



**US Army Corps
of Engineers
Galveston District**

Public Notice

PROPOSAL TO ACCEPT FUNDS FROM PORT FREEPORT

Comment Period: September 12, 2013 to October 12, 2013

Project Manager: Lynn Vera

This Public Notice announces the preliminary intent of the U.S. Army Corps of Engineers, Galveston District (“Galveston District”) to accept funds contributed by Port Freeport. The Galveston District would allocate funds internally and distribute funds to other supporting Corps of Engineers Districts in order to expedite the Department of Army processing of modifications to the Freeport Ship Channel Project in accordance with 33 U.S.C. 408¹ (Section 408), subject to a series of limitations specified below.

The Galveston District may accept and expend these funds pursuant to Section 214 of the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541) as amended, which provides that the Secretary of the Army, after public notice, may accept and expend funds contributed by a non-federal public entity to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army. In doing so, the Secretary must ensure that the use of such funds will not impact impartial decision making with respect to permits, either substantively or procedurally. The authority provided in Section 214 is 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 District Commanders of the U.S. Army Corps of Engineers.

Authorized representatives of the District Commander for the Galveston District are negotiating an agreement with Port Freeport to accept and expend funds to expedite Section 408 review and evaluations of proposed modifications to the Freeport Ship Channel Project.

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. These entities include, but are not limited to, flood and storm water management agencies, port authorities, local transportation agencies, and governmental economic development agencies. Port Freeport meets this definition.

¹ 33 USC 408 provides authority to the Secretary of the Army to grant permission for the alteration or modification of Corps 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 Galveston District's acceptance of funds from Port Freeport is expected to expedite the processing of the proposed modification: The Corps' Operation and Maintenance Inspection of Completed Works program is funded through the Corps' Civil Works program in the annual Federal budget. The Galveston District would receive additional funds from Port Freeport and would add those funds to the Operation and Maintenance budgets of the Galveston District and supporting Districts, in accordance with the provisions of Section 214 of WRDA 2000. Funding to the supporting Districts will facilitate independent reviews by staff outside the Corps resident Galveston District, as required by Corps review policy.

Activities for which funds will be expended: Funds would be expended primarily on the direct labor and overhead of Corps' Civil Works personnel evaluating the engineering plans and reports prepared by engineering consultants or the Port Freeport. Such review and processing activities would include, but not be 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, coordination activities, additional personnel (including support/clerical staff), technical contracting, and environmental documentation preparation and review.

Any funds provided by Port Freeport that remain unexpended at completion of the Section 408 review and approval process will be returned by the Galveston District to Port Freeport upon request.

Procedures to be used to ensure impartial decision-making: Approval of the Port Freeport Section 408 permit applications will be in accordance with 33 CFR 208.10, Local flood protection works; maintenance and operations of structures and facilities. 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 for the District Commander or the Division Commander's consideration and recommendation to the Director of Civil Works regarding the Port Freeport Section 408 permit application.
- b. Draft technical documents or draft decision documents resulting from the use of funds obtained from Port Freeport under Section 214 will be reviewed and signed by a reviewer who is not funded by funds received under Section 214 for the Port Freeport Section 408 permit application.
- c. All final permit decisions for cases where Section 214 funds are used will be made available on the Galveston District website on a monthly basis.
- d. The Galveston District will not eliminate any procedures or decisions that would otherwise be required for that type of project and permit application under consideration.
- e. The Galveston District will comply with all applicable laws and regulations.
- f. Section 214 funds will only be expended to provide priority review of the participating non-federal entity's permit application.

Impacts to the Civil Works Program: We do not expect priority review of the Port Freeport projects to negatively impact the Corps District's Civil Works Programs, or to increase the time for evaluations of other projects.

Consideration of Comments: The Galveston District 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 Galveston 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 Galveston District will implement Section 214 of WRDA 2000 through a signed Memorandum of Agreement (“MOA”) and accept the funds from Port Freeport. 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: Interested parties may submit, in writing, any comments concerning this proposal. Comments should refer to Proposed Acceptance of Funds from Port Freeport and the date of this Public Notice, and be postmarked by the comment due date. Comments must be sent to the U.S. Army Corps of Engineers, Galveston District, Attention: Lynn Vera, P.E., CESWG-OD-O, P.O. Box 1229, Galveston, TX 77553-1229. Alternatively, comments can be sent electronically to: laura.l.vera@usace.army.mil.

For additional information, please call Lynn Vera, P.E. at (409) 766-6370. This public notice is issued by the U.S. Army Corps of Engineers, Galveston District.