



**US Army Corps
of Engineers** ®
Charleston District

SPECIAL PUBLIC NOTICE

PROPOSAL TO ACCEPT AND EXPEND
FUNDS FROM SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION

COMMENT PERIOD: September 20, 2024 to October 4, 2024
POINT OF CONTACT: Brad Carey (843) 329-8099

Applicant

South Carolina Department of Transportation
Chad Long - Director of Environmental Services
Post Office Box 191
Columbia, SC 29202

Location

Throughout the state of South Carolina.

Activity

This Special Public Notice announces the preliminary intent of the District Commander, Charleston District, to accept funds and expend funds contributed by the South Carolina Department of Transportation to expedite processing of Department of Army (DA) permit applications, pursuant to 33 U.S.C. § 2352 (Section 214 of the Water Resources Development Act of 2000, as amended by Section 1006 of the Water Resources Reform and Development Act of 2014, 128 Stat. 1193, Public Law No. 113-121 [H.R. 3080]; as amended by Section 1125 of the Water Infrastructure Improvements for the Nation Act, 130 Stat. 1628, Public Law No. 114-322 [S 612]; as amended by Section 1145 of America's Water Infrastructure Act of 2018, 132 Stat. 3765, Public Law No. 115-270; as amended by Section 8135 of the Water Resources Development Act of 2022, 136 Stat. 3722, Public Law No. 117-263).

This Special Public Notice also solicits comments from the general public on the subject of acceptance and expenditure of funds contributed by the South Carolina Department of Transportation to expedite review of DA permit applications.

Comments should be mailed to:

**US Army Corps of Engineers, Charleston District
Regulatory Division
ATTN: Brad Carey
69A Hagood Avenue
Charleston, South Carolina 29403**

Background Information: Section 214 of the Water Resources Development Act of 2000, as amended (33 U.S.C. § 2352) provides that the Secretary of the Army, after public notice, may accept and expend funds contributed by a non-Federal public entity to expedite the DA permit review process. In doing this, the Secretary must ensure that the use of such funds will not impact impartial decision making with respect to permits, either substantively or procedurally.

Non-Federal public entities are generally comprised of state and local governmental agencies and Indian tribal governments, but may also include entities such as port authorities, flood and storm water management agencies, and public infrastructure departments that have the desire to expedite the DA permitting process programmatically, or for a specific project.

Section 1006 of Water Resources Reform and Development Act (WRDA), enacted after being signed by the President on June 10, 2014, eliminated the sunset date from the Section 214 authority for non-Federal public entities.

How the Charleston District would expend funds: The U.S. Army Corps of Engineers, Charleston District's Regulatory Program is funded as part of a congressionally appropriated line item in the annual Federal budget. Additional funds received from the South Carolina Department of Transportation would be used to augment the Charleston District Regulatory budget in accordance with the provisions of WRDA. The Charleston District would establish a separate account to track receipt and expenditure of the funds. A Charleston District regulatory employee would charge their time against the respective account when they do work related to permit actions for the South Carolina Department of Transportation.

Activities for which funds will be expended: Funds would primarily be expended on the salary and overhead of Regulatory Project Managers performing the expedited DA

permit processing activities for the South Carolina Department of Transportation. Such activities would generally include the following: pre-application meetings, jurisdictional delineations, site visits, public notice preparation, preparation of correspondence, conduct of public interest reviews, preparation of draft permit decisions, preparation and/or review of Environmental Impact Statements and Environmental Assessments, coordinate and provide training on natural resource issues and permits, organize and/or attend meetings, organize and/or participate in conference calls. South Carolina Department of Transportation funds would not be expended for a Corps supervisor's review of a WRDA-funded project manager's work, other components of the Charleston District, or other persons in the decision-making chain of command. Furthermore, South Carolina funding would not be used for enforcement activities.

