decision to prepare an EIS is a lead agency responsibility.

- D. Select Third Party Contractor – USACE regulations<sup>9</sup> provide for use of third party contractor assistance for the preparation of an EIS. Districts must work closely with applicants to identify candidate contractors and then must fulfill the agency responsibility of solely selecting the contractor to avoid any conflict of interest.

When USACE is a cooperating agency, USACE does not have a role in selecting the third party contractor.

- E. Prepare Draft Permitting Timetable – A draft Permitting Timetable will be prepared for use in coordinating cooperating agency requests and preparing for scoping, as well as for identifying and scheduling additional information needs. An example two-year Permitting Timetable with required milestones is attached.

When USACE is a cooperating agency, the lead agency will be responsible for preparing and distributing the Permitting Timetable.

- F. Request cooperating agency involvement – USACE will request other federal agencies with required authorization decisions and/or special expertise to serve as cooperating agencies. This request will be in writing and should include the draft Permitting Timetable for cooperating agency use. Districts will allow cooperating agencies reasonable time to review the draft Permitting Timetable and attach their respective agency tasks with required timelines. This will allow the lead agency (USACE) to complete the draft Permitting Timetable for use in scoping<sup>10</sup>.

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<sup>8</sup> Districts should consider whether project-specific MOAs will be executed with the applicant to clearly establish communication/coordination protocols that maximize information exchanges and preserve the third party contract arrangement.

<sup>9</sup> 33 CFR 325 Appendix B; 40 CFR 1506.5(c).

<sup>10</sup> Pursuant to Section VII A.2. of the MOU, lead agencies must initially consult cooperating agencies for input to the Permitting Timetable. After the Permitting Timetable includes the tasks and timelines for each Federal agency with a required authorization decision, cooperating agencies must respond within 10 days.

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When USACE is a cooperating agency, USACE will receive the lead agency's request to contribute USACE environmental review tasks and timelines to the draft Permitting Timetable prepared by the lead agency.

- G. Perform Data Gap Analysis – Following selection of a third party contractor, a data gap analysis should be conducted to identify and request additional applicant information to inform the environmental review<sup>11</sup>. Upon receipt of requested information directly relevant to agency decision authority(s), the draft Permitting Timetable will be revised as necessary to include any additional tasks identified in the data gap analysis.

When USACE is a cooperating agency, USACE will contribute to lead agency efforts for identification of information needs to inform the EIS. The USACE contribution should be confined to the area of USACE jurisdiction and authority.

- H. Prepare Purpose and Need statement – As the foundation for the development and analysis of alternatives under NEPA, the Purpose and Need statement will be prepared prior to issuing the NOI and undertaking scoping. This will assist the public in providing scoping comments that focus on likely impacts of the proposed project as well as identifying alternatives to the proposed project that may result in fewer impacts. The Purpose and Need statement is Concurrence Point #1 (see Concurrence Points and Permitting Timetable below).

When USACE is a cooperating agency, USACE will review and respond to the lead agency request on this concurrence point, considering the Purpose and Need based on regulatory requirements.

- I. Issue Notice of Intent to prepare the Draft EIS – the NOI should be issued after receipt of complete application, receipt of applicant response(s) to requested additional information, selection of third party contractor, designation of cooperating agencies, preparation of Permitting Timetable, and concurrence on Project Purpose and Need statement. The NOI will clearly indicate the permit authority(s) and the portions of the proposed project subject to Corps permit authority(s), as well as project elements subject to relevant cooperating agency authorities. The NOI will advise the public that comments are most helpful to the lead and cooperating agencies with Federal authorization decisions when the comments focus on issues (impacts and alternatives) relevant to agency authorities. Completion of these process steps will best inform the NOI and thus best assist the public in providing relevant and focused scoping comments, particularly important for meaningful scoping in the targeted 30-day timeframe.

When USACE is a cooperating agency, USACE does not have a role as the NOI is a lead agency responsibility.

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<sup>11</sup> Pursuant to 33 CFR 325.1(d)(10) and 33 CFR 325.1(e).

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- J. NEPA scoping phase – the scoping period should be 30 days. If a district commander determines that an extension of the scoping period is warranted based on project complexity or controversy, an extension of up to an additional 30 days may be granted. These timeframes also apply to cooperating agency requests to extend the scoping period. Note that extending the scoping period cannot result in extending any major milestone in the Permitting Timetable, particularly the 14 months scheduled to prepare the Draft EIS.

When USACE is a cooperating agency, USACE districts will limit their project involvement to scoping issues directly relevant to agency authorities.

- K. Complete the Permitting Timetable – the draft Permitting Timetable prepared prior to issuing the NOI may need to be revised based on issues raised during scoping. Revisions required to finalize the Permitting Timetable should include any additional information needs brought to the attention of the lead or cooperating agencies as a result of scoping. Information needs that require the lead agency to request additional information from the applicant may affect the timing of milestones in the Permitting Timetable. [‘Pauses’ outside agency control, such as delayed applicant information, are described below in Reporting and Accountability, Item 3.] If revised, the draft Permitting Timetable must be provided to cooperating agencies for comment<sup>12</sup>. If a cooperating agency with Federal authorization responsibility objects, that agency must include an alternative proposed milestone consistent with the two-year timeline. If no objections are received in writing within 10 business days, the lead agency will finalize the Permitting Timetable.

