

## DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT

**Permittee:** Harris County Engineering Department (HCED)

**General Permit Number:** SWG-2011-00629

**Issuing Office:** US Army Corps of Engineers, Galveston District (Corps)

**Project Description:** To authorize structures, work, and/or the discharge of dredge and/or fill material, resulting from activities associated with public infrastructure facilities under the jurisdiction of Harris County Engineering Department (HCED).

**Project Location:** Harris County, Texas

**Definitions:** Definitions found at 33 Code of Federal Register (CFR) Parts 320-329 and 40 CFR Part 230 are applicable to this Regional General Permit (RGP) and are incorporated by reference herein. In addition, the following definitions are provided to clarify terms within this RGP:

**Authorization:** Indicates that specific activities may proceed under this RGP, provided that the terms and conditions of the RGP are met. After determining that the activity complies with all applicable terms and conditions, HCED may assume an authorization under this RGP, provided timelines are met pursuant to the Preconstruction Notification (PCN) requirements of the RGP. This assumption is subject to the District Engineer's (DE) authority to determine if an activity complies with the terms and conditions of this RGP.

**Best Management Practices (BMPs):** Practicable policies, practices, procedures, or structures implemented to mitigate potential adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. BMPs will vary based on what is appropriate to adequately address the unique circumstances and design for each proposed project.

**Compensatory mitigation:** The restoration (re-establishment or rehabilitation), establishment, enhancement, and/or (in certain circumstances) preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts to waters of the United States (US), including wetlands, which remain after all appropriate and practicable avoidance and minimization activities have been undertaken. If the activity includes mechanized clearing, the impact may be considered "conversion impacts" and will be mitigated per recommendations and/or requirements put forth by the Corps. This does not include creation of new streams.

**Ecological Reference:** A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under Item 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area that currently exists in the region where the proposed Item 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area to be restored, enhanced, or established as a result of the proposed Item 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area in the region. Intact aquatic habitat includes aquatic habitat that has not been altered, impacted, or modified due to known human activity.

**Emergency Repair:** The repair, rehabilitation, or replacement of structures or fill destroyed or damaged by storms, floods, fire, or other discrete events, which requires immediate action to avoid unacceptable hazard to life, significant loss of property, or to avoid an economic hardship.

**High Tide Line (HTL):** The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gauges, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the "normal" or predicted reach of the tide due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storm.

**Loss of Waters of the US:** Waters of the US, including wetlands, which are filled or otherwise permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects can include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The loss of stream bed identified as a water of the US includes the linear-foot length and width of stream bed that is filled or excavated. The anticipated acreage or linear foot length and width of loss of waters of the US, including wetlands, is a threshold measurement for determining whether a project may qualify for this RGP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the US, including wetlands, which are *temporarily* filled, flooded, excavated, or drained, but restored to original contours and elevations after construction, are not included in the acreage or linear foot measurement of loss of waters of the US, including wetlands (provided the timeline meets the definition of a temporary impact). If the activity (e.g. hand clearing), is completed and the impacted area is restored to original contours and elevations after construction, then, by definition, the impacts are temporary. If the activity includes mechanized clearing, the impact may be considered "conversion impacts" and will be mitigated per recommendations and/or requirements put forth by the Corps. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act (CWA) are not considered when calculating loss of waters of the US, including wetlands.

**Maintenance:** The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit, or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized, provided the deviations do not include changes to the existing project footprint, or use of materials that would not be considered "in-kind". Only the minimum volume of material needed to accomplish the purpose of each maintenance project would be discharged into waters of the US, including wetlands.

**Minor New Construction:** The creation of new public infrastructure facilities or the expansion of existing public infrastructure facilities. These projects are routine in nature, limited in scope, and cause minimal impact to the environment. Projects are designed to minimize impacts to waters of the US, including wetlands, to the maximum extent practicable.

**Ordinary High Water Mark (OHWM):** A line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see also 33 CFR 328.3(c)(6)).

**Practicable:** Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Pre-Construction Notification (PCN):** A request submitted by the applicant to the Corps for verification that a particular activity is authorized by this RGP. The request may be a permit application, letter, or similar document that includes required information about the proposed work and its anticipated environmental effects. A PCN may be required by the terms and conditions of this RGP, or by the RGP General Conditions. A PCN may be voluntarily submitted in cases where PCN is not required and the applicant wants verification that the activity is authorized by the RGP. A complete PCN submittal includes all forms required by the Corps and associated reports (e.g., wetland delineation report, threatened and endangered species report, cultural report, etc., as needed), as stated in the Special Condition 6 of this RGP.

**Previously Improved Streams:** Streams that have been modified, or impacted, prior to the commencement of permitted project activities, authorized under this RGP.

**Public Infrastructure Facilities:** Facilities or infrastructure that function to provide the public with a safe and enhanced quality of life. These facilities may include, but are not limited to, roads, bridges, buildings, drainage improvements, utilities, parks, channels, inline and offline storm water basins, water quality enhancement features, transition control structures, weirs, spillways, and outfall and associated intake structures.

**Special Aquatic Sites:** A subset of waters of the US that are large or small areas possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. Special Aquatic Sites are defined as wetlands, mud flats, vegetated shallows, coral reefs, riffle, and pool complexes sanctuaries, and refuges (see 40 CFR 230.40 thru 230.45).

**Substantial Completion:** The time at which a contractor retained for a specific work product associated with a project considers the entire work ready for its intended use. The contractor shall notify HCED in writing that the entire work is Substantially Complete (except for items specifically listed as incomplete, if applicable) and request that the HCED engineer issue a certificate of "Substantial Completion". Within a reasonable time thereafter, the parties to the contract shall make an inspection of the work to determine the status of completion. If the HCED engineer does not consider the work Substantially Complete, he or she will notify the contractor in writing giving the reasons thereby. If the HCED engineer considers the work Substantially Complete, he or she will prepare a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final payment, if applicable. The Substantial Completion certificate will allow a reasonable period for the contractor to complete the list of items. Upon satisfactory completion of all items, the contractor may apply for final payment. "Substantial Completion" is defined in the General Conditions of Harris County's construction documents.

**Temporary Impacts:** Per the Corps-approved definitions, temporary impacts are defined as impacts that would only occur concurrently with project activities and would require the Permittee to restore the area to pre-construction conditions. It is assumed that temporary impacts occur between the start of the temporary impact in jurisdictional areas, until the beginning of the restoration process. Generally, around 6 months.

