US Army Corps of Engineers®

SPECIAL PUBLIC NOTICE

PROPOSAL TO ACCEPT FUNDS FROM
FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

LOS ANGELES DISTRICT

Public Notice/Application No.: EE2012-33
Comment Period: August 3, 2012 through September 4, 2012
Project Manager: Phil Serpa

This Public Notice announces the preliminary intent of the Los Angeles District of the U.S. Army Corps of Engineers ("Corps") to accept funds contributed by Maricopa County Flood Control District ("District") in order to expedite processing of the District's Department of the Army (DA) permit application in accordance with 33 U.S.C. 408[1] (Section 408), subject to a series of limitations specified below.

Section 214 of the *Water Resources Development Act of 2000* (WRDA 2000, Public Law No. 106-541) as amended, provides:

(a) The Secretary (of the Army), after public notice, may accept and expend funds contributed by non-federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army.

(b) In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision making with respect to permits, either substantively or procedurally.

(c) The authority provided under this section shall be in effect from October 1, 2000 to December 31, 2016.

The Secretary of the Army delegated this responsibility to the Chief of Engineers and his authorized representatives, including District Commanders of the U.S. Army Corps of Engineers. The authorization to accept and expend funds from non-Federal public entities after December 31, 2016 is conditional on the extension of Section 214 of WRDA 2000.

[1] 33 USC 408 provides authority to the Secretary of the Army to grant permission for the alteration or modification of Corps projects when in the judgment of the Secretary such alteration or modification will not be injurious to the public interest and will not impair the usefulness of the project.

Definition of non-Federal public entities: Non-federal public entities are defined for Section 214 purposes as state and local governmental agencies and Indian tribal governments. They include, but are not limited to, local transportation agencies desiring to expedite highway projects, port authorities wanting permits expedited for marine terminals, flood and storm water management agencies, and governmental economic development agencies seeking to expedite permit applications for certain kinds of work, including industrial or commercial development. The District meets this definition.

How the Los Angeles District would expend the funds: The Corps' Operation and Maintenance budget is funded through the Corps' Civil Works program in the annual Federal budget. Additional funds would be received by the Corps from the District and would be added to the Operation and Maintenance budget, in accordance with the provisions of Section 214 of WRDA 2000. The Corps would establish a separate account to track receipt and expenditure of the funds in the Corps of Engineers Financial Management System. With the supplemental funding, the Corps would pay for support services, both technical and administrative. Corps personnel would charge their time against a specific account when working on the District's permit application.

Activities for which funds will be expended: Funds would be expended primarily on the labor and overhead of Corps' Civil Works personnel evaluating the permit application submitted by the District. Such permit processing activities would include, but not be limited to, the following: technical analyses and writing, real estate evaluation, risk analysis, copying or other clerical/support tasks, acquisition of GIS data, site visits, training, travel, coordination activities, additional personnel (including support/clerical staff), technical contracting, environmental documentation preparation and review. Funds will not be used for drafting, negotiating, or issuing any necessary real estate instruments.

If the District's funds are fully expended and are not renewed, any remaining tasks necessary to complete processing of the permit application would be handled like those of any other non-participant, subject to the availability of funds.

Procedures to be used to ensure impartial decision-making: Approval of the District's Section 408 permit application may be at the Director of Civil Works level or at the District Commander level, depending on the estimated magnitude of the impacts of the proposed modifications on Corps projects. To ensure the funds will not impact impartial decision-making, the following procedures would apply:

a. No funds received under a Section 214 agreement shall be expended to complete the District level determinations, including the determinations of the District Commander, whether these determinations are to result in a recommendation to the Director of Civil Works through the Division Commander, or whether they are to result in a final permit decision by the District Commander under delegated Section 408 approval authority.

b. The final permit decision will be made available on the Los Angeles District web page.

c. The Corps will not eliminate any procedures or decisions that would otherwise be required for that type of project and permit application under consideration.

d. The Corps will comply with all applicable laws and regulations.

e. Section 214 funds will only be expended to provide priority review of the participating non-federal entity's permit application.

Impacts to the Civil Works Program: We do not expect priority review of the District's permit application to negatively impact the Los Angeles District's Civil Works Program, or to increase the time for permit evaluations of other projects.

Consideration of Comments: The Corps is soliciting comments from the public, Federal, State and local agencies, and officials, and other interested parties. Comments will be made part of the record, and they will be considered in determining whether it would be in the public interest to proceed with this action. If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with Section 214 of WRDA 2000 and is not otherwise contrary to the general public interest, the Los Angeles District will implement Section 214 of WRDA 2000 through a signed Memorandum of Agreement ("MOA") and accept the funds from the District. A second public notice will be issued regarding the final decision on this matter.

Provided that the purpose for accepting funds remains the same as that described in this notice, a new public notice is not required in the event that the MOA is amended to extend the term of the agreement; to modify the list of priority projects identified in the MOA; or to adjust the terms of the annual advance payment contemplated under the MOA.

Submission of Comments: Comments on implementing Section 214 of WRDA 2000 will be accepted and made part of the record, and they will be considered in determining whether it would be in the best public interest to proceed with this administrative practice. Interested parties may submit, in writing, any comments concerning this proposal. Comments should refer to Proposed Acceptance of Funds from the Flood Control District of Maricopa County and the date of this Public Notice, and be forwarded by the comment due date. Comments must be sent to the U.S. Army Corps of Engineers, Los Angeles District, Asset Management Division, ATTN: Phil Serpa, P.O. Box 532711, Los Angeles, California 90053. Alternatively, comments can be sent electronically to: phillip.j.serpa@usace.army.mil.

For additional information, please call Phil Serpa of my staff at (213) 452-3402. This public notice is issued by the Commander of the Los Angeles District of the U.S. Army Corps of Engineers.