



SPECIAL PUBLIC NOTICE

**U. S. ARMY CORPS OF ENGINEERS
NEW ORLEANS DISTRICT**

BUILDING STRONG®

**NOTICE OF INTENT TO ACCEPT FUNDS FROM THE
LAKE CHARLES HARBOR AND TERMINAL DISTRICT
FOR EXPEDITING SECTION 408 REQUESTS**

Public Notice Issue Date: April 29, 2016

Comment Period Expiration Date: May 16, 2016

This Special Public Notice announces the intent of the United States Army Corps of Engineers (“USACE”), New Orleans District (“CEMVN”), to accept and expend funds from the Lake Charles Harbor and Terminal District (“LCHTD”) for the purpose of providing the expedited review, evaluation, and processing of permission requests for LCHTD projects and activities that are under the jurisdiction of the Department of the Army (“DA”).

This Special Public Notice solicits comments from the general public, concerned agencies, and organizations on the subject of the acceptance and expenditure of funds to be contributed by LCHTD to expedite the evaluation of DA permits pursuant to 33 U.S.C Section 2352, also referred to as Section 214 of the Water Resources Development Act of 2000, (“Section 214”), as amended by Section 1006 of the Water Resources Reform and Development Act of 2014. The public comment period under this Special Public Notice is 15 days.

LCHTD has multiple proposed projects and activities that generally involve the upgrading of existing port facilities and constructing new port facilities at the Lake Charles Harbor and Terminal, and that will require permissions pursuant to Section 14 of the Rivers and Harbors Appropriation Act of 1899, as amended (33 U.S.C. 408) (hereinafter “Section 408”). Section 408 provides authority to the Secretary of the Army (“Secretary”) to grant permission for the alteration or modification of USACE federal civil works projects when, in the judgment of the Secretary, the alteration or modification will not be injurious to the public interest and will not impair the usefulness of the USACE project.

Name of the Funding Entity.

The Funding Entity is the Lake Charles Harbor and Terminal District, a non-federal public entity. The term “non-federal public entity” is limited to governmental agencies or governmental public authorities, including governments of federally recognized Indian Tribes. Non-federal public entities include, but are not limited to, port authorities; state, local or Tribal local transportation agencies; flood and storm water management agencies; and public infrastructure departments that have the desire to expedite the permitting process either programmatically or for a specific project. Projects by a non-federal public entity may potentially be funded by private funds, or a mix of private and

public funds. The non-federal public entity must be the proponent of the Section 408 request. A permit or permission if granted, must be issued to a non-federal public entity; and the proposed single or complete project must have a public purpose. It is not acceptable for private entities to provide funds to a non-federal public entity to expedite a private project. District Commanders have the discretion to determine whether a single or complete project has a public purpose and therefore, may be reviewed under a Section 214 funding agreement with a non-federal public entity.

Statutory Authority to Accept and Expend the Funds.

Pursuant to Section 214 and USACE Engineering Circular (“EC”) 1165-2-216 (as amended from time to time), the Secretary after public notice, may accept and expend funds contributed by a non-federal public entity, to expedite the evaluation of permits and permissions of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army, including Section 408. 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 Secretary has delegated decision-making responsibility on the acceptance of funds under Section 214 to the Chief of Engineers and his authorized representatives, including District Commanders of USACE.

Reason for the Contribution of Funds.

By correspondence dated April 12, 2016, LCHTD requested CEMVN to expedite the evaluation of Section 408 requests to be submitted by LCHTD for multiple proposed projects and activities that involve the upgrading of existing LCHTD port facilities and constructing new port facilities that will require, among other DA permits, Section 408 permissions.

How the District’s Acceptance of Funds Will Expedite the Section 408 Process.

Funds received from LCHTD will be used by CEMVN in accordance with the provisions of Section 214 and all applicable USACE guidance and regulations. CEMVN personnel accomplishing the technical and administrative tasks required to expedite the evaluation of the Section 408 requests, shall charge their time against a specific account expressly established by CEMVN for the processing of LCHTD Section 408 requests. The District Commander shall designate a Section 408 Coordinator responsible for ensuring the processes set forth in applicable USACE regulations are met, and that the proper coordination occurs among all necessary CEMVN elements, including but not limited to, regulatory, real estate, office of counsel, planning, engineering, programs and project management, and/or operations. The Section 408 Coordinator will track CEMVN expenditures, including funding provided by LCHTD for expediting the processing of Section 408 requests by federal fiscal year basis by funding source. CEMVN shall expedite the evaluation of LCHTD’s Section 408 permission requests in accordance with the terms and conditions of a Funding Agreement to be executed by CEMVN and LCHTD.

