

FRN to Modernize Civil Works

Comments Summary Document

PR&G AGENCY SPECIFIC PROCEDURES

This section contains summaries of both oral and written comments on the Army's FRN to Modernize Civil Works outreach effort that are related to the policy initiative on rulemaking for Agency Specific Procedures for the Principles, Requirements and Guidelines.

1.0 General Comments on PR&G ASPs

1.1 Support for Changing Federal Objective

Many commenters expressed their support from changing the federal objective from the single purpose national economic development to the objectives from the PR&G and to highlight the distinction between the existing NED evaluations with the new goal to "encourage economic development" while "maximizing sustainable economic development". Many commenters further endorsed the full accounting for project economic, societal, and environmental costs and benefits and recommended using a triple bottom line approach instead of the current four accounts. Multiple commenters noted that an over-reliance upon NED effectively disqualifies all but the most urban or wealthy communities from USACE projects, and that current NED calculations understate flood risk management benefits including supply chain and socio-economic disaster recovery impacts. Several commentors emphasized that PR&G referred to the objective as "sustainable" economic development, rather than economic development.

A commenter urged USACE to establish an expectation that project alternatives will be evaluated based on their capacity to promote positive ecological outcomes, not just avoid negative ones. Another commenter suggested a policy approach that approves only projects which are beneficial to the socio-cultural fabric of the location concerned.

A commenter recommended that Corps planning prioritize building resilience into all Corps projects, operations, and planning across each Corps business line, with a fundamental focus on climate change, biodiversity, and community safety.

A commenter suggested that the ASPs ensure that federal infrastructure investment includes investment in restoring, protecting, maintaining, and improving natural infrastructure.

A commenter urged that Investments recognize critical current and developing issues such as drought, floods, rising tides, water quality impairments, endangered species conservation, and generally better preserve our natural resources.

Multiple commenters supported full accounting of costs and benefits would provide more flexibility to maintain high BCR while accounting for potential cost contingencies.

One commenter suggested Corps add "cultural factors" to its list of social effects under consideration.

1.2 Support for Comprehensive Benefits memo

Many commentors expressed support for the Comprehensive Benefits memo including its direction to look more broadly at benefits, including life safety. A few commentors explicitly supported the memo's requirement to consider who benefits and who is adversely affected (distributional effects). One commenter asked that the ASP's clarify the seemingly conflicting aspects of the Comprehensive Benefits memo. One commenter urged that ASP's adopt the memo's' itemized list of other social effects (OSE) that must be considered. Another commenter suggested the ASPs provide clear guidance on how to quantify OSE, allow it to be considered in the decision process, and clearly identify which OSE metrics are directly relevant to flood risk objectives.

One commenter disagreed with the prohibition against "double" counting the multiple benefits that a project might provide to a community and likewise not "double" counting costs across multiple metrics.

1.3 Incorporate Life Safety

Many commentors endorsed consideration and codification of life safety as a benefit. One commenter encouraged codification of the Comprehensive Benefits memo requirement for flood and coastal storm risk management studies to explicitly include a life safety study objective. While some urged that life safety be monetized so as to give it more weight in monetized BCR calculations, others urged that life safety not be monetized. Multiple commentors suggested using a quantitative index value for life safety aspects of a FRM project. One commenter suggested requiring adequate analysis of life loss & life risk at a basin scale (e.g. CaDWR 2022 Central Valley Flood Protection Plan Update's comprehensive life risk assessment).

1.4 Need for Detailed Guidance and Direction

Many commentors stressed the need for the ASPs to use unambiguous, directive language and detailed guidance to ensure that the evaluation considered the full suite of costs and benefits including non-monetized and qualitative information instead of falling back on easily monetized costs and benefits. Many commentors also explicitly called for revisions to the PGN to reflect the PR&G and ASPs and to promote clarity and consistency between Districts. One commenter suggested developing reference sets of metrics for benefit categories to ensure planner consider the full range of benefits. One commenter called for clear guidance both on how the PR&G will implement the Administration's environmental justice policy (particularly with respect to benefit-cost analysis) and how the Corps should identify and engage stakeholders and measure the strength of engagement efforts.

