

of the above phases of project development. Specific considerations may include, but are not limited to, actions to preserve or enhance critical habitat for fish and wildlife; maintain or enhance water quality; improve streamflow; preservation and restoration of certain cultural resources, and the preservation or creation of wetlands.

(c) The 1105-2-200 series of Engineer Regulations describe the procedures to be followed in developing water resource plans. These procedures require the establishment of planning objectives (generally encompassing a combination of National Economic Development (NED) and EQ outputs), and evaluation of alternative plans to meet those objectives to differing degrees. With respect to the recommendation of measures for Corps implementation, ER 1105-2-200 states that, "If the selected plan or a portion thereof is not within existing Corps implementation authority, but is responsive to the planning objectives established for the study, the reporting officer may recommend Federal (Corps) participation." The ER further states that the basis for and extent of such participation is to be specified, including the precedent setting aspects of the recommendation, and further, that such recommendations are to be coordinated through DAEN-CWP before commitments are made to states or local interests. This regulation expands upon that policy and provides operational policies and criteria which will allow the field to recommend authorization for implementation of certain EQ measures.

§ 236.5 Policy and procedure.

The following policies and procedures set forth criteria to be applied in determining when EQ measures may be recommended for implementation by the Corps.

(a) *Policy*—(1) *Achievement of specified, study authority planning objectives.* Recommended plans must include measures for accomplishment of the primary purposes authorized by Congress.

(2) *Relationship of EQ measures to a Corps water resource development.* Measures proposed for EQ must enhance, preserve or restore the environment of the study area. EQ opportunities cre-

ated as a result of meeting study authority purposes should be pursued and, as appropriate, included in plans for Corps implementation. In addition, the recommended plan may also include separable EQ measures to meet established planning objectives. Such separable EQ measures for Corps implementation must be related to, or take advantage of, opportunities created by a water resource development to be recommended for implementation by the Corps of Engineers.

(3) *Justification.* Recommended plans must be justified on the basis that combined beneficial NED and EQ effects outweigh combined adverse NED and EQ effects.

(4) *Cost sharing.* Some features of plans required to foster EQ objectives in the Corps of Engineers program have well-defined laws or policies which establish cost sharing requirements. For instance, Pub. L. 89-72, as amended, defines cost sharing requirements for fish and wildlife enhancement. However, there are other features which may not be defined by law or policy. In those instances, cost sharing will be based on an analogy with established cost sharing policies or other similar Federal programs as described in the Catalog of Federal Domestic Assistance. Cost sharing for EQ measures for which the Corps has no standard policy will be approved by HQDA (DAEN-CWP-E, C or W), WASH DC 20314, prior to proposing cost sharing to local interests.

(b) *Procedures for approval*—(1) *Without advance OCE approval.* The reporting officer may recommend separable EQ measures that satisfy any one of the following criteria:

(i) Implemented on lands required for the water resource development;

(ii) Required to complete or more fully develop proposed EQ measures partly on lands, including mitigation lands, required for the water resource development;

(iii) More cost effective to implement or manage when directly integrated with the implementation or management of the water resource development.

(2) *With advance approval.* Other separable EQ measures may be recommended with advance approval of the Director of Civil Works through

§ 236.6

the intensive management program (ER 1105-2-10). The appropriateness for including such measures will be based upon a consideration of factors which may include, but are not limited to:

- (i) Level of significance of the EQ resource.
- (ii) Proximity to the proposed water resource development.
- (iii) Acceptability and support for Corps implementation.
- (iv) Certainty of the pending loss or significant degradation of the EQ resource in the absence of implementing the proposed EQ measure.
- (v) Relationship of the EQ measures to implementing the proposed water resources development.
- (vi) Relationship of the EQ measures to assigned missions of other agencies and the capability for timely implementation by these agencies.
- (vii) Cost effectiveness.

§ 236.6 Other agencies EQ measures.

The selected plan may include EQ measures not proposed for Corps implementation, but to be accomplished through other Federal programs or by local interests. Planning reports including such measures will discuss how they would impact on the recommended plan, and how they may be implemented by the appropriate Federal agency or the local interests. However, implementation of such measures will not be required as local cooperation for the works proposed for Corps implementation.

PART 238—WATER RESOURCES POLICIES AND AUTHORITIES: FLOOD DAMAGE REDUCTION MEASURES IN URBAN AREAS

- Sec.
- 238.1 Purpose.
 - 238.2 Applicability.
 - 238.3 References.
 - 238.4 Definitions.
 - 238.5 Comprehensive planning.
 - 238.6 General policy.
 - 238.7 Decision criteria for participation.
 - 238.8 Other participation.
 - 238.9 Local cooperation.
 - 238.10 Coordination with other Federal agencies.

AUTHORITY: Pub. L. 738, 74th Congress, 33 U.S.C. 701a.

33 CFR Ch. II (7-1-12 Edition)

SOURCE: 45 FR 71801, Oct. 30, 1980, unless otherwise noted.

§ 238.1 Purpose.

This regulation provides policies and guidance for Corps of Engineers participation in urban flood damage reduction projects and establishes criteria to distinguish between improvements to be accomplished by the Corps under its flood control authorities and storm sewer systems to be accomplished by local interests.

§ 238.2 Applicability.

This regulation is applicable to all OCE elements and all field operating activities having Civil Works responsibilities.

§ 238.3 References.

- (a) Executive Order 11988—Floodplain Management, dated 24 May 1977.
- (b) U.S. Water Resources Council, Floodplain Management Guidelines, (43 FR 6030), to February 1978.
- (c) ER 1105-2-811.
- (d) ER 1140-2-302.
- (e) ER 1140-2-303.
- (f) EP 1165-2-2.

§ 238.4 Definitions.

For purposes of this regulation the following definitions apply:

(a) *Urban areas* are cities, towns, or other incorporated or unincorporated political subdivisions of States that:

(1) Provide general local government for specific population concentrations, and,

(2) Occupy an essentially continuous area of developed land, containing such structures as residences, public and commercial buildings, and industrial sites.

(b) *Flood damage reduction works in urban areas* are the adjustments in land use and the facilities (structural and non-structural) designed to reduce flood damages in urban areas from overflow or backwater due to major storms and snowmelt. They include structural and other engineering modifications to natural streams or to previously modified natural waterways. Flood damage reduction works are designed to modify flood behavior typified by temporary conditions of inundation of normally dry land from the