Procedures to be used to ensure impartial decision-making: To ensure funds received from a non-Federal public entity would not impact impartial decision-making, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, would apply to all cases using funds provided by the South Carolina Department of Transportation:

- All final permit decisions must be reviewed by at least one level above the decision maker.
- All final permit decisions made for projects where funds are used, will be entered accurately into the Charleston District's ORM database and will be posted on the HQUSACE ORM2 public portal.
- The Charleston District will not eliminate any procedures or decisions that would otherwise be required for that type of project and permit application under consideration.
- The Charleston District will comply with all applicable laws and regulations.
- Funds will only be expended to provide expedited review of permit applications submitted by the South Carolina Department of Transportation, including the associated DA permit processing activities identified above (*i.e.*, "Activities for which funds will be expended")
- Funds will not be expended for the review of the decision maker's decision.

The benefits the South Carolina Department of Transportation would receive from their funds: In general, the workload of the Charleston District has increased over the past five years. WRDA Section 214, as amended, is designed to enable the Charleston District to expedite the processing of DA permit applications for certain public projects. The South Carolina Department of Transportation can expect their DA permit applications to receive expedited handling by the Charleston District, and to the degree that the Charleston District considers it appropriate, the South Carolina Department of Transportation can set priorities among their pending DA permit applications. As a result

of the South Carolina Department of Transportation's funding, the South Carolina Department of Transportation will have dedicated Project Managers focus on their applications and requests, better availability for site visits and meetings, and overall streamlined DA permit processing.

Impacts to the Regulatory Program: This method of expediting the review of DA permit applications submitted by the South Carolina Department of Transportation should not negatively impact the Charleston District's Regulatory Program or increase the waiting time for permit evaluations that are not subsidized by funds contributed by non-Federal public entities. The remaining workload for non-funding entities should actually be reduced. We expect the benefits of implementing this program to translate into an enhanced evaluation capability for all participants.

Consideration of Comments: This Special Public Notice has a 15-day comment period. Following the review of comments received, the Charleston District will determine if acceptance and expenditure of funds is in compliance with WRDA. If the District Commander determines, after considering public comments, that acceptance and expenditure of the funds is in compliance with WRDA and is not otherwise contrary to the general public interest, the Charleston District will proceed to accept and expend such funds from the South Carolina Department of Transportation. Funds will be accepted only if the public interest is better served through cost-effectiveness, enhanced evaluation capability, streamlined permit processing, or other appropriate jurisdiction. A final public notice will be issued regarding the District Commander's decision. Beyond that, no new public notice will be issued if a participating non-Federal public entity increases the amount of funds previously furnished, provided that the purpose remains the same.

Submission of Comments: Comments on implementing WRDA will be accepted and made part of the record, and they will be considered in determining whether it would be in the best public interest to proceed with this administrative practice. Comments should refer to the *Proposed Acceptance of Funds from the South Carolina Department of Transportation* and the date of this Special Public Notice and should reach this office no later than the expiration date of this public notice.

COOPERATIVE AGREEMENT

between

U.S. ARMY CORPS OF ENGINEERS

and

**STATE OF SOUTH CAROLINA
DEPARTMENT OF TRANSPORTATION**

For the 2025-2029 Federal Fiscal Years

(October 1, 2024 through September 30, 2029)

Article I. **FUNDING RECIPIENT**

U.S. Army Corps of Engineers
Charleston District
69A Hagood Avenue
Charleston, South Carolina 29403

Article II. **AUTHORITY**

This Agreement between the U.S. Army Corps of Engineers, Charleston District (hereinafter referred to as the “Corps”) and the South Carolina Department of Transportation (hereinafter referred to as “SCDOT”) is hereby entered into under the authority of 33 U.S.C. § 2352 (Section 214 of the Water Resources Development Act of 2000, as amended by Section 1006 of the Water Resources Reform and Development Act of 2014, 128 Stat. 1193, Public Law No. 113-121 [H.R. 3080]; as amended by Section 1125 of the Water Infrastructure Improvements for the Nation Act, 130 Stat. 1628, Public Law No. 114-322 [S 612]; as amended by Section 1145 of America’s Water Infrastructure Act of 2018, 132 Stat. 3765, Public Law No. 115-270; as amended by Section 8135 of the Water Resources Development Act of 2022, 136 Stat. 3722, Public Law No. 117-263). Collectively, these two agencies are referred to herein as the “Parties.”