A commenter urged the Corps to address the issues identified in the NRC's WSTB report, especially the need for a clear, concise and workable planning framework to develop critical water resources projects.

A commenter urged revisions that would accelerate project delivery and promote innovation.

2 Applicability of the PR&G

Multiple commentors suggested that the PR&G should apply to all new Civil Works projects and to major rehabilitation projects. One commenter suggested that the Corps voluntarily apply it to the 404 regulatory program. Multiple commentors indicated that the PR&G should not apply to the 408 program.

One commenter urged the Corps include updates to reservoir operating plans and reallocations of storage pursuant to the Water Supply Act of 1958.

A commenter suggested that the ASPs should apply the updated Federal Objective to the “Federal Standard” model for selecting dredge material disposal alternatives with the Federal Standard option accounting for all benefits, including the economic value of clean dredged material for beneficial reuse and cost savings available across USACE business lines through regional sediment management.

A commenter urged the Corps to evaluate investments on a case-by-case basis rather than by reviewing its investments as a program so that projects that impact Tribal communities are not overlooked

3 Planning Themes & Considerations

3.1 Watershed Approach

Multiple commenters urged USACE planning process to move away from looking at one primary purpose to reengage in multi-purpose multi-objective projects. Commenters suggesting Codifying coordination across business lines especially in the scoping phase to realize a watershed approach and project benefits across multiple business lines.

Multiple commenters requested that the Corps consider upstream and downstream conditions, potential needs and economic effects (including transboundary) and provide specific instructions for implementing a watershed approach.

A commenter stated that narrow legislative or policy guidance constrains the Corps from implementing a watershed approach

3.2 Floodplains

A few commenters called for defining and giving examples of wise use of floodplains (and unwise use) to be consistent with EOs 11988 & 13690, and to elevate the importance of floodplain preservation.

A commenter urged the ASP’s to require the Corps to provide a detailed description of the actions taken to ensure the proposed project complies with the requirements of E.O. 11988 to minimize, restore, and preserve the beneficial functions and values of floodplain.

A commenter urged USACE to prioritize creative efforts to allow for both floodplain/river health and flood reduction opportunities

A commenter suggested that Corps floodplain management authorities to be expanded beyond reduction of flood risk to also address ecological processes.

A commenter urged Corps to recognize mitigation responsibility with dedicated funding for floodplain restoration regardless of land ownership, particularly in projects originally constructed by the Corps but no longer federally owned. Commenter urged exploration of creative use of easements.

3.3 Climate Change & uncertainty

3.3.1 Use updated hydrology for impacts

Multiple commenters urged broader incorporation of climate information to update the hydrology in benefit and cost calculations. Climate-induced impacts to inland precipitation was specifically cited. Many commenters suggested developing and using regional information on climate change hydrology.

3.3.2 Other Climate Change impacts

Multiple commenters suggested adopting local and state government’s climate assumptions, data and analysis.

3.3.3 Use Climate change scenarios as baselines

A commenter suggested that the ASPs address uncertainty by requiring the use of multiple baselines for planning studies, with at least one baseline to reflect future hydrologic conditions with climate change.

3.3.4 Address and Document uncertainty

Multiple commenters urged the ASPs to require addressing and documenting uncertainty

3.4 NNBF

3.4.1 Prioritize NNBF alternatives

Many commenters suggested that the ASPs should allow additional hybrid or structural alternatives to be developed and evaluated only if NNBF-approaches are determined to be infeasible. Many commenters encouraged the expansion of NNBF solutions, increased compliance with WRDA2018 & 2020’s requirements on NNBF and establishment of a uniform procedure for when and how a NNBF measure is “appropriate” to “consider”.

