



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

# PUBLIC NOTICE

**Comment Period Begins:** March 10, 2022

**Comment Period Ends:** April 11, 2022

**In Reply Refer To:** Kevin R. Kotelly, P.E.

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## **RHODE ISLAND DEPARTMENT OF TRANSPORTATION FUNDING AGREEMENT UNDER SECTION 214 OF THE WATER RESOURCES DEVELOPMENT ACT OF 2000 AND 23 U.S.C. 139(j)**

The District Engineer announces the preliminary intent of the U.S. Army Corps of Engineers, New England District (Corps), to enter into a Memorandum of Agreement with Rhode Island Department of Transportation (RIDOT) to accept and expend funds from RIDOT to expedite processing of their Department of the Army (DA) permit applications, subject to certain limitations pursuant to Section 214 of the Water Resources Development Act of 2000 (as amended) and title 23 of the U.S. Code (U.S.C.), Section 139(j). This public notice solicits comments from the public on the proposed acceptance and expenditure of funds contributed by RIDOT to expedite the evaluation of RIDOT's DA permit applications.

Section 214 of the Water Resources Development Act of 2000 (Section 214), as amended and codified at 33 U.S.C. 2352, provides in part that:

“The Secretary, after public notice, may accept and expend funds contributed by a non-Federal public entity, public utility company, natural gas company, or railroad carrier 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.”

RIDOT is eligible to provide funds to the Corps under Section 214 as a non-Federal public entity. 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 District, U.S. Army Corps of Engineers.

Under 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 involved 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) may only 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 proposed funding agreement with RIDOT would require approval by the Rhode Island FHWA Division office.

Prior to entering into a funding agreement pursuant to Section 214 and Section 139(j), the Corps must ensure that the funding agreement would not impact impartial decision making by the Corps or adversely affect the timeline for evaluation of the DA permit applications of other applicants within the District.

**How the Corps Would Expend Funds:**

The Corps Regulatory Program is funded as a Congressionally-appropriated line item in the annual Federal budget. Additional funds received from RIDOT would be used by the Corps to expedite the review of RIDOT's Section 404 Clean Water Act and Section 10 Rivers and Harbors Act of 1899 DA permit applications for projects with a public purpose, in accordance with the provisions of Section 214 and Section 139(j). The Corps would establish a separate account to track the receipt and expenditure of the RIDOT funds to ensure they would be expended for the intended purpose. District employees would charge their time against the established account when processing RIDOT's priority permit applications and conducting other related activities as specified below (see "Activities for Which Funds Would be Expended").

**Reason for the Funding Agreement:**

RIDOT's work often requires permits from the Corps under Section 404 of the Clean Water Act (Section 404) and Section 10 of the Rivers and Harbors Act of 1899 (Section 10). Over the last few years, the number of RIDOT projects requiring DA permits has increased substantially and RIDOT expects that these higher levels will continue for the foreseeable future. Accelerated review and decision making is critical to RIDOT's ability to advertise these projects to meet scheduled dates for obligating federal funding, statewide transportation improvement targets and accelerated programs. With this funding agreement, the Corps would be able to provide RIDOT with dedicated staff to ensure priority review, consistency, and opportunity for staff training and process improvements.

**How Acceptance of Funds Is Expected to Expedite the Permit Review:** Since the purpose of Section 214 and Section 139(j) is to expedite the permit review process, a funding agreement is an ideal vehicle to improve the permitting process. The FHWA provides funds for certain RIDOT projects. The Corps, RIDOT, and FHWA believe that a dedicated Corps project manager would be able to develop expertise in the types of projects performed by RIDOT, which could improve the efficiency of the review process. Further, based on experience and the volume of expected RIDOT permit applications going forward, the Corps expects that using funds accepted from RIDOT to support a Corps project manager to evaluate RIDOT permit applications would result in expedited reviews for RIDOT projects. A 214/139(j) funding agreement would also improve the ability of the Corps and RIDOT to coordinate and prioritize the review of projects based on RIDOT and FHWA project schedules and deadlines. In addition, this would benefit the reviews of non-RIDOT permit applications since existing Corps project managers that would otherwise be working on RIDOT applications would have additional time to work on applications for other applicants.

