US Army Corps
of Engineers®

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

NUMBER: 04-01 DATE: 16 April 2004

RESPONSE REQUIRED BY: 16 May 2004

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

PROJECT MANAGER: Bob Smith Phone: (415) 977-8450/E-mail: rsmith@spd.usace.army.mil

This Public Notice announces the proposed intent of the Corps of Engineers, San Francisco District, Regulatory Branch to accept and expend funds contributed by the San Francisco Public Utilities Commission (SFPUC) to provide priority evaluation of their Department of the Army (DA) permit applications, subject to the limitations specified below. The Corps' Sacramento District Regulatory Branch, 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, to provide priority review of SFPUC projects. With the additional funding, the Federal agencies would hire additional Federal employees, paying salaries from the SFPUC account to the degree the employees are working on SFPUC permit applications.

The *Water Resources Development Act of 2000* (WRDA 2000, Public Law No. 106-541) as amended, allows the Corps of Engineers to accept funds from non-federal public entities to provide priority review of their permit applications. 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."
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> "(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."
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> Section 114 of the Energy and Water Development Appropriations Act 2004 (EWDA 2004; Public Law 108-137) states:
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> "Section 114. Section 214(a) of Public Law 106-541 is amended by striking "2003" and inserting "2005".

Furthermore, Section 140 of the EWDA of 2004 states:

> "Sec 140. SAN FRANCISCO, CALIFORNIA. CAPITAL IMPROVEMENT PROJECT-
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> (1) Establishment of Office. - The Secretary shall establish a centralized office at the office of the district engineer, San Francisco, California, for the use of all Federal and State agencies that are or will be involved in issuing permits and conducting environmental reviews for the capital improvement project to repair and upgrade the water supply and delivery system for the city of San Francisco.
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> (2) Contributions- The Secretary may use the authority under section 214 of the Water Resources Development Act of 2000 (33 U. S. C. 2201 note) for the project described in paragraph (1).
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> (3) Protection of Impartial Decision making- In carrying out this section, the Secretary and the heads of Federal agencies receiving funds under such section 214 for the project described in paragraph (1)

shall ensure that the use of the funds accepted under such section for such project will not impact impartial decision making with respect to the issuance of permits, either substantively or procedurally, or diminish, modify, or otherwise affect the statutory or regulatory authorities of such agencies."

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 current authorization to accept and expend funds from non-Federal public entities expires on September 30, 2005.

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.

How the San Francisco District would expend the funds: The Corps of Engineers' regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received from the SFPUC, a non-Federal public entity, would be used to augment the San Francisco and Sacramento District regulatory budget in accordance with the provisions of WRDA 2000 and EWDA 2004. The San Francisco District would establish a separate account for the SFPUC to track receipt and expenditure of the funds. San Francisco and Sacramento District regulatory project managers, and other federal agencies would charge their time against the account when they would work on SFPUC projects. With the additional funding, the San Francisco and Sacramento Districts, and other federal agencies would hire additional Federal employees, paying salaries in part from the SFPUC account to the degree the employees are working on those permit applications.

Activities for which funds will be expended: Funds would be expended mainly on the labor and overhead of Federal agency project managers performing evaluation of SFPUC projects. Such activities would include, but not be limited to the following: application completeness review; jurisdictional determinations, wetland delineations or verifications; site visits; public notice preparation; public hearings if necessary; preparation of correspondences; meetings with the applicant, agencies and the general public; endangered species and cultural resource coordination; conduct the public interest review; analysis of alternatives, mitigation proposal reviews, and preparation of environmental assessments and permit decision documents. *No enforcement or compliance activities would be paid from the augmenting funds.*

Funds may also be expended to hire independent contractors to perform select duties; such as site visits, technical writing or review of specific items, such as biological assessments for endangered species and Essential Fish Habitat determinations, and other technical documents.

If SFPUC's funds are expended and are not renewed, its remaining permit applications would be handled like those of any other non-participant, 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 the funds will not impact impartial decision making, the following procedures would apply to all cases using funds provided by the participating the SFPUC:

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, Regulatory Branch, then the reviewer would be the Chief, Operations-Readiness Division.

b. All final permit decisions for cases where these funds are used will be made available on the San Francisco District Regulatory 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 application.

Impacts to the regulatory program: We do not expect priority review of SFPUC projects to negatively impact the San Francisco or Sacramento Districts' regulatory program, or to increase the time for permit evaluations of other projects since additional staff will be hired to augment this priority review.

Consideration of Comments: The Corps of Engineers 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 administrative practice. If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with the WRDA 2000, and is not otherwise contrary to the general public interest, the San Francisco District will implement Section 214 of WRDA 2000 and accept funds from the San Francisco Public Utility Commission. A final public notice will be issued regarding the District Commander's decision.

Submission of Comments: Interested parties may submit, in writing, any comments concerning this proposal. Comments should include the number and the date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197, or by contacting Bob Smith of our office at telephone (415) 977-8450 or E-mail: rsmith@spd.usace.army.mil.