



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
100 W. OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3604

January 23, 2025

SPECIAL PUBLIC NOTICE

DECISION TO ACCEPT AND EXPEND FUNDS FROM THE GEORIGIA PORTS AUTHORITY TO EXPEDITE SECTION 408 PERMISSION APPLICATION REVIEW

This Special Public Notice announces the final decision, as accepted in a funding agreement and documented in a memorandum for record, of the U.S. Army Corps of Engineers' ("USACE") Savannah District, to accept and expend funds contributed by the Georgia Ports Authority (GPA) in order to expedite processing of their Section 408 request. The initial Special Public Notice announcing the intent to accept funds was published on February 21, 2024, under the identification number 408-SAS-2023-0023-Georgia-0307. The associated Regulatory public notice for this action was published on October 26, 2023, and can be found under the identification number SAS-2013-00406. This acceptance and expenditure of funding is subject to the series of limitations below:

Section 214 of the Water Resources Development Act of 2000, as amended (33 U.S.C. § 2352, provides:

(a) FUNDING TO PROCESS PERMITS. –

(2) Permit Processing – The Secretary, after public notice, may accept and expend funds contributed by a non-federal public entity, natural gas company, public utility company, or railroad carrier to expedite the evaluation of a permit of that entity or company related to a project or activity for a public purpose under the jurisdiction of the Department of the Army.

(b) EFFECT ON PERMITTING. –

(1) IN GENERAL. – In carrying out this section, the Secretary shall ensure that the use of funds accepted under sub-section (a) will not impact impartial decision making with respect to permits, either substantively or procedurally.

The Secretary of the Army has delegated this responsibility to the Assistant Secretary of the Army for Civil Works by memorandum dated January 8, 2018, re-delegated to the Chief of Engineers by memorandum dated January 19, 2018, and further re-delegated to District and Division Commanders by memorandum dated April 18, 2018. These delegations have since been superseded by updated delegation memorandums, dated June 14, 2024, June 17, 2024, and June 18, 2024, respectively.

Definition of non-Federal public entities: The term "non-Federal public entity" is limited to governmental agencies or governmental public authorities, including governments of federally recognized Indian tribes, i.e., any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe

List Act of 1994 (25 U.S.C. 479(a)), provided that the proposed alteration serves a public purpose. GPA meets this definition.

How the USACE would expend the funds: The USACE Section 408 Program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received from GPA would be used to augment the budget of the USACE Savannah District Section 408 Program and to expedite the review of the Section 408 request from GPA, in accordance with the provisions of Section 214 of WRDA 2000, as amended. The USACE Savannah District would establish a separate account to track receipt and expenditure of the funds. Savannah District employees would charge their time against such account when working on the GPA 408 permissions request for the Savannah Container Terminal Project.

Activities for which funds would be expended: Funds would be expended primarily to the USACE Deep Draft Center of Expertise and Savannah District for processing the requester's Section 408 permission request. The USACE Deep Draft Center of Expertise will evaluate the overall economic impact to the existing traffic/terminals associated with the new container yard using a HarborSym simulation model. Savannah District will conduct the administrative actions associated with coordination and request processing. Such processing activities would include, but would not be limited to, the following: application completeness review, site visits, preparation of public notices, preparation of correspondence, meetings, coordination and consultation with other agencies, public interest review, distribution of public notices, analysis of navigational impacts, preparation of environmental assessments, preparation of decision documents, and application compliance.

Procedures to be used to ensure impartial decision-making: To ensure the funds will not impact impartial decision-making, the following procedures would apply:

- (a) All final permit decisions (including Section 408 case-specific permissions and categorical permissions) and associated decision documents must be reviewed and signed by a responsible official that is at least one level above the decision-maker. Letters stating whether or not a permit or permission is required for a specific activity must also be reviewed and signed by the one-level above reviewer. For the purposes of this guidance, the permit decision-maker is the person that has been delegated signature authority. 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. Section chiefs and team leaders are appropriate one-level above reviewers provided that signature authority has been delegated to the project manager level. For example, if the funded project manager would otherwise have signature authority for a general permit for non-funded projects, then the section chief or team leader could be an appropriate one-level-above reviewer for general permits reviewed under the funding agreement by that project manager. Additionally, the one-level-above reviewer must meet the following requirements: must hold a position that is not partially or fully funded by the same funding entity, and; has not been partially or fully funded by the same funding entity for at least one year;
- (b) Instruments for mitigation banks or in-lieu-fee programs developed for an entity with a funding agreement must be signed by a Regulatory Branch/Division Chief, an equivalent, or a higher-level position that is not funded by the funding

agreement;

- (c) Funds from this Agreement cannot be used for enforcement activities. Funds from this Agreement may be used for compliance inspections (i.e. of issued permits and monitoring of compensatory mitigation banks, etc.), but cannot be used to resolve noncompliance issues. Enforcement activities must be charged to Regulatory's appropriated funds (or in the case of an unauthorized alteration, to funds appropriated for operation and maintenance of the affected civil works project or inspection of completed works) in accordance with the most recent budget execution guidance; and
- (d) The USACE will establish an account to track the acceptance and expenditure of Section 408 funds with the current fiscal year budget guidance.

Impacts to the Section 408 Program: The USACE Savannah District does not expect priority review of the proposed GPA project to negatively impact the Section 408 program or to increase the time for evaluations of other projects since additional staff may be hired to augment these priority reviews.

Final Decision: The USACE has solicited comments from the public, Federal, State, local agencies and officials, and other interested parties. The District Commander has determined, 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 USACE Savannah District will implement Section 214 of WRDA 2000, as amended, through a signed funding agreement, and accept and expend the funds from the GPA.