



Special Public Notice

**United States
Army Corps
Of Engineers
Galveston District**

Flood Recovery and Repair Activities in the
Galveston District, United States Army Corps
of Engineers

U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT

PURPOSE OF PUBLIC NOTICE

The purpose of this public notice is to provide guidance and a summary of exemptions and permits which may be required for the protection and repair of existing flood damaged structures, damaged land areas, damaged fills, and response operations under the authority of Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344).

FLOOD RECOVERY AND REPAIR ACTIVITIES IN THE GALVESTON DISTRICT

In response to flooding and other storm related damages in the Galveston District Area of Responsibility, it is anticipated that municipalities and owners of damaged property will want to conduct repair activities in the near future. A United States Army Corps of Engineers (Corps) Section 10 of the Rivers and Harbors Act and/or Section 404 Clean Water Act permit may be required for dredging or placing fill in waters of the United States, including rivers, lakes, streams, creeks, and wetlands. However, many of the permits have scopes of work and thresholds which allow you to accomplish your project without delay or waiting for an authorization.

Division engineers are authorized to approve special processing procedures in emergency situations. An emergency is defined as a situation that would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.

For any activities that are not emergency protective measures (i.e., permanent work or final reconstruction), all regular permitting and regulatory processes apply, as outlined below. Therefore, communities should keep the long-term recovery requirements in mind as they move through the initial construction stages of emergency protective measures. This advisory is a summary for municipalities and property owners of existing regulations which may streamline many activities within waters of the United States including repair and maintenance of existing facilities, bank stabilization, emergency watershed protection and rehabilitation, repair of upland areas, dredging in and around water intake structures, boat slips, and docks.

Clearing and removal of floating debris, such as tree trunks and limbs and trash, from around culverts, bridge crossings, boat docks or retaining walls, *provided no material removed is placed permanently in a water of the United States*, does not require a permit.

Depending upon the size and location of your proposed work, you may be required to provide an application or preconstruction notification (PCN) for our review and prior to authorization of your project. Please note that all Regional and General Conditions, such as compliance with the Endangered Species Act and Section 106 of the National Historic Preservation Act still apply. For more information regarding each of the following permitting options go to: <https://www.swg.usace.army.mil/Missions/Regulatory/Permits>

These permits do not authorize any damage to private property, invasion of property rights, or any infringement of federal, state, or local laws or regulations. Check with the local reservoir or water authority prior to any activities. *If you are unsure if the work you are proposing to accomplish may need a permit, please email CESWGRRegulatoryInbox@usace.army.mil and we will provide additional guidance.*

MAINTENANCE EXEMPTIONS

Certain activities that result in a discharge of dredge or fill material may not require Section 404 authorization. Examples of activities meeting this exemption may include maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures, provided there is no change in the lines, grades or character of the original features. Exemptions are also available for the construction or maintenance of farm or stock ponds and construction of temporary sedimentation basins. See 33 CFR 323.4 for more information.

NATIONWIDE PERMITS (NWP)

NWP 3 - Maintenance

For the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill, provided that the structure or fill is not to be put to uses differing from those uses specified in the original permit or most recent modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project.

This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire, or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays. A PCN is required for the removal of sediments.

NWP 13 - Bank Stabilization

Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects (an exception is for bulkheads—the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);
- (c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high-water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
- (g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;
- (h) The activity is not a stream channelization activity; and
- (i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization. This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) Involves discharges into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high-water mark or the high tide line.

NWP 14 - Linear Transportation Projects

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars. Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 32)

Note 1: For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects must comply with 33 CFR 330.6(d).

Note 2: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under section 404(f).

NWP 19 - Minor Dredging

Dredging of no more than 25 cubic yards below the plane of the ordinary high-water mark or the mean high-water mark from navigable waters of the United States (i.e., section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)). All dredged material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

NWP 20 - Response Operations for Oil or Hazardous Substance

Activities conducted in response to a discharge or release of oil or hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) including containment, cleanup, and mitigation efforts, provided that the activities are done under either: (1) The Spill Control and Countermeasure Plan required by 40 CFR 112.3; (2) the direction or oversight of the federal on scene coordinator designated by 40 CFR part 300; or (3) any approved existing state, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761. This NWP also authorizes the use of temporary structures and fills in waters of the U.S. for spill response training exercises.

NWP 37 - Emergency Watershed Protection and Rehabilitation

Work done by or funded by:

- (a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);
- (b) The United States Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13);
- (c) The Department of the Interior (DOI) for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);
- (d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR Subchapter R), where the activity does not involve coal extraction; or
- (e) The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).