**Waterbody:** A jurisdictional water of the US that, during a year with "normal" patterns of precipitation, has water flowing or standing above ground to the extent that an OHWM (see 33 CFR 328.3(e)), or other indicators of jurisdiction can be determined, as well as any wetland

area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent (e.g. bordering, contiguous, or neighboring) to a jurisdictional waterbody displaying an OHWM, or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

### **Type and Amount of Materials Being Discharged (for all items within the RGP):**

The amount and type of materials discharged or excavated during the permitted activities will be determined on a case-by-case basis for each project. Only the minimum volume of material needed to accomplish the purpose of each project will be used. The limits of discharge for each of the activities listed in this RGP are specified in certain cases. The intent of this RGP is to authorize all maintenance and minor new construction activities defined herein.

### **Specific Items authorized by this RGP:**

This RGP authorizes construction of public infrastructure facilities meeting the criteria described in each numbered Item below, as well as meeting the General Conditions and Special Conditions:

**(3a) Structural and Earthen Maintenance and Erosion Protection.** Activities including maintenance of various structural features such as concrete aprons, retaining walls, sheathing, outfalls, channel side slopes, back slope swales, and activities such as repair of voids and slope failures as well as removal of previously authorized structures and fills. Activities necessary for erosion control and prevention are included in this RGP, provided the activity meets all of the following criteria:

- No material is placed in excess of the minimum needed for erosion control and protection
- No material is placed to impair or impede surface water flow into or out of jurisdictional wetland area not covered by the work
- No material is placed in a manner that is expected to be eroded by normal or expected high flows

Notification. A Pre-Construction Notification (PCN) is not required for this activity. A Non-Notifying Form (HCED Form 7 [for the purpose of tracking]) is required. No interagency review will be required for this activity.

**(3b) Removal of Sedimentation and Debris.** Activities include the removal of accumulated sediments and debris in the vicinity of and within existing structures (e.g., bridges, culverts at road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure are authorized. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200-feet in any direction from the structure. This 200-foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and associated intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and associated intake structures. All dredged or excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the Corps under separate authorization. The placement of riprap must minimize impacts to waters of the US to the greatest extent practicable. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the Corps.

Notification. All activities authorized under this RGP require a PCN (HCED Form 1). A Post-Construction Notification Form (HCED Form 2) is required to be submitted within **30 calendar days** of “Substantial Completion”. No interagency review will be required for this activity.

**(3c) Temporary Structures, Fills, and Work.** Authorizes temporary structures, fills, and work necessary to conduct the maintenance activity, including the use of temporary mats. 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.

Notification. A PCN is not required for this activity. A Non-Notifying Form (HCED Form 7) is required. No interagency review will be required for this activity.

**(7) Outfall and Associated Intake Structures.** Activities related to the construction of outfall and associated intake structures, provided the effluent from the outfall is authorized, conditionally authorized, specifically exempted, or otherwise in compliance with regulations issued under the Texas Pollutant Discharge Elimination System (TPDES) Program. Only the minimum volume of material needed for construction of outfall and associated intake structures would be discharged into waters of the US, including wetlands.

Notification. All activities authorized under this RGP require a PCN (HCED Form 1). No interagency review will be required for this activity.

**(12) Utility Line Activities.** Activities required for the construction, maintenance, repair, and removal of utility lines, which includes storm and sanitary sewer systems, in waters of the US, including wetlands, provided the activity does not result in the loss of greater than 1.0 acre of non-tidal waters of the US, including wetlands, or 0.5 acre of tidal waters of the US, including wetlands. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, storm sewer, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio, internet, and television communication. The term “utility line” does not include activities that drain a water of the US, including wetlands, such as drainage tile or French drains, but it does apply to pipes conveying drainage from another area. Discharges of dredged or fill material into all waters of the US, including wetlands, for utility line activities are authorized under this RGP, provided the activity meets all of the following criteria:

- This RGP authorizes the construction, maintenance, or repair of utility lines, which includes storm sewer and sanitary sewer systems and associated excavation, backfill, or bedding for the utility lines, provided there is no change in original contours.
- Material resulting from trench excavation may not be stored in any water of the US, including wetlands. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the US, including wetlands (e.g., backfilling with extensive gravel layers, creating a French drain effect).
- Any exposed slopes and stream banks must be stabilized upon substantial completion of the utility line crossing of each waterbody.

- This RGP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in all non-tidal waters of the US, including wetlands, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1.0 acre of waters of the US, including wetlands. This RGP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the US to construct, maintain, or expand substation facilities.
- This RGP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the US, including wetlands, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.
- This RGP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in all non-tidal waters of the US, including wetlands, provided the total discharge from a single and complete project does not cause the loss of greater than 1.0 acre of non-tidal waters of the US, including wetlands. This RGP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads constructed above original contours and elevations in waters of the US, including wetlands, must be properly bridged or culverted to maintain surface flows.
- This RGP authorizes temporary structures, temporary mats, fills, and work necessary to conduct the utility line 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. 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 RGP authorizes utility line maintenance and repair activities that do not qualify for the CWA Section 404(f) exemption of maintenance.
- This RGP shall not be used to authorize discharges within 500 feet of vegetated shallows and coral reefs; as defined by 40 CFR 230.43 and 230.44 respectfully. Examples include, but are not limited to: seagrass beds; oyster reefs; and coral reefs.
- Activities that require a PCN must include any other applicable RGP(s), used or intended to be used to authorize any part of the proposed activity that require authorization under the RGP, but not necessarily require a PCN. The Corps will evaluate the PCN and may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects.

Notification. Activities authorized under this RGP require a PCN (HCED Form 1) if: (1) a Section 10 permit is required, (2) mechanized land clearing in forested wetlands are required in the right-of-way (ROW), (3) discharge results in a loss of greater than 1/10 acres of wetlands or waters of the US, (4) the length of utility lines in waters of the US exceeds 500 linear feet, (5) the utility line runs parallel to a stream bed within a jurisdictional area, (6) above grade permanent access roads exceed 500 linear feet in waters of the US, or (7) permanent access roads are constructed with impervious materials. Interagency review will be required if impacts to waters of the US, including wetlands, is greater than 0.5 acre. A Non-Notifying Form (HCED Form 7) will be required if proposed activity impacts are below notification thresholds.

**(13) Bank Stabilization.** Activities necessary for erosion control and prevention provided the activity meets all of the following criteria:

- No material is placed in excess of the minimum needed for erosion control and protection.

- The activity is no more than 750 feet in length along the bank using unlimited cubic yards of fill material.
- The activity will not exceed 1,500 feet in length along the bank as long as the fill materials have an average of one cubic yard per running linear foot placed along the bank below the plane of the ordinary high water mark (OHWM) or the high tide line (HTL).
- The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the Corps waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects.
- Invasive plant species will not be used for bioengineering or vegetative bank stabilization.
- No material is placed to impair surface water flow into or out of jurisdictional wetland areas not covered by the work.
- No material is placed in a manner that is expected to be eroded by normal or expected high flows.
- The activity is not a stream channelization activity.