When USACE is a cooperating agency, the lead agency will be responsible for completing and distributing the Permitting Timetable.

- L. Impact analysis phase – analyses for all alternatives to be carried through the Draft EIS must address impacts and issues related to agency authorities (see Concurrence Point #2 below). These include likely impacts to waters subject to CWA Section 404 and RHA Section 10, including impacts related to public interest factors. Note that additional analyses required to satisfy the NEPA obligations of cooperating agencies must also be included; however, it will be the responsibility of the respective cooperating agencies to identify and perform those impact/issue analyses<sup>13</sup>.

When USACE is a cooperating agency: USACE will be responsible for identifying and performing impact analyses directly related to agency authorities and obligations (and that will enable USACE to determine whether the applicant’s proposed alternative represents the least environmentally damaging practicable alternative (LEDPA) for permit application decision purposes.

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<sup>12</sup> Section VII A.2. of the MOU.

<sup>13</sup> When a cooperating agency requests assistance with impact analyses, USACE can direct the Third Party Contractor to assist with such analyses provided the contract Statement of Work includes or is amended to include such efforts.

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- M. Permit decision phase – permit application decisions must be based on careful consideration of environmental information in project NEPA documents; the USACE public interest review; the proposed project's compliance with the 404(b)(1) Guidelines; and all other relevant laws and regulations. Likely impacts outside USACE regulatory authority, and particularly impacts which are clearly within another agency's authority, should be described as such as part of the public interest review where appropriate. The USACE permit decision will address those activities subject to USACE authority and the determination of whether the applicant's proposed alternative represents the LEDPA, as well as attaching any permit conditions intended to avoid, minimize and/or compensate for USACE-regulated project impacts. Districts may include identification of the LEDPA in the Final EIS, and must identify the LEDPA in the ROD. Balancing the need to make timely permit decisions while minimizing legal risk is the essence of risk-informed decision making, and will be most effective when USACE carefully and strategically pursues a scope of analysis clearly based on agency authorities.

When USACE is a cooperating agency and an Individual Permit is required, the USACE decision will be made as described above.

- N. Water Quality Certification – In certain instances, a project sponsor (applicant) must apply for certification pursuant to Section 401(a)(1) of the Clean Water Act from the certifying agency. Federal agencies cannot issue federal licenses or permits unless such certification has been granted or waived. For the purposes of EO 13807 and consistent with all other projects, in instances where the lead agency determines that certification requirements have been waived, e.g. the certifying agency has not acted within the time period allowed by law, USACE will defer to the determination of the lead agency, determine that the certification requirement has been waived, and proceed accordingly.

- O. Record of Decision – the lead agency is responsible for preparing and publishing a single ROD for all Federal agencies with required authorization decisions. The ROD will incorporate the independent decisions of each cooperating agency, and will necessarily be prepared in consultation with the relevant cooperating agencies. While the EO and MOU allow for agency authorization decisions to be completed as much as 90 days after the ROD is completed, districts must note that the Record of Decision must be completed within 60 days after the Notice of Availability (NOA) for the Final EIS. Therefore, cooperating agencies will be responsible for providing their authorization decision information to the lead agency in a timeframe that supports timely preparation of the ROD.

When USACE is a cooperating agency and an Individual Permit is required, USACE will contribute text relevant to the USACE permit decision to the lead agency for incorporation into the single ROD.

- P. Consolidated Project File and Administrative Record – the consolidated project file is all of the information assembled and utilized by the lead and cooperating Federal agencies during the environmental review and Federal authorization decision processes.

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Pursuant to Section VII A.8. and B.7. of the MOU, the lead agency will maintain the consolidated project file. Cooperating agencies will independently maintain their respective administrative records in support of their authorization decision(s), and then will provide such information as the lead agency may request to complete the consolidated project file.

- Q. Best Practices – The EO and the MOU each require implementation of best practices (see Definitions) as part of project-specific process techniques and strategies, as appropriate. The environmental review process activities and chronology described above should assist districts in utilizing best practices, particularly when USACE is the lead agency. Current versions of *Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects for Fiscal Year 2018* can be found at <https://www.permits.performance.gov/tools>.

## **5. Transparency**

Efficient timelines for major infrastructure projects as reflected in the two-year Permitting Timetable, measured from NOI to ROD, will rely on enhanced transparency to maximize effective public involvement. When USACE is the lead agency, web pages, project-specific web sites, social media, and other means of disseminating information must be used to inform the public about the process and status of the environmental review. This may include establishing and periodically updating project news, milestones, Permitting Timetables, upcoming public forum events via:

- A. District web pages,
- B. Project-specific web pages maintained by USACE Regulatory and/or the third party contractor. This transparency is strongly encouraged as a best practice because it can be dedicated solely to the project under review and it can make virtually all publicly accessible documents readily available. Permitting Timetables should be maintained on the site throughout the environmental review,
- C. District Twitter and Facebook accounts, in coordination with and physically posted by district Public Affairs/Corporate Communications Offices.

## **6. Concurrence Points**

Concurrence points are opportunities for lead and cooperating agencies to assess mutual understanding and agreement on fundamental elements of the EIS. Concurrence among lead and cooperating agencies establishes that agencies agree to a given decision described in the concurrence point, and to abide by the decision as analyses and EIS preparation progress. Three specific concurrence points are required per Section XI of the MOU, and are milestones that must be included in the Permitting Timetable. Non-concurrence issues should be identified as early as possible and resolved either before a dispute arises, or resolved via the Dispute Resolution process described in this guidance.