Article III. **PURPOSE AND OBJECTIVE**

The purpose of this Agreement is to set forth the responsibilities of the Parties relative to priority review of transportation projects with the goal of achieving timely design and implementation of effective, safe, and financially prudent transportation improvements, while also assuring such design and implementation is sensitive to protection of natural resources for which the Corps is responsible under Federal statutes and regulations.

The objective of this Agreement is for the Corps to commit four full time employees (FTEs) dedicated exclusively to SCDOT activities and funding for up to one-half FTE as needed for special projects, as outlined in **Appendix A**, to assure timely decisions on applications for Department of Army Permits for SCDOT projects. These applications may be subject to Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act. Although assigned work may include compliance inspections (i.e. of issued permits, etc.), it will not include enforcement activities and/or resolution of non-compliance issues. Enforcement actions, including permit non-compliance, will be handled by non-funded Regulatory Project Managers for resolution. It is also understood that the funded employees will also participate in general Corps employee activities.

Article IV. **BACKGROUND**

SCDOT has an extremely active highway development and improvement program. In addition, SCDOT has exhibited a strong commitment to incorporating environmental quality measures into the transportation planning process. This Agreement outlines the interactions and relationships of the signatory Parties as they relate to transportation projects. Conferences, meetings, and workshops have been held in the past to discuss broad issues as well as specific projects. These contacts and discussions have shown that in order to optimize environmental coordination, it is important to develop procedures that enable Corps personnel to work directly with transportation planners and provide recommendations at the earliest stages of project development.

This Agreement is intended to provide the resources necessary to increase direct and early Corps involvement in the SCDOT planning and project development process. This increased focus will facilitate environmentally responsible highway development while at the same time improving the Corps' ability to review, evaluate, and process appropriate permits for SCDOT projects in a timely manner. This Agreement is predicated upon a relationship of trust among all Parties that will be maintained and strengthened as a result of this effort.

Article V. **SCOPE OF WORK**

For the period hereinafter set forth, the Corps will furnish the necessary personnel, materials, services, and facilities needed to carry out the activities described below:

Specifically, the Corps will:

- A. Employ four Regulatory Project Managers to carry out work as detailed in **Appendix A** and other work contemplated by this Agreement. In addition, funds will be set aside for up to ½ FTE on special projects as needed, based on consultation amongst SCDOT and the Corps. The Corps will use funds provided under this Agreement to pay the costs of salary, associated benefits, and actual burdened overhead rate. These funds will also be used to supply the project managers with the tools of the trade customarily provided to and utilized by their colleagues in the Regulatory Program, such as cell phones, snake boots, other safety equipment, use of government vehicles, etc.
- B. Maintain accurate accounting records necessary for substantiating hours and costs billed against this Agreement. The Corps will provide a summary of costs incurred after each quarter to SCDOT. A budget summary report will be run annually and provided to SCDOT. As required by federal

regulations, records will be kept during and for a period of five years thereafter the completion of work conducted under this Agreement. These records will be subject to examination or audit by SCDOT if they should so desire.

- C. Refund SCDOT with any funds advanced under this Agreement that were not expended towards fulfilling the intent of this Agreement or that remain at the end of the funding period. With approval from SCDOT, the Corps shall carryover any remaining funds from the previous funding period into the next funding period for expenditure in accordance with this Agreement.
- D. Coordinate with and assist SCDOT in developing options for wetland and stream mitigation in compliance with current Corps' Guidance, Standard Operating Procedures, Laws, and Regulations to address the needs of SCDOT's future Public Transportation Projects.
- E. Provide electronic monthly status reports to SCDOT on the first Wednesday of every month.
- F. Report annually on or before October 31, the percentage of time frames achieved for those items in **Appendix B** that can be readily obtained from the Corps' ORM2 database.

