

DEPARTMENT OF THE ARMY PERMIT

Permittee Harris County Flood Control District

Permit No. SWG-2009-00123

Issuing Office Galveston District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: This Regional General Permit (GP) authorizes Harris County Flood Control District (HCFCD) to conduct work and place dredged and/or fill materials for the purpose of routine maintenance and emergency repair of existing stormwater management facilities. Maintenance includes repair, rehabilitation and replacement of structural and earthen features, removal of sediment and debris restoring previously authorized cross-sectional configurations, erosion protection, or emergency repairs required as a result of discrete natural events. In addition, temporary construction, access and dewatering are authorized provided that the associated primary maintenance activity is authorized under this GP. HCFCD proposes reissuance of their GP for maintenance and emergency repair of stormwater management facilities in Harris County, Texas.

Project Location: The GP is valid in waters of the United States utilized as stormwater management facilities under the authority of the HCFCD, in Harris County, Texas.

Definitions: Definitions found at 33 CFR Parts 320-329 and 40 CFR Part 230 are applicable to this application and are incorporated by reference herein.

- a. The term "**Emergency Repair**" means the repair, rehabilitation, or replacement of structures or fills destroyed or damaged' by storms, floods, fire or other discrete events.
- b. The term "**Maintenance**" means the repair, rehabilitation, or replacement of stormwater management facilities, provided that the facility is not to be put to uses differing from those uses previously authorized, specified, or contemplated. Minor deviations may be required, such as changes in configuration, filled area, materials, and construction techniques, or updates to meet current codes or safety standards.
- c. The term "**practicable**" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.
- d. The term "**stormwater management facilities**" means features or infrastructure that function to regulate or convey stormwater runoff. These facilities may include, but are not limited to, channels, basins for stormwater detention and quality, components and appurtenances of the municipal separate storm sewer system, water quality enhancement features, transition control structures, weirs, spillways, and outfall and inlet structures. Maintenance and Emergency Repair of Stormwater Management Facilities would be limited to the following activities:

Maintenance: The following maintenance activities are authorized under this GP.

- a. Structural Maintenance. Activities including maintenance of various structural features such as concrete aprons, retaining walls, and outfalls.
- b. Earthen Maintenance. Activities including maintenance of features such as channel side slopes, back slope swales, and activities such as the repair of voids and slope failures.
- c. Post-flood Maintenance. Activities including removal of debris and other necessary maintenance following a discrete flooding event.

- d. Removal of Sediment and Debris (Desilting). Activities required for the removal of accumulated sediment and debris in the vicinity of and within existing structures and stormwater management facilities. These activities do not include deepening and/or widening of stormwater management facilities.
- e. Restoration of Existing Stormwater Management Facilities. Excavation or discharge of fill material into Waters of the United States to restore the cross-sectional configuration of currently serviceable stormwater management facilities constructed in Waters of the United States. These activities do not include deepening and/or widening of stormwater management facilities.
- f. Erosion Protection. Activities necessary for erosion control and prevention, provided the activity meets all of the following criteria:
 - i. No material is placed in excess of the minimum needed for erosion control and protection;
 - ii. No material is placed to impair or impede surface water flow into or out of jurisdictional wetland areas not covered by the work; and
 - iii. No material is placed in a manner that is expected to be eroded by normal or expected high flows.

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 and access or dewatering of construction sites, provided that the associated primary maintenance activity is authorized under this permit and provided the following criteria are met:

- a. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding.
- b. Fill must consist of materials, and be placed in a manner, that is not expected to be eroded by expected high flows.
- c. Following completion of construction, all temporary structures, fill, or discharges shall be removed.
- d. Cofferdams cannot be used to dewater jurisdictional wetlands to change their use.

Emergency Repair Activities. This permit authorizes 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.

- a. The two-year limit may be waived by the district engineer, provided Harris County Flood Control District (HCFCD) can demonstrate funding, contract, or other similar delays.
- b. This permit authorizes activities associated with restoration and stabilization necessary to protect upland areas.
- c. The restoration of the damaged areas must not exceed the contours, or ordinary high water mark (OHWM), that existed before the damage occurred.
- d. Minor excavation (desilting) is limited to the amount necessary to restore pre-existing bottom contours of the waterbody.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on 31 December 2024. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We 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.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office 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 your permit.

Special Conditions:

