



# SPECIAL PUBLIC NOTICE

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PROPOSAL TO ACCEPT AND EXPEND FUNDS FROM MARYLAND DEPARTMENT OF TRANSPORTATION TO EXPEDITE PERMIT APPLICATION REVIEW

**U.S. ARMY CORPS OF ENGINEERS  
BALTIMORE DISTRICT**

**Special Public Notice No.:** 23-15

**Comment Period:** March 30, 2023 to April 14, 2023

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This Special Public Notice announces that the United States Army Corps of Engineers, Baltimore District (Corps) Regulatory Branch is considering a proposal to accept and expend funds provided by the Maryland Department of Transportation (MDOT) to expedite processing of MDOT Department of the Army (DA) permit applications, subject to a series of limitations in accordance with: Section 214 of the Water Resources Development Act of 2000, as amended; 33 USC Chapter 36 Section 2352. This public notice solicits comments from the public on the proposed acceptance and expenditure of funds contributed by MDOT to expedite the evaluation of MDOTs DA permit applications.

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 Baltimore District, United States Army Corps of Engineers.

MDOT is eligible to provide funds to the Corps under Section 214 as non-federal public entity.

**Definition of non-federal public entities:**

Non-federal public entities include state and local governmental agencies or government public authorities, as well as federally recognized Tribes. Examples of non-federal public entities include, but are not limited to, local transportation agencies, port authorities, and flood and storm water management agencies. One or more non-federal public entities may enter into a Section 214 funding agreement with the Corps.

**Purpose for the proposed funding agreement:**

The Corps' Regulatory Program is funded as a congressionally appropriated line item in the annual federal budget. In past several years, the District has been able to maintain a higher staffing level because of a previous funding agreement, allowing for priority review of MDOT (State Highways Administration) projects. The District is considering replacing the expiring funding agreement with an agreement which includes the MDOT Secretary's Office, Maryland Transportation Authority and the following transportation business units: MDOT State Highway Administration, MDOT Maryland Aviation Administration, MDOT Maryland Transit Administration, MDOT Maryland Port Administration, and MDOT Motor Vehicle Administration (collectively known as MDOT). Without MDOT funding for additional staff, the District is unable to expedite the evaluation of MDOT Section 404 Clean Water Act, Section 10 Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection Research and Sanctuaries Act Department of the Army permit application(s) using current resources. Funds received from MDOT would be used by the District to expedite the review of MDOT permit applications in accordance with the provisions of Section 214 of WRDA 2000, as amended. The Baltimore District, Regulatory Branch would establish a separate account to track receipt and expenditure of the funds to ensure they would be expended for the intended purpose. District employees would charge their time against the established account when processing MDOT priority permit applications and conducting other related activities as specified below:

**Activities for which funds would be expended:**

Funds would be expended primarily on the labor and overhead of Baltimore District personnel processing MDOT priority permit applications. Such permit application processing activities would include, but not be limited to, the following: pre-application meetings, application reviews, jurisdictional determinations, site visits, preparation of public notices, preparation of correspondence, meetings, coordination activities, endangered species and cultural resource reviews, public interest review, distribution of public notices, analysis of alternatives, compensatory mitigation proposal reviews,

preparation of environmental assessments or environmental impact statements, preparation of permit decision documents, compliance inspections, training, travel, outreach, the development of programmatic tools, the review of mitigation bank instruments, and participation in early project planning or coordination activities. Funds may also be expended to pay for support services to perform select duties, such as technical writing or review of specific technical or legal documents (e.g. biological assessments for endangered species or contracts to develop National Environmental Policy Act documents).

If the funds accepted by the District under a funding agreement are fully expended and are not renewed, any remaining tasks necessary to complete processing of the MDOT permit application(s) would be handled like those of any other non-participant, subject to the availability of funds.

**How funds are expected to expedite permit review process:**

Since the purpose of Section 214 is to expedite the permit review process, a Section 214 funding agreement is an ideal vehicle to improve the permitting process for MDOT projects that require a Corps authorization. The Corps and MDOT believe that dedicated Corps project managers would be able to develop expertise in the types of projects performed by MDOT, which could improve the efficiency of the review process. Further, based on experience and the volume of expected MDOT permit applications going forward, the Corps expects that using funds accepted from MDOT to fund full-time Corps project managers and some part time project managers for MDOT permit applications would result in expedited reviews for MDOT projects. A Section 214 funding agreement would also improve the ability of the Corps and MDOT to coordinate and prioritize the review of projects based on MDOT project schedules and deadlines. In addition, hiring an additional full-time Corps project manager for MDOT permit applications would also benefit the reviews of non-MDOT permit applications since existing Corps project managers that would otherwise be working on MDOT applications would have additional time to work on applications for other applicants.

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

To ensure the funds would not impact impartial decision-making, the District would incorporate the following procedures into the funding agreement:

(a) 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 MDOT for at least one year.

(b) Instruments for mitigation banks or in-lieu fee programs proposed for review by the funding entity would be signed by the District Regulatory Branch 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 would be used to complete the JD would have documentation in the administrative record that a non-funded Corps District 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 United States Environmental Protection Agency, additional internal review would not be required.

(d) The Corps would 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 would comply with all applicable laws and regulations and would 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 would ensure the funding agreement and all final permit decisions carried out using funds accepted from MDOT would be made available to the public on the Corps Headquarters' public web pages at:

<https://permits.ops.usace.army.mil/orm-public#> and  
<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Section-214/>.

### **Impacts to the Regulatory Program:**

We expect that this funding agreement would have a net positive impact on the Corps Regulatory Program's evaluation of other applicants' permit applications. The Corps would use the funds to maintain Corps project managers to process MDOTs DA permit applications. This would allow existing Corps staff that would otherwise review MDOT applications to focus on the review of permit applications from other applicants in the District. The area of responsibility of the Baltimore District applicable to the proposed funding agreement includes the geographic boundaries of the State of Maryland.

### **Consideration of Comments:**

This public notice has a 15-day comment period. Following the review of comments received, the Baltimore District Commander will determine if acceptance and expenditure of the funds is compliant with Section 214. If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is compliant with Section 214, 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 Baltimore District may execute a Memorandum of Understanding with MDOT pursuant to Section 214 and proceed to accept and expend such funds from MDOT. 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 Memorandum of Understanding is executed by the Corps and MDOT 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.

### **Submission of Comments:**

Interested parties may submit, in writing, any comments concerning this proposal. **Comments should refer to Special Public Notice No. 23-15 and be submitted by the comment due date of April 14, 2023.** Comments must be sent to the United States Army Corps of Engineers, Baltimore District, Regulatory Branch ATTN: Nick Ozburn, by email at [Nicholas.R.Ozburn@usace.army.mil](mailto:Nicholas.R.Ozburn@usace.army.mil) or by mail to Nick Ozburn, U.S. Army Corps of Engineers, Regulatory Branch, 2 Hopkins Plaza, Baltimore, Maryland 21201.