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

CECW-NWD

APR 13 2009

MEMORANDUM FOR COMMANDER, Northwestern Division (CENWD-PDD)

SUBJECT: Implementation Guidance for Section 3163 of the Water Resources Development Act of 2007 (WRDA 2007) – Duwamish/Green, Washington

1. Section 3163 of WRDA 2007 modifies the Duwamish/Green ecosystem restoration project authorized by Section 101(b)(26) of the Water Resources Development Act of 2000 (114 Stat. 2579) to:

(1) 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 work carried out by the non-Federal interest for the project before the date of the partnership agreement for the project; and

(2) authorize the non-Federal interest to provide any portion of the non-Federal share of the cost of the project in the form of in-kind services and materials. A copy of Section 3163 is enclosed for information.

2. Section 3163 provides authority to afford credit toward the non-Federal share of the cost of the project for the costs of in-kind services and materials provided by the non-Federal interest both before and after execution of the Design Agreement (DA) and the Project Partnership Agreement (PPA), as applicable

3. The guidance and procedures contained in Engineering Circular (EC) No. 1165-2-208 In-Kind Contribution Provisions of Section 221 must be used to determine eligibility of credit for items proposed as in-kind contributions under the authority of Section 3163. This includes, but is not limited to, the following: work carried out after WRDA 2007 and prior to execution of the applicable cost sharing agreement (DA or PPA) is not 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); all proposed in-kind contributions must be determined to be integral to the project (see paragraph 6 and Table 2 of the EC)); and the actual value of the eligible in-kind contributions and amount of credit afforded will be determined in accordance with the terms and conditions of the applicable cost sharing agreement (DA or PPA) for the project.

4. Because the Duwamish/Green ecosystem restoration project consists of 45 project features or sites, it is anticipated that numerous PPAs will be executed with various non-Federal sponsors to construct an individual project feature or small groupings of the project features. As discussed in

paragraph 3.i. of EC 1165-2-208, excess in-kind contributions from one PPA will not be applied toward project features undertaken in a separate PPA.

FOR THE COMMANDER:

Encl

EDWARD J. HECKER
Chief, Northwestern Division
Regional Integration Team
Directorate of Civil Works

SEC. 3163. DUWAMISH/GREEN, WASHINGTON.

The project for ecosystem restoration, Duwamish/Green, Washington, authorized by section 101(b)(26) of the Water Resources Development Act of 2000 (114 Stat. 2579), is modified—

(1) 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 work carried out by the non-Federal interest for the project before the date of the partnership agreement for the project; and

(2) to authorize the non-Federal interest to provide any portion of the non-Federal share of the cost of the project in the form of in-kind services and materials.

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