



# *Initial Public Notice*

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**Public Notice Name:** *PROPOSAL TO ACCEPT AND EXPEND FUNDS FROM PORT OF BELLINGHAM*

**Public Notice Date:** 17 June 2014

**Expiration Date:** 17 July 2014

**US Army Corps of Engineers**  
Seattle District  
Planning Branch  
Post Office Box 3755  
Seattle, Washington  
98124-3799

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## **Public Notice Purpose**

This Public Notice announces the intent of the U.S. Army Corps of Engineers - Seattle District (Seattle District) to accept and expend funds contributed by the Port of Bellingham pursuant to the Water Resources Development Act of 2000 Section 214. The Seattle District would allocate funds internally to expedite processing of a Port of Bellingham's Department of the Army (DA) permit application, including 33 U.S.C. § 408, subject to a series of limitations, to alter a Federal project that is within the public interest and is determined to maintain the usefulness of the Federal project. This Public Notice solicits comments from the general public on the subject of acceptance and expenditure of funds contributed by the Port of Bellingham to expedite the evaluation of such DA permit application.

The following subjects will be discussed in this Public Notice:

- How the Seattle District would expend the funds,
- The kind of activities for which funds would be expended,
- The procedures used to ensure that the funds will not impact impartial decision-making,
- The benefits the Port of Bellingham would receive,
- Impacts foreseen to other DA permit evaluations that are not subsidized by funds contributed by non-Federal public entities.

## **Section 214 of the Water Resources Development Act Policy**

On December 11, 2000, the *Water Resources Development Act of 2000* (WRDA 2000, Public Law No. 106-541) was signed into law by the President of the United States. Section 214 was amended by Public Law 111-315 and provides as follows:

- (a) In general. - The Secretary, 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.
- (b) Effect on permitting. -
  - (1) General.- 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

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(2) Impartial decision making. - In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall-

(A) Be reviewed by -

(i) the District Commander, or the Commander's designee, of the Corps District in which the project or activity is located;

or

(ii) the Commander of the Corps Division in which the District is located if the evaluation of the permit is initially conducted by the District Commander; and

(B) utilize the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.

(c) Limitation on use of funds. - None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under subsection (b)(2)(A).

(d) Public availability. - The Secretary shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public, including on the Internet.

(e) Duration of authority. - The authority provided under this section shall be in effect from October 1, 2000, through December 31, 2016."

## **How The Seattle District Will Expend Funds**

A separate account would be established for funding the Port of Bellingham projects under a Section 408 evaluation. This account would allow the Seattle District to track receipt and expenditure of the funds used for Corps Section 408 reviews in the Corps of Engineers Financial Management System. Seattle District employees would charge their time against this account when they work to expedite review and analysis of a Port of Bellingham project under Section 408 evaluation.

## **The Kind of Activities for Which Funds Would be Expended**

Funds would primarily be expended on the salaries and overhead of Corps Project Managers, Planners, and Engineers performing expedited processing activities for Section 408 evaluations for the Port of Bellingham. The evaluation will determine the usefulness and public interest of the proposed alteration under Section 408 evaluation. Such 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, travel, coordination activities, additional personnel (including support/clerical staff), technical contracting, environmental documentation preparation and review. Funds will also be expended for administrative tasks associated with maintaining and tracking the work completed under WRDA Section 214. Funds would *not* be expended for review of work by supervisors or any other final decision makers. No enforcement or compliance activities would be paid for from the augmenting funds, nor would the funds be used for paying the costs of public hearings and distribution of public notices.

Port of Bellingham's funds for a Section 408 review and analysis will not be used on any other Port of Bellingham permit actions. Any other Port of Bellingham permits and projects



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will be handled like those of any other non-participant, in a manner decided by the assigned project manager and his or her supervisor.

## **The Procedures the Corps Will Use To Ensure No Impartial Decision-Making**

To ensure that the funds will not impact impartial decision-making, the following procedures, mandated from Headquarters, Corps, would apply to all cases using additional funds provided by the Port of Bellingham for a Section 408 project:

- a. The final approval decision for a Section 408 project 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, Regulatory Branch, then the reviewer would be the Chief, Operations Division.
- b. The final approval decision for the Port of Bellingham's Section 408 project will be made available on the Seattle District web page.
- c. The Seattle 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 Seattle District must comply with all applicable laws and regulations.
- e. Funds will only be expended to expedite the final decision on the Section 408 decision. Funds will not be expended for the review of the decision maker's decision.

## **The Benefits Port of Bellingham Would Receive**

WRDA Section 214 is designed to enable the Seattle District to expedite the processing of public projects. The Port of Bellingham can expect the Section 408 application to receive expedited handling, and to the degree we consider it appropriate, they can set priorities. The result for Port of Bellingham Section 408 project should be streamlined permit processing, and a more predictable time-line for obtaining DA decision.

## **Potential Impacts Not Subsidized by Port of Bellingham Funds**

We do not expect this method of expediting the review of the Port of Bellingham's Section 408 project to negatively impact the Seattle District's Civil Works Program, or to increase the time of evaluations of other projects.

## **Approval Authority**

The Secretary of the Army has delegated approval authority to the Chief of Engineers and his authorized representatives, including the Director of Civil Works, Division Commander, or the Commander of the Seattle District, U.S. Army Corps of Engineers (Seattle District) for those projects that are temporary or permanent alternative, occupation, or use of any seawall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States upon a finding that the alteration, occupation or use will not be injurious to the public interest and will not impair the usefulness of such Federal facility.



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This public notice has a 30-day comment period. Following the review of comments we receive in response to the public notice, the Seattle District Commander will determine if acceptance and expenditure of the funds is in compliance with WRDA Section 214. 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 Seattle District will proceed to accept and expend such funds from the Port of Bellingham by implementing Section 214 of WRDA 2000 through a signed Memorandum of Agreement. Funds will be accepted only if the public interest is better served through cost-effectiveness, enhanced evaluation capability, streamlined Section 408 reviews, 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 the Port of Bellingham increases the amount of funds previously furnished, the WRDA Section 214 authority is extended to a later date or indefinitely, or a new agreement is signed, provided that the purpose remains the same a new public notice will issued.

## **Commenting Directions**

Comments on implementing WRDA Section 214 will be accepted and made part of the record, and will be considered in determining whether it would be in the best of public interest to proceed with this administrative practice. Interested parties may submit in writing any comments concerning this notice. Comments should refer to the Proposed Acceptance of Funds from the Port of Bellingham and the date of this Public Notice, and be forwarded by the comment due date. Comments should be sent to the U.S. Army Corps of Engineers – Seattle District, Planning Branch ATTN: Keely Brown.

## **Point of Contacts**

The Seattle District point of contact for this public notice is Ms. Keely Brown, Section 408 Program Coordinator and can be reached at (206) 764-3434 or by e-mail at [keely.n.brown@usace.army.mil](mailto:keely.n.brown@usace.army.mil).