The District Commander is the regulatory decisionmaker for permit decisions that are not elevated to the Division Commander. On this basis, the District Commander retains the

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responsibility and authority for concurrence point decisions. Authority to concur with a required concurrence point may be delegated to the Regulatory Chief at the District Commander's discretion. Authority to non-concur with a required concurrence point cannot be delegated. A District Commander intending to provide written non-concurrence will inform the USACE CERPO (Chief Environmental Review and Permitting Officer), through MSC SERO (Senior Environmental Review Officer) and HQ environmental review POC of the intent to non-concur.

When acting as the lead agency, the District will provide cooperating agencies with written requests for concurrence, including any information necessary for cooperating agencies to consider in providing their concurrence and/or resolving any points of disagreement that may affect concurrence. As a cooperating agency, the District must receive written requests for concurrence and must respond to such requests in writing. Note that the MOU establishes that cooperating agencies will respond to lead agency requests within 10 business days, and that failure to respond may be treated as concurrence, at the discretion of the lead agency.

**A. Concurrence Point #1 – Purpose and Need**

As discussed above in the context of risk-informed decision making, the Purpose and Need statement serves as the basis for developing and evaluating alternatives. For this reason, all cooperating agencies with required authorization decisions must review and concur on the Purpose and Need statement drafted by the lead agency, indicating their concurrence in writing. For lead or cooperating agency roles, respectively, districts must draft or concur with a Purpose and Need that reasonably and objectively describes the proposal without inappropriately constraining the range of alternatives that ultimately must be considered. Districts should consider whether to seek additional written agreement/concurrence with lead/cooperating agencies regarding the preliminary scope of analysis for the proposed project. The scope of analysis for the EIS will be defined following scoping, will ultimately reflect the cumulative control and responsibility of all Federal agencies with required authorization decisions, and may be the subject of a separate concurrence point in addition to the three concurrence points required by the MOU.

**B. Concurrence Point #2 – Alternatives to be Carried Forward for Evaluation**

This concurrence point will occur after completion of scoping and consideration of alternatives screening criteria, ultimately identifying the range of reasonable alternatives to be evaluated in the Draft EIS. The lead agency must gain cooperating agency concurrence(s) on this point prior to making results of alternatives screening available to the public (i.e. via newsletters or public meetings). Lead agency requests for concurrence must include a description of alternatives screening criteria and alternatives considered as part of screening, as well as a description of all alternatives to be further evaluated in the Draft EIS. In a lead agency role, districts are encouraged to present this information in Technical Memorandum format to support the Administrative Record.

**C. Concurrence Point #3 – Preferred Alternative**

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NEPA requires agencies to identify the preferred alternative(s), if one exists, in the Draft and Final EIS<sup>14</sup>. The MOU recommends identifying the preferred alternative in the Draft EIS and requires it in the Final EIS. Corps regulations at 33 CFR 325 Appendix B clarify that the Corps is neither an opponent nor proponent of the applicant's proposal; therefore, the applicant's final proposal will be identified as the "applicant's preferred alternative." To comply with NEPA, Corps regulations, and the MOU, when the Corps is lead agency, the Draft and Final EIS will identify the Applicant's Preferred Alternative, and will include text identifying the Preferred Alternative of any cooperating agency (with a required federal authorization) with regulations that prevent their concurrence with "applicant's preferred alternative."

When the Corps is a cooperating agency, the Corps will respond to lead agency request stating the Corps does not have a preferred alternative, and the Draft and Final EIS should identify the lead agency's Preferred Alternative as well as the Applicant's Preferred Alternative, including when these are the same alternative. Coordination among agencies on this concurrence point must be written, including lead agency request and cooperating agency response/concurrence, in support of the Administrative Record.

## **7. Permitting Timetable**

The Permitting Timetable is the schedule for Federal agency environmental reviews, consultations and authorization decisions for major infrastructure projects. The lead agency is responsible for preparing the Permitting Timetable with required input from cooperating agencies and in consultation with participating agencies according to their agency roles and involvement. The Permitting Timetable should be drafted<sup>15</sup> by the lead agency prior to the NOI, and must include milestones critical to the completion of the environmental review and issuance of a single EIS and single ROD that meet the needs and obligations of each agency with a required authorization decision. The Permitting Timetable should include and account for:

- A. required Federal decisions and authorizations;
- B. required Federal decisions and authorizations delegated to state, tribal, or local agencies (when these are pre-requisite to issuance of a decision or authorization by a Federal agency);
- C. a complete inclusion of the environmental review and authorization requirements for a project (see attached example Permitting Timetable);

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<sup>14</sup> 40 CFR 1502.14(a).

<sup>15</sup> The Permitting Timetable should be drafted as soon as practicable for use in cooperating agency requests, applicant information requests, and for informing the public regarding the overall project timeline. An example two-year Permitting Timetable is attached to this Appendix.

