



SPECIAL PUBLIC NOTICE

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

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**NOTICE OF PROPOSED INTENT TO ACCEPT FUNDS FROM THE
STATE OF LOUISIANA, COASTAL PROTECTION & RESTORATION AUTHORITY
FOR EXPEDITING DEPARTMENT OF THE ARMY
PERMISSION AND PERMIT APPLICATIONS**

Public Notice Issue Date: May 13, 2016

Comment Period Expiration Date: June 3, 2016

This Special Public Notice announces the proposed intent of the United States Army Corps of Engineers (“USACE”), New Orleans District (“CEMVN”), to accept and expend funds from the State of Louisiana, Coastal Protection and Restoration Authority (“CPRA”) for the purpose of providing expedited review, evaluation, and processing of Department of the Army (“DA”) permission requests and permit applications to be submitted by CPRA for their proposed Mid-Breton Sediment Diversion Project (“Project”).

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 CPRA to expedite the evaluation of DA permission and permit requests 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 twenty (20) calendar days.

CPRA intends to submit a request for permission for the Project under 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 a USACE project. In addition, CPRA will also submit a Joint DA Permit Application for the Project under the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344) (hereinafter “Section 404”), and Section 10 of the Rivers and Harbors Appropriation Act of 1899, as amended (33 U.S.C. 403) (“Section 10”) which may be collectively referred to as “Section 10/404” herein.

The proposed Project generally consists of the construction of a sediment diversion structure through a portion of the USACE Mississippi River and Tributaries Project mainline levee in Plaquemines Parish, Louisiana. The diversion structure would be operated by CPRA to divert freshwater and sediments from the Mississippi River through a diversion channel into an outfall area.

Name of the Funding Entity.

The Funding Entity is the State of Louisiana, Coastal Protection and Restoration Authority, 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 departments/agencies; flood and storm water management agencies; and public infrastructure departments that have the desire to expedite the permitting and permission processes either programmatically or for a specific project.

Funding can only be accepted and expended pursuant to Section 214 to expedite a Section 408 review if the proposed alteration serves a public purpose. CPRA, as non-federal public entity, must be the proponent of the Section 408 permission request. District Commanders have the discretion to determine whether a single or complete project has a public purpose and therefore, may be reviewed under a Funding Agreement with a non-federal public entity. It is not acceptable for private entities to provide funds to a non-federal public entity to expedite a private project. No funds provided by a federal agency to CPRA under the Funding Agreement may be accepted by USACE unless CPRA forwards to USACE, a written confirmation from the federal agency, that the use of the funds to expedite the evaluation of the Section 408 permission request is acceptable.

Statutory Authority to Accept and Expend the Funds.

Pursuant to Section 214 and USACE Engineering Circular (“EC”) 1165-2-216 http://www.publications.usace.army.mil/Portals/76/Publications/EngineerCirculars/EC_1165-2-216.pdf the Secretary after public notice, may accept and expend funds contributed by a non-federal public entity, to expedite the evaluation of applications for permits and requests for 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 10, Section 404, and Section 408. The Secretary must ensure that the use of such funds will not impact impartial decision making with respect to permits and permissions, 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 27, 2016, CPRA has requested CEMVN to expedite the evaluation of a Joint DA Section 10/404 Permit Application and a Section 408 permission request to be submitted by CPRA for the Project, and has stated CPRA’s intent to provide the funds necessary to expedite the permit and permission evaluations and processing.

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

Funds received from CPRA will be used by CEMVN in accordance with the provisions of Section 214, EC 1165-2-216, and all applicable USACE guidance and regulations. 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. CEMVN shall expedite the evaluation of the Section 408 request in accordance with the terms and conditions of the Funding Agreement to be executed by CEMVN and CPRA. 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.

Types of Activities on Which the Funds Will Be Expended.

Prior to expending funds on any activity, CEMVN shall determine that the activity contributes to meeting the specific purpose of the appropriate authorities (i.e., Section 10/404 and Section 408). Funds provided by CPRA will be primarily expended on direct labor, salaries, and overhead for CEMVN personnel performing expedited Section 10/404 and Section 408 permitting and permission processing activities for the Project. Examples of CEMVN tasks and activities that the funds may be expended on include, but are not limited to: application intake review, permit database entry, correction of drawings, jurisdictional determinations, jurisdictional delineation verifications, functional or conditional assessment verifications, public scoping meetings, preparation of public notices, drafting of correspondence, conducting the public interest review, meetings with CPRA, preparation of draft permit decision documents, engineering, technical, legal and policy analyses, real estate evaluation, risk analysis, 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, early coordination activities such as National Environmental Policy Act ("NEPA")/404 synchronization procedures, and any other permit evaluation related activities that are mutually agreed upon in writing by the parties.

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 also be expended for administrative tasks associated with maintaining and tracking the work

completed under the Funding Agreement. 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.

No funds will be used by the Division or District Commanders for their review, recommendation, or decision concerning the Section 408 request. Funds will not be expended for review of the decision-maker's decision. CEMVN will provide an annual report on the Funding Agreement to CECW-CO-R as required by USACE Guidance. If contracts are used to develop decision documents, such documents shall be drafts only and subject to review and adoption by CEMVN before the decision is made.

