



**US Army Corps
of Engineers®**

Special Public Notice

**Department of the Army Permit Setbacks along
the Gulf Intracoastal Waterway
May 15, 2013**

Galveston District

Galveston District Permit Setbacks along the Gulf Intracoastal Waterway Draft Policy Memorandum

PURPOSE OF PUBLIC NOTICE: To inform you of a proposed U.S Army Corps of Engineers, Galveston District (Corps) policy updating setback distances for Department of the Army Permits on the Gulf Intracoastal Waterway and to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest.

INTRODUCTION: The proposed policy provides guidance for Department of the Army (DA) permits along the Gulf Intracoastal Waterway Navigation Channel (GIWW). It is the intent of this proposed policy to regulate the construction of structures and/or fill along the GIWW in order to preserve the Government's ability to maintain the waterway and provide a margin of safety to those who use such waterway by maintaining established setbacks from the GIWW.

The GIWW is important because more than \$25 Billion worth of goods are transported annually on the Texas portion alone. Compared to the nation's ports, the GIWW would rank 6th in respect to tonnage. In addition to this important economic engine, the GIWW is access for many Texans to navigable waters for both commercial and recreation purposes. The infrastructure for these commercial and recreational uses can adversely impact vital commercial navigation if they are not assured to be compatible with the congressionally authorized purpose of the GIWW. With increased development along the GIWW, the Corps concluded that it was imperative that we develop a predictable and repeatable policy for authorizing structures along the GIWW that maintains the compatibility of these important functions. To do this, the Corps established setbacks from the GIWW channel where structures could be placed without interfering with navigation on the GIWW. In addition, we identified areas of concern where a heightened permit evaluation was necessary.

A setback is defined as the distance from a federally authorized and constructed channel, landward, to a proposed structure (i.e., the distance that a structure must be "set back" from the edge of the channel). For the Corps, these setbacks ensure that we have sufficient clearance for dredging the channel. For industry, these setbacks facilitate safe transportation by ensuring there are no encroachments into the navigable channel. For the public, these setbacks serve as a guideline, or a hard line, for which the district will regulate permit applications along the GIWW.

DEVELOPMENT OF THE POLICY: The District established an interagency-team comprised of state and federal agency partners as well as commercial users of the GIWW to develop the proposed setback policy. Members of the team included the; Corps' Area Offices and Regulatory Branch, U.S. Coast Guard, Texas Department of Transportation, Texas General Land Office, Gulf Intracoastal Canal Association, and numerous towing vessel operators.

ESTABLISHMENT OF SETBACKS: The following setbacks are designed to ensure that no structures or fill encroach beyond the top edge of the navigation channel, including appropriate side slopes, and there is sufficient clearance for dredging the navigation channel to its full width and depth, including side slopes. Additionally, considerations are made for safe passage of commercial vessels through the GIWW. Absent unusual circumstances identified on a case-by-case basis, the following guidelines will apply.

- a. Standard Setback. The Standard Setback is designed to establish a distance from the near bottom edge of the GIWW where structures or fill should not extend past.
- b. Standard Setback Exceptions. During the development of this policy, 5 areas of navigation concern were identified. The 5 areas of concern include: 1) Bends; 2) Bridges; 3) Mooring Facilities; 4) Waterfront Structural Congestion/Encroachment areas; and 5) Land Encroachment. Modifications to the standard setback distances were made to account for safe passage in these areas.

Evaluation of DA Permits on the GIWW: The Corps' Regulatory program regulations, specifically 33 CFR 320.4, require permit decisions in navigable waters balance the inherit right to reasonable private land use with the rights and interests of the public. When the activity is in the area of a federal project, such as the GIWW, the activity must be evaluated to ensure that they are compatible. In the case where a permit proposal will create undue interference with access to, or use of, a navigable water, the authorization will be generally denied. The proposed policy established the following guidelines for the evaluation of DA permit application on the GIWW.

1. DA permits for structures and/or fill proposed within areas of the GIWW with Standard Setbacks will be evaluated based on their proximity to the setback. Projects located shoreward of the setback will be evaluated using a permit type commensurate with the proposed impact. These permit types include general and standard permits. DA permits proposed impacts on or within the standard setback will be evaluated using an individual permit, including letter of permission if applicable. DA permits for proposed work within the Standard Setback areas of the GIWW will be evaluated using the permit type commensurate with the proposed impact.
2. DA Permits for structure and/or fill proposed within areas identified as Standard Setback Exemptions will also be evaluated based on their proximity to the modified setbacks. DA permit applications proposed shoreward of the setback lines will be evaluated using an individual permit, including letter of permission if applicable. General permits shall not be used to evaluate DA permits within Standard Setback Exemption areas. DA permits for structures and/or fill proposed within the standard setback will be considered to create undue interference with access to, or use of, navigable waters and authorization will be denied by the district engineer pursuant to 33 CFR 325.8(b). DA permits for proposed

work within the Standard Setback Exemption areas of the GIWW will be evaluated using an individual permit, including letter of permission if applicable.

3. All general permits, including Nationwide General Permits, Programmatic General Permits and Regional General Permits, will have a regional general condition added to require pre-construction notification if proposed along the GIWW and will restrict their use in Standard Setback Exemption areas.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Special Public Notice must reach this office on or before June 15, 2013. **If no comments are received by that date, it will be considered that there are no objections.** Comments and requests for additional information should be submitted to:

Derek A. Thornton
CPT (P), EN
Operations Manager
Navigation Branch
Galveston District
U.S. Army Corps of Engineers
409-766-3096
swg_public_notice@usace.army.mil

DISTRICT ENGINEER
GALVESTON DISTRICT
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