



**US Army Corps
of Engineers®**

SPECIAL PUBLIC NOTICE

PROPOSAL TO ACCEPT FUNDS
FROM ARIZONA DEPARTMENT OF TRANSPORTATION
THROUGH FEDERAL HIGHWAY ADMINISTRATION

LOS ANGELES DISTRICT

Public Notice No: SPL-2010-00772-SDM

Comment Period: May 18, 2012- June 1, 2012

Project Manager: Sallie McGuire (602) 230-6950 or Sallie.McGuire@usace.army.mil

Applicant

Mr. Dallas Hammit, P.E.
Deputy State Engineer, Development
Arizona Department of Transportation
206 S. 17th Avenue
Phoenix, Arizona 85007

Location:

Specific Arizona Department of Transportation projects throughout Arizona.

Activity:

This Special Public Notice announces the preliminary intent of the District Commander, Los Angeles District, to accept and expend Federal-Aid Highway Program funds contributed by the Arizona Department of Transportation (ADOT) through the Federal Highway Administration (FHWA) to expedite processing of ADOT's Department of the Army (DA) permit applications, subject to a series of limitations pursuant to 23 U.S.C. 139(j) (Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users) referred to hereafter as SAFETEA-LU.

This Public Notice also solicits comments from the general public on the subject of acceptance and expenditure of funds contributed by ADOT through FHWA to expedite the evaluation of DA permit applications.

Comments should be mailed to:

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Division – Arizona Branch
ATTN: Sallie McGuire
3636 N Central Ave., Suite 900
Phoenix, Arizona 85012

Alternatively, comments may be sent electronically to: Sallie.McGuire@usace.army.mil

Background Information: The two landmark bills that brought surface transportation into the 21st century, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century of 1998 (TEA-21) shaped the highway program to meet the Nation's changing transportation needs. On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which continues that effort. With guaranteed funding for highways, highway safety, and public transportation totaling \$244.1 billion, SAFETEA-LU represents the largest surface transportation investment in our Nation's history.

SAFETEA-LU addresses the many challenges facing our transportation system today, such as improving safety, reducing traffic congestion, improving efficiency in freight movement, increasing intermodal connectivity, and protecting the environment, as well as laying the groundwork for addressing future issues.

Conducting an efficient and effective environmental review process requires coordination and collaboration between State transportation agencies and resource agencies, such as the Corps of Engineers (Corps). However, numerous demands on staff time often limit our ability to participate as early or as fully as possible in transportation project planning. It also limits our ability to expedite transportation project review. Section 1309 of TEA-21 mandated an environmental streamlining process that improved transportation project delivery while protecting and enhancing the environment. One of the key elements of this process was cooperation between transportation and environmental resource agencies to develop and adhere to realistic project-development timeframes. Recognizing insufficient staff levels as a barrier to streamlining the environmental review process, TEA-21 allowed States to use Federal-aid project funds to provide additional resources to agencies that participate in the process, including Federal and State agencies and federally recognized Indian Tribes.

Building on and expanding the TEA-21 foundation, SAFETEA-LU was signed into law in August 2005. Several SAFETEA-LU provisions focused on improving efficiency in the highway program, including project delivery. The Act also maintains Federal-aid project funds to support expedited environmental review and expands eligibility of funding to include transportation planning activities. As outlined in SAFETEA-LU Section 6002 and codified in 23 USC Section 139(j), activities for which funds may be provided include transportation planning activities that precede the initiation of the environmental review process, dedicated staffing, training of agency personnel, information-gathering and mapping, and development of programmatic agreements.

For additional information see <http://www.fhwa.dot.gov/safetealu/summary.htm> and <http://www.environment.fhwa.dot.gov/strmlng/fundedPositionsReport/report.asp>

How the Los Angeles District would expend funds: The Corps of Engineers' regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received from ADOT would be used to augment the Los Angeles District regulatory budget in accordance with the provisions of SAFETEA-LU. The Los Angeles District would establish a separate account to track receipt and expenditure of the funds. Los Angeles District regulatory employees would charge their time against the respective account when they do work to expedite resolution of one of that entity's permit requests.

Activities for which funds will be expended: Funds would mainly be expended on the salary and overhead of a Regulatory Project Manager performing expedited processing activities for ADOT. Such activities would include, but not be limited to, the following: application intake review, drawings correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, conduct of the public interest review, preparation of draft permit decision documents, and meetings with the applicant and other agencies. Funds would not be expended for review of project managers' work by supervisors, other elements of the Los Angeles District, or other persons in the decision-making chain of command. No enforcement or compliance activities would be paid from the augmenting funds, nor would the funds be used for paying the costs of public hearings and the distribution of public notices.

If ADOT's funds are expended and are not renewed, their remaining permit applications would be handled like those of any other applicant, in a manner decided by the assigned regulatory project manager and his or her supervisor.

Procedures to be used to ensure impartial decision-making: To ensure that the funds will not impact impartial decision-making, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, would apply to all cases using additional funds provided by ADOT:

- a. All final permit decisions for cases where these funds are used must be reviewed at least by one level above the decision maker, unless the decision maker is the District Commander.
- b. All final permit decisions for cases where these funds are used will be made available on the Los Angeles District Regulatory web page.
- c. The Los Angeles District will not eliminate any procedures or decisions that would otherwise be required for that type of project and permit application under consideration.
- d. The Los Angeles District must comply with all applicable laws and regulations.
- e. Funds will only be expended to provide priority review of ADOT's permit applications. Funds will not be expended for the review of the decision maker's decision.

The benefits ADOT would receive from their funds: In general, the workload of the Los Angeles District Regulatory Division has increased significantly over the last five years.

SAFETEA-LU is designed to enable the Los Angeles District regulatory program to expedite the processing of transportation projects. ADOT can expect some of their permit applications to receive expedited handling by the Corps, and to the degree the District considers it appropriate, ADOT can set priorities among their pending permit applications. The result for ADOT should be streamlined permit processing, new tools to resolve controversial issues, and a more predictable time-line for obtaining permit authorizations.

Impacts to the Regulatory Program: We do not expect this method of expediting the permit review of certain ADOT projects to negatively impact the Los Angeles District's regulatory program or to increase the waiting time for permit evaluations that are not subsidized by funds contributed by non-Federal public agencies. In fact, remaining workload for non-funding entities to be managed with the normal regulatory budget will be reduced. Reference documents and programmatic tools developed by public entity funding will also be available to the general public. We expect the benefits of implementing this program to translate into an enhanced evaluation capability for all participants.

Consideration of Comments: This public notice has a 15-day comment period. Following the review of comments received, the Los Angeles District Commander will determine if acceptance and expenditure of the funds is in compliance with SAFETEA-LU. If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with the Act and is not otherwise contrary to the general public interest, the Los Angeles District will proceed to accept and expend such funds from ADOT through FHWA. Funds will be accepted only if the public interest is better served through cost-effectiveness, enhanced evaluation capability, streamlined permit processing, or other appropriate justification. A final public notice will be issued regarding the District Commander's decision. Beyond that, no new public notice will be issued if a participating non-Federal public entity increases the amount of funds previously furnished, provided that the purpose remains the same.

Submission of Comments: Comments on implementing SAFETEA-LU 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. Comments should refer to the *Proposed Acceptance of Funds from ADOT* and the date of this Public Notice and should reach this office not later than the expiration date of this public notice (see the address on page one of this public notice).

For additional information please call Sallie McGuire of my staff at (602) 230-6950. This public notice is issued by the Chief, Regulatory Division.