



Public Notice

US Army Corps
of Engineers
Alaska District

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Regulatory Division (1145b)
CEPOA-RD
Post Office Box 6898
Anchorage, AK 99506-0898

In reply refer to above Identification Number
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SPECIAL PUBLIC NOTICE 2007-218

This Special Public Notice announces the preliminary intent of the Alaska District to accept and expend funds contributed by the Alaska Department of Transportation and Public Facilities (ADOT&PF) under the provisions of the Water Resources Development Act (WRDA) of 2000, as amended.

This Public Notice also solicits comments from the general public on the subject of acceptance and expenditure of funds contributed by this non-Federal public entity to expedite the evaluation of Department of the Army (DA) permit applications.

On December 11, 2000, WRDA 2000 (Public Law No. 106-541) was signed into law by the President of the United States.

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 decisionmaking with respect to permits, either substantively or procedurally."

On December 1, 2003, the Energy and Water Appropriations Bill, (H2754, Public Law 108-137) was signed into law by the President of the United States.

Section 214 of WRDA 2000 was amended by striking "2003" and inserting "2005", and was subsequently amended to "December 31, 2006"

On December 20, 2006, Public Law 109-434 was signed into law by the President of the United States: "To extend through December 31, 2008, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits."

The Secretary of the Army has delegated this responsibility to the Chief of Engineers and his authorized representatives, including the Commander of the Alaska District, U.S. Army Corps of Engineers (Alaska District).

We also want to discuss the following subjects with this Public Notice:

- definition of non-Federal public entities,
- how the Alaska District would expend the funds,
- the kind of activities for which funds would be expended,
- the procedures we will use to ensure that the funds will not impact impartial decisionmaking,
- the benefits non-Federal public entities would receive from their funds,
- impacts we foresee to our regulatory program and to DA permit evaluations that are not subsidized by funds contributed by non-Federal public entities.

Non-Federal public entities are comprised of various forms 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, or governmental economic development agencies seeking to expedite permit applications for certain kinds of work, including industrial or commercial development. Two or more non-Federal public entities could jointly fund a single account. To date, the Alaska District has had funding discussions with ADOT&PF. We expect participating entities would be public agencies with a number of permit applications being simultaneously considered by the Alaska District, and enough future projects in the planning stage to warrant this form of partnership.

The Corps of Engineers' regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received from non-Federal public entities would be used to augment the Alaska District regulatory budget in accordance with the provisions of WRDA 2000. The Alaska District would establish separate accounts for each funding non-Federal public entity to track receipt and expenditure of the funds. Alaska District regulatory employees would charge their time against the respective account of a non-Federal public entity when they did work to expedite resolution of one of that entity's permit requests. With an increased regulatory budget, the Alaska District would hire additional employees, paying salaries in part from the non-Federal public entity funding to the degree the employees work on expediting those entities' permit applications.

Funds would mainly be expended on the salaries and overhead of Regulatory Project Managers performing expedited processing activities for participating non-Federal public entities. 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. Funds would not be expended for review of project managers' work by supervisors, other elements of the Alaska District, or other persons in the decisionmaking 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 distribution of public notices.

Funds may also be expended to hire contractors to perform select duties such as site visits, technical writing, copying, technical contracting for review of specific items such as biological assessments for endangered species, writing drafts of reference biological assessments to be used by funding entities and the general public alike, preparing regional general permits, Essential Fish Habitat determinations, and other technical documents, including draft environmental documents.

If a participating entity's funds are expended and are not renewed, their 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.

To ensure that the funds will not impact impartial decisionmaking, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, would apply to all cases using additional funds provided by the participating non-Federal public entities:

- a. All final permit decisions for cases where these funds are used must be reviewed at least by one level above the decisionmaker, unless the decisionmaker is the District Commander. For example, if the decisionmaker is the Chief, South Branch, Regulatory Division, then the reviewer would be the Deputy Chief, Regulatory Division.
- b. All final permit decisions for cases where these funds are used will be made available on the Alaska District Regulatory web page.
- c. The Alaska 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 Alaska District must comply with all applicable laws and regulations.
- e. Funds will only be expended to expedite the final decision on the permit application. Funds will not be expended for the review of the decisionmaker's decision. If contracts are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Corps regulatory program employees, before the decision is made.

Section 214 of WRDA 2000 is designed to enable the Alaska District regulatory program to expedite the processing of non-Federal public projects. Participating agencies can expect some of their permit applications to receive expedited handling, and to the degree we consider it appropriate, they can set priorities. Their augmentation of our regulatory budget would allow us to hire additional people, increasing the size of the pool from which we would assign people to expedite these applications. The result for participants should be streamlined permit processing, new tools to resolve issues, and a more predictable time-line for obtaining DA authorizations.

We do not expect this method of expediting the permit review of certain public projects to negatively impact the Alaska District's regulatory program, or to increase the waiting time for permit evaluations that are not subsidized by funds contributed by non-Federal sponsors. Rather, the Regulatory Division project managers could process the remaining applications which are not assigned to the WRDA 2000 employees/contractors on a quicker basis. 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.

This public notice has a 30-day comment period. Following the review of comments we receive in response to the public notice, the Alaska District Commander will determine if acceptance and expenditure of the funds is in compliance with Section 214 of WRDA 2000. 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 Alaska

District will proceed to accept and expend such funds from the Alaska Department of Transportation and Public Facilities. 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.

The authority to accept and expend funds from non-Federal public entities expires on December 31, 2008.

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 public interest to proceed with this administrative practice. Comments should reach this office, Attn: Regulatory Division, not later than the expiration date of this public notice.

The Alaska District point of contact for this public notice is William A. Keller, who can be reached at (907) 753-2712.

Note: This Public Notice requesting use of WRDA 2000 funding, under the Water Resources Development Act can be found on the Alaska District's internet Regulatory Home Page: <http://www.poa.usace.army.mil/Reg/>

District Engineer
U.S. Army, Corps of Engineers