



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

CECW-LRD

MAR 18 2009

MEMORANDUM FOR COMMANDER, GREAT LAKES AND OHIO RIVER DIVISION
(CELRD-PDS-P)

SUBJECT: Implementation Guidance for Section 3094 of the Water Resources Development Act of 2007 (WRDA 2007) – Grand Marais Harbor, Minnesota.

1. Section 3094 of WRDA 2007 provides authority for the Secretary to credit in accordance with Section 221 of the Flood Control Act of 1970 (hereinafter "Section 221"; 42 U.S.C. 1962d-5b), toward the non-Federal share of the cost of the Grand Marais Harbor, Minnesota, proposed for implementation under Section 107 of the River and Harbor Act of 1960, as amended (hereinafter "Section 107"; 33 USC 577), the cost of design work carried out for the project before the date of the partnership agreement for the project. A copy of Section 3094 is enclosed for information.
2. Subject to the availability of Section 107 funds, the Detroit District should negotiate and execute a Continuing Authorities Program Feasibility Cost Sharing Agreement (FCSA) with the non-Federal sponsor to prepare a feasibility study for the project in accordance with the requirements of Appendix F of ER 1105-2-100. The District should note that a project implemented in accordance with section 107 of the River and Harbor Act of 1960, as amended, must demonstrate that the benefits of the project exceed the costs.
3. If the feasibility report does not recommend a feasible project, no additional design or construction work shall be undertaken. If a feasibility report recommending a feasible project is approved, the project may be considered for implementation in accordance with current budget guidance for projects under Section 107, River and Harbor Act of 1960, as amended.
4. If the project proceeds to the design and implementation phase, the Secretary will afford credit, in accordance with Section 221, toward the non-Federal share of the cost of the project the cost of design work carried out for the project before the date of the project partnership agreement (PPA). The guidance and procedures contained in Engineering Circular No. 1165-2-208, In-Kind Contribution Provisions of Section 221, dated 6 June 2008, will be used to determine eligibility of credit for such design work (such as, any design work undertaken prior to execution of the PPA will not be eligible for credit if such work is carried out prior to execution of an In-Kind MOU (see paragraph 4 and Table 1 of the EC) and determined to be integral to the project (see paragraph 6 and Table 2 of the EC)). The actual value of the eligible work and amount of credit afforded will be determined in accordance with the terms and conditions of the PPA for the project.

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5. Section 3094 does not provide authority to afford credit for: 1) study work performed prior to execution of the FCSA; 2) construction work carried out prior to execution of the PPA; or 3) design or construction work carried out after the date of execution of the PPA. No Federal work shall be carried out on the study or project, unless Section 107 funds are made available for such work.

FOR THE COMMANDER:

Encl

A handwritten signature in black ink, appearing to read 'Michael G. Ensich', is written over a faint, illegible stamp or background.

MICHAEL G. ENSCH
Chief, Regional Integration Team
Great Lakes and Ohio River Division
Civil Works Directorate

Water Resources Development Act of 2007

SEC.3094. GRAND MARAIS, MINNESOTA

The project for navigation, Grand Marais, Minnesota, carried out under section 107 of the River and Harbor Act of 1960 (33 USC 577) is modified to direct the Secretary to credit, in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), toward the non-Federal share of the cost of the project the cost of design work carried out for the project before the date of the partnership agreement for the project.