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- D. specific focus to those reviews and authorizations that are complex, require extensive coordination, or might significantly extend the overall project review schedule;
- E. cooperating agencies that are required by law to develop schedules for environmental review or authorization processes should provide such schedules to the lead agency for integration into the Permitting Timetable;
- F. estimated milestones for any review or authorization decision processes for which the project design has not sufficiently advanced to more accurately determine dates to inform the Permitting Timetable;
- G. Times for completion of environmental review and authorization decision subtasks are:
  - (1) Formal scoping and preparation of a Draft EIS within 14 months, beginning on the date of publication of the NOI to publish an EIS and ending on the date of the NOA for the Draft EIS;
  - (2) Completion of the formal public comment period and development of the Final EIS within eight (8) months of the date of the NOA for the Draft EIS;
  - (3) Publication of the ROD within two (2) months of the publication of the NOA for the Final EIS, noting that USACE regulations at 33 CFR 325 Appendix B require that no ROD can be signed until at least 30 days following the NOA for the Final EIS.

A Permitting Timetable shall be prepared in a suitable format to identify project tasks, durations and dependencies to maximize effectiveness in managing and meeting the EO 13807 goal of two years on average for covered major infrastructure projects.

Permitting Timetable milestones are listed in the table below. These are milestones that must be included in the lead agency's Permitting Timetable. Additional project-specific tasks and milestones may also be necessary depending on the type of project proposed and the cooperating agencies that are involved.

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<b>Milestone*</b>	<b>Target Date</b>	<b>Actual Date</b>
Pre-application meeting(s)		Date of 1st agency involvement
<b>Initial Application Received</b>		Date received
<b>Complete Application Received</b>		Date received
<b>Public Notice</b> for application		Within 15 days of complete application
Notify applicant EIS is required and subject to EO 13807		Within 7 days of determination
3rd Party Contractor selection		Date of selection
SOW approval/3rd party contract executed		Date of approval
Cooperating agency requests and agreements		Date(s) as applicable
Determine additional required information (e.g. 404(b)(1) compliance, alternatives, Public Interest Review)		Date of information request
<b>Concurrence Point #1: Purpose &amp; Need</b> preliminary scope of analysis can also be addressed		Date of concurrence must precede NOI
<b>Publish NOI / Initiate Scoping / Public Notice</b>		<b>Date initiates 2-year timeline</b>
Scoping Meeting		Date(s) of meeting(s) held
Revise SOW (as necessary)		Date as applicable
<b>Concurrence Point #2: Alternatives to be Analyzed</b> Review project scope of analysis, EIS Table of Contents (issues to be analyzed)		Date of concurrence
<b>Concurrence Point #3: (Applicant's) Preferred Alternative</b>		Date of concurrence
<b>NOA DEIS/Supplemental</b>		<b>Date of NOI + 14 months</b>
Public Hearing/Meeting		Date of event
<b>NOA FEIS/Supplemental</b>		<b>Date of DEIS NOA + 8 months</b>
ESA Section 7 process begin/end**		Date(s) determined in coordination with Services
EFH process begin/end**		Date(s) determined in coordination with NMFS
NHPA Section 106 process begin/end**		Date(s) determined in coordination with ACHP/SHPO
Tribal consultation**		Date(s) determined/estimated
Government-to-Government consultation**		Dates(s) as applicable
<b>ROD/Amended ROD</b>		<b>Date of FEIS NOA + 2 months</b>
<b>Permit Issuance/Denial</b>		<b>Date of ROD</b>

\*Major milestones required by the MOU are shown in bold type. Target Dates and Actual Dates must be reported in ORM for use in populating the Federal Agency Portal.

\*\*Milestone to begin this process would occur during or near the timing of scoping.

Milestone to end this process would occur near the timing of FEIS NOA, prior to ROD.

## **8. Elevation Procedures for Dispute Resolution and Prevention of Delays**

The USACE CERPO will serve as the USACE senior agency official and will be made aware of disputes that have the potential to result in a missed Permitting Timetable milestone or delay, including elevated issues or disputes brought by cooperating or participating agencies.

Concurrence points are intended to promote process efficiency and minimize disputes between cooperating agencies, particularly cooperating agencies for which authorization decisions are required. As required by the MOU, three specific concurrence points must be included in the Permitting Timetable to facilitate major milestones: 1) Purpose and Need; 2) Alternatives to be Carried Forward for Evaluation, and; 3) Preferred Alternative (Applicant's Preferred Alternative). Per the MOU, lead and cooperating agencies may choose to include additional concurrence points in the Permitting Timetable to accommodate specific project circumstances.

Districts should strive to resolve all issues and disputes at the earliest time and lowest level possible, including issues and disputes raised by other agencies. Should agency staff identify an issue or dispute that, if not resolved, may result in missing a milestone (delay) and/or a decision inconsistent with law, regulation or agency policy, the district regulatory project manager must notify the District Commander, or designee, via the district Regulatory supervisory chain of command. This written notice should clearly state in detail the specific issue or dispute; the consequence, including potential delay, of failing to resolve the issue or dispute; and the recommended resolution.