One commenter suggested that ASPs should ensure that adaptation planning to protect grey infrastructure (such as coastal roads) avoids, minimizes, and mitigates impacts to surrounding natural infrastructure, including by employing nature-based solutions where appropriate.

3.4.2 Define NNBF, distinguish from non-structural

One commenter suggested bringing the definition of the nonstructural plan more in line with the 2013 P&R, and that the ASP’s allow for and encourage hybrid approaches. Another commenter suggested using the ASP as a way to clarify the relationship between NNBF and Nonstructural measures. A commenter suggested that the ASPs use a broad definition of nonstructural and nature-based solutions, which at a minimum, should be inclusive of the definition of natural and nature-based features found at 33 USC 2289a, and give examples.

3.5 Collaboration

3.5.1 General

Multiple commenters promoted more intensive collaboration of USACE with the non-federal sponsors, state and local governments, non-governmental entities and tribes. Most frequently mentioned was more collaboration at the scoping phase, including recommendations to start with a “blank page” versus pre-determined suggestion of the problem statement. Many commenters stated that collaboration

should be at **all** aspects of the planning (as stated in the Comprehensive benefits memo). Commenters suggested that the Corps use the “Empower” part of the International Association for Public Participation’s (IAP2) “spectrum of engagement”. One commenter suggested the Lower Columbia Solutions Group (OR) as good model for local collaboration.

Many commenters suggested that the Corps conduct its planning and project development in a collaborative manner with all levels of government and varied interested parties to understand the tradeoffs among objectives under a full cost accounting approach. One suggestion is for the Corps to establish stakeholder advisory committees for each study and establish a governing structure for resilience.

One commenter proposed guidelines for equitable community engagement to be issued by USACE

Multiple commenters suggested that USACE account for community and Tribal resource constraints, competing priorities of community members, and the time needed to review and evaluate complex planning data.

One commenter suggested a metric of successful engagement is whether separate locally preferred plans will be required less often under the ASPs than under current practices because the plan that maximizes net total benefits will more often serve as the locally-preferred plan.

A commenter suggested increased partnership with and funding to state coastal management programs for planning, project design, and implementation of ecosystem-based approaches, as well as for technical assistance, guidance, and outreach.

A commenter suggested USACE coordinate with state and local partners as it develops its procedures for tradeoff analysis across non-commensurate objectives so that state and locals can update and better coordinate their procedures.

3.5.2 Engaging Tribal and disadvantaged communities

A commenter urged the regulations to expressly mention and consider Tribes.

One commenter urged the ASPs to describe how the planning process will incorporate impacted communities, especially tribal and economically disadvantaged communities, as early as possible in the development of project alternatives. Many commenters emphasized increased early engagement with tribes.

Multiple commenters urged the Corps to engage both federally recognized and non-federally recognized tribes.

3.5.3 Using locals’ knowledge in data and methods

Multiple commenters suggested using state local and tribal data and methods to calculate benefits. One commenter urged the Corps to not only value the opinions of experts.

A commenter urged the ASPs to ensure that USACE collaborates with non-federal partners when determining best available science and the appropriate level of detail to apply to alternatives analysis

A commenter suggested that the ASPs provide specific standards for the incorporation of traditional ecological knowledge and cultural history into planning processes.

3.6 EGS approach

Multiple commenters stated that ASPs should provide clear direction on the use of EGS in planning studies. Another commenter suggested using an EGS approach for the Environmental Outcomes account. Other commenters suggested that USACE apply a common ecosystem services framework to evaluate alternatives for new or non-traditional federal objectives

A commenter urged USACE to account for the value of ecosystem services lost as a project cost, and account for the value of ecosystem services gained as a project benefit and to consider the entire project life cycle including long term operations, major rehab, decommissioning, and removal.

