



US Army Corps
of Engineers®
San Francisco District

Regulatory Division
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

SPECIAL PUBLIC NOTICE

PROPOSAL TO ACCEPT FUNDS FROM The City and County of San Francisco

Public Notice/Application Number: 2011-00057S
Comment Period: June 2, 2011 through July 2, 2011

This Public Notice announces the preliminary intent of the San Francisco District to accept funds contributed by the City and County of San Francisco. The Corps' San Francisco District Dredge Material Maintenance Office, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, as necessary, will also use these funds, administered by the San Francisco District Regulatory Division, to provide priority review of the permit applications submitted by the City and County of San Francisco (CCSF) for capital improvement projects related to the 34th America's Cup, subject to a series of limitations specified below. With the additional funding, the Federal agencies would pay current employees for hours spent working on 34th America's Cup permit applications.

Section 214 of the *Water Resources Development Act of 2000* (WRDA 2000, Public Law No. 106-541 111-120) 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 has delegated this responsibility to the Chief of Engineers and his authorized representatives, including the Commander of the San Francisco District, U.S. Army Corps of Engineers. The authorization to accept and expend funds from non-Federal public entities is conditional on the extension of Section 214 of WRDA 2000.

Definition of non-Federal public entities: Non-federal public entities are comprised of 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 City and County of San Francisco meets this definition.

How the San Francisco District would expend the funds: The Corps' Regulatory Program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received by the San Francisco District from CCSF would be used to augment the Regulatory budget of the San Francisco District, in accordance with the provisions of Section 214 of WRDA 2000. The San Francisco District would establish a separate account to track receipt and expenditure of the funds. A Regulatory employee would charge his/her time against a specific account when working on CCSF's permit applications deemed a priority.

Activities for which funds will be expended: Funds would be expended primarily on the labor and overhead of Regulatory personnel processing priority permit applications designated by CCSF. Such permit processing activities would include, but not be limited to, the following: application completeness review, jurisdictional determinations, site visits, preparation of public notices, preparation of correspondence, meetings (with the non-Federal entity, applicants, agencies and general public), coordination concerning endangered species and cultural resources, public interest review, public hearings, distribution of public notices, analysis of alternatives, compensatory mitigation proposal reviews, and preparation of environmental assessments and permit decision documents. Funds may also be expended to pay for support services or to hire independent contractors to perform select duties; such as site visits, technical writing or review of specific technical documents, such as biological assessments for endangered species and Essential Fish Habitat determinations. No enforcement or compliance activities would be paid from the augmenting funds.

If the CCSF's funds are fully expended and are not renewed, their remaining priority permit applications would be handled like those of any other non-participant, in a manner decided by the assigned Regulatory personnel and his/her supervisor.

Procedures to be used to ensure impartial decision-making: To ensure the funds will not impact impartial decision-making, the following procedures would apply:

- 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. For example, if the decision maker is the Chief of the Regulatory Division, then the reviewer would be the District Commander.
- b. All final permit decisions for cases where these funds are used will be made available on each District's 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. Funds will only be expended to provide priority review of the participating non-federal entity's permit applications.

Impacts to the Regulatory Program: We do not expect priority review of CCSF projects to negatively impact the San Francisco District's Regulatory 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 San Francisco 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, then San Francisco District will implement Section 214 of WRDA 2000 through a signed memorandum

of agreement and accept the funds from CCSF. A second public notice will be issued regarding the District Commander's final decision on this matter. Beyond that, no new public notice will be issued if CCSF increases the amount of funds previously furnished, provided that the proposed terms of acceptance and expenditure of funds remains the same.

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 City and County of San Francisco 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, San Francisco District, Regulatory Division, ATTN: Holly Costa, San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-13978. Alternatively, comments can be sent electronically to: holly.n.costa@usace.army.mil

For additional information, please contact Holly Costa of my staff (415) 503-6780. This public notice is issued by Jane Hicks, San Francisco District Regulatory Division Chief.