- A. When the Corps of Engineers is the lead federal agency (the elevation and resolution process is shown in flow diagram format in Figure 1): The District Commander or designee should coordinate with the cooperating or participating agency's locally-responsible senior official (e.g. DOI Regional Administrator) or designee, and decide whether the issue can be expeditiously resolved. Coordinating the dispute with the cooperating or participating agency shall consist of a written notice describing in detail the specific issue or dispute, the consequence(s) to the project timeline of failing to resolve the issue or dispute, and the recommended resolution. If the issue or dispute is not resolved within 15 days from the written coordination, the District Commander will notify the SERO. Depending on the nature of the dispute, the District Commander may notify the SERO of an issue or dispute prior to 15 days, particularly important if a milestone or concurrence point is near. If a dispute is not resolved within 15 days following notification of the SERO, the USACE CERPO will be notified to facilitate interagency coordination at the HQ level.
- B. When the Corps of Engineers is a cooperating agency: The same procedure described for Corps as lead agency should be used, unless the Corps has agreed with the lead agency on a project-specific dispute resolution that achieves the same goal. The District Commander will notify and coordinate with the SERO and CERPO prior to signing and transmitting a non-concurrence to the lead agency.

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- C. Elevation information package: Upon a decision to elevate an issue or dispute, the responsible district senior official shall transmit an elevation package. The elevation package must contain a fact sheet with project details and nature of dispute, timeline and milestones, the initial dispute notification, any subsequent formal written correspondence between the disputing agency and the lead federal agency, and recommended resolution.
  
- D. Disputes Related to Developing the Permitting Timetable: Section VII. A.2. of the MOU describes the specific process that will apply if any dispute arises regarding the lead agency's proposed Permitting Timetable.
  
- E. Unresolved Non-Concurrence (USACE as a cooperating agency): If a dispute associated with a required concurrence point cannot be resolved, including through additional meetings intended to seek resolution, USACE districts must follow one of the following approaches:
  - (1) incorporate additional necessary information into the USACE section of the ROD (in coordination with the lead agency) to satisfy decision-making needs;
  
  - (2) CERPO requests CEQ to mediate the unresolved dispute pursuant to the MOU (Section 5(e)(ii)).

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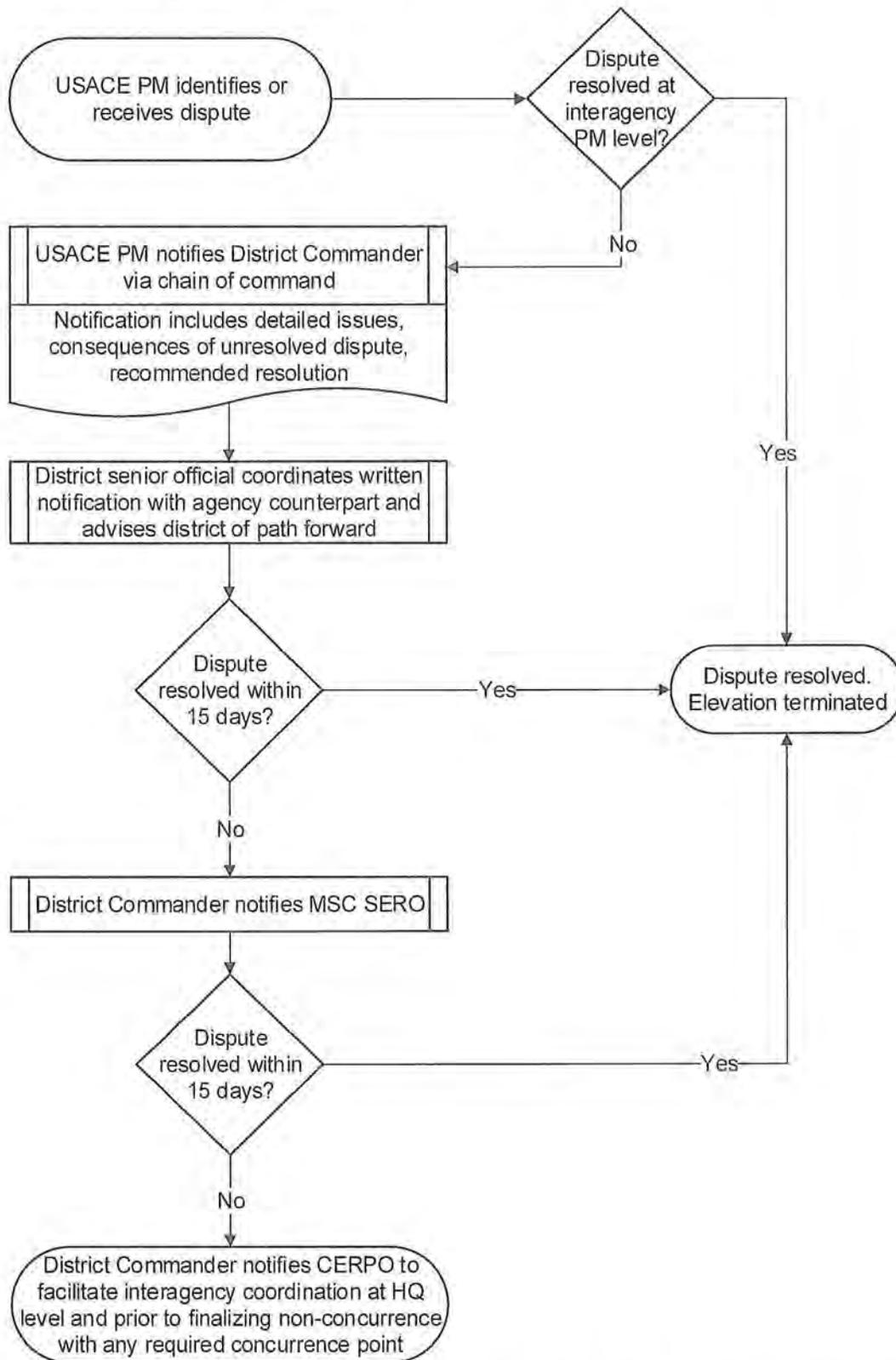


Figure 1. Flow diagram of the USACE Regulatory Elevation and Resolution Process.

