



**U.S. Army Corps  
of Engineers**  
Galveston District

# Public Notice

Permit No.: \_\_\_\_\_ 20204  
Date Issued: \_\_\_\_\_ 7 July 1995

## **U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT**

**PURPOSE OF PUBLIC NOTICE:** To announce issuance of Letter of Permission (LOP) procedure for authorizing the work described herein, within the state of Texas.

**SPONSOR:** U.S. Army Corps of Engineers  
P.O. Box 1229  
Galveston, Texas 77553-1229

**LOCATION:** See "Location of Work" in enclosure.

**SCOPE OF WORK:** The enclosed "Letter of Permission Procedure, Excavation Activities" details the scope and location of work, terms and conditions, and application procedures pertinent to obtaining a Department of the Army LOP under the procedure.

**BACKGROUND:** A Public Notice was issued on 20 March 1995, proposing issuance of these LOP procedures. We received several comments from Federal and State agencies and the general public which were considered in finalizing the procedures.

If there are any questions relative to this Public Notice, please contact Ms. Cynthia Wood at the following address and/or phone:

Regulatory Branch, CESWG-CO-RB  
U.S. Army Corps of Engineers  
P.O. Box 1229  
Galveston, Texas 77553-1229  
409/766-3980 Phone  
409/766-3931 Fax

**DISTRICT ENGINEER  
GALVESTON DISTRICT  
CORPS OF ENGINEERS**

## LETTER OF PERMISSION PROCEDURE

### EXCAVATION ACTIVITIES

Interested parties are hereby notified that, in accordance with Title 33 CFR 325.2(e), published in the Federal Register on November 13, 1986, the Albuquerque, Fort Worth, Galveston, and Tulsa districts of the U.S. Army Corps of Engineers (USACE) have adopted a Letter of Permission (LOP) procedure for authorizing the work described herein, within the state of Texas. Each LOP issued will include the general conditions identified herein by reference and appropriate case-specific provisions intended to protect the environment, including natural and cultural resources. Work that does not comply with these provisions may require authorization by individual permit. However, compliance with this LOP procedure, including the general conditions, does not guarantee authorization of the work by LOP. Work or structures that would have unacceptable impacts on the public interest are not authorized. Activities requiring Department of the Army authorization that are not specifically covered by this LOP are prohibited unless authorized by a separate permit.

On August 25, 1993, the USACE and Environmental Protection Agency (EPA) revised their regulations with respect to the types of activities subject to regulation under Section 404 of the Clean Water Act (CWA). Under the revised definition of discharges of dredged or fill material, such activities as mechanical land clearing, ditching, channelization, dredging, and other excavation activities include discharges when performed in waters of the United States and are regulated under Section 404 of the CWA when they would have the effect of destroying or degrading waters of the United States, including wetlands. As a result of this revision, many excavation activities that were not regulated under Section 404 prior to August 25, 1993, now require Department of the Army authorization. The purpose of this procedure is to expedite Section 404 authorization for the activities described below when they would not pose substantial adverse individual or cumulative impacts on the aquatic environment.

#### SCOPE OF WORK:

Work authorized by LOP under this procedure 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, construction and maintenance dredging of boat slips, channels, and intake and outfall structures, mining of sand and gravel, and work associated with these activities, such as temporary coffer dams. This procedure may be used to authorize the disposal of material excavated under authority of an 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.

#### LOCATION OF WORK:

This LOP procedure shall apply to work in all waters of the United States, including navigable waters of the United States, within the state of Texas.

WATER QUALITY CERTIFICATION:

The Texas Natural Resource Conservation Commission (TNRCC) and the Railroad Commission of Texas (RCT) have certified the discharges authorized by this permit pursuant to Section 401 of the Clean Water Act.

AUTHORIZATION FROM OTHER AGENCIES:

The permittee is responsible for obtaining any additional federal, state, or local permits that may be required, which include, but are not limited to:

