



**US Army Corps
of Engineers**®
Rock Island District

SPECIAL PUBLIC NOTICE

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

U.S. ARMY CORPS OF ENGINEERS CHICAGO, LOUISVILLE, MEMPHIS, ROCK ISLAND, & ST. LOUIS DISTRICTS

Comment Period: July 23, 2024 – August 21, 2024

USACE District POC: Aurora Scott; (309)-794-8578; Aurora.C.Scott@usace.army.mil

This Special Public Notice announces that the U.S. Army Corps of Engineers, Chicago, Louisville, Memphis, Rock Island & St. Louis Districts (USACE) Regulatory Divisions are considering a proposal to accept and expend funds provided by the Illinois Department of Transportation (IDOT) to expedite processing of IDOT 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; 23 U.S.C. 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 Commanders of the Chicago, Louisville, Memphis, Rock Island & St. Louis Districts, U.S. Army Corps of Engineers.

IDOT is eligible to provide funds to the USACE under Section 214 as non-Federal public.

1. 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 USACE.

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 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) 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 IDOT would require approval by the Illinois FHWA Division office.

2. Purpose for the proposed funding agreement: IDOT's work often requires permits from the USACE 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 IDOT projects requiring DA Permits have increased and IDOT expects that these higher levels will continue to increase for the foreseeable future. Many of these projects fall within USACE jurisdiction. Accelerated review and decision-making is critical to IDOT's ability to advertise these projects so as to meet scheduled dates for obligating federal funding, statewide transportation improvement targets and accelerated programs. With this funding, the USACE will be able to provide IDOT with dedicated staff to ensure priority review, consistency, and opportunity for staff training and process improvements.

3. Activities for which funds would be expended:

Funds would be expended primarily on the labor and overhead of USACE personnel processing IDOT's 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 NEPA documents).

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

4. How funds are expected to expedite permit review process: Since the purpose of Section 214 and Section 139(j) is to expedite the permit review process, a Section 214 and Section 139(j) funding agreement is an ideal vehicle to improve the permitting process for IDOT projects that require a USACE authorization. The FHWA provides funds for certain IDOT projects. The USACE, IDOT, and FHWA believe that dedicated USACE project managers would be able to develop expertise in the types of projects performed by IDOT, which could improve the efficiency of the review process. Further, based on experience and the volume of expected IDOT permit applications going forward, the USACE expects that using funds accepted from IDOT to fund one and up to three dedicated full-time

USACE project manager(s), as well as periodically utilizing supplemental USACE staff for IDOT permit applications would result in expedited reviews for IDOT projects. A Section 214 and Section 139(j) funding agreement would also improve the ability of the USACE and IDOT to coordinate and prioritize the review of projects based on IDOT and FHWA project schedules and deadlines. In addition, fund one and up to three dedicated full-time USACE project manager(s) for IDOT permit applications would also benefit the reviews of non-IDOT (Local Roads) permit applications since existing USACE project managers that would otherwise be working on IDOT applications would have additional time to work on applications for other applicants.

5. Procedures to ensure impartial decision-making: To ensure the funds would not impact impartial decision-making, the USACE would incorporate the following procedures into the funding agreement:

A. The review must comply with all applicable laws and regulations. Any procedures or decisions that would otherwise be required for a specific type of project or review under consideration cannot be eliminated. However, process improvements that are developed under a funding agreement are encouraged to be applied widely, when applicable, for all members of the regulated public to benefit;

B. All final DA permit decisions and associated decision documents for matters where IDOT funds are used must be reviewed and approved in writing by a responsible official that is at least one level above the decision-maker and adhering to the respective District's delegation of signature authority. Additionally, the one-level-above reviewer must meet the following requirements: must hold a position that is not partially or fully funded by the same funding entity, and has not been partially or fully funded by the same funding entity for at least one year;

C. Instruments for mitigation banks or in-lieu-fee programs developed for an entity with a funding agreement must be signed by a Regulatory Branch/Division Chief, an equivalent, or a higher-level position that is not funded by any funding agreement;

D. All preliminary jurisdictional determinations (JDs) and approved JDs where funds are used to complete the JD must have documentation that a non-funded regulator conducted a review of the determination. This review is intended to maintain impartiality in the decision and does not require a one-level-above reviewer. The JD review does not need to be a field review. For those approved JDs that require coordination with EPA, additional internal review may be required;

E. USACE will not use the process of expediting permit evaluation to eliminate any procedures or decisions that would otherwise be required for the type of project and permit application under consideration;

F. USACE shall comply with all applicable laws and regulations in conducting its evaluation of IDOT permit applications;

G. Funds from this Agreement cannot be used for enforcement activities. Funds from this Agreement may be used for compliance inspections (i.e., of issued permits and monitoring of compensatory mitigation banks, etc.), but cannot be used to resolve noncompliance issues. Enforcement activities must be charged to Regulatory's appropriated funds in accordance with the most recent budget execution guidance.

H. The USACE will establish a separate work item to track the acceptance and expenditure of funds with the current fiscal year budget guidance; and

I. Funds will only be expended to expedite the evaluation of IDOT Projects, with performance measured as outlined in the Attachment #1. Funds will not be expended for the required review and approval by the decision-maker, and that decision-maker must hold a position that is not partially or fully funded by the same funding entity and has not been partially or fully funded by the same funding entity for at least one year. If contracts are used to develop decision documents or environmental compliance documentation, such documents shall be submitted to the USACE as drafts only and are subject to review and adoption by the USACE before a permit decision is made.

To ensure transparency, the USACE would ensure the funding agreement and all final permit decisions carried out using funds accepted from the IDOT would be made available to the public on the USACE 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/>.

6. Impacts to the Regulatory Program: USACE expects that this funding agreement would have a net positive impact on the USACE Regulatory Program's evaluation of other applicants' permit applications. The USACE would use the fund one and up to three dedicated full-time USACE project manager(s) to process IDOT's DA permit applications. This would allow existing USACE staff that would otherwise review IDOT applications to focus on the review of permit applications from other applicants in each District. Further, since permit process improvements that result from the funding agreement could potentially be applied to other permit applications, the USACE anticipates that this funding agreement could also result in additional permit process improvements for other applicants in the Districts. As needed, USACE may supplement reviews with existing regulatory personnel to utilize funds received from IDOT to augment this priority review.

7. Consideration of Comments: This public notice has a 30-day comment period. Following the review of comments received, the District Commanders will determine if acceptance and expenditure of the funds is in compliance with Section 214 and Section 139(j) If the District Commanders determine, after considering public comments, that the acceptance and expenditure of the funds is in compliance with Section 214 and Section 139(j) that USACE would be able to preserve impartial decision-making, and that the timeframes of permit application reviews for other applicants in the Districts would not be adversely affected, the USACE may execute a Memorandum of Agreement (MOA) with the IDOT pursuant to Section 214 and Section 139(j) and proceed to accept and expend such funds from IDOT. 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 each District Commander's decision. If a MOA is executed by the USACE and IDOT 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.

8. Submission of Comments: Interested parties may submit, in writing, any comments concerning this proposal. **Comments should refer to Special Public Notice IDOT and be submitted by the comment due date of August 21, 2024.** Comments must be sent to the U.S. Army Corps of Engineers, Rock Island District, Regulatory Division, ATTN: Aurora Scott, Clock Tower Building, PO Box 2004, Rock Island, IL 61204 or Aurora.C.Scott@usace.army.mil.