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**9. Reporting and Accountability**

The Office of Management and Budget will establish a Federal Agency Portal where project information will be posted and used to track agency compliance via the Permitting Dashboard<sup>16</sup>. The OMB will review accountability system performance at least once per quarter, and will produce a scorecard of agency performance. Therefore, districts must update and maintain current project information to reflect progress and any revisions from the previous quarter. Districts will enter project information into ORM at the EIS data entry screen, including all lead and cooperating agency EIS efforts subject to EO 13807. Data prompts on the ORM EIS screen are designed to report the information required. Subject to future revised procedures, when USACE is the lead agency HQUSACE will use ORM Reports to populate the Federal Agency Portal in six information areas.

- A. **Whether major infrastructure projects are processed as OFD.** Lead agencies are required to verify on the Federal Agency Portal whether each major infrastructure project is being processed in accordance with One Federal Decision, and if not, specify the reason the project should not be processed using OFD.

The lead agency should update these entries at least quarterly, to ensure that each entry corresponds to an active environmental review process and accurately indicates whether each such project is being processed using OFD. Additionally, lead agencies must submit a quarterly report of all infrastructure projects that published an NOI to prepare an EIS under NEPA in the previous quarter to OMB. OMB will use this information to assess the extent to which the agency is processing major infrastructure projects under OFD as appropriate.

Guidance note: this information will be collected from the ORM EIS screen when USACE is the lead agency. When USACE is a cooperating agency the lead agency will be responsible for reporting this information.

- B. **Whether major infrastructure projects have a Permitting Timetable.** Lead agencies are responsible for uploading to the Federal Agency Portal the content of each Permitting Timetable. The lead agency, in consultation with cooperating and participating agencies, should enter target dates in the milestone fields for all applicable agency actions as soon as practicable after the project is sufficiently advanced to allow the determination of relevant milestones. Permitting Timetables for major infrastructure projects must be uploaded onto the Federal Agency Portal no later than 30 days after the publication of the NOI. The Federal Agency Portal is pre-populated with the major milestones for each kind of major agency action. The major milestones correspond to the milestones set forth in the most current version of Appendix B of the OMB/CEQ “Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects” (M-17-14). To have a complete Permitting Timetable, agencies must enter the target completion dates of the milestones (and

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<sup>16</sup> The Permitting Dashboard was established to track infrastructure projects subject to FAST-41. The Permitting Dashboard will be expanded to include reporting and accountability for major infrastructure projects subject to EO 13807.

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actual completion dates for already completed milestones) for each of the relevant agency actions. OMB will use this information to assess the extent to which major infrastructure projects have complete Permitting Timetables.

Guidance note: When USACE is the lead agency, Permitting Timetables must be provided to HQUSACE along with notification that the NOI has been published in the Federal Register. HQUSACE will use the Permitting Timetable along with the ORM Report to update the Federal Agency Portal. When USACE is a cooperating agency the lead agency will be responsible for reporting this information.

- C. Whether agencies are meeting major milestones.** Lead agencies, in consultation with cooperating and participating agencies, are responsible for updating the status of major milestones for all applicable agency actions. Lead agencies may delegate the responsibility of updating milestones for specific environmental reviews and authorization decisions to the cooperating or participating agencies, but will be responsible for approving any changes to the Permitting Timetable. Any changes in milestone target dates should be notated in the entry for that milestone, along with the reason(s) for the change in target date. The Federal Agency Portal allows the agency to select from among the following reasons: (a) ahead of schedule, (b) data entry error, (c) dependency delay, (d) interagency coordination issue, and (e) internal agency factor. Additionally, in the event of delays outside of the Federal government's control, agencies can list the status of an environmental review or authorization decision as "paused." For example, if an agency is waiting on the project sponsor to submit additional information to complete an authorization decision, the agency can mark the status of the action as "paused." Once the additional information is received, the agency can change the status of the action back to "in progress" and update the relevant milestone target dates.<sup>17</sup> OMB will use this information to track each agency's progress in meeting milestones for each action.<sup>18</sup>

Guidance note: Districts must maintain current and accurate data on the ORM EIS screen for milestones (refer to table above), including providing relevant reasons for any changes in milestone target dates as described above, as well as any applicant-dependent pauses that may affect interim and/or final milestones. Changes to the Permitting Timetable must be documented via MFRs in the project's Administrative Record. When USACE is a cooperating agency the lead agency will be responsible for reporting this information.

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<sup>17</sup> On the Federal Agency Portal, agencies will be able to indicate whether the status of an environmental review or authorization decision is "Planned," "In Progress," "Paused," "Cancelled," or "Complete." OMB will only apply this performance indicator to milestones in which the action status is "In Progress." OMB will not consider the milestone missed for this performance indicator, if the reason for moving the milestone to a later date is outside of the agency's control (e.g. project sponsor issue, date was dependent on another milestone outside of the agency's control that was not met).