1. When streambed materials such as sand, shell, gravel and marl are to be disturbed or removed from state-owned waters in Texas, the permittee may be required to obtain a permit from the Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744.
2. Activities outside the permit area of the USACE that may affect a federally listed endangered or threatened species or its critical habitat could require permits from the U.S. Fish and Wildlife Service to prevent a violation of the Endangered Species Act under Section 9.
3. All activities in Texas located on lands under the jurisdiction of the Texas General Land Office, 1700 North Congress Avenue, Austin, Texas 78701-1495, must have prior approval from that office.
4. Any work on lands or in waters under the jurisdiction of any river authority or other operating agency may require a permit from that authority or agency.
5. Projects involving government property on USACE reservoirs will require submission of detailed design information to the reservoir manager and the manager's approval of the proposed activity.
6. Activities within a 100-year floodplain may require a permit from the local floodplain administrator or the TNRCC. In addition, evidence that the project meets non-encroachment restrictions in regulatory floodways may be required.
7. Construction activity, including clearing, grading, and excavation, that would disturb five or more acres of land area may require an National Pollutant Discharge Elimination System permit from the EPA, Region 6, Water Management Division (6W-EA), 1445 Ross Avenue, Dallas, Texas 75202.
8. Activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including the transportation of oil or gas prior to the refining of such oil or the use of such gas in manufacturing or as a fuel, as described in Tex. Nat. Res. Code Ann. §91.101, may require authorization from the Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967.
9. The construction, operation, maintenance, or connection of facilities at the borders of the United States are subject to Executive control and must be authorized by the President, Secretary of State, or other delegated official. Proposed activities affecting an international water in Texas, including the Rio Grande, Amistad Reservoir, Falcon Lake, and tributaries of the Rio Grande, may require authorization from the International Boundary and Water Commission, The Commons, Building C, Suite 310, 4171 N. Mesa Street, El Paso, Texas 79902.

10. The construction, operation and maintenance of dams, water conduits, reservoirs, power houses, transmission lines, and other physical structures of a hydro-power project may require a license from the Federal Energy Regulatory Commission, 3125 Presidential Parkway, Suite 300, Atlanta, Georgia 30340.

**CONDITIONS OF THE LETTER OF PERMISSION:**

In addition to limitations discussed in the scope of work, projects authorized by LOP are subject to the general conditions contained in Appendix A.

**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 (ENG Form 4345) 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 U.S. 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.

Address applications and inquiries regarding proposed activities to the district office within whose boundaries the proposed project falls (see Appendix B):

Fort Worth District: Regulatory Branch, U.S. Army Corps of Engineers, Fort Worth District, ATTN: CESWF-OD-R, P.O. Box 17300, Fort Worth, TX 76102-0300; or telephone the Regulatory Branch at (817) 334-2681

Albuquerque District: El Paso Regulatory Office, U.S. Army Corps of Engineers, Albuquerque District, ATTN: CESWA-CO-R-EP, P.O. Box 6096,

Fort Bliss, TX 79906-0096, or telephone the Regulatory Office at (915) 568-1359

**Galveston District:** Regulatory Branch, U.S. Army Corps of Engineers, Galveston District, ATTN: CESWG-CO-R, P.O. Box 1229, Galveston, TX 77552-1229, or telephone the Regulatory Branch at (409) 766-3930

**Tulsa District:** Regulatory Branch, U.S. Army Corps of Engineers, Tulsa District, ATTN: CESWT-OD-R, P.O. Box 61, Tulsa, OK 74121-0061, or telephone the Regulatory Branch at (918) 669-7401

This procedure will also suffice as the LOP application for work proposed in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899.

**EVALUATION PROCEDURES:**

Prior to authorizing any project, the USACE shall coordinate with the EPA, FWS, Texas Parks and Wildlife Department, either the TNRCC or RCT, depending on the nature of the proposed activities, and, for projects that would be located within the boundaries of the Galveston District, the National Marine Fisheries Service to obtain their concurrence with authorizing the proposed work under this LOP procedure. Should one of the appropriate agencies not concur, the proposed work would require authorization by individual permit. A verbal or written response from each contacted agency is required to complete the interagency coordination process. Pre-application coordination with these agencies through the USACE is highly recommended.

Work may not proceed prior to written notification that the District Engineer has issued an LOP. It is the applicant's responsibility to insure that the authorized project meets the terms and conditions set forth in the LOP; failure to abide by them will constitute a violation of the Clean Water Act and/or the Rivers and Harbors Act of 1899. Projects outside the scope of this LOP procedure may be considered for authorization by individual permit.