This RGP also authorizes temporary structures, fills, and work 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. 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. Invasive plant species shall not be used for bioengineering or vegetative bank stabilization.

This RGP also authorizes maintenance activities such as replacing and repairing previously authorized bank stabilizing materials. Activities authorized by this RGP are limited to those resulting from maintenance activities that are conducted within the maintenance baseline. The “maintenance baseline” is defined as the physical characteristics collected and/or identified during field delineations and surveys (e.g., depth, width, length, location, and/or configuration, etc.).

Notification. Activities authorized under this RGP require a PCN (HCED Form 1) if 1) greater than 500 linear feet of bank will be stabilized, 2) greater than 1 cubic yard per running foot along the OHWM or the HTL is proposed, or 3) discharge into special aquatic sites is proposed. Interagency review will be required if impacts to waters of the US are greater than 500 linear feet or will involve the discharge of greater than an average of one cubic yard per running linear foot along the bank below the OHWM or the HTL. A Non-Notifying Form (HCED Form 7) will be required if proposed activity impacts are below notification thresholds.

**(14) Linear Transportation Projects.** Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, sidewalks, highways, trails, and bridges) in waters of the US, including wetlands. Any stream channel modification, including erosion protection, 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. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1.0 acre of non-tidal waters of the US, including wetlands. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 0.5 acre of waters of the US, including wetlands. 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.

Temporary structures, fills, and work necessary to construct the linear transportation project are authorized by this RGP. 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 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 RGP 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 hangers.

Notification. Activities authorized under this RGP require a PCN (HCED Form 1) if greater than 1/10 acres of fill is proposed or discharge into special aquatic sites is proposed. Interagency review will be required if impacts to waters of the US, including wetlands, is greater than 0.5 acre in non-tidal waters or greater than 0.33 acre in tidal waters. A Non-Notifying Form (HCED Form 7) will be required if proposed activity impacts are below notification thresholds.

**(15) US Coast Guard (USCG) Approved Bridges.** Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the US, including wetlands, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided such discharges have been authorized by the USCG as part of the bridge permit. Only the minimum volume of material needed for construction would be discharged into waters of the US, including wetlands.

Notification. A PCN is not required for this activity. A Non-Notifying Form (HCED Form 7) is required. No interagency review will be required for this activity.

**(18) Minor Discharges.** Minor discharges of dredged or fill material into all waters of the US, including wetlands, provided the activity meets all of the following criteria:

- The quantity of discharged material and the volume of area excavated do not exceed 100-cubic yards below the plane of the OHWM or the HTL, or the discharge will not cause the loss of more than 0.5 acre of waters of the US, including wetlands (whichever is greater).
- The discharge is not placed for the purpose of a stream diversion.

Notification. Activities authorized under this RGP require a PCN (HCED Form 1) if greater than 10 cubic yards of fill are discharged below the plane of the OHWM or the HTL or discharge into special aquatic sites is proposed. Interagency review will be required if impacts to waters of the US are greater than 25 cubic yards below the plane of the OHWM or HTL or if greater than 1/10 acre of waters of the US is impacted.

**(19) Minor Dredging.** Minor dredging of no more than 100 cubic yards below the plane of the OHWM or the mean high water mark from navigable waters of the US, including wetlands (i.e., section 10 waters), is authorized. This RGP 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), or anadromous fish spawning areas. The effluent from dredged materials that are placed into upland contained disposal areas shall not exceed a Total Suspended Solids (TSS) concentration of 300 mg/L, unless a site specific limit has been approved by the Texas

Commission on Environmental Quality (TCEQ). All dredged material must be disposed of in areas that have no waters of the US. Placement of dredged material into a water of the US would require a separate verification/authorization.

Notification. Activities authorized under this RGP require a PCN (HCED Form 1) if greater than 25 cubic yards of fill are discharged below the plane of the OHWM or the HTL. Interagency review will be required if impacts to waters of the US are greater than 25 cubic yards below the plane of the OHWM or HTL. A Non-Notifying Form (HCED Form 7) will be required if proposed activity impacts are below notification thresholds.

**(23) Approved Categorical Exclusions (CE).** Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another federal agency or department where:

- The federal agency has determined the activity is categorically excluded from environmental documentation required by the National Environmental Policy Act (NEPA), as it would not have individually or cumulatively resulted in significant effects on the human environment.
- The Corps has concurred with that federal agency's determination.
- The approved categorical exclusions are those approved by the US Department of Transportation (USDOT), including agencies such as the Federal Highway Administration (or their designated state agency partners) and the USCG.

Notification. A PCN is not required, except for certain activities stated in Regulatory Guidance Letter (RGL) 05-07. No interagency review will be required for this activity. A Non-Notifying Form (HCED Form 7) will be required if a PCN is not required.

**(25) Structural Discharges.** These include discharges of concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, walkways, and mooring cells. The discharge includes excavation of bottom material within the form prior to the discharge of the fill material into the form. This does not authorize filling structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas, and other such structures. The structure itself may require a separate Section 10 Permit if located in navigable waters of the US.

Notification. A PCN is not required for this activity. A Non-Notifying Form (HCED Form 7) will be required if proposed activity impacts are below notification thresholds. No interagency review will be required for this activity.

**(27) Aquatic Habitat Restoration, Establishment, and Enhancement Activities.** Activities in waters of the US, including wetlands, associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas and the restoration and enhancement of non-tidal streams and other non-tidal open waters, provided those activities result in net increases in aquatic resource functions and services are authorized by this RGP.

To the extent that a Corps permit is required, activities authorized by this RGP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open

water areas; the construction of oyster habitat over non-vegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or disking for seed bed preparation, and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; the use of temporary mats, and other related activities. Only native plant species should be planted at the site.

This RGP authorizes undersized culverts, fords, and grade control structures. To be authorized by this RGP, the aquatic habitat restoration, enhancement, or establishment activity must be planned, designed, and implemented so that it results in aquatic habitat that resembles an ecological reference. An ecological reference may be based on the characteristics of an intact aquatic habitat or riparian area of the same type that exists in the region, or based on a conceptual model developed from a regional ecological knowledge of the target aquatic habitat type or riparian area. Intact aquatic habitat includes aquatic habitat that has not been altered, impacted, or modified due to known human activity.