In general, the prospective permittee should wait until the district engineer issues an NWP verification or 45 calendar days have passed before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre- construction notification and any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

Notification: Except in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32).

NWP 41 - Reshaping Existing Drainage Ditches

Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the ditch as originally constructed (i.e., the capacity of the ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.

This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects.

NWP 45 - Repair of Uplands Damaged by Discrete Events

This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high-water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer.

This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period. This NWP does not authorize beach restoration or nourishment. Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 33) within 12-months of the date of the damage; for major storms, floods, or other discrete events, the district engineer may waive the 12-month limit for submitting a preconstruction notification if the permittee can demonstrate funding, contract, or other similar delays. The pre-construction notification must include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration.

Note: The uplands themselves that are lost as a result of a storm, flood, or other discrete event can be replaced without a section 404 permit, if the uplands are restored to the ordinary high-water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5). This NWP authorizes discharges of dredged or fill material into waters of the United States associated with the restoration of uplands.

LETTERS OF PERMISSION

Letter of Permission Procedure for Activities at Certain Reservoirs and Federal and State Sponsored Projects (CESWF-97-LOP-1)

The scope of work that may be authorized by this Letter of Permission (LOP) procedure includes *any activity at a Corps, Bureau of Reclamation, state river authority, regional water district, city, county, or utility reservoir, including, but not limited to, bank stabilization, beach nourishment, property protection, and sediment removal*. Work authorized by this LOP may also include any projects conducted, sponsored, or funded, in whole or in part, by the Corps, United States Fish and Wildlife Service (FWS), United States Environmental Protection Agency (EPA), Natural Resources Conservation Service (NRCS), Texas Parks and Wildlife Department (TPWD), Texas Commission on Environmental Quality (TCEQ), or the Texas Water Development Board (TWDB). Activities associated with such programs as the Water Resources Development Act of 1986, as amended, Section 1135 Project Modifications for Improvement of Environment, Partners for Wildlife, the North American Waterfowl Management Plan, and the Wetlands Reserve Program and activities at National Wildlife Refuges, State Wildlife Management Areas, and State Parks are eligible for authorization under this procedure.

Letter of Permission Procedure for Excavation Activities (20204)

The scope of work for LOP 20204 is limited to discharges of dredged or fill material associated with excavation activities in waters of the United States, including navigable waters of the United States. *Activities that may be authorized by LOP under this procedure include, but are not limited to, removal of accumulated sediment at road crossings, dredging of new and maintenance dredging of boat slips, boat access lanes and channels, intake and outfall structures, mining of sand and gravel, and work associated with these activities, such as the construction of temporary coffer dams to perform such work.*

This procedure may be used to authorize the disposal of material excavated under authority of a LOP into waters of the United States provided the purpose of the disposal is not land reclamation. Impacts to waters of the United States, including wetlands, shall be avoided or minimized through the use of practicable alternatives. Reasonable compensation for unavoidable adverse impacts to waters of the United States shall be required. Work that would have substantial adverse impacts on the aquatic environment or cause a substantial reduction in the reach of waters of the United States shall not be authorized by LOP under this procedure.

LOP APPLICATION PROCEDURES:

An application for authorization of work under this LOP procedure must include a written description of the entire project, proposed work schedule, and the address and telephone number of a point of contact who can be reached during working hours. The information may be submitted on an Application for Department of the Army Permit form or in any other form convenient to the applicant. A description of the project must include at least the following information, as applicable:

1. A vicinity map showing the location of the entire project, including all disposal site(s).
2. Plan and typical cross-section views of the proposed work.
3. A description of the type, amount, and location of all permanent and temporary fills and excavations that would be located in waters of the United States, including adjacent wetlands. A description of each disposal site shall also be included.
4. A statement disclosing whether any species listed as threatened or endangered under the Endangered Species Act might be affected by or found in the vicinity of the proposed project should be included. Direct coordination with the United States Fish and Wildlife Service (FWS) regarding the entire project is encouraged. A written response from the FWS should be included in the application whenever possible.
5. Any other available relevant information, such as information regarding cultural resources, the proximity of the project to ecologically sensitive areas, results of previous sediment sampling, and project impacts on local/regional hydrology should be included.

FOR FURTHER INFORMATION CONTACT: United States Army Corps of Engineers, Galveston District, P.O. Box 1229 Galveston, TX 77553-1229, telephone 409-766-3869, email: CESWGRegulatoryInbox@usace.army.mil, website: <https://www.swg.usace.army.mil/Missions/Regulatory/>.