A commenter suggested establishing a separate sub-category for ecosystem services lost or gained on federal lands managed for conservation or privately owned lands protected by permanent conservation easements

3.7 Alternative plans

3.7.1 Non-structural Plan

Multiple commenters supported requiring a non-structural plan in the final array.

3.7.2 Locally preferred plan

Many commenters suggested that the locally preferred plan be elevated in the final array.

One commentor suggest that the Corps should formulate a locally preferred plan without requiring a request from the locals – that it should be the responsibility of the Corps to engage with locals (and Tribes) to ensure that a locally preferred alternative was fully analyzed.

3.7.3 Plans Proposed by Tribes

One commenter urged the array of alternatives for evaluation include all plans put forward by affected Tribes and groups of Tribes.

3.7.4 Plan consistency w/coastal zone management policies

One commenter suggested that ASPs should clearly require that all plan alternatives must be consistent with the enforceable policies of state coastal management programs from the start; consistency should not be considered a “tradeoff” among alternatives.

3.8 Evaluation Methods & metrics

3.8.1 Environmental baseline

A commenter urged the Corps to use pre-development, treaty-time ecologically healthy habitat conditions as an appropriate environmental baseline to address impacts of new and flood repair projects.

3.8.2 Benefits from agricultural lands

Multiple commenters encouraged benefits from agricultural lands be considered, including benefits to ecosystems. Multiple commenters suggested changing USACE policy on land title and on intermittent ecosystem use of flooded lands to appropriately count ecosystem benefits.

3.8.3 Incremental analysis

One commenter stated that incremental analysis processes (e.g. looking at different sections of levees such as Natomas) can lead away from system-wide solutions and result in gaps in protecting urban areas from flood risks. A commenter suggested that individual projects should not be required to later demonstrate incremental benefits if a cumulate benefit has already been demonstrated through a programmatic study.

3.8.4 Discount Rates

Multiple commenters requested that USACE and OMB review the discount rates for BCR calculations to be more consistent. Multiple Commenters suggested revising discount rates to value long-term rather than short-term benefits and to more heavily weight long-term environmental costs. USACE should examine how current cost-benefit methodologies favor or disfavor infrastructure investments and nature-based solutions. A commenter stated that having differing discount rates was structural deficiency that directly and negatively influences federal investment in underserved communities.

3.8.5 Cost of WS storage

One commenter urged the PR&G Procedures to clarify the price for reallocated storage - water supply providers should only be charged for costs directly related to a reallocation. Current price rules are vague and unfair and did not go thru public comment.

3.8.6 Other

A commenter suggested that benefits include a gap analysis of mitigation alternative versus no action.

A commenter request that planning studies make use of existing Corps data, tools, and procedures to quantify or monetize non-market benefits and impacts.

A commenter urged the Corps to base cost estimates on realistic projects of construction start dates and funding streams.

A commenter encouraged predictable replicable and consistent processes for meaningful comparison and analysis of quantitative and qualitative benefits to enable project recommendation and selection.

A commenter suggested including in the preamble to the rule a list of tools and methods for evaluation of ecological and social benefits and costs.

A commenter recommended USACE prioritize community-identified solutions and the evaluation of self-sustaining natural and nature-based features and nonstructural measures that provide co-benefits.

One commenter suggester that in the evaluation of plan benefits and detriments, the Corps should add "global" to its definitions of economic and environmental benefits.

A commenter suggested that the ASPs should clarify that the NEPA No Action alternative and the PR&G "Future Without Project Scenario" should be identical.

A commenter suggested that the ASPs set criteria for when to “close” the study record to allow the analysis to proceed with the data in hand versus perpetually updating the data and analysis.

A commenter suggested the Corps clearly state the policy choices the Corps is making that are relevant to the alternatives analysis and the impacts of those policy choices; and articulate, both the rationale for any decision to maintain such policies despite the costs and why such a decision is consistent with the Federal Objectives.