This RGP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

Except for the relocation of non-tidal waters on the project site, this RGP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This RGP does not authorize stream channelization. This RGP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Compensatory mitigation is not required for activities authorized by this activity under the RGP since these activities must result in net increases in aquatic resource functions and services.

For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the US Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), US Forest Service (USFS), or their designated state cooperating agencies or (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or the US Department of Agriculture (USDA) Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; this RGP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this RGP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, or an appropriate state cooperating agency. This RGP also authorizes discharges of dredged or fill material in waters of the US for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a Section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency

executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the Corps and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps regulatory requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this RGP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. The Applicant will adhere to the Corps requests if certain projects may need further review.

Notification. All activities authorized under this RGP require a PCN (HCED Form 1). No interagency review will be required for this activity.

**(31) Maintenance of Existing Flood Control Facilities.** Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (1) were previously authorized by the Corps by Individual Permit (IP), general permit, by 33 CFR 330.3, or did not require a permit at the time they were constructed, or (2) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this RGP are limited to those resulting from maintenance activities that are conducted within the maintenance baseline. The “maintenance baseline” is defined as the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized in existing permits, subject to any case-specific conditions required by the Corps. The Corps will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility.

Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this RGP. Only the minimum volume of material needed for construction would be discharged into waters of the US, including wetlands. This RGP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged material must not be placed in a water of the US, including wetlands, and proper siltation controls must be used.

Notification. A PCN is required for all activities (HCED Form 1). No interagency review will be required for this activity.

**(33) Temporary Construction, Access, and Dewatering.** Temporary structures, work, and discharges, including, but not limited to cofferdams, linear transportation crossings, utilities, low-water crossings, and portable spans, necessary for construction activities, access fill, or dewatering of construction sites. Only the minimum volume of material needed for construction would be discharged into waters of the US, including wetlands. The following criteria must be met for activities authorized under this RGP:

- Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding.
- Fill must consist of non-highly erodible materials, and be placed in a manner, that is not expected to be eroded by expected high flows.

- Following substantial completion of construction, temporary structures, fill, or discharges shall be removed to upland areas, dredged materials must be returned to their original location, and the affected area must be returned to pre-construction grade.
- The affected area must also be revegetated as appropriate. A restoration plan must be included with the PCN that includes discussion of how all temporary fills and structures will be removed and the area restored to pre-construction conditions.
- Cofferdams cannot be used to dewater jurisdictional wetlands to change their use.
- Structures left in place after construction is completed require a separate Section 10 permit if located in navigable waters of the US

Notification. Only activities within Section 10 waters require a PCN (HCED Form 1). The PCN must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions or conditions as shown on associated permit(s). A Non-Notifying Form (HCED Form 7) is required if a PCN is not required. No interagency review will be required for this activity.

**(35) Maintenance Dredging of Existing Basins.** The removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less. All dredged material must be deposited and retained in an area that has no waters of the US unless otherwise specifically approved by the Corps under separate authorization. Proper sediment controls must be used for the disposal site. (Authority: Section 10). The “maintenance baseline” is defined as the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized in existing permits.

Notification. A PCN is not required for this activity. A Non-Notifying Form (HCED Form 7) is required. No interagency review will be required for this activity.

**(36) Boat Ramps.** Boat ramp activities include the construction, maintenance, repair, and removal of single or double boat ramps and associated facilities in waters of the US, including jurisdictional wetlands. Activities required for the construction of a single boat ramp, provided the activity meets all of the following criteria:

- Placement of fill material within tidal and non-tidal waters of the US will involve the discharge of no more than 150 cubic yards of concrete, rock, crushed stone, or gravel into forms, or in the form of pre-cast concrete planks or slabs.
- The boat ramp does not exceed 20 feet in width. The boat ramps will be designed to minimize and avoid impacts to the environment to the greatest extent practicable.
- The base material is crushed stone, gravel, or other suitable material.
- The excavation and/or dredging required is limited to the minimum area necessary for site preparation and all excavated material is removed to uplands.
- Temporary fills would consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills would be removed in their entirety and the affected areas returned to pre-construction contours. Areas affected by temporary fills would be revegetated, as appropriate.
- No material is placed in special aquatic sites. Wetlands that have been categorized as non-jurisdictional and/or wetlands that have been accounted for by the Corps and whose impacts would be appropriately mitigated.
- The use of asphalt below the OHWM is not authorized.
- The use of unsuitable material that is structurally unstable is not authorized.

Activities required for the construction of a double boat ramp, provided the activity meets all of the following criteria:

- Placement of fill material within all tidal and non-tidal waters of the US, will involve the discharge of no more than 300 cubic yards of concrete, rock, crushed stone, or gravel into forms, or in the form of pre-cast concrete planks or slabs.
- The boat ramp does not exceed 40 feet in width, unless the criterion is waived in writing by the Corps.
- The boat ramps will be designed to minimize and avoid impacts to the environment to the greatest extent practicable.
- The base material is crushed stone, gravel, or other suitable material.
- The excavation and/or dredging required is limited to the minimum area necessary for site preparation and all excavated material is removed to uplands.
- No material is placed in special aquatic sites.
- The use of asphalt below the OHWM is not authorized.
- The use of unsuitable material that is structurally unstable is not authorized.

Any stream channel modification, including erosion protection, is limited to the minimum necessary to construct or protect the boat ramp project; such modifications must be in the immediate vicinity of the project.

Temporary structures, fills, and work necessary to construct the boat ramp project are authorized by this RGP. 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 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.

Notification. Activities authorized under this RGP require a PCN (HCED Form 1) if: (1) the discharge into waters of the US exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in length. If dredging in navigable waters of the US, including wetlands, is necessary to provide access to the boat ramp, that dredging may be authorized by a Nationwide Permit (NWP), Individual Permit (IP), or another RGP. Interagency review will be required if impacts to waters of the US are greater than 50 cubic yards below the plane of the OHWM or HTL or greater than 20 feet in width. A Non-Notifying Form (HCED Form 7) will be required for proposed impacts below notification thresholds.

**(37) Emergency Repair Activities.** Discharge of dredged or fill material for the repair, rehabilitation, or replacement of 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 general, the permittee should wait until the Corps issues an RGP verification, or the **45-day PCN timeline has expired**, before proceeding with the emergency repair activity. However, in cases where there is an unacceptable hazard to life or a significant loss or property or economic hardship will occur, the emergency repair activity may proceed immediately and the Corps will consider the information in the PCN, and any comments received as a result of agency coordination, to decide whether the authorization for RGP Item 37 should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5. The two-year limit may be waived by the Corps, provided HCED can demonstrate funding, contract, or other similar delays. This RGP authorizes activities associated with restoration and stabilization necessary to protect

upland areas. The restoration of the damaged areas must not exceed the contours, or OHWM, that existed before the damage occurred. Minor excavation (desilting) is limited to the amount necessary to restore pre-existing bottom contours of the waterbody.

