§ 203.50 Nonstructural alternatives to rehabilitation of flood control works.

(a) Authority. Under Public Law 84-99, the Chief of Engineers is authorized, when requested by the non-Federal sponsor, to implement nonstructural alternatives (NSA's) to the rehabilitation, repair, or restoration of flood control works damaged by floods or coastal storms.

(b) Policy. (1) The option of implementing an NSA project (NSAP) in lieu of a structural repair or restoration is available only to non-Federal sponsors of flood control works eligible for Rehabilitation Assistance in accordance with this regulation, and only upon the request of the non-Federal sponsor. 

(2) A sponsor is required for implementation of an NSAP. The NSAP sponsor must demonstrate that it has the legal authority and financial capability to provide for the required items of local cooperation.

(3) The Corps shall not be responsible for the operation, maintenance, or management of any NSAP implemented in accordance with this section.

(4) The Corps may, in its sole discretion, reject any request for an NSAP that would:

(i) Lead to significantly increased flood protection expenses or flood fighting expenses for public agencies, flood control works sponsors, public utilities, or the Federal Government; or,

(ii) Threaten or have a significant adverse impact on the integrity, stability, or level of protection of adjacent or nearby flood control works; or,

(iii) Lead to increased risk of loss of life or property during flood events.

(5) The principal purposes of an NSAP are for:

(i) Floodplain restoration;

(ii) Provision or restoration of floodways; and,

(iii) Reduction of future flood damages and associated flood control works repair costs.

Note to paragraphs (b)(5)(i) and (ii): Habitat restoration is recognized as being a significant benefit that can be achieved with an NSAP, and may be a significant component of an NSAP, but is not considered to be a principal purpose under PL 84-99 authority.

(c) Limitation on Corps expenditures. Exclusive of the costs of investigation, report preparation, engineering and design work, and related costs, Corps expenditures for implementation of an NSAP are limited to the lesser of the Federal share of computed benefits which would be derived from such structural rehabilitation. This limitation on Corps expenditures may be waived by the Director of Civil Works or the Chief, Operations Division, Directorate of Civil Works when compelling reasons exist.
Corps of Engineers, Dept. of the Army, DoD § 203.50

(d) Responsibilities of the NSAP non-Federal sponsor. (1) Operate and maintain the NSAP;
(2) Provide, or arrange for and obtain, all funding required to implement the NSAP in excess of the limitation established in paragraph (c) of this section.
(3) Accept the transfer of ownership of any lands or interests in lands acquired by the Corps and determined by the Corps to be necessary to implement the NSAP.

(e) Responsibilities of other Federal agencies acting as NSAP sponsor. The Corps may participate with one or more Federal agencies in NSAP’s. If the Corps is the lead Federal agency, based on mutual agreement of the Federal agencies, then a non-Federal NSAP sponsor is required. (See paragraph (d) of this section.) If another Federal agency is the lead Federal agency, then Corps participation in the NSAP will be based on the content of this section, with appropriate allowances for effecting an NSAP in accordance with the authority and ultimate goal of the lead Federal agency. In such cases, a Memorandum of Agreement between the Corps and the lead Federal agency is required, in accordance with paragraph (1) of this section.

(f) Responsibilities of the requesting flood control work project sponsor. (1) The flood control work project sponsor must request the Corps undertake an NSA project in lieu of rehabilitation of the flood control work, in accordance with the sponsor’s applicable laws, ordinances, rules, and regulations.
(2) If not also the NSAP sponsor, the flood control work project sponsor must:
   (i) Divest itself of responsibility to operate and maintain the flood control work involved in the NSAP; and
   (ii) Provide to the NSAP sponsor such lands or interests in lands as it may have which the Corps determines are necessary to implement the NSAP.

(g) Allowable Public Law 84–99 expenses for NSAP’s. (1) Acquisition of land or interests in land.
(2) Removal of structures, including manufactured homes, for salvage and/or reuse purposes.

(h) Time limitation. Corps participation in development and implementation of an NSAP may cease, at the sole discretion of the Corps, one year after the date of approval of rehabilitation of the damaged flood control work or the date of receipt of the flood control work public sponsor’s request for an NSAP, whichever is earlier, if insufficient progress is being made to develop and implement the NSAP for reasons beyond the control of the Corps. In such circumstances, the Corps may, at its sole discretion, determine that Rehabilitation Assistance for the damaged flood control project may also be denied.

(i) Participation and involvement of other Federal, State, tribal, local, and private agencies. Nothing in this section shall be construed to limit the participation of other Federal, State, tribal, local, and private agencies in the development, implementation, or future operations and maintenance of an NSAP under this section, subject to the limitations of such participating agency’s authorities and regulations.

(j) Future assistance. After transfer of NSAP operation and maintenance responsibility to the NSAP sponsor or the lead Federal agency, flood-related assistance pursuant to Public Law 84-
§ 203.51 Levee owner’s manual.

(a) Authority. In accordance with section 202(f) of Public Law 104–303, the Corps will provide a levee owner’s manual to the non-Federal sponsor of all flood control works in an Active status in the RIP.