



U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

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PUBLIC NOTICE

PUBLIC NOTICE OF PROPOSAL TO ACCEPT FUNDS FROM CITY OF SCOTTSDALE, ARIZONA UNDER SECTION 214 OF THE WATER RESOURCES DEVELOPMENT ACT OF 2000

Public Notice/Application No.: SPL-408-Scottsdale-WRDA214 Proposal

Comment Period: February 17, 2023 to March 17, 2023

Project Manager: Section 408 Project Manager (see below)

This Public Notice announces the preliminary intent of the Los Angeles District of the U.S. Army Corps of Engineers (“USACE”) to accept funds contributed by the City of Scottsdale, Arizona (“CITY”) in order to expedite processing of CITY Department of the Army permission applications in accordance with 33 U.S.C. 408¹ (Section 408), subject to certain limitations pursuant to Section 214 of the Water Resources development Act of 2000 (as amended).

Section 214 of the *Water Resources Development Act of 2000* (WRDA 2000, Public Law No. 106-541) as amended and codified at 33 U.S.C. 2352, 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 permissions 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 permissions, either substantively or procedurally.

(c) The authority provided under this section has been in effect since October 1, 2000.

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 authority to accept and expend funds from non-federal public entities does not expire, unless modified by law.

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 permissions expedited for marine terminals, flood and storm water management agencies, and governmental economic development agencies seeking to expedite permission applications for certain kinds of work, including industrial or commercial development. CITY meets this definition.

¹ 33 USC 408 provides authority to the Secretary of the Army to grant permission for the alteration or modification of USACE 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.

How the Los Angeles District would expend the funds: The USACE 408 permission Review budget is funded through the USACE Civil Works program in the annual Federal budget. Additional funds would be received by USACE from CITY and would be added to the 408 permission Review budget, in accordance with the provisions of Section 214 of WRDA 2000. USACE 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, USACE would use funds for support services, both technical and administrative. USACE personnel would charge their time against a specific account when working on priority CITY 408 permission applications.

Activities for which funds will be expended: Funds would be expended primarily on the labor and overhead of USACE Civil Works personnel evaluating priority 408 permission applications submitted by CITY. Such 408 permission processing activities include, but are not 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 CITY funds are fully expended and are not renewed, any remaining tasks necessary to complete processing of the 408 permission 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 CITY Section 408 permission applications 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 USACE 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 permission decision by the District Commander under delegated Section 408 approval authority.

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

(c) The USACE will not eliminate any procedures or decisions that would otherwise be required for that type of project and permission application under consideration.

(d) The USACE 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 408 permission applications.

Impacts to the Civil Works Program: We do not expect priority review of CITY 408 permission applications to negatively impact the Los Angeles District's Civil Works Program, or to increase the time for permission evaluations of other projects.

Consideration of Comments: The USACE 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 CITY. 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 Proposal to Accept Funds from City of Scottsdale and the date of this Public Notice and be forwarded by the comment due date. All comments must be received by 5 p.m. on March 17, 2023.

Comments should be sent to:

Section 408 Project Manager
USACE-SPL-EDD-V
915 Wilshire Boulevard, Suite 1109
Los Angeles, California 90017-3401
or by email at spl.408permits@usace.army.mil

For additional information, please email spl.408permits@usace.army.mil. This public notice is issued by the Commander of the Los Angeles District of the U.S. Army Corps of Engineers.