



Special Public Notice

U.S. Army Corps
Of Engineers
Galveston District

Subject:
Date Issued:

PHA-WRDA 2000

14 February 2012

**FUNDING AGREEMENT
BETWEEN
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
AND
PORT OF HOUSTON AUTHORITY
PURSUANT TO
SECTION 214 WATER RESOURCE DEVELOPMENT ACT 2000**

PURPOSE OF PUBLIC NOTICE: To inform you of an agreement between the U.S. Army Corps of Engineers, Galveston District (Galveston District), and the Port of Houston Authority to transfer funds pursuant to Section 214 of the *Water Resources Development Act of 2000* to expedite the evaluation of permits under jurisdiction of the Department of the Army (DA).

AUTHORITY: Section 214 of the *Water Resources Development Act of 2000* (WRDA 2000, Public Law No. 106-541), 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 through 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 Galveston District, U.S. Army Corps of Engineers. This Public Notice announces the intent of the Galveston District to accept and expend funds contributed by the Port of Houston Authority to expedite processing of their DA permit applications, subject to a series of limitations.

We also want to discuss the following subjects with this Public Notice: definition of non-Federal public entities; how the Galveston 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 decision making; the benefits the Port of Houston Authority would receive from their funds; and impacts we foresee to our Regulatory Program and to DA permit evaluations that are not subsidized by funds contributed by the Port of Houston Authority.

Definition of 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, levee districts, 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. We expect participating entities would be public agencies with a number of permit applications being simultaneously considered by the Galveston District, and enough future projects in the planning stage to warrant this form of partnership. The Port of Houston Authority meets the definition of a non-Federal public entity.

How the Galveston District will 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 Port of Houston Authority will be used to augment the Galveston District Regulatory budget in accordance with the provisions of WRDA 2000. The Galveston District will establish separate account for the Port of Houston Authority to track receipt and expenditure of the funds. Galveston District Regulatory employees will charge their time against the respective account of the Port of Houston Authority when they do work to expedite resolution of one of the Port of Houston Authority's permit requests. With an increased Regulatory budget, the Galveston District may hire additional employees, paying salaries in part from the Port of Houston Authority funding to the degree the employees work on expediting the Port of Houston Authority's permit applications.

The kind of activities for which funds would be expended: Funds will mainly be expended on the salaries and overhead of Regulatory Project Managers performing expedited processing activities for the Port of Houston Authority. Such activities would include, but not be limited to, the following: application intake review, 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 will not be expended for review of Regulatory project managers' work by supervisors, other elements of the Galveston District, or other persons in the decision making chain of command. No enforcement or compliance activities will be paid from the augmenting funds, nor will the funds be used for paying the costs of public hearings and distribution of public notices.

If the Port of Houston Authority's funds are expended and are not renewed, their remaining permit applications will 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 Galveston District will use to ensure that the funds will not impact 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, will apply to all cases using additional funds provided by the Port of Houston Authority:

- 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 Branch, then the reviewer would be the Chief of the Planning, Environmental, and Regulatory Division.
- b. All final permit decisions for cases where these funds are used will be made available on the Galveston District Regulatory web page.
- c. 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.
- d. The Galveston 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 decision maker'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.

Benefits the Port of Houston Authority will receive from their funds: Section 214 of WRDA 2000 is designed to enable the Galveston District Regulatory Program to expedite the processing of public projects. The Port of Houston Authority 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 may 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 the Port of Houston Authority should be streamlined permit processing, new tools to resolve jurisdictional determination issues, and a more predictable time-line for obtaining DA decisions.

Impacts we foresee to our Regulatory Program and to DA permit evaluations that are not subsidized by funds contributed by non-Federal public entities: We do not expect this method of expediting the permit review of certain public projects to negatively impact the Galveston 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 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.

Consideration of Comments: A Public Notice was issued on December 12, 2011, with a 15-day comment period. The Galveston District Commander has determined, 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 proceed with acceptance and expenditure of funds from the Port of Houston Authority.

The authority to accept and expend funds from non-Federal public entities expires on December 31, 2016.

DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS