

## **Section 7**

### **Plan Implementation**

The recommended plan described in Section 6 will require a number of commitments on the part of USACE and the non-Federal sponsor for the benefits of the plan to be realized. The major requirements of plan implementation are described below.

#### **7.1 Cost-Sharing Responsibilities**

Section 204 of WRDA 1992 authorizes the Corps to carry out ecosystem restoration projects in connection with dredging of authorized navigation projects. Ecosystem restoration projects are funded as navigation construction or operation and maintenance costs up to the level of the base plan. For costs above this baseline, non-Federal interests must enter into a cooperative agreement in accordance with the requirements of Section 221 of the Flood Control Act of 1970, agreeing to provide assurances as indicated in paragraph 7.3 below. WRDA 1992 established the cost sharing for Section 204 environmental restoration projects at 75 percent Federal and 25 percent non-Federal.

#### **7.2 Identification of Local Sponsor**

The State of Maryland, Department of Transportation, is the non-Federal sponsor for this project. Specifically, the MPA, through its Office of Harbor Development, was involved in all of the coordination related to this feasibility study. Throughout the entire study process, the Baltimore District continued to meet with the MPA and the State of Maryland. They are aware of the items of local cooperation described below and are aware of their responsibilities with regard to a potential project. They have participated throughout the study and have demonstrated a commitment to both the outcome of the study and project implementation.

#### **7.3 Summary of Responsibilities**

The sponsoring agency understands that they will be required to provide assurance of their authority and willingness to provide 25 percent of the incremental project costs and as further specified below:

- a. Provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform or ensure the performance of all relocations determined by the Federal Government to be necessary for the initial construction, periodic nourishment, operation, and maintenance of the project.

- b. Provide all improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the initial construction, periodic nourishment, operation, and maintenance of the project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and dewatering pumps and pipes.
- c. Provide, during construction, any additional amounts as are necessary to make its total contribution equal to 25 percent of incremental project costs.
- d. For so long as the project remains authorized, operate, maintain, repair, replace, and rehabilitate the completed project, or functional portion of the project, at no cost to the Federal Government, in a manner compatible with the project's authorized purposes and in accordance with applicable Federal and State laws and regulations and any specific directions prescribed by the Federal Government.
- e. Give the Federal Government a right to enter, at reasonable times and in a reasonable manner, upon property that the non-Federal sponsor, now or hereafter, owns or controls for access to the project for the purpose of inspection, and, if necessary after failure to perform by the non-Federal sponsor, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Federal Government shall operate to relieve the non-Federal sponsor of responsibility to meet the non-Federal sponsor's obligations, or to preclude the Federal Government from pursuing any other remedy at law or equity to ensure faithful performance.
- f. Hold and save the United States free from all damages arising from the initial construction, periodic nourishment, operation, maintenance, repair, replacement, and rehabilitation of the project and any project-related betterments, except for damages due to the fault or negligence of the United States or its contractors.
- g. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project in accordance with the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 Code of Federal Regulations (CFR) Section 33.20.
- h. Perform, or cause to be performed, any investigations for hazardous substances as are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Public Law (PL) 96-510, as amended, 42 U.S.C. 9601-9675, that may exist in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be required for the initial construction, periodic nourishment, operation, and maintenance of the project. However, for lands that the Federal Government determines to be subject to the navigation servitude, only the Federal Government shall perform such investigations

unless the Federal government provides the non-Federal sponsor with prior specific written direction, in which case, the non-Federal sponsor shall perform such investigations in accordance with such written direction.

- i. Assume complete financial responsibility, as between the Federal government and the non-Federal sponsor for all necessary cleanup and response costs of any CERCLA regulated materials located in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be necessary for the initial construction, periodic nourishment, operation, or maintenance of the project.
- j. As between the Federal Government and the non-Federal sponsor, the non-Federal sponsor shall be considered the operator of the project for the purpose of CERCLA liability. To the maximum extent practicable, operate, maintain, repair, replace, and rehabilitate the project in a manner that will not cause liability to arise under CERCLA.
- k. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way, required for the initial construction, periodic nourishment, operation, and maintenance of the project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and inform all affected persons of applicable benefits, policies, and procedures in connection with said act.
- l. Comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination of the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."
- m. Provide 25 percent of that portion of total historic preservation mitigation and data recovery costs that are in excess of one percent of the total amount authorized to be appropriated for this project.

A copy of the model Project Cooperation Agreement (PCA) was provided to the MPA for their review in April 1995. Due to the magnitude of this project, there will be deviations from the model PCA.

#### **7.4 Incremental Project Cost Estimate**

Cost estimates have been developed for the Poplar Island Restoration Project. The estimate includes the feasibility study cost, costs for preparation of plans and specifications, construction, construction management, monitoring, and contingencies. The cost estimate for the project is \$307 million. The estimated cost includes \$69.4 million for initial dike construction, \$48.0

million for placement and habitat development, and \$189.6 million in incremental transportation costs. The construction period for the initial containment dikes is estimated at 18 months. The total construction period, which includes filling of the site with dredged material and development of the habitat, is estimated at 26 years.

### 7.5 Funding Schedule

The initial construction contract cost (initial containment dikes) is approximately \$69.4 million. The funding schedule is shown in Table 6.5. This schedule was developed because placement needs require the Poplar Island site to be operational by 1998. The initial funding would be required over 3 Federal fiscal years for initial dike construction (\$0.7 million in FY96, \$29.3 million in FY97, and \$39.4 million in FY98). An additional \$6.2 million would be required in FY98 to initiate placement operations. An average of about \$6.5 million would be required annually thereafter to cover the cost of site operations, construction management, and habitat development. Table 6.5 also shows the Federal and non-Federal cost-sharing for the period.