This LOP procedure shall become effective on the date of the signature of the District Engineers, or their authorized representative.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:  
FOR THE DISTRICT ENGINEERS:

7 July 1995  
Date

*Wayne A. Sea*

Joseph G. Graf  
Colonel, Corps of Engineers  
District Engineer  
Fort Worth District

Gary R. Burroughs  
Lieutenant Colonel, EN  
District Engineer  
Albuquerque District

Robert B. Gatlin  
Colonel, Corps of Engineers  
District Engineer  
Galveston District

Otis Williams  
Colonel, U.S. Army  
District Engineer  
Tulsa District

## APPENDIX A

### CONDITIONS OF LETTERS OF PERMISSION ISSUED UNDER "LETTER OF PERMISSION PROCEDURE, EXCAVATION ACTIVITIES"

#### GENERAL CONDITIONS:

1. In issuing an LOP, the Department of the Army relies in part on the information provided by the permittee. If that information proves to be false, incomplete, or inaccurate, the LOP may be revoked.
2. Projects authorized by LOP shall comply with all terms and conditions herein. Failure to abide by such conditions invalidates the authorization and may result in a violation of the law, requiring restoration of the site or other remedial action.
3. An LOP should not be considered as an approval of the design features of any authorized project or an implication that such is considered adequate for the purpose intended; a Department of the Army LOP merely expresses the consent of the Federal Government to the proposed work insofar as public rights are concerned. An LOP does not authorize any damage to private property, invasion of private rights, or any infringement of federal, state or local laws or regulations. Nor does it relieve the permittee from the requirement to obtain a local permit from the jurisdiction within which the project is located and to address all non-encroachment restrictions within a regulatory floodway of such local jurisdiction as identified by the Federal Emergency Management Agency.
4. This LOP procedure may be modified or suspended in whole or in part if it is determined that the individual or cumulative impacts of work that would be authorized using this procedure are contrary to the public interest. The authorization for individual projects may also be summarily modified, suspended, or revoked, in whole or in part, upon a finding by the District Engineer that immediate suspension of the project would be in the public interest.
5. Any modification, suspension or revocation of the District Engineer's authorization shall not be the basis for any claim for damages against the United States.
6. An LOP does not authorize the interference with any existing or proposed Federal project, and the permittee shall not be entitled to compensation for damage or injury to the authorized structures or activities that may result from existing or future operations undertaken by the United States in the public interest.
7. No attempt shall be made by the permittee to prevent the full and free public use of all navigable waters of the United States, at or adjacent to the authorized project.
8. There shall be no unreasonable interference with navigation by the existence or use of the permanent and temporary authorized structures.
9. The permittee shall make every reasonable effort to conduct the authorized activities in a manner that will minimize any adverse impact of the work on water quality, fish and wildlife, and the natural environment, including adverse impacts to migratory waterfowl breeding areas, spawning areas, and trees, particularly mast-producing trees such as oaks and hickories.

10. The permittee shall allow the District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary to assure that the activity being performed under this authorization is in accordance with the terms and conditions prescribed herein.
11. Impacts on cultural resources listed, or eligible for listing, in the National Register of Historic Places (NRHP), shall be taken into account by the U.S. Army Corps of Engineers (USACE) prior to the initiation of work. If previously unknown cultural resource sites are encountered during work authorized by LOP, the appropriate USACE district shall be notified and the sites avoided until the USACE can assess their eligibility for listing in the NRHP. Sites determined to be eligible for listing in the NRHP shall be mitigated in consultation with the USACE. Cultural resources include prehistoric and historic archeological sites, and areas or structures of cultural interest which occur in the permit area.
12. Appropriate erosion and siltation controls shall be used and maintained in effective operating condition during construction, and all exposed soil shall be permanently stabilized at the earliest practicable date.
13. All temporary fills shall be removed in their entirety.
14. All construction activities in federally maintained channels and/or waterways shall be coordinated for required setback distances with the appropriate USACE area or district office prior to application for an LOP.
15. Heavy equipment working in wetlands shall be placed on mats, or other measures shall be taken to minimize disturbances to soil.
16. No authorization will be granted for an activity that is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act, or for an activity that is likely to destroy or adversely modify the critical habitat of such species. Permittees shall notify the District Engineer if any listed species or critical habitat might be affected by, or is in the vicinity of, the project and shall not begin work until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.
17. The project shall not significantly disrupt the movement of those species of aquatic life indigenous to the water body or those species that normally migrate through the project area.

