



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

PUBLIC NOTICE

Comment Period Begins: February 7, 2023

Comment Period Ends: March 9, 2023

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**CONNECTICUT DEPARTMENT OF TRANSPORTATION
FUNDING AGREEMENT UNDER SECTION 214 OF THE
WATER RESOURCES DEVELOPMENT ACT OF 2000, AS
AMENDED, 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 Connecticut Department of Transportation (CTDOT) and the Federal Highway Administration (FHWA) to accept and expend funds from the CTDOT to expedite processing of their Department of the Army (DA) permit applications and authorizations pursuant to Section 14 of the RHA (33 U.S.C. §408) (hereinafter "Section 408"), 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 CTDOT to expedite the evaluation of CTDOT's DA permit applications and Section 408 requests.

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.”

CTDOT 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) applies to those public entities receiving financial assistance under title 23 (Highways) of the U.S.C., which are typically administered by the FHWA. 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 Section 139(j) funding agreements to the division level of FHWA. The proposed funding agreement with CTDOT would require approval by the Connecticut 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 CTDOT would be used by the Corps to expedite the review of CTDOT's Section 408 requests and Section 404 Clean Water Act/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 & Section 139(j). The Corps' Regulatory and Section 408 Programs would establish a separate account to track the receipt and expenditure of the CTDOT funds to ensure they would be expended for the intended purpose. District employees would charge their time against the established account when processing CTDOT'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:

CTDOT's work often requires authorization from the Corps under: Section 404 of the Clean Water Act (Section 404) for discharges of dredged and/or fill material into waters of the U.S.; Section 10 of the Rivers and Harbors Act of 1899 (Section 10) for structures and/or work in navigable waters of the U.S.; and Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. §408) for all temporary or permanent alterations, occupations, or use of a water resource development projects constructed by the Corps. Over the last several years, the number of CTDOT projects requiring DA permits and their complexity has increased substantially and we expect these higher levels will continue for the foreseeable future. Accelerated review and decision making is critical to CTDOT'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 CTDOT with appropriate staffing levels to ensure timely review, consistency, and opportunity for staff training and process improvements.

How Acceptance of Funds Is Expected to Expedite the Permit/Authorization Review: Since the purpose of Section 214, Section 139(j) is to expedite the permit review and Section 408 authorization process, a funding agreement is an ideal vehicle to improve the permitting process. The FHWA provides funds for certain CTDOT projects. The Corps, CTDOT, and FHWA believe that dedicated Corps project managers would be able to develop expertise in the types of projects performed by CTDOT, which could improve the efficiency of the review process.

Further, based on experience and the volume of expected CTDOT permit applications going forward, the Corps expects that using funds accepted from CTDOT to support a Corps project manager to evaluate CTDOT permit applications and Section 408 requests would result in expedited reviews for CTDOT projects. A 214/139(j) funding agreement would also improve the ability of the Corps and CTDOT to coordinate and prioritize the review of projects based on CTDOT and FHWA project schedules and deadlines. In addition, this would benefit the reviews of non-CTDOT permit applications since existing Corps project managers that would otherwise be working on CTDOT 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 CTDOT DA permit applications under Section 10 and Section 404. Funds would be expended for the labor and overhead of Section 408 Program staff as needed for CTDOT Section 408 permission requests.

Such DA 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, programmatic efforts, preparation of permit decision documents and permit compliance.

Section 408 Program activities would include, but would not be limited to, the following: application completeness review, jurisdictional review, site visits, preparation of public notices, preparation of correspondence, meetings, coordination and consultation with other agencies, public interest review, distribution of public notices, engineering reviews, analysis of environmental assessments, preparation of decision documents and application compliance. Funds may also be expended to pay for support services or to hire independent contractors.

If CTDOT's funds are expended and not renewed, CTDOT's remaining permit applications would be processed like those of any other non-participant, in a manner based on date of receipt and decided by the assigned Corps staff 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 and Section 408 authorizations where funds were used 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 CTDOT for at least one year.
- (c) All applications/authorization requests 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. 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 CTDOT funds are expended would be made available on the Corps Headquarters' public web page.

Impacts to the Regulatory and Section 408 Programs: We do not expect priority review of the projects to negatively impact either the Regulatory program or Section 408 program or to increase the time for permit evaluations or permission requests of other projects since additional staff will be hired to augment this priority review. We expect that this funding agreement would have a net positive impact on the ability of the Corps Regulatory Program and Section 408 program to evaluate other applicants' permit applications and authorization request. The Corps would use the funds to support a Corps project manager(s) time to process ES's DA permit applications and Section 408 authorizations. This would free up the existing Corps staff that would otherwise be used to process ES 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 CTDOT Funding Agreement. Comments may be sent electronically to kevin.r.kotelly@usace.army.mil or mailed to:

Kevin R. Kotelly
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 are in compliance with Section 214, Section 408 and 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, Section 408 and 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 CTDOT and the FHWA pursuant to Sections 214, Section 408 and Section 139(j), and proceed to accept and expend such funds from CTDOT. 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, CTDOT and FHWA 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 Peter Olmstead of my staff at (978) 318-8211 or via email at peter.d.olmstead@usace.army.mil.

Kevin R Kotelly

Kevin R. Kotelly
Chief, Permits and Enforcement Branch B
Regulatory Division

If you would prefer not to continue receiving Public Notices by email, please contact Ms. Leslie Martin at (978) 318-8688 or by email at 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.

NAME: _____

ADDRESS: _____

PHONE: _____