<sup>18</sup> Agencies will have up to five business days to update a milestone target date that has passed (e.g. mark the milestone as complete, change the target completion date) before it is considered a missed milestone.

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- D. **Whether delays follow a process of elevation to senior agency officials.** This information will be used by OMB to determine the extent to which agencies have established and are following, as necessary, a process that elevates to senior agency officials, instances in which Permitting Timetable milestones are missed or extended, or are anticipated to be missed or extended.

For major infrastructure projects, agencies are required to establish and implement a process that elevates to senior agency officials instances in which they anticipate missing or needing to extend a Permitting Timetable major milestone or when a major milestone is missed or extended to a date more than 30 days after the final target completion date<sup>19</sup>.

For each such delay or extension, agencies will be required to indicate in the Federal Agency Portal whether the agency used its elevation process to refer the matter to a senior agency official. The entry should be made in the relevant milestone field. OMB will use this information to assess agency performance on elevation procedures.

Guidance note: When USACE is the lead agency, HQUSACE will use the elevation information package prepared by the district to enter 'Notes' in the Federal Agency Portal for any Permitting Timetable milestones subject to dispute. If any dispute results in a missed/delayed milestone that would require changes in subsequent milestone Target Dates, the district must identify these to HQUSACE before making changes (in coordination with cooperating and participating agencies) to the Permitting Timetable and the ORM database. When USACE is a cooperating agency the lead agency will be responsible for reporting this information.

- E. **Time required to complete processing of environmental reviews and authorizations for major infrastructure projects.** Agencies will not be required to report any additional information in order to comply with this criteria. OMB will track completion times on the basis of the data reported quarterly for other assessment areas, including the number of days from the NOI to the ROD, and the number of days from the ROD to the date of issuance of the final authorization decisions for the project. OMB will use this information to assess agency performance on completion times.
- F. **Costs of environmental reviews and authorizations for each major infrastructure project.** At project completion, the lead agency should report the estimated cost to the government for the environmental review and authorization process. Agencies should report the cost of their Full-Time Equivalent (FTE) hours and contractor costs related to the project.

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<sup>19</sup> Agencies will not be required to use the elevation procedure when the missed or extended date is caused by reasons outside of the agency's control (e.g., project sponsor issue, date was dependent on another milestone outside of the agency's control that was not met) or if the milestone is associated with an Action that is in "Planned" or "Paused" status.

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When calculating costs, agencies should include subject-matter experts who participate in a portion of the review, managers or supervisors who have direct or indirect oversight of major infrastructure projects, and attorneys who review documents pertaining to the review. Agencies should also include contractors that are directly funded by the agency and third-party contractors that are supervised by the agency, but funded by another party. Agencies will not be required to track and report non-direct staff hours (e.g., administrative support staff, human resources) or other indirect costs (e.g., overhead).

- (1) USACE as lead agency:** Districts must report agency costs to HQUSACE as described above, including costs provided to districts for inclusion of all Federal cooperating and participating agencies with required authorization decisions. Upon receipt of required cost information at project completion, HQUSACE will post to the Federal Agency Portal.
- (2) USACE as cooperating agency:** Districts must report agency costs to the lead agency for input to the Federal Agency Portal.
- (3) Guidance note:** Districts will establish a unique cost code for each subject major infrastructure project for use in cost tracking and reporting. Required staff (as described above) will track time spent on each major infrastructure project such that accounting units (Resource Management) can calculate the total cost based on staff time spent after each major infrastructure project is completed. No reporting is required for projects that do not receive USACE authorization.

## **10. Definitions**

The following definitions (A – F) provided in EO 13807 should be applied as part of the implementation of this guidance and EO 13807. Other definitions applicable to NEPA can be found in 40 CFR 1508, 33 CFR 230, and 33 CFR 325, Appendix B.

- A. Authorization** means any license, permit, approval, finding<sup>20</sup>, determination, or other administrative decision issued by a Federal department or agency (agency) that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of an infrastructure project, including any authorization under 42 U.S.C. 4370m(3).
- B. CAP Goals** means Federal Government Priority Goals established by the Government Performance and Results Act (GPRA) Modernization Act of 2010, Public Law 111-352, 124 Stat. 3866, and commonly referred to as Cross-Agency Priority (CAP) Goals.

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<sup>20</sup> Required consultations with Federal agencies such as U.S. Fish and Wildlife Service and National Marine Fisheries Service meet the definition of authorization and thus apply to determinations of multiple federal authorizations.

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- C. **Federal Permitting Improvement Steering Council** or “FPISC” means the entity established under 42 U.S.C. 4370m.
- D. **Infrastructure project** means a project to develop the public and private physical assets that are designed to provide or support services to the general public in the following sectors: surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production and generation, including from fossil, renewable, nuclear, and hydro sources; electricity transmission; broadband Internet; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; and other sectors as may be determined by the FPISC.
- E. **Major infrastructure project** means an infrastructure project for which multiple authorizations by Federal agencies will be required to proceed with construction, the lead Federal agency has determined that it will prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and the project sponsor has identified the reasonable availability of funds sufficient to complete the project.
- F. **Permitting Timetable** means an environmental review and authorization schedule, or other equivalent schedule, for a project or group of projects that identifies milestones--including intermediate and final completion dates for action by each agency on any Federal environmental review or authorization required for a project or group of projects--that is prepared by the lead Federal agency in consultation with all cooperating and participating agencies.
- G. **Additional definitions**
  - (1) **Best Practices** means the techniques and strategies published and updated annually by the Federal Permitting Improvement Steering Council (FPISC) pursuant to 42 U.S.C. 4370m-1(c)(2)(B)<sup>21</sup>, and identified in *Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects for Fiscal Year 2018*, or subsequent revisions, as best practices.
  - (2) **Environmental review** means agency effort toward evaluation of an application from initial receipt until the date of the issuance of the Final EIS.
  - (3) **Multiple authorizations**, as one of the three criteria defining a major infrastructure project, means ‘more than one’ Federal agency authorization by ‘more than one’ Federal agency. When two or more Federal agencies will be required to make authorization decisions to proceed with construction the criterion is met.

