



**US Army Corps
of Engineers**
St Paul District

PUBLIC NOTICE

Comment Period Begins: 29 NOV 2022

Comment Period Ends: 14 DEC 2022

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This Special Public Notice announces the preliminary intent of the Saint Paul District of the U.S. Army Corps of Engineers (Corps) to accept and expend funds from the Wisconsin Department of Transportation (WisDOT) to expedite processing of WisDOT's Department of the Army (DA) permit applications 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). This Special Public Notice solicits comments from the general public on the subject of acceptance and expenditure of funds contributed by WisDOT to expedite the evaluation of Corps DA permit applications.

Authority to accept funds: Section 214 of the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541), as amended, authorizes the Secretary of the Army, after public notice, to 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 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 St. Paul District, U.S. Army Corps of Engineers. The authority to accept and expend funds from non-Federal public entities was made permanent by the passage of the Water Resources Reform and Development Act (WRRDA) of 2014 (Public Law No. 113-121) on June 10, 2014.

The Corps is negotiating an agreement with WisDOT to accept and expend funds to expedite evaluations of permit applications submitted by WisDOT.

Definition of non-Federal public entity: Non-federal public entities include state and local governmental agencies or government public authorities, as well as Federally-recognized Indian Tribes. They include, but are not limited to, local transportation agencies, port authorities, flood and storm water management agencies, and governmental economic development agencies. WisDOT is a non-federal public entity.

How the Corps 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 Corps from WisDOT would be used to augment the Corps' Regulatory budget, in accordance with the provisions of Section 214, as amended. Corps employees would charge their time against such account when working on WisDOT DA permit applications deemed a priority.

Purpose of accepting funds and how this will expedite reviews: Timely review and authorization of state transportation projects is critical to WisDOT's ability to advertise these projects so as to meet scheduled dates for obligating federal and non-federal funding, statewide Transportation Improvement Program targets, and accelerated programs. The Corps is unable, within current staff resource constraints, to provide expedited evaluation of applications for transportation projects. WisDOT-funded Corps dedicated staffing will assist WisDOT in meeting its milestones for bid advertisement and help avoid unanticipated costs and delays to WisDOT projects.

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,

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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 permit decisions, including general permit verifications, will be reviewed and signed by at least one level above the decision-maker.
- b. All documents involved in the decision-making process must be reviewed and signed by the one-level-above reviewer as defined above.
- c. All jurisdictional determinations made on projects where funds are used must have documentation that a non-funded Regulator reviewed and agreed with the determination.
- d. All final permit decisions, including all general permit verifications, for cases where these funds are used will be made available and updated monthly on the Corps' web page in an area separate from any other final actions, clearly identifiable as being for projects funded through this authority.
- e. 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.
- f. The Corps must comply with all applicable laws and regulations.
- g. Funds will not be expended for the review of the decision maker's decision.
- h. Funds will not be used for enforcement activities.

Impacts to the Regulatory Program: The Corps does not expect priority review of WisDOT projects to negatively impact the St. Paul 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.

Consideration of Comments: The Corps is soliciting comments from the public, federal, state and local agencies and officials, and other interested parties. Comments will be made part of the record, and they will be considered in determining whether it would be in the public interest to proceed with this action. If the Corps determines, after considering public comments, that the acceptance and expenditure of the funds is appropriate in consideration of the requirements under the applicable statutory authority, is in compliance with Section 214 of WRDA 2000, and is not otherwise contrary to the general public interest, the Corps will implement Section 214 of WRDA 2000 through a signed Memorandum of Agreement (MOA) with WisDOT and will accept the funds from them. A second public notice will be issued regarding the final decision of the District Commander on this matter.

We are seeking public comment. Anyone wishing to comment is encouraged to do so. **Comments should be submitted in writing within the comment period specified at the top of this notice,** and refer to the Proposed Acceptance of Funds from WisDOT. Replies may be addressed to: Corps of Engineers – Regulatory Division, 332 Minnesota Street, Suite E1500, St. Paul, Minnesota 55101. If you have any questions, please contact Ryan Malterud at (651) 290-5286.