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

CECW-PB

SEP 21 2009

MEMORANDUM FOR COMMANDER, South Pacific Division (CESPD-DE)

SUBJECT: Implementation Guidance for Section 4027 of the Water Resources Development Act of 2007 (WRDA 2007) – South San Francisco Bay Shoreline, CA

1. Section 4027 of WRDA 2007 authorizes the Secretary, in cooperation with non-Federal interests, to conduct a feasibility study for flood damage reduction, salt ponds restoration, and other related purposes. It provides that the feasibility report is to be submitted to Congress within three years of enactment of the WRDA 2007, and should include recommendations with respect to the project based on documents prepared by the non-Federal sponsors, the California State Coastal Conservancy, the Santa Clara Valley Water District, and other local interests. In addition, the Secretary is directed to credit toward the non-Federal share of any project authorized by law as a result of the study the cost of work performed in preparation of the feasibility study prior to execution of the feasibility cost sharing agreement (FCSA), and the funds expended by the non-Federal interest for acquisition costs of land that constitute part of such project and that are owned by the U.S. Fish and Wildlife Service. A copy of Section 4027 is enclosed.

2. A feasibility study for flood damage reduction and ecosystem restoration of the salt ponds is currently underway. The San Francisco District shall continue their partnership with the local non-Federal sponsors and study efforts in determining the feasibility of carrying out a project for flood damage reduction along the South San Francisco Bay shoreline, restoration of the South San Francisco Bay salt ponds, and other related purposes. The feasibility report should be prepared in accordance with guidance in ER 1105-2-100, Planning Guidance Notebook. In addition, the following will be considered:

a. Plans may be formulated for restoration of salt ponds on lands owned by other Federal agencies. The feasibility report should include recommendations on the responsible parties for implementation of such plans, including responsibility for the costs of such plans.

b. The feasibility report should include recommendations which fully consider the planning, design, and land acquisition documents prepared by the California State Coastal Conservancy, the Santa Clara Valley Water District and other local interests.

c. Although the three-year submission requirement is fully dependent upon adequate and timely funding, the District should proceed as expeditiously as possible towards study completion.

3. In accordance with Section 4027(c), credit shall be afforded as follows:

a. Section 4027(c)(1)(A) provides authority to afford credit toward the non-Federal share of the cost of any project authorized by law as a result of the study, the cost of work performed by the non Federal interest in preparation of the feasibility study that is conducted before the date of the FCSA, in accordance with Section 221 of the Flood Control Act of 1970, as amended. This provision covers work related to and determined necessary for the study, and does not include design and construction work. The feasibility study must identify the work eligible for credit under this provision and include an assessment of the costs for such work. This assessment shall be similar to the integral determination described in Engineering Circular 1165-2-208, In-Kind Contribution Provisions of Section 221. The actual value of the work and the amount of credit to be afforded will be determined in accordance with the terms and conditions of the Project Partnership Agreement for a project authorized by law as a result of the study.

b. Any work carried out after the date of the FCSA should have already been covered in the FCSA for the feasibility study, with the costs of such work eligible as a work-in-kind credit.

c. In accordance with Section 4027(c)(1)(B), the amount of funds expended by the non-Federal interest for acquisition costs of land that constitutes a part of a project authorized by law as a result of the study <u>and</u> that is owned by the U.S. Fish and Wildlife Service, will be credited towards the non-Federal share of the cost of the project to the extent that the value of all or any portion of land has not previously been credited to the non-Federal interest for a project and the land was not acquired to meet any mitigation requirement of the non-Federal interest. The actual value of lands and the amount of credit to be afforded will be determined in accordance with the terms and conditions of the Project Partnership Agreement for the project.

d. The total amount of credit afforded pursuant to Section 4027(c) shall not exceed the non-Federal cash requirement for the project.

FOR THE COMMANDER:

Encl

STEVEN L. STOCKTON, P.E.
Director of Civil Works

AUTHORIZING LANGUAGE

SECTION 4027. SOUTH SAN FRANCISCO BAY SHORELINE, CALIFORNIA.

(a) IN GENERAL.—The Secretary, in cooperation with non-Federal interests, shall conduct a study of the feasibility of carrying out a project for—
(1) flood damage reduction along the South San Francisco Bay shoreline, California;
(2) restoration of the South San Francisco Bay salt ponds (including on land owned by other Federal agencies); and
(3) other related purposes, as the Secretary determines to be appropriate.

(b) REPORT.—
(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress a report describing the results of the study under subsection (a).
(2) INCLUSIONS.—The report under paragraph (1) shall include recommendations of the Secretary with respect to the project described in subsection (a) based on planning, design, and land acquisition documents prepared by—
(A) the California State Coastal Conservancy;
(B) the Santa Clara Valley Water District; and
(C) other local interests.

(c) CREDIT.—
(1) IN GENERAL.—In accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), and subject to paragraph (2), the Secretary shall credit toward the non-Federal share of the cost of any project authorized by law as a result of the South San Francisco Bay shoreline study—
(A) the cost of work performed by the non-Federal interest in preparation of the feasibility study that is conducted before the date of the feasibility cost sharing agreement; and
(B) the funds expended by the non-Federal interest for acquisition costs of land that constitutes a part of such a project and that is owned by the United States Fish and Wildlife Service.
(2) CONDITIONS.—The Secretary may provide credit under paragraph (1) if—
(A) the value of all or any portion of land referred to in paragraph (1)(B) that would be subject to the credit has not previously been credited to the non-Federal interest for a project; and
(B) the land was not acquired to meet any mitigation requirement of the non-Federal interest.

Enclosure