



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
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WASHINGTON, DC 20314-1000

CECW-NWD

JUL 06 2017

MEMORANDUM FOR COMMANDER, NORTHWESTERN DIVISION

SUBJECT: Implementation Guidance for Section 1105 of the Water Resources and Development Act (WRDA 2016), Remote and Subsistence Harbors

1. Section 1105 of WRDA 2016 further amends Section 2006 of WRDA 2007 (33 U.S.C. 2242), which was previously amended by Section 2104 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), to require the Secretary to consider benefits to communities located within the region served by a remote and subsistence harbor when evaluating navigation improvements for the harbor. The provision also expands the Secretary's authority to recommend projects for such harbors without the need to demonstrate justification solely on national economic development benefits if the long-term viability of a community located within the region served by the project would be threatened without the navigation improvements. Section 1105 and Section 2006 of WRDA 2007, as amended, are enclosed.

2. Guidance.

a. This guidance supersedes the implementation guidance for Section 2104 of WRRDA 2014, dated 6 April 2016.

When conducting a study of harbor and navigation improvements, the Secretary may recommend a project without the need to demonstrate that the improvements are justified solely by National Economic Development (NED) benefits, if the Secretary determines that the improvements meet the following criteria:

(1) The community to be served by the project is at least 70 miles from the nearest surface accessible commercial port and has no direct rail or highway link to another community served by a surface accessible port or harbor; or the project would be located in the State of Hawaii or Alaska, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, or American Samoa;

(2) The harbor is economically critical such that over 80 percent of the goods transported through the harbor would be consumed within the region served by the harbor and navigation improvement, as determined by the Secretary, including consideration of information provided by the non-federal interest; and

(3) The long-term viability of the community in which the project is located, or the long-term viability of a community that is located in the region that is served by the project

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and that will rely on the project, would be threatened without the harbor and navigation improvement.

b. In considering whether to recommend a project under subsection (a) of Section 2006, as amended, the Secretary shall consider the benefits of the project to:

(1) Public health and safety of the local community and communities that are located in the region to be served by the project and that will rely on the project, including access to facilities designed to protect public health and safety;

(2) Access to natural resources for subsistence purposes;

(3) Local and regional economic opportunities;

(4) Welfare of the regional population to be served by the project; and

(5) Social and cultural value to the local community and communities that are located in the region to be served by the project and that will rely on the project.

c. Although Section 2006 liberalizes the justification of harbor and related navigation improvements in remote and isolated locations that have limited alternative modes of transportation, it does not obviate the need under the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies, and Army policy, to analyze and present the NED impacts of alternative plans, or to identify the NED Plan. This analysis still is required.

3. The following policy and procedures will be used to implement Section 1105:

a. Decision documents addressing harbor and/or related navigation improvements may address the criteria and considerations listed above in the formulation, evaluation, and selection of alternatives. The analyses will be incorporated into the existing four accounts (see EC 1105-2-409) and ER 1105-2-100.

b. Decision documents will continue to present the NED analyses for all viable alternatives and identify the NED Plan when alternatives exist with net positive NED benefits.

c. A decision document may recommend a plan other than the NED Plan based on a full description of the benefits of the project to public health and safety of the local and regional community; access to natural resources for subsistence purposes; local and regional economic opportunities; welfare of the local and regional population; and social and cultural value to the local community and communities that are located in the region to be served by the project and that will rely on the project.

d. If there is no NED Plan and/or the selection of a plan other than the NED Plan is based in part or whole on non-monetary units (Environmental Quality (EQ) and Other Social

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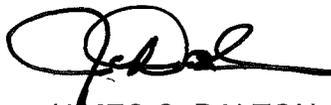
Effects (OSE) accounts), then the selection will be supported by a cost effectiveness/incremental cost analysis consistent with ecosystem restoration evaluation procedures (see appendix E, Section V, ER 1105-2-100). The decision document will present the tradeoffs of impacts in the four accounts for the plans in the final array and describe the compelling justification for any plan that is not the NED Plan.

