



**US Army Corps
of Engineers®**

SPECIAL PUBLIC NOTICE

**DECISION TO ACCEPT FUNDS FROM THE
COUNTY OF SAN DIEGO**

LOS ANGELES DISTRICT

Public Notice Date: April 9, 2007

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Regulatory Division
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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 County of San Diego (County). The funds will be used to expand Corps resources available to evaluate and process the County's Department of the Army (DA) permit applications. Though the County will receive more expeditious reviews of their permit applications, the Corps will 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 Corps determination that the County has submitted multiple permit applications on a continuing basis. There is a need to devote significant staff time to these numerous applications in order to ensure the County and the public are best served throughout the permit evaluation process. The decision to accept funds does not constitute any endorsement or implied consent to the County; rather, it will enable Corps Regulatory staff to devote the attention required to these applications, in both a more timely and more thorough manner, benefiting both the County and the general public.

Colonel Alex C. Dornstauder, Commander of the Corps Los Angeles District has determined that acceptance and expenditure of such funds is in accordance with Section 214 of the *Water Resources Development Act of 2000* (WRDA 2000, Public Law 106-541 as amended by Public Law 108-137). The Memorandum documenting this decision is attached.

On February 5, 2007, 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 County. The February 2007 Special Public Notice also discussed the kind of activities for which funds would be expended, and the safeguarding procedures which 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 normal decision-maker, unless the decision-maker is the District Commander. For example, if the decision-maker were the Section Chief, then the decision-maker for that permit action would be raised to the Regulatory Branch Chief.
- All final permit decisions for cases where these funds are used will be made available on the Los Angeles District Regulatory 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 County 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 County permit applications. If County funds are used to hire contractors in support of the Corps permit/EIS 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.

Copies of the relevant documents related to this decision to accept County funds, as well as any permit decisions in the future, which were evaluated by County-funded Corps staff, can be viewed at the Corps Regulatory Web Page at <http://www.spl.usace.army.mil/regulatory>.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O. BOX 53277
LOS ANGELES, CALIFORNIA 90053

CESPL-RG

3 April 2007

MEMORANDUM FOR RECORD

SUBJECT: Regulatory Program Funds Contributed by Non-Federal Public Entities

References:

- a. Public Law 106-541
 - b. Memorandum, CECW, 29 Mar 04, subject: Regulatory Program Funds Contributed by Non-Federal Entities.
2. The purpose of this memorandum is to document my decision, as District Commander of the U.S. Army Corps of Engineers' Los Angeles District, to accept and expend funds contributed by the County of San Diego ("County") for the purpose of expediting the evaluation of County permit applications under consideration of our Regulatory Division.
 3. Funding would be accepted and expended in accordance with Section 214 of the Water Resources Development Act of 2000 ("WRDA 2000", Public Law 106-541). Section 214 of WRDA 2000 reads as follows:
 - a. IN GENERAL. – In Fiscal Years 2001 through 2003, 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. EFFECT ON PERMITTING. – 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.
 4. The sunset clause of Section 214 of WRDA 2000 was extended to 31 December 2008 by Public Law 109-434, signed into law 20 December 2006.
 5. In accordance with reference b, an initial public notice announcing the Los Angeles District's preliminary intent to accept funds from the County was issued 5 February 2007. The public notice contained the actual text of Section 214, described conventional funding, defined non-Federal public entities, and presented information on the following subjects:
 - a. How the Los Angeles District would expend the funds.

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SUBJECT: Regulatory Program Funds Contributed by Non-Federal Entities

- b. The kind of activities for which funds would be expended.
 - c. The procedures we will use to ensure that the funds will not impact impartial decision-making.
 - d. The benefits non-Federal public agencies would receive from their funds.
 - e. Foreseeable impacts to our Regulatory Program and to Department of the Army (DA) permit evaluations that are not subsidized by funds contributed by non-Federal public entities.
6. The Los Angeles District received electronic mail in response to the initial public notice from one commenter. The commenter expressed concerns related to potential inequity of Corps time and resources expended on permit review for non-federal public entities that can afford to fund Corps positions compared to non-public entities that cannot fund Corps positions. The commenter requested evidence of Corps accountability for past/current WRDA program(s) in the District to justify any new WRDA program such as the proposed County WRDA program.
7. I have considered the stated views of the concerned citizen. In regards to requests for evidence of Corps accountability, Regulatory Division referred the commenter by electronic mail to the Government Accountability Office's (GAO) ongoing audit of WRDA programs throughout the nation and its report to be finalized this summer, and to the Los Angeles District's quarterly report furnished to the City of San Diego ("City") under the City's WRDA program, a copy of which the commenter could request from the Corps pursuant to the Freedom of Information Act.
8. After analyzing the comments received from the public, it is my decision that acceptance and expenditure of funds from the County would not adversely impact impartial decision-making with respect to regulatory permit applications, either substantively or procedurally. 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.
9. I find that acceptance and expenditure of these funds are in accordance with Section 214 of WRDA 2000.



ALEX C. DORNSTAUDER
COL, EN
Commanding