Specifically, SCDOT will:

- A. Provide funding sufficient to pay for salary, benefits, and all associated overhead for four full time GS-12 employees adjusted annually to cover all Government-wide Pay Increases, including Local Market Supplement, Rate Range Adjustment, Base Salary Increase, and Bonus Award. In addition, funds will be set aside for up to ½ FTE on special projects as needed, based on consultation amongst SCDOT and the Corps.
- B. These funds will also be used to supply the project managers with the tools of the trade customarily provided to and utilized by their colleagues in the Regulatory Program, such as computer equipment, cell phones, safety equipment, use of government vehicles, etc.
- C. Once this agreement has been signed by all Parties, transmit an advance payment equal to the funding period total in Article IX, needed to support the services contemplated by this Agreement.
- D. SCDOT Environmental Services Division will clearly communicate project priorities to the Corps staff through regular and frequent communication. The SCDOT Director of Environmental Services will have the final authority on project priorities for Corps Regulatory Project Managers.

E. To Assist the Corps in forecasting longer term workloads and future mitigation needs, SCDOT will regularly meet with the Corps to discuss results from long term modeling. SCDOT will discuss forecasted impacts, projects, and how the proposed projects would be mitigated based on SCDOT's mitigation strategy. SCDOT will also share critical watershed information based on project totals and impact totals.

Regarding all Parties:

- A. The Parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement; and no Party shall be construed as the officer, agent, or employee of the other.
- B. In no way shall this be construed or implied that either SCDOT or the Corps is, by this Agreement, intending to abrogate its obligation and duty to comply with the regulations promulgated under the 1973 Endangered Species Act, the Fish and Wildlife Coordination Act of 1958 (as amended), the National Environmental Policy Act (NEPA) of 1969, or the Clean Water Act of 1977 (as amended) or any other Federal statute or implementing regulations. Nor shall this Agreement be construed to imply that the Corps' impartial decision making will be compromised in any way.
- C. The Parties will establish a primary point of contact for administration of this Agreement and list them in Article XIII, which will hold regular meetings to establish priorities and evaluate work performed under the Agreement. These meetings will be the forum to discuss management level concerns related to staff performance, workload priorities, and management initiatives.
- D. The Agreement Officers listed in Article XII, or their designated representative, will meet at least annually to facilitate communication, discuss interagency cooperation, and identify programmatic initiatives and strategic goals. Issues which the Agreement Administrators have identified and are unable to resolve at their level should be brought forward and resolved at this meeting.
- E. The Parties will provide staff to attend regularly scheduled monthly interagency coordination meetings. These meetings will be attended by the Corps' SCDOT Project Managers to specifically discuss SCDOT projects. The intent of these meetings is to solicit input from the group on particular projects to identify concerns and facilitate the resolution of concerns. For the purpose of this Agreement, "projects" can apply to upcoming work, pending applications, permit modifications, and mitigation.

Article VI. **COORDINATION**

- A. Regarding the monthly administrators meeting established above, SCDOT will communicate priorities in writing to the Corps for project review. In return, the Corps will provide a monthly status report for all projects Pending and Issued by category (IP, GP, JD) and identify status of all pending actions. These meetings will be held monthly, if the meeting is not face-to-face the monthly priority report and status report are still due by the 15th of the month.
- B. Prior to the staff interagency meetings mentioned above, SCDOT will provide sufficient information to allow for appropriate review in order to facilitate substantive comments from the Corps; however, it is understood by all Parties that in many cases these comments are preliminary and are in no way an official position or approval from the Corps. Official positions or approvals, including commitments from the Corps, will only be provided by official letterhead.
- C. Both SCDOT and the Corps agree that ready and reasonable access will be provided to working level staff of the other agency in an effort to minimize the need for formal meetings. Both agencies are committed to frequent and productive interaction and the establishment of working-level interpersonal relationships which will allow for expedient scheduling of field visits, meetings, and all manner of open communications in a sustained effort to achieve the stated goals of this agreement.
- D. SCDOT and the Corps agree to conduct early and frequent coordination on issues such as, but not limited to: comments on project alternatives; mitigation plans; review of and comments on Biological Assessments; implementation of permit streamlining processes; and interagency SCDOT/Corps training.