Notification. Except in cases where there is an unacceptable hazard to life or significant loss of property or economic hardship will occur, the permittee must submit a PCN (HCED Form 1) to the Corps prior to commencing the repair activity. No interagency review will be required for this activity.

**(38) Cleanup of Hazardous and Toxic Waste.** Specific activities within all waters of the US, including wetlands, required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a federal, state, or local government agency with established legal or regulatory authority are authorized by this RGP. Court ordered remedial action plans or related settlements are also authorized by this RGP. This RGP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste. Only the minimum volume of material needed for cleanup of hazardous and toxic waste would be dredged from or discharged into waters of the US, including wetlands.

Notification. All activities authorized under this RGP require a PCN (HCED Form 1). No interagency review will be required for this activity.

*Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by Environmental Protection Agency (EPA), are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.*

**(39) Institutional Developments.** Discharges of dredged or fill material into non-tidal waters of the US for the construction or expansion of institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, helipads, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of institutional developments include government office buildings, judicial buildings and facilities, public works buildings, libraries, and county-owned/operated non-commercial healthcare facilities. The construction of new golf courses and new ski areas are not authorized by this RGP.

The discharge must not cause the loss of greater than 1-acre of non-tidal waters of the US and loss of greater than 0.5-acre of tidal waters of the US for each single and complete project. The discharge must not cause the loss of more than 500 linear feet of stream bed, unless for intermittent and ephemeral stream beds the Corps waives the 500-linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the RGP activity cannot exceed 1/2-acre. This RGP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification. All activities authorized under this RGP require a PCN (HCED Form 1). Interagency review will be required if impacts to waters of the US, including wetlands, is greater than 0.5 acres in non-tidal waters or greater than 300 linear feet of streambed are impacted.

**(41) Reshaping Existing Drainage Ditches.** Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the US, including wetlands, for the purpose of improving water quality by re-grading 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. Only the minimum volume of material needed for construction would be discharged into waters of the US, including wetlands. Compensatory mitigation is not required because the work is designed to improve water quality.

Relocation of drainage ditches constructed in waters of the US, including wetlands, is not authorized by this RGP; 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. Stream channelization or stream relocation projects are not authorized by this RGP. Discharge of concrete lining or other hard armoring is not authorized by this RGP unless there is existing concrete lining or hard armoring that requires repair for its original purpose of reducing erosion and stabilization.

Notification. A PCN is not required for this activity. A Non-Notifying Form (HCED Form 7) is required. No interagency review will be required for this activity.

**(42) Recreational Facilities.** Discharges of dredged or fill material into all waters of the US, including wetlands, for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this RGP include, but are not limited to, playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This RGP also authorizes the construction or expansion of small support facilities and ancillary facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities. The discharge must not cause the loss of greater than 1.0 acre of non-tidal waters of the US or 0.5-acre of tidal waters of the US, including wetlands, including the loss of no more than 500 linear feet of stream bed.

Notification. All activities authorized under this RGP require a PCN (HCED Form 1). Interagency review will be required if impacts to waters of the US, including wetlands, is greater than 0.5 acres in non-tidal waters or greater than 300 linear feet of streambed are impacted.

**(43) Stormwater Management Facilities.** Discharges of dredged or fill material into all non-tidal waters of the US, including wetlands, for the construction and maintenance of stormwater management facilities, including the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures, and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins. The discharge must not cause the loss of greater than 1.0 acre of non-tidal waters of the US, and the loss of no more than 500 linear feet of stream bed, but DE can waive for intermittent and ephemeral streams. This RGP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This RGP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams. This RGP does not authorize impacts to tidal or non-tidal wetlands adjacent to tidal waters. No discharge into perennial streams is authorized.

Notification. All activities authorized under this RGP require a PCN (HCED Form 1). Interagency review will be required if impacts to waters of the US, including wetlands, is greater than 0.5-acre in non-tidal waters of the US including wetlands or greater than 300 linear feet of streambed are impacted.

**(45) Repair of Uplands Damaged by Discrete Events.** Authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the US for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This RGP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or OHWM, that existed before the damage occurred. The Corps retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this RGP. 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 Corps. This RGP cannot be used to reclaim lands lost to normal erosion processes over an extended period. This RGP 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.

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).

Notification. The permittee must submit a PCN (HCED Form 1) to the Corps prior to commencing the repair activity. The PCN should include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Sections 10 and 404). No interagency review will be required for this activity.

**(46) Discharges in Ditches.** Discharges of dredged or fill material into non-tidal ditches that are: (1) constructed in uplands, (2) receive water from an area determined to be a water of the US, including wetlands, prior to the construction of the ditch, (3) divert water to an area determined to be a water of the US, including wetlands, prior to the construction of the ditch, and (4) are determined to be waters of the US, including wetlands. The discharge must not cause the loss of greater than 1.0 acre of non-tidal waters of the US, including wetlands. This RGP does not authorize discharges of dredged or fill material into ditches constructed in or other waters of the US, or in streams that have been relocated in uplands. This RGP does not authorize discharges of dredged or fill material that increase the capacity of the ditch and drain those areas determined to be waters of the US prior to the construction of the ditch.

Notification. All activities authorized under this RGP require a PCN (HCED Form 1). No interagency review will be required for this activity.

**(99) Piers and Boathouses.** Discharges of dredged or fill material into all navigable waters of the US to construct, maintain, repair, or remove docks and piers including, but not limited to the following related features: boat hoists, boat shelters with open sides, stairways, walkways, mooring pilings, and dolphins. Activities required for the construction of boathouses, provided the activity meets all of the following criteria:

- The piers and boathouses will be designed to minimize and avoid impacts to the environment to the greatest extent practicable.
- The excavation and/or dredging required is limited to the area necessary for site preparation and all excavated material is removed to the upland.

- No material is placed in special aquatic sites.
- The use of unsuitable material that is structurally unstable is not authorized.
- The Applicant will work with the Corps for recommendations for spacing requirements on a case-by-case basis.

Notification. All activities authorized under this RGP require a PCN (HCED Form 1). No interagency review will be required for this activity.