**Activities for Which Funds Would be Expended:** Funds would be expended primarily for the labor and overhead of Regulatory Division staff processing RIDOT DA permit applications, including permit coverage and authorizations under Section 10 and Section 404. Such permit processing activities could include but would not be limited to the following: pre-application conferences, permit area determinations, application completeness reviews, jurisdictional determinations, site visits, preparation and distribution of public notices, preparation of correspondence, meetings, consultation and coordination with other agencies and consulting

parties, public interest reviews, analyses of alternatives, compensatory mitigation proposal reviews, preparation of environmental assessments, preparation of permit decision documents and permit compliance.

If RIDOT's funds are expended and not renewed, RIDOT's remaining permit applications would be processed like those of any other non-participant, in a manner decided by the assigned Regulatory Division project manager and his or her supervisor.

**Procedures to Ensure Impartial Decision Making:** To ensure the funds would not impact impartial decision making, the following procedures would be applied:

- (a) Instruments for in-lieu fee programs proposed for review by the funding entity would be signed by the District Regulatory Division Chief, an equivalent, or a higher-level position that is not funded by any funding agreement.
- (b) All final permit decisions where funds were used for the permit review process would 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 would 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 would hold a position that is not partially or fully funded by RIDOT for at least one year.
- (c) All applications reviewed using funds accepted under the agreement must comply with all applicable laws and regulations. The Corps would not eliminate any procedures or decisions that would otherwise be required for the type of project and permit application under consideration.
- (d) All preliminary jurisdictional determinations (JDs) and approved JDs where funds would be used to complete the JD would have documentation in the administrative record that a non-funded Corps Regulatory Program staff member conducted a review of the determination. This review would not require a field review. For those approved JDs that require coordination with the U.S. Environmental Protection Agency, additional internal review would not be required.
- (e) Funds from this agreement would not be used for enforcement activities; this includes, but is not limited to, the resolution of non-compliance issues.
- (f) The executed funding agreement and all final permit decisions where RIDOT funds are expended would be made available on the Corps Headquarters' public web page.

**Impacts to the Regulatory Program:** We expect that this funding agreement would have a net positive impact on the ability of the Corps Regulatory Program to evaluate other applicants' permit applications. The Corps would use the funds to support a Corps project manager(s) time to process RIDOT's DA permit applications. This would free up the time of existing Corps staff that would otherwise be used to process RIDOT applications. Further, since permit process improvements that result from the funding agreement could be applied widely to other permit applicants, the Corps anticipates that this funding agreement could result in additional time savings for other applicants in the district.

**Consideration and Submission of Comments:** In order to properly evaluate the proposal, we are seeking public comment. Anyone wishing to comment is encouraged to do so. Comments should be submitted in writing by the above date and should refer to the RIDOT Funding Agreement. Comments may be sent electronically to [kevin.r.kotelly@usace.army.mil](mailto:kevin.r.kotelly@usace.army.mil) or mailed to:

Kevin R. Kotelly, P.E.

U.S. Army Corps of Engineers, New England District  
Regulatory Division  
696 Virginia Road  
Concord, MA 01742-2751

This public notice has a 30-day comment period. Following the review of comments received, the New England District Commander will determine if acceptance and expenditure of the funds is in compliance with Section 214 or Section 139(j). If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with Section 214 or Section 139(j), that the District would be able to preserve impartial decision-making, and that the timeframes of permit application reviews for other applicants in the District would not be adversely affected, the New England District may execute a Memorandum of Agreement (MOA) with the RIDOT pursuant to Sections 214 or 139(j), and proceed to accept and expend such funds from RIDOT. Funds will be accepted only if the public interest is better served through cost-effectiveness, enhanced evaluation capability, streamlined permit application processing, or other appropriate justification. A final informational public notice will be issued regarding the District Commander's decision. If a MOA is executed by the Corps and RIDOT and later amended to change the amount of funds previously furnished or to extend the duration of the agreement, no new public notice will be issued provided that the purpose of the agreement remains the same as described in this notice.

For additional information please contact me at (978) 318-8703 or via email at [kevin.r.kotelly@usace.army.mil](mailto:kevin.r.kotelly@usace.army.mil).

*Kevin R Kotelly*

Kevin R. Kotelly, P.E.  
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 Leslie 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 Martin, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751.

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