

26 OCT 2018

MEMORANDUM FOR RECORD

SUBJECT: Seattle District Decision to Accept and Expend Funds Contributed by King County

1. The purpose of this memorandum is to document the decision by the Seattle District, U.S. Army Corps of Engineers (Seattle District) to accept and expend funds contributed by King County--non-Federal public entities--to expedite the evaluation of Department of the Army (DA) permits under consideration by the District's Regulatory Branch.

2. Funding would be accepted and expended in accordance with Section 214 of the Water Resources Development Act (WRDA) of 2000 as amended [WRDA 214 requirements, as amended by the Water Resources Reform and Development Act of 2016, are now codified under 33 U.S.C 2352].

3. Key provisions of Section 214 as amended:

a. 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.

b. To the maximum extent practicable, the Secretary shall ensure that expediting the evaluation of a permit through the use of funds accepted and expended under this section does not adversely affect the timeline for evaluation (in the Corps district in which the project or activity is located) of permits under the jurisdiction of the Department of the Army of other entities that have not contributed funds under this section.

c. 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.

d. In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall:

(1) be reviewed by:

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

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(b) 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

(2) 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.

None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under paragraph 3.d above.

4. The Seattle District published an initial public notice (enclosed) on 4 June 2018 which contained announcements of the Seattle District's preliminary intent to accept and expend funds from King County to expedite processing of DA permit applications from these non-Federal public entities. The special public notice provided information on the following:

a. Name of the non-Federal public entity proposing to provide the funds.

b. The Corps' authority to accept and expend such funds.

c. The reason for such contributions.

d. How acceptance of the funds is expected to expedite the Department of the Army permit review process.

e. The type of activities for which the funds would be expended.

f. The procedures to be placed in effect to ensure the funds will not impact impartial decision-making.

5. The following comments/concerns were received:

a. Snoqualmie Indian Tribe, Date of Response: 6 June 2018; Comment: The Tribe had a couple questions regarding the proposed agreement (whether or not it was a new or extended agreement) and asked if we have similar agreements with other entities.

Corps' Evaluation: On 6 June 2018, Ms. Jacalen Printz (Regulation Section Chief) responded that the public notice is for a new proposed agreement and provided the names of the entities we have current agreements with. No further response was received from the Tribe.

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b. Confederated Tribes of the Colville Reservations, Date of Comment: 4 June 2018; Comment: "We have no concerns or comments related to this King County issue related to cultural resources."

Corps' Evaluation: The comment is noted and no follow up is required or necessary.

6. After considering public comments, I have determined that acceptance and expenditure of the contributed funds by the Seattle District Regulatory Branch is appropriate. The public interest will be better served through cost-effectiveness and enhanced evaluation capability. The funding program will lead to better, more cost-effective evaluation, and processing of King County's DA permit applications by funding additional resources to do some of the expedited work. Acceptance and expenditure of these funds is in accordance with the provisions of WRDA and will not impact impartial decision-making. In doing so, the Seattle District will establish, at a minimum, the following procedures:

a. All final decisions must be supported by sufficient information to assure the decision-maker that the acceptance and expenditure of contributed funds by the Seattle District has not affected the District's evaluation of the permit application either substantially or procedurally.

b. All final permit decisions for cases where these funds are used must be reviewed by at least one level above the normal decision-maker unless the decision-maker is the District Commander.

c. If contracts are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Seattle District before the decision is made.

d. Funds will be expended only to expedite the final decision on the permit application and will not be expended for review of the decision-maker's decision.

e. All final permit decisions for cases where these funds are used will be made available to the public on the web.

f. The Seattle District will not eliminate any procedures or decisions that would normally be required for the type of permit application under consideration.

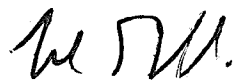
g. The Corps of Engineers must comply with all applicable laws and regulations.

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7. Prior to the receipt of funds from King County, the Seattle District will enter into a Memorandum of Agreement (MOA) with the entity. The MOA will describe the scope of work to be completed, impartial decision-making requirements, funding responsibilities, and representative contacts.
8. Funds accepted from King County will be tracked.
9. The 6 June 2018 initial public notices indicated that in addition to accepting funds to expedite Regulatory Program processing of permits, funds could also be accepted from these entities to expedite processing of Section 408 authorizations for modifications to Corps projects. Should such a request arise in the future, the Seattle District Planning Branch would execute a separate MOA with the entity and separately from the Regulatory Branch receive and track funds contributed by the entity for expedited Section 408 review.
10. An informational public notice will be issued regarding this decision to sign this MOA and it will be posted on the Seattle District's webpage.
11. The point of contact for this memorandum is Ms. Jacalen Printz, Regulatory Branch at (206) 764-6901 or jacalen.m.printz@usace.army.mil.

Encl



MARK A. GERALDI
COL, EN
Commanding