



**US Army Corps  
of Engineers**®  
New England District  
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# SPECIAL PUBLIC NOTICE

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## DECISION TO ACCEPT FUNDS FROM MAINE DEPARTMENT OF TRANSPORTATION TO EXPEDITE PERMIT APPLICATION REVIEW

This Special Public Notice announces the decision of the U.S. Army Corps of Engineers, New England District (Corps) to accept and expend funds from the Maine Department of Transportation (Maine DOT) to expedite processing of their Department of the Army (DA) permit applications. This decision follows a previous public notice issued by the New England District on October 26, 2021, that solicited public comment on the aforementioned funding arrangement.

Following consideration of comments received on the initial public notice, published on October 26, 2021, the New England District Commander determined that acceptance and expenditure of such funds would be appropriate in accordance with Section 214 of the Water Resources Development Act of 2000, (WRDA 2000, Public Law No. 106-541), as amended, and title 23 of the U.S. Code (U.S.C.), Section 139(j).

Section 214 of the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541), as amended and codified at 33 U.S.C. 2352, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by non-Federal public entities, public-utility companies, natural gas companies, or railroad carriers to expedite the evaluation of a permit of that entity, company, or carrier related to a project or activity for a public purpose under the jurisdiction of the Department of the Army. The authority to accept and expend funds under Section 214 has been delegated from the Secretary of the Army to District and Division Commanders, including the Commander of the New England, U.S. Army Corps of Engineers. Maine DOT is eligible to provide funds to the Corps under Section 214 as a non-Federal public entity.

Under 23 U.S.C. Section 139(j), the Secretary of Transportation can allow public entities that receive financial assistance from a U.S. Department of Transportation (USDOT) operating administration to provide funds to Federal agencies, state agencies, and Tribes participating in the environmental review process for a transportation project or program that requires approval by a USDOT operating administration. Section 139(j) only applies to those public entities receiving financial assistance under title 23 (Highways) or chapter 53 of title 49 (Public Transportation) of the U.S.C., which are typically administered by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), respectively. Funds provided under Section 139(j) must be used to support activities that directly

and meaningfully contribute to expediting and improving permitting and review processes. USDOT has delegated approval of 139(j) funding agreements to the division level of FHWA and FTA. The funding agreement between the New England District and the Maine DOT has been approved by the Maine FHWA Division office.

The Corps is implementing the provisions of Section 214 of WRDA 2000, as amended; and 23 U.S.C. 139(j) with Maine DOT through a signed memorandum of agreement (MOA) that will be posted on the Corps Headquarters website at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Section-214/> and New England District (Corps) website at: <https://www.nae.usace.army.mil/Missions/Regulatory/PublicNotices>

**Procedures to ensure impartial decision-making:** To ensure the funds will not impact impartial decision-making, the District has incorporated the following procedures into the funding agreement:

- (a) All final permit decisions where funds were used for the permit review process will be reviewed and approved in writing by a Corps official that is at least one level above the typical Corps decision-maker. Funds accepted under the agreement will not be expended for review of such decisions by supervisors or other Corps officials in the decision-making chain of command. Additionally, the one-level-above reviewer must hold a position that is not partially or fully funded by Maine DOT for at least one year.
- (b) Instruments for mitigation banks or in-lieu fee programs proposed for review by the funding entity will be signed by the District Regulatory Division Chief, an equivalent, or a higher-level position that is not funded by any funding agreement.
- (c) All preliminary jurisdictional determinations (JDs) and approved JDs where funds are used to complete the JD will have documentation in the administrative record that a non-funded Corps District Regulatory Program staff member conducted a review of the determination. This review does not require a field review. For those approved JDs that require coordination with the U.S. Environmental Protection Agency, additional internal review will not be required.
- (d) The Corps will not use funds accepted under this agreement to conduct enforcement activities; this includes, but is not limited to, the resolution of non-compliance issues.
- (e) The Corps must comply with all applicable laws and regulations and will not eliminate any procedures or decisions that would otherwise be required for the type of project and permit application under consideration.
- (f) To ensure transparency, the Corps will ensure all final permit decisions carried out using funds accepted from the Maine DOT will be made available to the public on the Corps Headquarters' website at: <https://permits.ops.usace.army.mil/orm-public#>.

Additional information concerning Section 214 of WRDA 2000, as amended; and 23 U.S.C. 139(j) may be found on the Corps Headquarters website at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Section-214/>.

For additional information please contact Michael Hicks of my staff at (978) 318-8157 or via email at [michael.c.hicks@usace.army.mil](mailto:michael.c.hicks@usace.army.mil).

Frank J. DelGiudice  
Chief, Permits and Enforcement Branch  
Regulatory Division

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If you would prefer not to continue receiving Public Notices by email, please contact Ms. Leslie A. Martin at (978) 318-8688 or by email at [leslie.martin@usace.army.mil](mailto:leslie.martin@usace.army.mil) You may also check here ( ) and return this portion of the Public Notice to: Leslie A. Martin, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751.

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