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

In order to ensure the funds accepted from CPRA are expended for the intended purposes, CEMVN shall establish a separate account for expenditures for the Joint DA Section 10/404 permit application processing, and a separate account for expenditures for the Section 408 permission request processing, in the USACE Financial Management System to track the acceptance and expenditure of funds in accordance with the USACE current fiscal year budget execution guidance. CEMVN personnel accomplishing the technical and administrative tasks required to expedite the evaluation of the Joint DA Section 10/404 permit application and the Section 408 request shall charge their time against the specific applicable account when working on those requests.

Regulatory funds can only be used for Section 10/404 actions, which may include actions associated with the Section 408 request. Regulatory staff can use Regulatory funds to participate in joint meetings and internally coordinated portions of shared documents when the Section 408 request also requires a Section 10/404 action. Regulatory funds cannot be used to develop or coordinate any components of the Section 408 request independent of a Section 10/404 action. If the Section 408 request requires Division or HQUSACE coordination and/or review, no Section 10/404 permit decision documentation will be forwarded to Division or HQUSACE in order to preserve the independent decision-making authority of CEMVN and Division Commander. CEMVN, however, shall ensure that the Section 408 documentation clearly articulates that the Section 10/404 authorization is required.

The Section 408 Coordinator shall ensure that the processes in USACE regulations are met and that the proper coordination occurs among all necessary CEMVN elements. The Section 408 Coordinator will track CEMVN expenditures, including funding provided by CPRA for expediting the processing of the Section 408 request by federal fiscal year basis by funding source. The District Commander, or his authorized designee, shall designate a Regulatory Project Manager to oversee the Section 10/404 permit application processed by CEMVN to ensure that USACE regulations are met and that proper coordination occurs among CEMVN elements. The Regulatory Project Manager will

coordinate as necessary with the Section 408 Coordinator, throughout their respective evaluations.

HQUSACE maintains a Regulatory informational web page at <http://www.usace.army.mil/Missions/CivilWorks/Section408.aspx> that will include a copy of the Funding Agreement, a list of all permit and permission 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 HQUSACE 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 permission request and permit application reviews conducted 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 Project and reviews 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 permit and permission 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. For example, if the decision maker is a Regulatory Section Chief, then the one-level-above reviewer may be the Regulatory Chief or Deputy Chief. Team leaders are appropriate one-level above reviewers provided signature authority has been delegated to the project manager level. Instruments of mitigation banks or in-lieu-fee programs developed for CPRA pursuant to the Funding Agreement must be signed by a Regulatory Branch/Division Chief, an equivalent, or a higher level position that is funded by the Funding Agreement.

If the Section 408 approval authority is at the level of the USACE Director of Civil Works, CEMVN through the Mississippi Valley Division, shall provide sufficient information to assure the decision maker that the acceptance and expenditure of funds by CEMVN under the Funding Agreement has not affected the District'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 District Commander's consideration and recommendation to the Director of Civil Works regarding CPRA's Section 408 request.

All preliminary jurisdictional determinations and any approved jurisdictional determinations where funds are used must have documentation that a non-funded regulator conducted a review of the determination. Funds will not be used under the Funding Agreement for enforcement activities. However, funds received under the Funding Agreement may be used for compliance activities including monitoring of mitigation sites and compliance inspections.

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

CEMVN does not expect the Funding Agreement and the expedited review of the CPRA Section 10/404 permit application and the Section 408 permission request 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 under the Funding Agreement will 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 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.

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

CEMVN does not expect the Funding Agreement to negatively impact the CEMVN's Regulatory Program, or to increase the time frames for evaluations of applications for the general public with CEMVN. CEMVN anticipates that the benefits of implementing this expedited review process will result in an enhanced evaluation capability for all participants.

Consideration of Comments.

This Special Public Notice has been issued, posted, and published on the CEMVN webpage:

<http://www.mvn.usace.army.mil/Missions/214Agreement/214PublicNotices.aspx> and has also been distributed to concerned agencies, and organizations, and the interested public. There is a twenty (20) day public comment period pursuant to this Public Notice. 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 appropriate and 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 Public Notice to concerned agencies, organizations, and the interested public.

CEMVN will implement the 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 CPRA to expedite the evaluation and processing of the Section 10/404 permit application, the Section 408 permission request, and the acceptance of the required funds from CPRA. Provided that the purpose of accepting funds remains the same as that described in this Special Public Notice, a new Public Notice is not required in the event that the MOA is amended to extend the term of the MOA, 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 proposed intent of CEMVN to accept and expend funds under Section 214, for the expedited processing of the DA Section 10/404 permit application and the Section 408 permission request to be submitted for the Project by CPRA. All comments must be post-marked by the comment due date of May 13, 2016. All comments should refer to this Special Public Notice dated June 3, 2016, "Proposed CPRA Section 214 Funding Agreement". Comments must be sent to:

The United States Army Corps of Engineers, New Orleans District
Programs and Project Management Division
ATTN: Brad L. Inman
Post Office Box 60267
New Orleans, Louisiana 70160-0267

Alternatively comments may be sent electronically to: Brad L. Inman at Brad.L.Inman@usace.army.mil Email comments must be received no later than June 3, 2016.

For additional information regarding the Section 10/404 permit process, please contact Martin S. Mayer at (504) 862-2255 or by email to Martin.S.Mayer@usace.army.mil

For additional information regarding the Section 408 permission process, please contact Mike F. Park by email to Michael.F.Park@usace.army.mil

