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# PUBLIC NOTICE



**US Army Corps  
of Engineers** ®  
New England District  
**696 Virginia Road  
Concord, MA 01742-2751**

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This Public Notice announces the decision of the New England District of the U.S. Army Corps of Engineers (Corps) to accept funds from the Massachusetts Department of Transportation (MassDOT) in order to expedite processing of the MassDOT Department of the Army (DA) permit applications.

**Authority to accept funds:** Section 214 of the *Water Resources Development Act of 2000* (Public Law No. 106-541) as amended (33 U.S.C. § 2201 note), provides:

(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) In 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.

(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.”

The Secretary of the Army has delegated the authority of these provisions to the Chief of Engineers and his authorized representatives to, after public notice, accept and expend funds contributed by non-Federal, public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army.

The District Commander for the New England District is negotiating an agreement with MassDOT to accept and expend funds to expedite evaluations of permit applications submitted by MassDOT pursuant to Clean Water Act Section 404 (13 U.S.C. § 1344) and/or Rivers and Harbors Act Section 10 (33 U.S.C. § 403). A Public Notice seeking comment was issued January 3, 2012. No comments have been received.

**Non-federal public entity:** Non-federal public entities are defined for Section 214 purposes as state and local governmental agencies and Indian tribal governments. They include, but are not limited to, local transportation agencies desiring to expedite highway projects, port authorities wanting permits expedited for marine terminals, flood and storm water management agencies, and governmental economic development agencies seeking to expedite permit processing programmatically, or for a specific project. MassDOT is a non-federal public entity.

**How the New England District would expend the funds:** The Corps’ Regulatory Program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received by the District from a non-Federal public entity would be used to augment the District Regulatory budget, in accordance with the provisions of WRDA 2000 as amended. With the supplemental funding, the District would retain a term employee or advertise for additional permanent staff and pay for support services, both technical and administrative.

**Purpose of accepting funds and how this will expedite reviews:** MassDOT has realized a substantial increase in both the number of projects and aggregate dollar value of its highway and bridge construction program over the last several years. Both Governor Deval Patrick and the Massachusetts Legislature have called upon MassDOT to accelerate the design, construction and repair of the Commonwealth’s highways and bridges, and many of these projects fall within the jurisdiction of the Corps under Section 404 of the Clean Water Act. Accelerated review and authorization is critical to MassDOT’s ability to advertise these projects so as to meet scheduled dates for obligating federal funding, statewide Transportation Improvement Program targets and accelerated programs. With this funding the Corps will be able to provide MassDOT with dedicated staff to ensure priority review, consistency and opportunity for staff training and process improvements.

**Activities for which funds will be expended:** Permit application review activities would include, but not be limited to: application completeness review, jurisdictional determinations, site visits, preparation of public notices, public hearings, preparation of correspondence, interagency coordination, meetings (with the non-Federal entity, applicants, agencies and

general public), coordination concerning endangered species and cultural resources, public interest review, analysis of alternatives, compensatory mitigation proposal reviews, and preparation of environmental assessments and permit decision documents.

If the non-federal entity funds are fully expended and are not renewed, the remaining permit applications would be handled like those of any other non-participant, in a manner decided by the assigned Regulatory personnel and his/her supervisor.

**Procedures to be used to ensure impartial decision-making:**

- a. All final MassDOT permit decisions, including reporting general permit verifications will be reviewed and signed by at least one level above the decision maker. A “decision maker” is the Corps official who would ordinarily have signature authority for the pertinent permit decision.
- b. All documents involved in the decision making process for a MassDOT permit application must be reviewed and signed by the one-level-above reviewer as defined above.
- c. When evaluation and/or decision making for a MassDOT permit application is initially conducted by the District Commander, documents and/or permit decisions must be reviewed and signed by the North Atlantic Division Commander.
- d. All jurisdictional determinations made on projects where funds are used must have documentation that a Corps Regulator not funded by MassDOT reviewed and agreed with the determination.
- e. All final permit decisions, including all reporting general permit verifications, for cases where MassDOT funds are used will be made available and updated monthly on the District’s web page in an area separate from any other final actions, clearly identifiable as being for projects funded through this authority.
- f. Any procedures or decisions that would otherwise be required for a specific type of project or permit under consideration cannot be eliminated; however, process improvements that are developed can be shared in order for all members of the regulated public to benefit.
- g. The Corps must comply with all applicable laws and regulations.
- h. MassDOT funds will not be expended for the review of the decision maker’s decision.
- i. MassDOT funds will not be used for enforcement activities. Funding may be used for compliance activities including monitoring of mitigation sites.

**Decision:** We do not expect priority review of these non-federal entity’s projects to negatively impact the District’s Regulatory Program or to increase the time for permit evaluations of other projects as there will be no decrease in the permanent staffing level of the non-funded reviews.

I have determined that the acceptance and expenditure of the funds is in compliance with Section 214 of WRDA 2000 and is not otherwise contrary to the general public interest, and the District will implement Section 214 of WRDA 2000 through a signed Memorandum of Agreement (“MOA”) and accept the funds from MassDOT. The public interest is better served through cost-effectiveness, enhanced evaluation capability, and streamlined permit processing.

If you have any questions, please contact Karen K. Adams at (978) 318-8828, (800) 343-4789 or (800) 362-4367, if calling from within Massachusetts.



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