**Mitigation:**

The DE will consider the following factors when determining appropriate and practicable mitigation for unavoidable effects, from minor new construction projects, to waters of the US, including wetlands:

1. Mitigation banks, in-lieu fee arrangements, or separate permittee responsible compensatory mitigation (including wetland creation, enhancement, and/or preservation) may be proposed. Proposed mitigation will be described in a mitigation plan, prepared in accordance with 33 CFR 332. For permittee responsible mitigation, the mitigation plan must include all 12 components: objectives, site selection, site protection instrument, baseline information, determination of credits, mitigation work plan, maintenance plan, performance standards, monitoring requirements, long term management plan, adaptive management plan, and financial assurances. Proposed mitigation plans using mitigation banks or in-lieu fee programs must include the name of the bank or program, baseline information, and determination of credits.
2. Compensatory mitigation for minor new construction activities will be determined by a Corps approved functions and values assessment methodology for all losses to tidal and non-tidal wetlands that exceed 1/10 acre. No mitigation will be required for losses to tidal and non-tidal wetlands of 1/10 acre or less.
3. For losses to previously improved tidal and non-tidal streams or other open waters in excess of 1/10 acre or 1,000 linear feet (whichever is greater), compensatory mitigation for new work activities will be required in accordance with stream mitigation guidelines promulgated by the Galveston District. For losses to natural tidal and non-tidal streams or other open waters in excess of 1/10 acre or 500 linear feet (whichever is greater), compensatory mitigation for new work activities will be required in accordance with the same stream mitigation guidelines.
4. No mitigation will be required for losses to previously improved tidal and non-tidal streams of 1/10 acre or less in area or 1,000 linear feet or less in length (whichever is greater) or for losses to natural tidal and non-tidal streams of 1/10 acre or less in area or 500 linear feet or less in length (whichever is greater).
5. No compensatory mitigation is required for maintenance activities or for minor new construction activities that involve bank stabilization, minor dredging projects, and US Coast Guard approved bridge projects.
6. If the activity includes mechanized clearing, the impact may be considered “conversion impacts” and will be mitigated per recommendations and/or requirements put forth by the Corps.
7. Mitigation does not include creation of new streams.

## Notification:

HCED will submit a PCN (HCED Form 1) and Post-Construction Notification (HCED Form 2) to the DE for all projects authorized by this RGP, unless otherwise stated below. HCED will submit the notification forms as follows:

1. Non-regulated activities/Activities outside Corps Jurisdiction: No notification forms will be required for non-regulated activities, and/or activities conducted entirely above the OHWM, and/or in areas where there are no jurisdictional wetlands or waters of the US.
2. Pre-Construction Notification (PCN): For activities that require a PCN, HCED shall submit HCED Form 1 to the DE at least **45 calendar days** prior to the initiation of construction in jurisdictional areas. The Corps recommends that PCNs be submitted at least 60 days, or more, before the desired start of construction date. The timing of the PCN and a thorough overview of PCN package completeness and approval timelines, is defined in RGP General Condition 27. The PCN will be accompanied by:
  - a. A delineation of any waters of the US, including wetlands, if present,
  - b. An assessment for federal threatened and endangered species,
  - c. An assessment of cultural or historic resources,
  - d. A compensatory mitigation plan, if required.
3. Post-Construction Notification: For new work affecting waters of the US, including wetlands, HCED shall submit the Post-Construction Notification (HCED Form 2) to the DE within **30 calendar days** after project completion. The Post-Construction Notification (HCED Form 2) will be accompanied by:
  - a. Post-construction photographs,
  - b. Documentation of post-construction conditions including restoration of pre-construction contours (if required),
  - c. Proof that the mitigation plan was implemented, if required,
  - d. Mitigation monitoring reports, if required.
4. For RGP Item 3b (Removal of Sediments and Debris): A Post-Construction Notification Form (HCED Form 2) is required to be submitted within **30 calendar days** of substantial completion.
5. For RGP Item 37 (Emergency Repair): HCED shall notify the DE within **24 hours** prior to initiation of construction in jurisdictional areas by email, or telephone. HCED will submit a PCN to the Corps within 10 calendar days of start of activities in jurisdictional areas, unless the Corps grants a written extension to submit a PCN, or waives the requirement for a PCN in writing (email is acceptable for a written extension or waiver of the PCN requirement).

HCED will submit a Post-Construction Notification (HCED Form 2) to the DE within **30 calendar days** of post substantial completion. The Post-Construction Notification (HCED Form 2) will include documentation such as the discovery date of the failure and/or a recent topographic survey, and photographs to justify the extent of the repairs.

## **RGP Permit Conditions:**

1. The time limit for completing the work authorized herein ends 5 years from the date of authorization of the RGP, or if the Department of the Army (DA) authorization is within two years of the expiration of this RGP, within 2 years of the DA approval or to account for permitting activities initiated prior to expiration date.
2. This RGP does not authorize stream channelization or stream diversion activities. This permit does not authorize the relocation of drainage ditches constructed in waters of the US, including wetlands; the location of the centerline must remain in approximately the same location.
3. This RGP only applies to projects managed, performed, or contracted on behalf of the HCED and any Harris County Precinct.
4. The discharge or fill activity cannot cause the loss of jurisdictional waters of the US, including wetlands, greater than the limits specified in this RGP.
5. For those projects that require a PCN, HCED shall submit a signed DA application (ENG Form 4345), HCED Form 1, or a letter that contains the needed project information for completeness. Information required to be provided shall include:
  - a. Name, address, email address, and telephone numbers of the HCED Project Manager and other relevant contacts;
  - b. A description of the proposed project, including:
    - i. Volume and type of material to be placed into waters of the US;
    - ii. Total area (or linear feet) of waters of the US, including wetlands to be directly affected;
    - iii. Estimated desired construction beginning and end dates;
    - iv. HCED's requested target permit decision date;
    - v. A list of all other permits and authorizations, including previous DA authorizations for the work area, as required by law, ordinance, or regulation; and
    - vi. A vicinity map, plan view, typical cross section, and description of the proposed method of construction. Drawings shall include:
      - (a) A vicinity map with the precise location of the proposed project so that its geographic coordinates can be determined;
      - (b) A plan view of the proposed project;
      - (c) A cross section drawing showing the dimensions of the proposed project;
      - (d) Mapped location of any special aquatic resources (i.e. wetlands, mud flats, vegetated shallows, coral reefs, riffle/pool complexes, sanctuaries, rookery habitat, oyster reefs, sea grasses, and/or refuges, etc.) located within 100 feet of any portion of the proposed project. The size of each aquatic resource and its distance to the edge of the project boundary must be depicted on this map.
  - c. If the RGP activity requires it, the notification must include a delineation of waters of the US, including wetlands; an Approved Jurisdictional Determination (AJD) or a Preliminary Jurisdictional Determination (PJD); or a request for an ADJ or PJD on the proposed project site. Delineations of waters of the US, including wetlands, must be prepared in accordance with the current methodologies required by the Corps.
  - d. The permittee shall follow current state and federal regulations for cultural and historic resources.