3.9 Tradeoff Analysis

Multiple commenters asked the Corps to incorporate a multi-criteria decision framework into the ASPs to provide consistent direction for planning studies and to clarify how net benefits may be calculated/determined from a combination of qualitative information and quantitative information of different units and used together with the benefit-cost ratio to prioritize project selection

A commenter suggested the ASPs require tradeoffs between alternative plans be made based on the goals from the guiding principles versus the four accounts.

Multiple commenters requested that the ASP’s clarify how USACE will weigh tradeoffs across three “equally” weighted goals – how will the Corps define equal weights? A few commenters called for the tradeoff weight and rankings to be explicit and to involve stakeholders in the determination of those weights, and to clearly display the weights for various benefits, as well as the weighted scores and rankings of alternatives.

A commenter urged the ASP’s provide for the Corps to defer to State and local preferences on trade-offs that primarily effect State and local interests (e.g. tradeoff between water supply reliability and recreation or downstream water quality. Furthermore, USACE should defer to State water allocation decisions unless the Corps establishes that an allocation has been preempted by federal law.

A commenter suggested that ASPs require that avoidance, minimization, and mitigation measures be identified and evaluated in a planning study as part of the trade-offs analysis, rather than in the environmental assessment.

A commenter suggested that Dol’s break even analysis concept may be helpful for USACE.

One commenter suggested USACE integrate DEIJ principles across ASPs incl cost/benefit methods and criteria for assessing tradeoffs.

3.10 Plan Selection

Multiple comments suggested that the ASPs identify the types of plans that USACE will not select, such as a plan that 1) increased or transferred flood risk to another community, 2) disproportionately affect minority, low-income or vulnerable populations, or 3) was more environmentally damaging than another plan that addressed the problem and was practicable.

Another commenter suggested a policy approach that approves only projects which are beneficial to the socio-cultural fabric of the location concerned.

A commenter suggested establishing decision criteria that “reflect national priorities, encourage economic development, and protect the environment” and align with PR&G’s definition of “sustainable economic development. The same commenter suggested that the key measure of environmental sustainability decision making should be the ability to protect and restore the natural functions of systems and floodplains rather than minimizing impacts.

Commenter was supportive of USACE moving towards a goal of providing responsible decisionmakers with actionable advice rather than develop a computationally driven “best solution”.

One commenter urged the Corps to never rely on mitigation measures to justify a project when funding for those mitigation measures is not in place

3.11 Budgeting

Multiple commenters suggest that if a non-Federal sponsor chooses a locally preferred plan which adds betterments, and thus lowers the benefit cost ratio, the Administration should make budgeting decisions based on the benefit cost ratio of the NED plan rather than the LPP plan.

A commenter urged USACE to expand Tribal and Historic Preservation Actions approved as shared project costs

A commenter urged reduction in the non-federal cost share for economically disadvantaged communities

A commenter suggested that OMB’s forthcoming guidance support Corps’ selection of a public benefits alternative that is based on discount rates or other methodologies that may differ from generally applicable calculations.

A commenter urged the Corps to provide mitigation cost share at the construction stage.

3.12 Leveraging Work by Others

A commenter suggested consideration of and accounting for the Non-Federal sponsor leading the design and construction of some project elements, and to require a timeline for expeditious review and approval by USACE of in-kind credits for construction of portions of authorized flood risk reduction projects ahead of USACE

A commenter suggested that during benefit cost evaluation, USACE consider interim benefits provided by advance implementation of flood risk improvements prior to project authorization and or reflect a baseline prior to advanced local investments.

A commenter suggested that Corps acknowledge already completed stream reach assessments, project designs, landowner agreements, and permitting assessment and not require duplicating the effort through their own processes.

One commenter urged the ASPs to direct Corps to rely on data and forecasts developed by State and local partners on matters within their jurisdiction and areas of expertise.

4 Who else to talk with

4.1 Training to the District

A commenter suggested that Corps HQ coordinate with the District staff who will have the responsibility for implementing the new ASPs.