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<sup>21</sup> Fixing America’s Surface Transportation Act, Title 41 (FAST-41)

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(4) **Senior agency official** means the USACE Chief Environmental Review and Permitting Officer (CERPO) and/or a USACE Division Commander's designated Senior Environmental Review Officer (SERO).

**Attachment:** Example Two Year Schedule

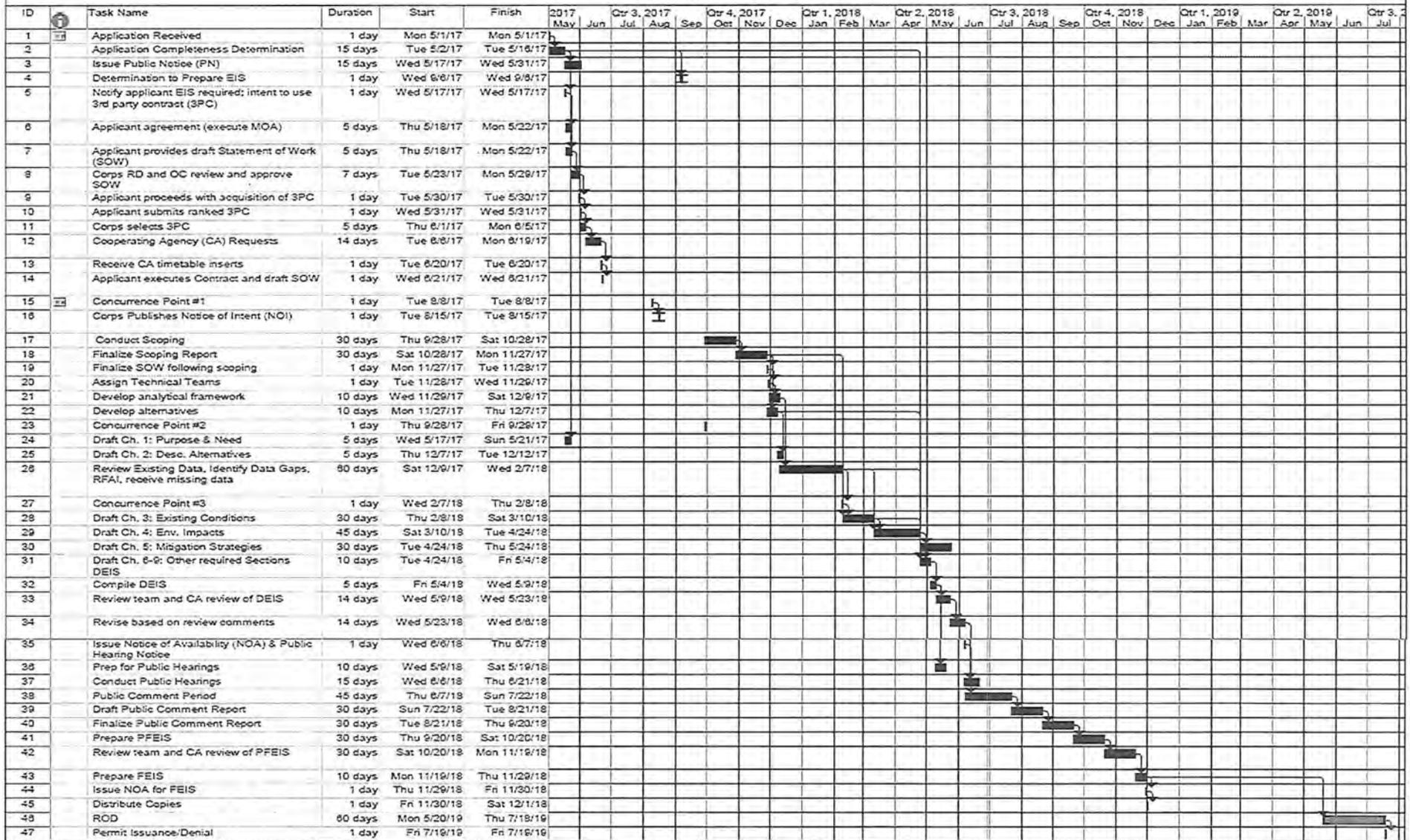


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SOUTHWESTERN DIVISION, CESWD

# Example Two Year Schedule

## Permitting Timetable



Date: Fri 8/29/18

Task		External Tasks		Duration-only		External Tasks	
Split		External Milestone		Manual Summary Rollup		External Milestone	
Milestone		Inactive Milestone		Manual Summary		Progress	
Summary		Inactive Summary		Start-only		Deadline	
Project Summary		Manual Task		Finish-only			