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

MAR 2 5 2009

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Implementation Guidance for Section 3093 of the Water Resources Development Act of 2007 (WRDA 2007) – Duluth Harbor, McQuade Road, Minnesota

1. Section 3093 of WRDA 2007 modifies the project for navigation at Duluth Harbor, McQuade Road, Minnesota, being carried out under Section 107 of the River and Harbor Act of 1960, as amended, (33 U.S.C. 577), and as previously modified by Section 321 of the WRDA 2000, to direct the Secretary to provide public access and recreational facilities. In addition, Section 3093 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 project for the costs of design work carried out by the non-Federal interest for the project before the date of the partnership agreement for the project. Further, Section 3093 increases the Federal per-project limit for the Section 107 project at Duluth Harbor to from $4,000,000 to $9,000,000. A copy of section 3093 is enclosed for information.

2. A Project Cooperation Agreement (PCA) between the Department of the Army and the State of Minnesota, Department of Natural Resources was executed 4 May 2004 for construction of the Duluth Harbor, McQuade Road, navigation project. Construction was initiated in 2004 and completed in 2008. In accordance with the terms of the May 2004 PCA, the sponsor was responsible for all costs in excess of the $4,000,000 Federal per-project limit.

3. The District will prepare an amendment to the May 2004 PCA to reflect the following:

a. As directed in Section 3093, the Secretary is to provide public access and recreational facilities as generally described in the Detailed Project Report (DPR) and Environmental Assessment, McQuade Road Harbor of Refuge, Duluth, Minnesota, dated August 1999. These features, previously defined in the DPR as local service facilities, include four reinforced concrete ramp lanes and three docks, two floating docks, a parking lot, a pedestrian underpass tunnel, relocation of Scenic Highway 61, a new 800-foot section of Highway 61 and rerouting McQuade Road. These features are to be included in the project and cost shared 50%/ 50% as recreational navigation features.

b. Credit will be afforded, in accordance with Section 221, toward the non-Federal share of the cost of the project for the cost of design work for the project carried out before the date of execution of the May 2004 PCA.

(1) Only design work determined to be integral to the project will be considered eligible for credit. The guidance and procedures contained in Engineering Circular No. 1165-2-208 In-Kind Contribution Provisions of Section 221 should be used to determine eligibility of credit for such design work. The actual value of the eligible design work and amount of credit afforded will be determined in accordance with the terms and conditions of the amended PCA for the project. Approval of the integral determination for the design work is delegated to the Commander, Great Lakes and Ohio River Division, and may not be delegated further. The integral determination must be made prior to Washington level review of the PCA Amendment.

(2) The total amount of credit afforded for in-kind contributions under the amended PCA shall not exceed the non-Federal cash requirement for the project.

c. The statutory Federal participation limit of $9,000,000.

4. The PCA amendment will be submitted to HQUSACE located in Washington, DC for review prior to approval by the Assistant Secretary of the Army (Civil Works). After execution of the amendment, the District will complete the final accounting of the project in accordance with the terms of the amended PCA to determine the final required shares of all work performed and each party's total contributions as of the date of such accounting. In addition, no additional Federal funds may be obligated or expended in excess of the existing $4 million limit and no refund of any excess non-Federal cash contributions may be made until the PCA amendment is executed and Federal funds are provided for such purpose.

John Paul Woodley, Jr.

Encl

John Paul Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)

**WATER RESOURCES DEVELOPENT ACT OF 2007**

**SEC. 3093. DULUTH HARBOR, MCQUADE ROAD, MINNESOTA.**

(a) IN GENERAL.—The project for navigation, Duluth Harbor, McQuade Road, Minnesota, being carried out under section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577) and modified by section 321 of the Water Resources Development Act of 2000 (114 Stat. 2605), is modified to direct the Secretary to provide public access and recreational facilities as generally described in the Detailed Project Report and Environmental Assessment, McQuade Road Harbor of Refuge, Duluth, Minnesota, dated August 1999.

(b) CREDIT.—The Secretary shall 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 for the costs of design work carried out by the non-Federal interest for the project before the date of the partnership agreement for the project.

(c) MAXIMUM FEDERAL EXPENDITURE.—The maximum amount of Federal funds that may be expended for the project shall be $9,000,000.