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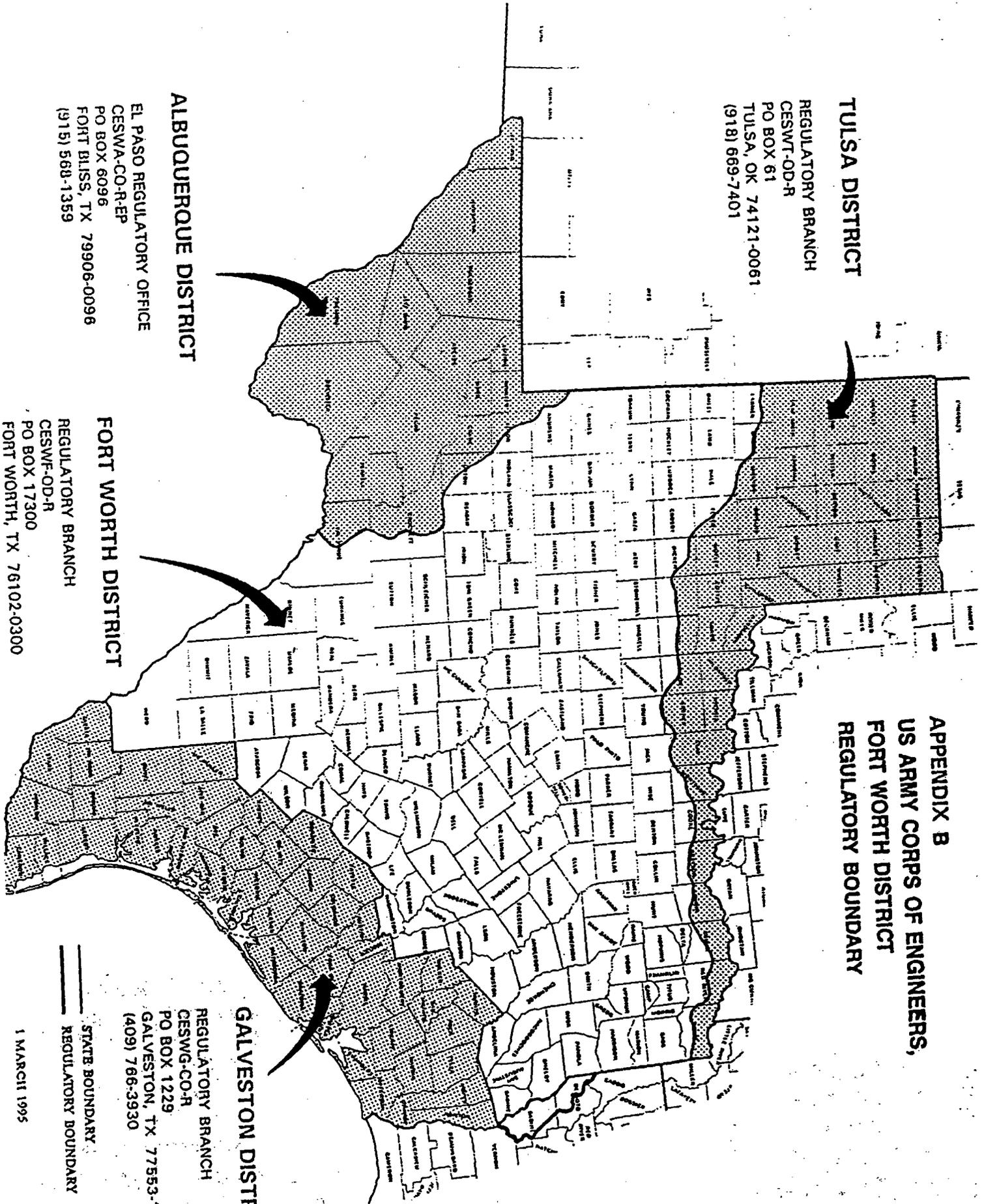
### TULSA DISTRICT

REGULATORY BRANCH  
CESWT-OD-R  
PO BOX 61  
TULSA, OK 74121-0061  
(918) 669-7401

### ALBUQUERQUE DISTRICT

EL PASO REGULATORY OFFICE  
CESWA-CO-R-EP  
PO BOX 6096  
FORT BLISS, TX 79906-0098  
(915) 568-1359

FORT WORTH DISTRICT  
REGULATORY BRANCH  
CESWF-OD-R  
PO BOX 17300  
FORT WORTH, TX 76102-0300  
(817) 334-2681



## APPENDIX B US ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT REGULATORY BOUNDARY

### GALVESTON DISTRICT

REGULATORY BRANCH  
CESWG-CO-R  
PO BOX 1229  
GALVESTON, TX 77553-1229  
(409) 766-3930

STATE BOUNDARY  
REGULATORY BOUNDARY

**DEPARTMENT OF THE ARMY**  
**U.S. Army Engineer District, Galveston**  
**Corps of Engineers**  
**P.O. Box 1229**  
**Jadwin Building**  
**2000 Fort Point Road**  
**Galveston, Texas 77553**

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**OFFICIAL BUSINESS**  
**CESWG-CO-RE**

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**Permit No. 248**