



# SPECIAL PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT

BUILDING STRONG®

## DECISION TO ACCEPT FUNDS FROM THE PORT OF LONG BEACH

**Public Notice Date:** October 26, 2012

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The purpose of this Special Public Notice is to announce that the Los Angeles District, U.S. Army Corps of Engineers (Corps) has decided to accept and expend funds contributed by the Long Beach Harbor Department/Port of Long Beach (Port) under a 2-year Memorandum of Agreement (MOA) between the Corps and the City of Long Beach. This is a new MOA between the Corps and the City of Long Beach that addresses the acceptance and expenditure of funds pursuant to Water Resources Development Act (WRDA) section 214. These funds would be used to increase Corps resources available to evaluate and process the Port's Department of the Army (DA) permit applications. Though the Port would generally receive more expeditious reviews of their permit applications, the Corps would ensure that regulatory permit decision-making remains impartial and that all applicable procedural and substantive requirements of the DA permit application review process remain unchanged.

The decision to accept funds is in response to the success of a similar MOA with the Port of Los Angeles, the large number of DA permit applications that continue to be submitted by the Port, and the ongoing need to devote significant staff time to these applications to ensure the Port and the public are best served throughout the permit evaluation process. The decision to enter into an agreement to accept funds does not constitute any endorsement or implied consent to Port permit applications; rather, it enables Corps staff to devote the attention required to these applications, in a more timely and more thorough manner, benefiting both the Port and the public.

Colonel R. Mark Toy, Commander of the Corps Los Angeles District has determined that acceptance and expenditure of additional funds would be in accordance with section 214 of the *Water*

*Resources Development Act of 2000* (WRDA 2000, Public Law 106-541), as amended. The Memorandum documenting his decision is attached. On August 3, 2012, the Los Angeles District circulated the initial Special Public Notice announcing our preliminary intent to accept and expend such funds, and stated that we had initiated funding discussions with the Port. The 3 August 2012 Special Public Notice also discussed the types of activities for which funds would be expended, and the safeguarding procedures that would be used to ensure that the funds will not impact impartial decision making. Those procedures include the following:

- All final permit decisions for cases where these funds are used must be reviewed at least one level above the standard decision-maker, unless the decision-maker is the District Commander. For example, if the decision-maker were the Regulatory Division Chief, then the decision-maker for that permit action would be raised to the District Engineer.
- All final permit decisions for cases where these funds are used will be made available on the Los Angeles District Regulatory Division web page.
- The Los Angeles District will not eliminate any procedures or evaluations that would otherwise be required for that type of project and permit application under consideration.
- The Los Angeles District must comply with all applicable laws and regulations.
- Contributed Port funds will not be expended for supervisory or management review of staff-generated permit decision recommendations. Also, funds would not be used for processing administrative appeals of any decisions on Port permit applications. If Port funds are used to hire contractors in support of the Corps permit evaluation process, such contractor products will be drafts only and be reviewed by Corps regulatory program employees, before they are utilized in support of any Corps permit decision.

Under the agreement, we will submit quarterly reports to the Port itemizing the funds expended and ongoing and completed activities by project, anticipated activities by project and estimated expenditures in the next quarter, and opportunities for improved efficiency and coordination. Under existing agreements with other agencies, the final permit decisions to date, posted on our Regulatory Division's web page, have been reviewed and/or signed by the Regulatory Division's North Coast Branch Chief, who is one level higher than the Senior Project Manager assigned to evaluate the Port applications, or the District Commander. With other similar agreements, we have noted improved responsiveness, while maintaining product integrity, by having staff available to answer questions and to evaluate these applications, on both small projects and on large projects involving more rigorous NEPA review. Implementation of the funding program will better serve the public interest through more cost-effective processing of permit applications, enhanced evaluation capability, and a streamlined permit processing system. Our capacity to evaluate permit applications from applicants not party to this funding agreement will not be adversely affected.

Copies of the relevant documents related to this decision to accept and expend Port funds under this new 2-year MOA, as well as any future permit decisions evaluated by Corps staff using other such funds, can be viewed at the Corps Regulatory Division web page at <http://www.spl.usace.army.mil/Missions/Regulatory.aspx>.