- e. A statement that the work will be conducted in compliance with the terms and conditions of this RGP.
  - f. HCED will submit notification to the Corps -Galveston District (designated Water Resources Development Act [WRDA] 214 project manager, or the Chief of Compliance) advising the date authorized work is scheduled to commence, or has commenced. Notification will be provided within two weeks after the pre-construction meeting has been held with the contractor.
6. No structure or fill will be authorized that is likely to jeopardize the continued existence of federally listed threatened or endangered species. A qualified biologist shall survey the area prior to initiating work.
7. For the project to satisfy the Texas Commission on Environmental Quality (TCEQ) water quality certification requirements, the permittee shall agree to use the Best Management Practices (BMPs) for Tier 1 projects and shall submit a signed statement that the applicable BMPs will be used. If a permittee fails to implement these provisions and BMPs, the RGP is subject to enforcement. Applications that do not incorporate all the provisions of the checklist into their project or use other alternatives are not authorized under this RGP. Alternative BMPs may be utilized once approved by the TCEQ on a case-by-case basis. Descriptions of the BMPs may be obtained from the Corps, Galveston District, website at: <http://www.swg.usace.army.mil/Portals/26/docs/regulatory/permit%20packet/401tier1des.pdf>, or the TCEQ website at: [https://www.tceq.texas.gov/permitting/401certification/401certification\\_tier1.html](https://www.tceq.texas.gov/permitting/401certification/401certification_tier1.html), or by calling TCEQ at 512-239-4671.
8. The permittee must maintain the activity authorized by this RGP in good condition and in conformance with the terms and conditions of this RGP. The permittee is not relieved of this requirement if the permitted activity is abandoned, although the permittee may make a good faith transfer to a third party in compliance with RGP Condition 10. Should the permittee wish to cease to maintain the authorized activity, or desire to abandon without a good faith transfer, the permittee must obtain a modification of this RGP from this office, which may require restoration of the area.
9. No structure or fill that may affect historic properties listed or eligible for listing in the National Register of Historic Places is authorized until the Corps and permittee has complied with the provisions of Section 106 of the National Historic Preservation Act (NHPA).
- a. The Corps will review all proposed activities for cultural resources requirements, and coordinate these activities internally within the Corps, and with the Texas Historical Commission (THC) if necessary. The Corps will conduct internal coordination activities within the PCN review timeline, as indicated in RGP Condition 27. The Corps will strive to conduct external coordination with the THC within the 45-day PCN review timeline. However, cultural resource concerns must be resolved and approved by the appropriate agencies before an RGP decision can be rendered by the Corps. If potential historic properties are located in the project area, they shall be avoided by a sufficient margin as designated by the Corps and the THC. If avoidance of the potential historic properties is not feasible, further archeological investigations shall be required.
  - b. If any previously unknown historic or archeological remains are discovered while accomplishing the activity authorized by this RGP, the permittee must immediately cease and desist and notify this office of what was found. The Corps will initiate the

Federal and state coordination required to determine if the remains warrant a recovery effort, or if the site is eligible for listing in the National Register of Historic Places.

10. When structures, work, or fill authorized by this RGP are still in existence at the time they are transferred to new ownership, the permittee must obtain and submit to the Corps a signed statement from the new owner(s) stating that they agree that the terms and conditions of this RGP will continue to be binding on the new owner(s).

A copy of the permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this RGP are still in existence at the time the property is transferred, the terms and conditions of this RGP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this RGP and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

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Transferee

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Date

11. The permittee must allow Corps representatives to inspect the authorized activity at any time deemed necessary to ensure that it is being, or has been, accomplished in accordance with the terms and conditions of the RGP.
12. If the determination is made that the adverse effects of the proposed work are more than minimal, then the permittee will be notified that either: (1) the project does not qualify for authorization under the RGP (the permittee will be provided instructions on the procedures to seek authorization under a Standard Permit [Letter of Permission or Individual Permit]); or (2) the project is authorized under the RGP subject to the permittee’s submission of an approved compensatory mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the RGP with specific modifications or conditions.
13. No structures or fill will be allowed to obstruct any navigation channels.
14. The permittee understands and agrees that, if future operations by the US require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or an authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the US. No claim shall be made against the US on account of any such removal or alteration. (For applicable Section 10 projects).
15. When structures or work authorized by this RGP are determined by the Corps to have become abandoned, or obstructive to navigation, or cease to be used for the purpose for which they were permitted, such structures or other work must be removed and the area

cleared of all obstructions, and written notice given to the Chief of Compliance, Galveston District Regulatory Branch within **30 calendar days** of substantial completion (for applicable Section 10 Projects).

16. For all discharges proposed for authorization under RGP 3, 7, 12, 14, 18, 19, 25, 27, 41, 42, and 43 into the following habitat types or specific areas, the permittee shall notify the Corps in accordance with the notification requirements listed under RGP General Condition 5. The Corps will coordinate with the resource agencies concerning the proposed activities, compliance with the terms and conditions of the RGP, and the need for mitigation to reduce the project's adverse impacts to a minimum level. The habitat types or areas are:
  - a. Wetlands, typically referred to as pitcher plant bogs, that are characterized by an organic surface soil layer and include vegetation such as pitcher plants (*Sarracenia* sp.), sundews (*Drosera* sp.), and sphagnum moss (*Sphagnum* sp.).
  - b. Bald Cypress-Tupelo Swamps: Wetlands comprised predominantly of bald cypress trees (*Taxodium distichum*), and water tupelo trees (*Nyssa aquatica*), that are occasionally or regularly flooded by fresh water. Common associates include red maple (*Acer rubrum*), swamp privet (*Forestiera acuminata*), green ash (*Fraxinus pennsylvanica*), and water elm (*Planera aquatica*). Associated herbaceous species include lizard's tail (*Saururus cernuus*), water mermaid weed (*Proserpinaca* spp.), buttonbush (*Cephalanthus occidentalis*), and smartweed (*Polygonum* spp.). (Eyre, F.H. Forest Cover Types of the US and Canada. 1980. Society of American Foresters, 5400 Grosvenor Lane, Bethesda Maryland 20814-2198. Library of Congress Catalog Card No. 80-54185).
17. For all activities proposed for authorization under RGP 12 that involve mechanized land clearing in a forested wetland, the permittee must submit a PCN to the Corps in accordance with the notification requirements listed under RGP General Condition 5.
18. For all discharges and work proposed in tidal waters under RGP 14 and 18, the permittee shall notify the Corps in accordance with the notification requirements listed under RGP General Condition 5. The Corps will coordinate with the NMFS and discuss the need for mitigation to reduce the project's adverse impacts to a minimum level, within the 45-day PCN review timeline.
19. All work in the San Jacinto Waste Pits (SJWP) Area of Concern (AOC), authorized under this RGP, requires a PCN and a written approval from the Corps, prior to start of work in jurisdictional areas. The permittee shall notify the Corps in accordance with the notification requirements listed under RGP General Condition 5. This PCN shall be used to review the project to determine if it will result in more than minimal effects to the region. The project must comply with the requirements of the October 21, 2009 EPA/Corps/TCEQ Public Announcement. This requirement does not lessen the restriction provided by any General Conditions of the RGP. The permittee must receive written approval, from the Corps, prior to starting work in jurisdictional areas. The permittee understands that if written approval of the RGP is not issued by the Corps, authorization is not assumed or granted. The permittee understands that if approval cannot be authorized under the RGP, a SP will be required.