e. Section 2006 of WRDA 2014, as amended, also provides that the Secretary may carry out a project in accordance with the criteria under Section 107 of the River and Harbors Act of 1960 as documented in Appendix F of ER 1105-2-100. Section 107 provides that the Secretary can construct small river and harbor improvement projects not specifically authorized by Congress which will result in substantial benefits to navigation and which can be operated consistently with appropriate and economic use of the waters of the Nation for other purposes, when in the opinion of the Chief of Engineers such work is advisable, if benefits are in excess of the cost. If the benefits do not exceed the cost, the Secretary shall allow a non-federal interest to participate in the financing of a Section 107 project in accordance with the criteria established for flood control projects under Section 903 (c) of WRDA 1986. In accordance with Section 903(c), any project features that do not produce NED benefits greater than costs must be documented in the feasibility study. In the event the project does not produce NED benefits greater than cost, the non-federal interest will be required to pay an amount sufficient to make the remaining costs of the project equal to the estimated value of the NED benefits of the project. This payment shall be in addition to payments required under Section 101 of the Water Resources Development Act of 1986, as amended, which are applicable to the remaining costs of the project.

f. This guidance, including the application of Section 903(c) of WRDA 1986 as specified in paragraph 3(e), applies to studies for projects that will be recommended for authorization and included in the Annual Report required by Section 7001 of WRRDA 2014, as well as for studies for projects that may be implemented in accordance with the criteria under Section 107 of the River and Harbor Act of 1960, as amended (33 USC 577).

4. The guidance will be incorporated into ER 1105-2-100. Questions regarding this implementation guidance should be directed to Steven Kopecky, Deputy Chief, Northwestern Division Regional Integration Team, at (202) 761-4527 or Steven.Kopecky@usace.army.mil.

Encl



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

SEC. 1105. REMOTE AND SUBSISTENCE HARBORS.

Section 2006 of the Water Resources Development Act of 2007 (33 U.S.C. 2242) is amended—

(1) in subsection (a)(3) by inserting “in which the project is located, or the long-term viability of a community that is located in the region that is served by the project and that will rely on the project,” after “community”; and

(2) in subsection (b)—

(A) in paragraph (1) by inserting “and communities that are located in the region to be served by the project and that will rely on the project” after “community”;

(B) in paragraph (4) by striking “local population” and inserting “regional population to be served by the project”; and

(C) in paragraph (5) by striking “community” and inserting “local community and communities that are located in the region to be served by the project and that will rely on the project”.

SEC. 2006. REMOTE AND SUBSISTENCE HARBORS as amended by Section 2014 WRRDA 14 and Section 1105 WRDA 16.

(a) IN GENERAL.—In conducting a study of harbor and navigation improvements, the Secretary may recommend a project without the need to demonstrate that the project is justified solely by national economic development benefits if the Secretary determines that—

(1) (A) the community to be served by the project is at least 70 miles from the nearest surface accessible commercial port and has no direct rail or highway link to another community served by a surface accessible port or harbor; or

(B) the project would be located in the State of Hawaii or Alaska, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, or American Samoa;

(2) the harbor is economically critical such that over 80 percent of the goods transported through the harbor would be consumed within the region served by the harbor and navigation improvement, as determined by the Secretary including consideration of information provided by the non-Federal interest; and

(3) the long-term viability of the community **in which the project is located, or the long-term viability of a community that is located in the region that is served by the project and that will rely on the project would be threatened without the harbor and navigation improvement.**

(b) JUSTIFICATION.—In considering whether to recommend a project under subsection (a), the Secretary shall consider the benefits of the project to—

(1) public health and safety of the local community **and communities that are located in the region to be served by the project and that will rely on the project**, including access to facilities designed to protect public health and safety;

(2) access to natural resources for subsistence purposes;

- (3) local and regional economic opportunities;
- (4) welfare of the **regional population to be served by the project**; and
- (5) social and cultural value to the **local community and communities that are located in the region to be served by the project and that will rely on the project**.

(c) **PRIORITIZATION.**—Projects recommended by the Secretary under subsection (a) shall be given equivalent budget consideration and priority as projects recommended solely by national economic development benefits.

(d) **DISPOSITION.**—

(1) **IN GENERAL.**—The Secretary may carry out any project identified in the study carried out pursuant to subsection (a) in accordance with the criteria for projects carried out under the authority of the Secretary under section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577).

(2) **NON-FEDERAL INTERESTS.**—In evaluating and implementing a project under this section, the Secretary shall allow a non-Federal interest to participate in the financing of a project in accordance with the criteria established for flood control projects under section 903(c) of the Water Resources Development Act of 1986 (Public Law 99–662; 100 Stat. 4184).

(e) **ANNUAL REPORT.**—For a project that cannot be carried out under the authority specified in subsection (d), on a determination by the Secretary of the feasibility of the project under subsection (a), the Secretary may include a recommendation concerning the project in the annual report submitted to Congress under section 7001.