

Continuing Authorities Program September 2020 Updates
Q&A Session
29 September & 8 October 2020

This webinar presented by the Revolutionize Civil Works Team discussed the latest changes to the Continuing Authorities Program (CAP), including an overview of the [new CAP project recommendation approval delegations](#) and recent [Director's Policy Memorandum guidance](#).



This summary of the Question / Answer session of the webinar is not a transcription; questions and responses have been edited and reordered for clarity.

For more information about the Continuing Authorities Program and recent guidance, visit the [Planning Community Toolbox](#).

Delegation Policy Applicability

Is there a reason CAP projects under Sections 111 (Prevention or mitigation of shore damage caused by Federal navigation projects) and 208 (Snagging and clearing for flood risk management) have not been delegated?

The Revolutionize Civil Works Team is actively working with Assistant Secretary of the Army for Civil Works (ASA(CW)) James to get those last two delegations approved.

Does the new delegation policy only apply to studies with feasibility cost share agreements (FCSAs) signed after a District receives its certification of capabilities?

This is something that should be discussed between Districts and MSCs. The ASA(CW)'s intent is for delegations to get set in place as soon as possible to allow for improved execution.

Does the new policy automatically delegate CAP project recommendation to District Commanders, or does it just give MSC Commanders the option to delegate these approvals?

The policy stipulates that CAP approvals *can* be delegated from the MSC Commander to the District Commander assuming the District in question meets the capability certification requirements. Delegation authority does not negate any existing policy or technical requirements.

Are there any parts of the [Director's Policy Memorandum \(DPM\) dated 3 September, CAP Feasibility Phase Process Changes](#) that are intended to take immediate effect and are not dependent on the certification process (e.g., changing "MSC Decision Meeting" [MDM] to "Tentatively Selected Plan [TSP] milestone meeting" or cost certification)?

The [delegation of the approval of Locally Preferred Plan \(LPP\)](#) policy waivers and cost certification to MSC Commanders takes effect immediately, as does the change in name from MDM to "TSP milestone meeting." In addition, [the delegation to the MSC Commanders of the authority to approve policy waivers](#) for projects where the federal share of total project costs would otherwise exceed the federal per-project limit by 25 percent or less is also effective immediately.

Delegation of approval authority from MSC to District Commanders is not in immediate effect; District Commanders must first complete the capability certification process.

Has there been any consideration of implementing delegations for other “CAP-like” programs such as Planning Assistance to States [PAS] or Dredged Material Management Plans [DMMPs]?

These particular delegations apply to CAP only. Other programs could develop delegations by the relevant program managers along with Planning & Policy Division leadership.

Has there been any consideration of updating Engineer Pamphlet 1105-2-58, Continuing Authorities Program, to reflect delegated authority?

[Engineer Pamphlet 1105-2-58, Continuing Authorities Program](#) (formerly Appendix F of the Planning Guidance Notebook) will be updated to include the new CAP delegation processes. In addition, flow charts will be added to the [CAP page on the Planning Community Toolbox](#) in the near future to help PDTs through the delegated CAP process.

CAP Milestones & Documentation

What documentation will be required for CAP TSP milestone meetings?

The documentation requirements for milestone meetings in [EP 1105-2-58, Continuing Authorities Program](#) (formerly Appendix F of the Planning Guidance Notebook) have not changed; the only change is a change in name from MDM to “TSP milestone” meeting. EP 1105-2-58 will be updated to reflect this new naming convention.

How long should it take from the Federal Interest Determination (FID) to the TSP milestone?

The timeline from FID to TSP will depend on the study – there is no predetermined deadline. Planners should follow the guidance in EP 1105-2-58.

Previously, the MDM was expected to occur 12-18 months after FCSA execution; with the shift from “MDM” to “TSP,” will this milestone be expected to be held within 12 months as it is for General Investigation (GI) studies?

The short answer is no – MDM timelines are project dependent and will depend on the level of complexity and other factors. Again, the only difference is the name change from MDM to TSP.

Districts and PDTs should continue to follow the CAP processes and timelines established by MSCs, which differ from those for GI studies. The recently revised [National Environmental Policy Act \(NEPA\) regulations](#) may shift timelines once USACE-specific NEPA guidance is finalized, but in general CAP processes and timelines should not change significantly.

Based on the revised NEPA regulations, is the intent for the NEPA timeline for CAP studies to start at the FCSA execution or at the TSP milestone?

It will depend on the complexity of the project. More information will be coming out on the new CEQ regulations.

Since there is no required milestone meeting after release of the draft report in the revised CAP process, will there be any triggers for additional in progress review (IPRs) if there are significant comments received prior to the Final Report?

There will not be official triggers for IPRs in the process, but Districts are encouraged to maintain regular communications with their MSCs to discuss expectations. If a significant policy issue arises before the report is finalized, an IPR would be appropriate. This process and delegation are not meant to prevent communication between Districts and MSCs; every CAP project is different, so it is important for Districts and MSCs to discuss the specifics of each.