Article VII. **PERFORMANCE OBJECTIVES**

- A. As part of this Agreement, the Corps has agreed to make every effort to adhere to the timeframes outlined in **Appendix B**. To document general adherence to these timeframes, the Corps shall provide SCDOT a report from its regulatory actions database upon request. Adjustments to the timeframes may be made when practical and agreed to by all Parties.
- B. Agency coordination meeting will generally occur monthly, as requested by either party. In addition to these monthly meetings, there will be a staff level Partnering Meeting at a minimum of once per fiscal year. These Partnering Meetings will address overall performance and discuss any potential improvement measures.

Article VIII. PERIOD OF PERFORMANCE

- A. This Agreement shall be effective for a period of five (5) years from the start date of the funding period.
- B. Any Party may terminate this Agreement upon ninety (90) day written notification to the other Party. Upon termination by SCDOT, the Corps will refund to SCDOT any funds which had been previously advanced, but which had not been used or would not be used in accordance with this Agreement. At such time, all SCDOT projects will be redistributed amongst existing Corps staff and all commitments made by the Corps under this Agreement shall cease.

Article IX. AWARD AMOUNT

- A. 1ST FUNDING PERIOD: October 1, 2024 – September 30, 2025
2ND FUNDING PERIOD: October 1, 2025 – September 30, 2026
3RD FUNDING PERIOD: October 1, 2026 – September 30, 2027
4TH FUNDING PERIOD: October 1, 2027 – September 30, 2028
5TH FUNDING PERIOD: October 1, 2028 – September 30, 2029
- B. TOTAL ESTIMATED COST FOR 1st FUNDING PERIOD: \$765,000
TOTAL ESTIMATED COST FOR 2nd FUNDING PERIOD: \$765,000
TOTAL ESTIMATED COST FOR 3rd FUNDING PERIOD: \$765,000
TOTAL ESTIMATED COST FOR 4th FUNDING PERIOD: \$765,000
TOTAL ESTIMATED COST FOR 5th FUNDING PERIOD: \$765,000
- C. TOTAL FUNDING FOR THIS AGREEMENT: \$3,825,000

Article X. PAYMENT PROVISIONS

The Parties agree that advance payment is required to be given to the Corps prior to the commencement of goods or services as described in this Agreement.

After execution of this Agreement by the Parties, SCDOT agrees to make payment in full of the Award amount for each funding period as set forth in Article IX prior to the start date of the applicable funding period. Checks shall be made payable to:

USAED
Accounting Officer
Charleston District
69A Hagood Avenue
Charleston, South Carolina 29403

Article XI. **FUNDING**

- A. The estimated amount for the funding period is based on the annual cost including overhead for four (4), GS-12, Regulatory Project Managers and ½ FTE to be used for a regulatory project manager for special projects and associated costs for benefits, overhead, safety equipment, vehicles, etc.
- B. The funding amount may have to be adjusted, either increased or decreased, to adequately compensate for the employee's actual total cost and/or any reasonable unforeseen costs. If a funding adjustment is required, the Parties will meet and agree to the appropriate amount in writing.
- C. Any funds that have not been expended during the current fiscal year will be applied towards the next funding period covered by this Agreement upon approval by SCDOT.

Article XII. **AGREEMENT OFFICERS**

- A. U.S. Army Corps of Engineers
Melinda G. Hogan-Charles – Chief, Regulatory Division
Regulatory Division
69A Hagood Avenue
Charleston, SC 29403
- B. State of South Carolina Department of Transportation
Director of Environmental Services
Post Office Box 191
Columbia, SC 29202

Article XIII. **AGREEMENT ADMINISTRATORS**

- A. U.S. Army Corps of Engineers
Brad Carey – Special Projects Branch Chief
Regulatory Division
69A Hagood Avenue
Charleston, South Carolina 29403
(843) 329-8044
- B. South Carolina Department of Transportation
Chad Long – Director of Environmental Services
Post Office Box 191
Columbia, South Carolina 29202

IN WITNESS WHEREOF, each Party has caused this agreement to be executed by an authorized official on the date and year set forth below their signature.

