
Barrow Alaska Coastal Erosion Feasibility Study

Appendix A: Policy and Guidance



Barrow, Alaska



**US Army Corps
of Engineers**

Alaska District



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

MAY 10 2012

CECW-PB/CEMP-POD

MEMORANDUM FOR COMMANDER, PACIFIC OCEAN DIVISION

SUBJECT: Implementation of Studies and Projects under Section 116 of the Energy and Water Development and Related Agencies Appropriations Act, 2010, Public Law 111-85

1. Section 116 of the Energy and Water Development and Related Agencies Appropriations Act of 2010 (P.L. 111-85) provides authority for the Secretary of the Army to carry out structural and non-structural projects for storm damage prevention and reduction, coastal erosion, and ice and glacial damage in Alaska, including relocation of affected communities and construction of replacement facilities. The Act provides that the non-Federal cost share of any project carried out pursuant to Section 116 shall be no more than 35 percent and shall be subject to the ability of the non-Federal interest to pay, as determined in accordance with 33 U.S.C. 2213(m). A copy of Section 116 is enclosed. Guidance for the implementation of Section 116 was previously issued by HQUSACE on 1 June 2010. This guidance replaces the previous version.
2. At such time that funds are appropriated, the District shall prepare a Project Management Plan (PMP) and negotiate a feasibility Cost Share Agreement (FCSA) with a non-Federal sponsor. The Feasibility Cost Sharing Agreement model for studies of proposed projects under the Continuing Authorities Program and for studies of proposed projects under other Program authorities that do not require additional authorization to implement a project should be used. Upon completion of the PMP and the execution of the FCSA the District will undertake a feasibility study in accordance with the policies and procedures of Engineer Regulation (ER) 1105-2-100 and CECW-CP Memorandum dated 8 February 2012, subject: U.S. Army Corps of Engineers Civil Works Feasibility Study Program Execution and Delivery, and will be cost shared with the non-Federal sponsor at 50 percent Federal and 50 percent non-Federal. The feasibility study will conform to the process for projects authorized without a report as discussed in ER 1105-2-100 Appendix H including the preparation of a Director's Report.
3. Each decision document will present the National Economic Development (NED) analysis for all viable alternatives and identify the NED Plan when alternatives exist with net positive NED benefits. 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 and/or Other Social Effects), then the selection will be supported by a cost effectiveness/incremental cost analysis consistent with established evaluation procedures (see ER 1105-2-100, Appendix E). The decision document will present the tradeoffs of impacts in the four accounts for the plans contained in the

final array and describe in detail the compelling justification for any plan that is not the NED Plan. Non-monetary benefits that may be considered include such things as public health and safety; local and regional economic opportunities; and, social and cultural value to the community. For each project, a decision document will be prepared that identifies a recommended plan and complies with all applicable environmental laws, regulations, and policies. In addition, an ability to pay analysis will be conducted in accordance with existing Ability to Pay Guidance in the Final Amended Rule, Federal Register, (60 FR 5133), 26 January 1995 and included in the feasibility report.

4. Subject to a determination by the Assistant Secretary of the Army (Civil Works) [ASA(CW)], and to the appropriation of funds for design of a project, a Design Agreement (DA) may be negotiated with an appropriate non-Federal interest in accordance with section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962-5b). Design costs will be shared 65 percent Federal and 35 percent non-Federal in accordance with the terms of the DA.

5. Subject to a determination by the ASA(CW), and to the appropriation of funds for construction of a project, a Project Partnership Agreement (PPA) may be negotiated with an appropriate non-Federal interest in accordance with section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962-5b). Construction costs will be shared 65 percent Federal and 35 percent non-Federal in accordance with the terms of the PPA. Operation, maintenance, repair, rehabilitation, and replacement (OMRR&R) of the completed project are a 100% non-Federal responsibility.

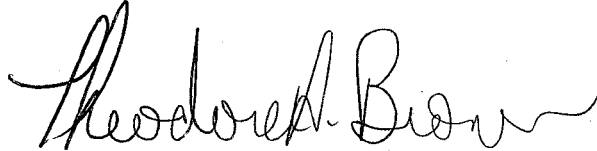
6. On 11 March 2009, Section 117 of the Energy and Water Development Appropriations Act, 2005 (Division C of the Consolidated Appropriations Act, 2005, Public Law 108-447) (hereinafter "Section 117") was repealed. At the time of the repeal, a number of Alaska District projects were underway using Section 117 as the authority for full Federal funding of costs associated with those projects. With limited exceptions, Section 117's repeal barred further full Federal funding of these projects, requiring their prompt termination. In proposing the initiation of new work on these projects under Section 116, the Alaska District shall follow all requirements of this guidance, except for the four Alaska Coastal Erosion projects (Unalakleet Shoreline Erosion, Kivilina Shoreline Erosion, Shishmaref Shoreline Erosion, and Newtok Shoreline Erosion) that were under construction at the time of repeal of Section 117. Subject to the availability of funds and amendment of existing PPAs to reflect the cost sharing requirements for work pursuant to Section 116, the Alaska District may proceed under the Section 116 authority to enter into construction contracts or modification of the existing construction contract to complete the four named projects as defined by their respective Decision Documents. For each of these four named projects, the Pacific Ocean Division (POD) Commander shall forward to the POD Regional Integration Team for HQ-level review and submission to ASA(CW) for

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approval, a PPA amendment package to incorporate the cost share and OMRR&R requirements set out in paragraph 5. The amendment package will include the previously executed Section 117 agreement with proposed changes indicated by redline/strikeout.

FOR THE COMMANDER:

A handwritten signature in black ink, appearing to read "Theodore A. Brown". The signature is fluid and cursive, with a large initial "T" and "B".

THEODORE A. BROWN, P.E.
Chief, Planning and Policy Division
Directorate of Civil Works

Encl

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Section 116 of the Energy and Water Development and Related Agencies Appropriations Act, 2010, Public Law 111-85, Title I states: *“The Secretary of the Army is authorized to carry out structural and non-structural projects for storm damage prevention and reduction, coastal erosion, and ice and glacial damage in Alaska, including relocation of affected communities and construction of replacement facilities: Provided, That the non-Federal share of any project carried out pursuant to this section shall be no more than 35 percent of the total cost of the project and shall be subject to the ability of the non-Federal interest to pay, as determined in accordance with 33 U.S.C. 2213(m).”*