CAP Section 107 (Navigation Improvements) places a general navigation feature (GNF) operations and maintenance (O&M) requirement on the Federal Government into perpetuity. For this reason, FIDs are “concurring with,” and not “approved” by HQUSACE; is this still the intent for Section 107 projects?
The intent of Headquarters’ concurrence with the Section 107 projects’ FID is not to commit the Federal Government to future large O&M costs; regardless of CAP delegation status this requirement is not changing.

Capability Certification & Recertification Processes

Will Districts be required to recertify delegation every time the District Commander changes?

No. The frequency of recertification will be based on the qualifications of the District’s planning and engineering organizations, not the turnover of District Commanders.

Is there any guidance for Districts who are willing to move out on CAP delegations if their MSC is not yet ready to conduct the certification process?

Districts may not be delegated any studies until they have requested delegation from the relevant MSC and the MSC has approved the capability certification for the District. Districts who are ready to begin this process should communicate with their MSCs to determine next steps.

What is the standard for “qualified planning and engineering staff” related to the requirements for District capability certification? What level of expertise is expected for policy review at the District level?

The phrase “qualified planning and engineering staff” refers to senior planners and engineers, generally GS-13 through GS-15s. If Districts do not have access to such staff, they are encouraged to look to other Districts in the MSC for team members that can bring these qualifications.

Doesn’t the 3 September (DPM) allow MSCs some leeway in assessing a District’s capabilities (i.e., not just relying on GS level of chiefs)?

Yes – the DPM does allow MSCs to develop their own policies for rolling out delegation; however, the GS level of District planning and engineering chiefs is specific to the recertification frequency framework and applies across the board. The intention of this new policy is to allow for every District to be able to get certified without having to make any organizational changes.

What level of effort and timeline does the team anticipate for the first “certification of capability” effort for delegation? Will the recertification process in subsequent years be streamlined?

There is a desire for delegations to be implemented quickly, but there is no set timeframe. The Planning Advisory Board (PAB), in coordination with Mr. Lee (Director of Civil Works), will determine the timeline for the initial certifications in the near future.

The Revolutionize CW Team anticipates there may be some delays as MSCs develop their own procedures during the initial certification period, but that recertification in subsequent years should take less time and effort as MSCs and Districts become familiar with the process.

CAP Project Review

Per [Engineer Circular \(EC\) 1165-2-217, Water Resources Policies and Authorities Review Policy for Civil Works](#), the review management organization (RMO) resolves disagreements between the District and the agency technical review (ATR) team, if they arise. If a District has delegated approval authority for

the feasibility report and is also serving as the RMO for the study, will the District still be responsible for resolving disagreements between the project delivery team (PDT) and the ATR team, or will that responsibility be elevated to the MSC?

The Revolutionize Civil Works Team is working closely with the EC 217 revision team to document the review process for delegated CAP studies. In addition, Districts should be thinking about how they would address these types of situations and be prepared to document review and disagreement resolution procedures in their capability certification applications.

Will MSCs maintain their responsibility for ensuring the quality of habitat models in cases where CAP approvals are delegated?

Responsibility for ensuring habitat model quality should be discussed and determined between MSCs and Districts. For example, Districts should discuss the complexity of the model with the relevant MSC early on. In general, delegation does not negate any existing policy or technical requirements (i.e., if a PDT needs a certified model, it must follow all requirements for certified model use without exception).

Resources

Are policy and legal compliance review (P&LCR) team costs associated with delegated studies expected to be allocated from project funds (vs. GE funds if that review would be conducted by the MSC)?

Yes, if P&LCR team members are District staff, their labor must be paid from project funds.

Are there model CAP agreements ready for use?

Yes. Model agreements for CAP authorities are maintained on the [HQUSACE website under Project Partnership Agreements](#).

Has the team developed any examples or templates for documenting the certification process?

The team did develop an initial template for certification, but received feedback that the MSC Planning Chiefs wanted to maintain the flexibility to establish the criteria and information needed to certify district capability.

Are there any plans to identify opportunities to expedite the process to obtain approval for a new start CAP study?

Ultimately, the number of CAP new starts that can be approved depends on the amount of appropriations available. Based on a recent CAP study affordability analysis, there will likely be even fewer new starts recommended because of the number of Section 1135, 205, and 206 projects in construction. Likely delays to starting a CAP study and project because of limited available appropriations needs to be clearly communicated to non-federal sponsors.

Measuring CAP Delegation Success & Auditing/Program Assessment

Is there a plan to collect performance and feedback information to assess how the delegation process is working?

Yes. The team intends to collect information on performance once delegations are in place to improve understanding of execution and improve data quality, as emphasized in the 3 September DPM.

What metric(s) will be used to measure success (e.g., number of delegations implemented, improvement in execution)?

It is likely that both of these items will be used as metrics to measure success. The ASA's office is closely tracking delegation implementation, and the Revolutionize Civil Works Team plans to track overall program execution improvement through project management systems.

Is there any guidance on what should be included in the programmatic assessments or root cause analyses to be conducted in the future?

This is a topic planned to be addressed at the upcoming CAP workshop.