20. No RGP activities, except RGP 3, shall be used to authorize discharges into the following waters of the US:
  - a. Mangrove Marshes. For the purpose of this regional condition, Mangrove marshes are those waters of the US that are dominated by mangroves (*Avicennia* spp., *Laguncularia* spp., and *Rhizophora* spp.).
  - b. Coastal Dune Swales. For the purpose of this general condition, coastal dune swales are wetlands and/or other waters of the US located within the backshore and dune areas in the coastal zone of Texas. They are formed as depressions within and among multiple beach ridge barriers, dune complexes, or dune areas adjacent to beaches fronting the tidal waters of the U. S.
  - c. Columbia Bottomlands. For the purpose of this regional condition, Columbia bottomlands are defined as waters of the US that are dominated by bottomland hardwoods in the Lower Brazos and San Bernard River basins.
21. This RGP does not obviate the need to obtain other Federal, state, or local authorizations required by law.
22. Work is prohibited within 1,000 feet of an identified bird rookery that is active with nesting birds between February 14<sup>th</sup> and September 1<sup>st</sup>, unless otherwise negotiated with Texas Parks and Wildlife Department (TPWD) and/or the US Fish and Wildlife Service (FWS). The permittee will be responsible for ensuring action complies with the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA). The permittee is responsible for contacting the appropriate local office of the FWS to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the MBTA or BGEPA for a particular activity.
23. If impacts to oyster beds cannot be avoided, the permittee must provide compensatory mitigation, at an appropriate ratio. The permittee will contact TPWD for appropriate guidance on mitigation techniques.
24. An as-built monitoring report will be submitted for permittee-responsible wetland and/or stream mitigation activities following substantial completion of the project.
25. Prop/wheel washing is not authorized by this RGP.
26. Aids to navigation will be permitted and placed in accordance with US Coast Guard (USCG) Regulation 33 CFR 66 (For applicable Section 10 projects).
27. Pre-Construction Notification (PCN). (a) Timing. Where required by the terms of the RGP, the applicant must notify the Corps by submitting a PCN at least 45 calendar days prior to start of construction in jurisdictional areas. The Corps recommends that PCNs be submitted at least 60 days, or more, before the desired start of construction date. The Corps will determine if the PCN is complete within 30 calendar days of the date of receipt (the date the request is received by the Corps, as noted in the Corps acknowledgement letter). If the PCN is determined to be incomplete, the Corps will notify the applicant within 30 calendar days of the date of receipt, to request additional information necessary to deem the PCN complete. The PCN is assumed to be deemed complete if no additional information is requested from the Corps within 30 calendar days from the Corps date of receipt, as noted in the acknowledgment letter.

The Corps additional information request will specify the information needed to deem the PCN complete. As a general rule, the Corps will request additional information necessary for a complete PCN once. However, if the applicant does not provide all of the requested information, or if the information submitted is not sufficient, then the Corps will notify the prospective permittee that the PCN is still incomplete, and the PCN review timeline will not commence until all of the requested information has been received by the Corps. The permittee shall not begin the activity until either:

- 1) The permittee is notified in writing by the Corps that the activity may proceed under the RGP, with special conditions (if any).
- 2) 45 calendar days have passed from the Corps acknowledged PCN receipt date, and the permittee has not received a request for additional information, or written notice of approval from the Corps. In the case where notice is not received from the Corps, it will be assumed that all agency and interagency coordination, associated with the PCN, is complete once 45 calendar days have passed from the date the Corps received the PCN, unless the PCN or General condition states that coordination must be complete before beginning work in jurisdictional areas.

If the proposed activity requires specific written approval from the Corps, the permittee may not begin the activity until the Corps issues the written approval. If the applicant has not received a written response from the Corps within the 45-day PCN review timeline, the applicant must still wait for notification from the Corps, before beginning work in jurisdictional areas.

If the Corps notifies the applicant in writing that a SP is required within the 45 day PCN review timeline, the applicant cannot begin work in jurisdictional areas, until an SP has been obtained. Subsequently, the permittee's right to proceed under the RGP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

If it is determined that a listed species or critical habitat might be affected by the activity, or major federal consultation is required under the National Historical Preservation Act (NHPA), and/or the Endangered Species Act (ESA), and the applicant has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the formal consultation has occurred and/or the proposed activity will have "no effect". If the applicant has not heard back from the Corps within the 45 day PCN review timeline, the applicant must still wait for notification from the Corps, before beginning work in jurisdictional areas.

#### **Further Information:**

I. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

( X ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

( X ) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

- a. Authorization under this General Permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. Authorization under this General Permit does not grant any property rights or exclusive privileges.
- c. Authorization under this General Permit does not authorize any injury to the property or rights of others.
- d. Authorization under this General Permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In authorizing a project under this General Permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office to authorize the activity under this General Permit as not contrary to the public interest will be made in reliance on the information provided by the applicant.

5. Reevaluation of Permit Decision. This office may reevaluate its decision to authorize an activity under this General Permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. The applicant fails to comply with the terms and conditions of this permit.
- b. The information provided by the applicant to support their permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contain 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the applicant to comply with the terms and conditions of their authorization under this General Permit and for the initiation of legal action where appropriate. The applicant will be required to pay for any corrective measures ordered by this office, and if they fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you the applicant for the cost.

This General Permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Kimberly Baggett  
(DISTRICT ENGINEER)

**ROBERT W. HEINLY, CHIEF  
POLICY ANALYSIS BRANCH  
FOR COLONEL LARS N. ZETTERSTROM**

7/5/18  
(DATE)