U.S. Army Corps of Engineers:

PATRICK G. RIPTON
Major, EN
Acting Commander
U.S. Army Corps of Engineers Charleston District

Date

South Carolina Department of Transportation:

Justin Powell
Secretary of Transportation

Date

Appendix A

The Corps staff will accomplish the reviews and tasks appropriate to expedite, implement and coordinate the Project Development Process and meet SCDOT's needs for compliance with applicable State and Federal statutes. The Corps staff reviews and work tasks may include, but are not limited, to the following:

- Review and process permit applications submitted by SCDOT.
- Coordinate with and assist SCDOT in developing options for wetland and stream mitigation in compliance with current Corps' Guidance, Standard Operating Procedures, Laws, and Regulations to address the needs of SCDOT's future Public Transportation Projects.
- Review transportation plans and programs.
- Participate in agency scoping meetings.
- Review wildlife resource inventory and impact assessments.
- Provide preliminary environmental analysis, guidance and review.
- Provide preliminary and detailed alternatives analyses guidance and review.
- Represent the Corps at meetings, as appropriate.
- Participate in the development and implementation of written SCDOT and Corps guidance.
- Conduct document reviews and provide Corps responses and positions on the documents, which may include but are not limited to:

- * Wetlands Identification and Delineation Reports
- * Wetland Functional Assessment Reports
- * Wildlife Resources and Related Technical Reports
- * Alternatives Analyses
- * Cultural Resource Assessments
- * Endangered Species - Biological Assessments
- * Floodplain Determination
- * Hydrologic Analysis
- * Habitat Evaluation Procedure Reports
- * Purpose and Need Statements
- * Preliminary Alternatives Reports
- * Categorical Exclusion Evaluations
- * Environmental Evaluation Reports
- * Mitigation Reports and Plans
- * Section 404 Permit Applications.

- Coordinate and provide training on natural resource issues and permits, including various aspects of the Regulatory Program.
- Organize meeting and conference calls to clarify problems at the request of SCDOT or the Corps.
- Perform other related tasks as defined by SCDOT and agreed to by the Corps

Appendix B

Under normal circumstances the Corps will make every effort to meet the following timeframes. Please be advised that these timeframes can be affected by Regulation changes, Supreme Court decisions, National Guidance, National Policy, etc. and can only be met when complete and accurate information is provided.

1. With all requests for Nationwide Permit authorization (NWP) and Individual Permit (IP) applications, the Corps shall provide notification of any need for additional, required information/clarification within 15 days of the Corps' receipt of such applications.
2. Upon receipt of a completed application or the requested (required), additional information associated with an IP application, the Corps shall disseminate the 30-day Joint Public Notice within 15 days.
3. For Individual Permits, within 15 days of the end of any Joint Public Notice the Corps shall provide, to SCDOT, all comments received as a result of the notice, as well as those comments from the Corps.
4. Regarding requests for authorization under SCDOT's General Permit (GP) agreement with the Corps, the Corps shall provide notification of any need for additional, required information within 15 days of the Corps' receipt of such GP authorization requests.
5. With all of SCDOT's requests for Approved Jurisdictional Determinations, Preliminary Jurisdictional Determinations, and Delineation Concurrences, the Corps Regulatory Project Manager shall provide notification of any need for additional, required information/clarification within 15 days of the Corps' receipt of such JD requests.
6. For General Permit (GP) authorization requests requiring dissemination to the resource agencies, the Corps shall provide all comments within 15 days of the end of the 15-day comment period.
7. For IPs, upon resolution of comments/issues with the Corps, the resource and other regulatory agencies, and issuance of 401 Water Quality Certification or a Critical Area Permit, the Corps shall render a permit decision within 30 days, in 95% of all instances.
8. For GP authorization requests that do not require dissemination to the resource agencies, the Corps shall issue or deny such GP authorization requests within 30 days of their receipt of a complete GP authorization request, or the requested (required), additional information associated with a GP authorization request.

9. Upon receipt of a complete JD request, the Corps shall issue the JD within 30 days, provided coordination with EPA and HQ is not required. Complete JD requests requiring coordination with EPA and or HQ, but not elevated, will generally be completed within 45 days. These timeframes are subject to the scheduling and timing of site visits and the availability of SCDOT and/or the consultant for the project.

DRAFT