Types of Activities on Which the Funds Will Be Expended.

Funds provided by LCHTD will be primarily expended on direct labor, salaries, and overhead for CEMVN personnel performing expedited Section 408 permission processing activities for the proposed LCHTD projects and activities. Examples of CEMVN tasks and activities that the funds may be expended on include, but are not limited to: District-led Agency Technical Review, real estate evaluation, technical writing, copying and other clerical/support tasks, site visits, travel, coordination activities, training, field office set up costs, technical contracting, programmatic tool development and improvement, acquisition of geographic information system data, additional personnel (including support/clerical staff), contracting support for technical services and environmental reviews and the filing of the environmental compliance documents. Funds may be used to hire contract staff. If contracts are used to develop decision documents or other NEPA documentation, such documents must be drafts only, and shall be reviewed and adopted by the USACE decision maker pursuant to EC 1165-2-216 before a Section 408 decision can be made.

Funds may be used to contract discrete tasks to inform decisions or conduct administrative actions. Funds may be expended for administrative tasks associated with managing and tracking the work completed under the Funding Agreement. No funds will be used by the Division or District Commanders for their review, recommendation, or decision concerning a Section 408 request. Funds will not be expended on compliance or enforcement actions. Funds will not be expended for review of the decision-maker's decision. The funds provided shall not be used to cover administrative expenses related to the issuance of real property instruments required if the Section 408 permission is granted. Those administrative costs for drafting, negotiating, or issuing any necessary real estate instruments, may be accepted under the provisions of 10 U.S.C. 2695.

Procedures to Ensure Funds Will Not Impact the District's Impartial Decision Making.

In order to ensure the funds accepted from LCHTD are expended for the intended purpose, the CEMVN shall establish separate accounts in the USACE Financial Management System to track the acceptance and expenditure of funds pursuant to the Funding Agreement in accordance with the USACE current fiscal year budget execution guidance. CEMVN will provide an annual report on the Funding Agreement to CECW-CO-R as required by USACE Guidance. Funds will only be expended to expedite the priority review and approval of Section 408 requests. If contracts are used to develop decision documents, such documents shall be drafts only and subject to review and adoption by the CEMVN before the decision is made.

HQUSACE will maintain a Regulatory web page that will include a copy of the Funding Agreement, a list of all Section 408 decisions made under the Funding Agreement during each federal fiscal year of the Funding Agreement, including the impacts and mitigation data, among other additional required data, information and documentation. CEMVN will provide a link to the HQ Regulatory informational web page on the CEMVN web page. All final decisions on permit and permission applications, will be made available, updated monthly and published on the CEMVN public web page.

The Section 408 review by CEMVN shall follow the same procedures for decisions that would otherwise be required for the evaluation of permits and permissions for similar projects or activities not carried out using funds authorized under Section 214. CEMVN shall not eliminate any procedures or decisions that would otherwise be required for the types of projects and Section 408 requests under consideration, and shall comply with all applicable laws, regulations, policies, and guidance. However, process improvements that are developed by CEMVN can be shared in order for all members of the general public to benefit. No prescribed procedures, analyses, decisions, or other activities will be eliminated, curtailed, or omitted by CEMVN for purposes of expediency.

All final Section 408 decision documents, including all reporting and state programmatic permit verifications, shall be reviewed and approved in writing by a responsible official, at least one level above the decision maker. The decision maker is the person that has been delegated signature authority. The one-level-above review must be a position that is not partially or fully funded by the same funding entity. If the Section 408 approval authority is at the level of the USACE Director of Civil Works, the CEMVN through the Mississippi Valley Division, shall provide sufficient information to assure the decision maker that the acceptance and expenditure of funds by the CEMVN under the Funding Agreement has not affected the CEMVN's or the Division's evaluation of the Section 408 request, either substantively, or procedurally. Draft technical documents or draft decision documents shall be reviewed and signed by unfunded reviewers prior to consideration by the Division or District Commander. No funds received shall be expended for the CEMVN District Commander's consideration and recommendation to the Director of Civil Works regarding LCHTD Section 408 requests.