*Regulatory Program Goals:*

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

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**DEPARTMENT OF THE ARMY**  
LOS ANGELES DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 532711  
LOS ANGELES, CALIFORNIA 90053-2325

REPLY TO  
ATTENTION OF

CESPL-RG

MEMORANDUM OF DECISION

17 October 2012

SUBJECT: Acceptance of Funds Contributed by the Port of Long Beach, a Non-Federal Public Entity

1. References:

(a) Section 214 of the Water Resources Development Act (WRDA) of 2000 (Public Law 106-541), as amended by Public Law 111-315.

(b) Memorandum, (CECW), 1 October 2008, Subject: Implementation Guidance for Section 2002 of the Water Resources Act of 2007 (Regulatory Program Funds Contributed by Non-Federal Entities).

2. The sunset clause for Section 214 of WRDA 2000 is 31 December 2016. This authority may be extended or made permanent.

3. The purpose of this memorandum is to document my decision to enter into an agreement to accept and expend funds contributed by the Port of Long Beach, for a period of three years, to expedite evaluation of permit applications under consideration of our Regulatory Division in accordance with ref. 1a and 1b. The duration of the agreement may be extended by written, mutual agreement of the parties.

4. On 6 January 2005 Colonel Alex Dornstauder signed a very similar Memorandum of Decision documenting his basis for accepting and expending funds from the Port of Los Angeles/Los Angeles Harbor Department pursuant to ref. 1a. On 13 January 2005, the Los Angeles District posted a Special Public Notice of the intent to accept and expend such funds. The Parties executed a 1-year agreement on 2 November 2006. This agreement expired on 2 November 2007.

5. Because of the success of the 1-year agreement, on 19 November 2007, the parties executed a 3-year agreement to continue accepting and expending funds in accordance with ref. 1a. This agreement followed our publication of a Special Public Notice on 17 October 2007 of our agencies' intent to enter into a

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3-year agreement and Colonel Thomas Magness' 11 October 2007 Memorandum of Decision supporting this agreement. As stated in responses to comments provided in the original 6 January 2005 Memorandum of Decision for the 1-year agreement, which were incorporated by reference into the 11 October 2007 Memorandum of Decisions for the 3-year agreement and the 25 October 2010 3-year agreement, I am confident adequate safeguards are in place for accounting, reviewing, reporting, and publicizing actions performed with these funds. Under the previous agreements, Regulatory Division submitted quarterly reports to the Port of Los Angeles/Los Angeles Harbor Department itemizing the funds expended and ongoing and completed activities by project, anticipated activities by project and estimated expenditures in the next quarter, and opportunities for improved efficiency and coordination. All Regulatory final actions have been and will continue to be posted on a Port Projects/Port of Los Angeles webpage on our Regulatory Division's website (<http://www.spl.usace.army.mil/Missions/Regulatory.aspx>). Regulatory Division has noted improved responsiveness, while maintaining product integrity, by having staff available to answer questions and to evaluate these applications, on both small projects and on large projects involving more rigorous NEPA review. Based on the success of the Port of Los Angeles WRDA agreement over the last seven years, Regulatory Division is confident that a similar agreement with the Port of Long Beach would provide substantial benefits.

6. On 18 June 2012, the Port of Long Beach forwarded a letter to Dr. Aaron O. Allen requesting that the Corps, Regulatory Division establish a Regulatory Project Manager position under Section 214 of WRDA to prioritize Port of Long Beach permit applications. On 3 August 2012, the Los Angeles District posted a Special Public Notice of the intent to accept and expend such funds. The comment period for the above Special Public Notice closed on 17 August 2012 and no comments were received from the public regarding the proposed Port of Long Beach Section 214 WRDA Agreement.

7. Because of the success of the previous agreements with the Port of Los Angeles, I have carefully considered the Port of Long Beach's request and the recommendation of the Regulatory Division. I have determined that acceptance and expenditure of funds from the Port of Long Beach will not adversely impact the impartial decision-making with respect to Regulatory permit applications, either substantially or procedurally. Per our responses to comments provided in the 6 January 2005 Memorandum of Decision for the Port of Los Angeles, and are incorporated by

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Entities

reference into this Memorandum of Decision, adequate safeguards are in place for accounting, reviewing, reporting, and publicizing actions performed with these funds. The funding program will better serve the public interest through more cost-effective processing of permit applications, enhanced evaluation capability, and a stream-lined permit processing system. Our capacity to evaluate permit applications from applicants not party to this funding agreement will not be adversely affected. Accordingly, I find that acceptance and expenditure of funds from the Port of Long Beach is appropriate and is in accordance with ref. 1a.

7. An informational public notice shall be issued to advise the public of my decision.



R. MARK TOY  
COL, EN  
Commanding