### 7.6 Implementation and Funding Options

Typical procedures for USACE participation in beneficial use projects of this magnitude dictate that an initial study be conducted using Operations and Maintenance funds under the authority of Section 216 of the Flood Control Act of 1970. The report would serve as the basis for budgeting for a reconnaissance study and feasibility study. At the time of the sponsor's request for USACE participation, the USACE had prepared its FY96 budget submission. The USACE would not have been able to complete a Section 216 study and budget for the feasibility study, if permitted, until FY97, and for construction until later years. This schedule was not amenable to the sponsor's placement needs and capacity shortfalls. As mentioned earlier, a replacement for the HMI facility is required to be on-line in 1998. This could only be accommodated with a construction initiation in 1996. The current management plan for project implementation is shown on Figure 7-1.

**FIGURE 7-1  
Current Management Plan**

Final Report Submitted	4 March 1996
Final EIS Issued	22 March 1996
30-day Public Review Completed	22 April 1996
Complete Corps Headquarters Policy Review	6 May 1996
Final Plans and Specifications Completed	22 March 1996
Complete Administration Approval Process	6 June 1996

In order to develop a timely and acceptable dredged material placement plan for the Baltimore Harbor and Channels Federal navigation project, and to take advantage of the opportunity to use the dredged material in an environmentally beneficial way, this study was conducted under the authority of Section 204 of the Water Resources Development Act of 1992, with the approval of HQUSACE. While this authority was essential for completing the necessary investigations within the prescribed timeframe, it was recognized that the current \$15 million annual limit for the Section 204 program would not be conducive to project construction. The Federal share of the initial dike costs is expected to be \$52.0 million: \$0.5 million in FY96, \$22 million in FY97, and \$29.5 million in FY98. While the first year is within the national program limits of \$15 million, the USACE received only about \$2.5 million in Section 204 funds in FY96. The second year's funding requirement is beyond even the national program limit. For this reason, alternative implementation options were investigated during this study.

### **7.6.1 Implementation under Section 204**

Approval under the authority of Section 204 could result in a number of implementation options based on the availability of funding. One option would be to develop a schedule commensurate with the expected funding stream from the Section 204 program; this, however, will extend the construction schedule of the initial dikes by a number of years. Another option would be to phase the construction, completing the overall diked area as funds are available, as was discussed in Section 6.1.4. Such an approach would be far more costly in the end, given the additional armoring that would be needed for what would have been unarmored, interior containment dikes. Once Congressional authorization has been obtained, the project could be specifically funded as part of an appropriations bill under Construction General.

Subject to the availability of non-Federal funding, a third option would be to offset shortfalls in Federal funding with additional sponsor outlays. Such precedence may exist under the authority of Section 11 of the River and Harbor Act of 1925. The non-Federal share of the initial dike construction would be about \$17.3 million. Additional funds received from the state could be used to offset the FY96 deficit in Federal funds or, if sufficient, could lower the FY97 requirement to a level that could be addressed with Section 204 funding.

### **7.6.2 Congressional Authorization/Funding**

Specific project authorization can be provided by Congress through any omnibus bill, but usually through a Water Resources Development Act (WRDA). This bill is typically passed bi-annually, but the last was WRDA 1992. The next WRDA, which is expected to be passed in 1996, could use this feasibility report and EIS as a basis for specific authorization; however, it is anticipated that construction would have to be initiated prior to such an action to maintain the current schedule.

### **7.6.3 Harbor Maintenance Trust Fund**

Funding of the Federal share by the Trust Fund is not currently an option, except for the costs attributable to the base plan. Since Poplar Island is not the base plan for placement, it is not an

Operation and Maintenance cost that is eligible for reimbursement from the Trust Fund, unless an exception is made.

#### **7.6.4 Combination of Section 204 and Congressional Authorization**

A combination of the above-described implementation options could be the solution to meeting the scheduled capacity shortfalls. Authorization of the project under the Section 204 authority could allow the USACE to use existing Section 204 funds to initiate construction in FY96. Following up with specific authorization would allow the USACE to budget the remainder of the construction costs.

### **7.7 Financial Analysis**

Construction is presently projected to begin in June 1996. At that time, the local sponsor must have funding mechanisms in place to provide the local share of project costs in a timely fashion. Based on the involvement and interest of the MPA in the project to date, and their extensive need to have placement sites available, the State of Maryland will become the non-Federal sponsor for the project. Once all aspects of the project cost-sharing responsibilities and the PCA are delineated, a letter stating the sponsor's support will be provided. However, recognizing that implementation of this project is essential to keeping the Port of Baltimore viable, the State of Maryland is prepared to fund a phased project on its own to have capacity by 1998.

#### **7.7.1 Financing Plan**

To date, the sponsor has not yet provided a specific financing plan for the project since the issue of the Federal role in project construction and funding has not been resolved. The State is fully committed to the project and is prepared to develop their financing plan in conjunction with the PCA process. They have already funded several million dollars in project design and have additional funds identified for project construction.

Financing methods generally available include special levies, general obligation bonds, and revenue bonds. It is also possible that the local sponsor's share of project costs may be funded through capital improvement programs of agency operating budgets.

### **7.8 Views of Local Sponsor**

The local sponsor has diligently supported, promoted, and financed studies to identify dredged material placement sites in general, and this study in particular. They support the recommendations of this study.