The granting or denial of a permission pursuant to Section 408 is not a permit action handled by the USACE Regulatory Program. If a proposed alteration also requires authorization pursuant to Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and/or Section 103 of the Marine, Research, and Sanctuaries Act of 1972 ("Section 10/404/103") CEMVN Regulatory and the Section 408 Coordinator and personnel shall coordinate throughout their respective evaluations. No funds will be accepted by CEMVN under the Funding Agreement to expedite the review and processing of any Section 10/404/103 permit applications for any of the projects or activities of LCHTD for which a Section 408 request has also been submitted. Regulatory funds cannot be used to develop or coordinate any components of the Section 408 request independent of a Section 10/404/103 action.

Impacts of the Proposed Funding Agreement on the District's Civil Works Program.

CEMVN does not expect the Proposed Funding Agreement and the expedited review of the LCHTD Section 408 requests for permissions to negatively impact the District's Civil Works Program, or to increase the time for evaluations of other projects submitted to CEMVN by the general public.

Impacts of the Proposed Funding Agreement on the District's Ability to Review Other Section 408 Requests.

Activities conducted in accordance with the Funding Agreement must expedite the Section 408 permission review process and may include generally shorter review times as compared to typical review times, facilitation of a smoother review process through improved coordination and communication, and/or the development or use of programmatic agreements or standard operating procedures. Activities conducted under the Funding Agreement shall not result in an adverse effect on the timeframes for review of other Section 408 requests within the New Orleans District, when considered collectively. The Funding Agreement will not negatively impact the CEMVN's ability to review other Section 408 requests nor will it increase the time frames for evaluations of Section 408 requests submitted to CEMVN by the general public.

Consideration of Comments.

This Special Public Notice has a 15-day public comment period. Comments will be made part of the Administrative Record and considered in determining whether it would be in the public interest to proceed with this action. If the CEMVN District Commander determines, after considering the public comments, that the acceptance and expenditure of the funds is in compliance with Section 214 and it is not otherwise contrary to the public interest, the CEMVN District Commander will document the decision in a Memorandum for Record and an informational Public Notice will be issued regarding the District Commander's final decision. CEMVN will post the informational Public Notice on the CEMVN webpage at:

<http://www.mvn.usace.army.mil/Missions/214Agreements.aspx> in the same location used for this Special Public Notice, and will distribute the notice to concerned agencies, organizations, and the interested public.

CEMVN will implement the Section 214 Funding Agreement through a signed Memorandum of Agreement ("MOA") for the purpose of establishing the framework for the acceptance and expenditure of funds provided by LCHTD to expedite the evaluation and processing of Section 408 requests for permissions and the acceptance of the required funds from LCHTD. Provided that the purpose of accepting funds remains the same as that described in this Public Notice, a new Public Notice is not required in the event that the MOA is amended to extend the term of the MOA; to modify the list of priority projects identified in the MOA (if any); or to adjust the terms of the annual advance payment contemplated by the MOA.

Submission of Comments.

Interested parties may submit written comments related to this Special Public Notice of the intent of CEMVN to accept and expend funds under Section 214 for the expedited processing of LCHTD Section 408 requests. All comments must be post-marked by the comment due date of May 16, 2016. All comments should refer to this Special Public Notice dated April 29, 2016, "Proposed Lake Charles Harbor and Terminal District

Funding Agreement". Comments must be sent to:

The United States Army Corps of Engineers, New Orleans District
Operations Division
ATTN: Michael F. Park
Post Office Box 60267,
New Orleans, Louisiana 70160-0267

Alternatively comments may be sent electronically to: Michael.F.Park@usace.army.mil
All e-mailed comments must be received by CEMVN no later than May 16, 2016. For
additional information please contact Ms. Tracy A. Falk at (504) 862-2971 or by e-mail to
Tracy.A.Falk@usace.army.mil

This Special Public Notice is issued by Michael F. Park, Chief, Operations Division,
USACE, New Orleans District.

**DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, U.S. ARMY CORPS OF ENGINEERS
Post Office Box 60267,
New Orleans, Louisiana 70160-0267**