- a. This GP only applies to projects managed, performed, and contracted by the HCFCD, its successors or assigns.
- b. This GP does not authorize any discharges of dredged or fill material into special aquatic sites, including wetlands, unless previously authorized. This includes mechanized land clearing of special aquatic sites.
- c. This GP does not authorize the deepening, widening or construction of new storm-water management facilities in waters of the United States.
- d. This GP does not authorize stream channelization or stream diversion activities. This permit does not authorize the relocation of ditches constructed in waters of the United States; the location of the centerline must remain in approximately the same location.
- e. This GP authorizes the use of concrete only when it is used to replace existing concrete.
- f. For any project where: 1) the use of alternatives to concrete armoring and gabion baskets; 2) the use of geomorphic principles that achieve stable channels; 3) the placement of outfalls at angles no greater than 45 degrees to the channel; or 4) the incorporation of wetlands as part of retention features will achieve HCFCD maintenance goals, HCFCD will utilize these practices.
- g. HCFCD will submit notification to the District Engineer (DE) for all projects authorized by this permit and, with the exception of emergency repair, no work shall be performed until HCFCD has received written authorization by the DE, or if 45 calendar days have passed from the District Engineer's receipt of the complete notification. The DE must determine if the notification is complete within 30 calendar days of the date of receipt and, if the notification is determined to be incomplete, notify HCFCD within that 30 day period to request the additional information necessary to make the notification complete. Notification will be in accordance with the Special Conditions and General Conditions of this permit. HCFCD will submit notification as follows. The notification shall include:
 - (1) A completed and signed DA application (ENG Form 4345), or a letter containing the required information, stating the number of the Regional General Permit under which the work is to be conducted.
 - (2) A copy of all DA authorizations previously issued for the work area and/or additional documentation if necessary to demonstrate the original project was constructed prior to the Clean Water Act passing in 1972, the date(s) of construction completion, the oldest available maintenance date, the most recent maintenance date, and a statement indicating whether the channel was previously modified.
 - (3) A vicinity map, typical plan view, typical cross-section, and a description of the proposed method of construction. Drawings shall include:
 - a) A vicinity map with the precise location of the project, the latitude and longitude of the project site, or beginning and end points.
 - b) A plan view drawing showing the property, its owner(s), specific project location, and showing the area to be excavated, the pertinent dimensions of all features, the location of any trenches, cofferdams, equipment ramps, any bank stabilization, and their relative location to the waters of United States, including wetland and oyster reefs, and the acreage of jurisdictional impacts.
 - c) A cross-section drawing showing the areas to be excavated and/or filled, the fill dimensions below Ordinary High Water (OHW) or the High Tide Line (HTL), the volume of material to be removed and/or added (in cubic yards), method of removal, location and method of bank stabilization, and any other relevant information and data required in the Special Conditions.
 - d) Representative pictures of the site and work to be performed.
 - e) A description of any environmental considerations (i.e. effects on threatened and/or endangered species or their habitat, cultural or historic resources, or rookeries).
 - (4) A statement that the work will be conducted in compliance with the terms and conditions of this GP.
 - (5) A statement of estimated construction start and completion dates.
 - (6) Certification that the work is in compliance with the terms and condition of the RGP, including TCEQ Water Quality Certification Requirements.
 - (7) Applications involving Corps of Engineers property must include a letter indicating the status of the Corps Real Estate easement, Section 408 approval, or Real Estate application, with Real Estate Identification Number (REIN).
- h. For the project to satisfy the Texas Commission on Environmental Quality's (TCEQ) water quality certification requirements, the applicant shall agree to use the Best Management Practices (BMPs) for Tier I projects and shall submit a signed statement that the applicable BMPs will be used. If an applicant fails to implement these provisions and BMPs, the permit is subject to enforcement. Applicants who do not wish to incorporate all the provisions of the checklist into their project or desire to use alternatives are not authorized under this GP. Descriptions of the BMPs may be obtained from the U.S. Army Corps of Engineers, Galveston District, web site at <http://www.swg.usace.army.mil/reg/> or the TCEQ web site at [http://www.tceq.state.tx.us/pennititing/water quality/w-assessment/401certification/401 certification tied.html](http://www.tceq.state.tx.us/pennititing/water%20quality/w-assessment/401certification/401%20certification%20tied.html), or by calling TCEQ at 512-239-5366.
- i. Emergency Repair activities are limited to those activities necessary for the repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fires, or other discrete events. Emergency repairs may be associated with restoration and

stabilization necessary to protect upland areas. Restoration of damaged areas must not exceed the contours, or ordinary high water mark that existed before the discrete event and excavation is limited to the amount necessary to restore pre-event bottom contours of the waterbody.

j. No compensatory mitigation for impacts to special aquatic sites, including wetlands, will be required if the adverse effects of the project are minimal.

k. If the DE determines that the adverse effects of the proposed work are more than minimal, then the DE will notify the applicant either: (1) That the project does not qualify for authorization under the GP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the GP subject to the applicant's submission of a DE approved 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 GP with specific modifications or special conditions.

l. Any work within 1,000 feet of a known wading bird or seabird rookery shall be restricted to the non-nesting period of the species comprising that rookery, unless that work is defined as an emergency repair activity.

m. The work will not adversely affect Federally listed or proposed threatened or endangered species or adversely modify their critical habitat as defined by the Endangered Species Act of 1973, as amended, unless the discharge is specifically authorized by the DE. Prior to authorizing a discharge which may affect a listed species or its critical habitat, the DE will consult or confer with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

n. Individual actions under this GP shall be reviewed for potential impacts to cultural resources by Corps of Engineers Staff Archeologists. If sites listed on or eligible for the National Register of Historic Places exist within the affected area, coordination with the State Historic Preservation Officer and the Advisory Council on Historic Preservation will take place in accordance with 36 CFR 800 And 36 CFR 325, Appendix C. Activities authorized under this GP will not affect any properties either listed in or eligible for listing in the National Register of Historic Places.

o. Any dredged or excavated material not used during the maintenance project shall be deposited and confined in an upland area such that sediment will not reenter the water or wetlands and shall not interfere with natural drainage.

p. Equipment ingress/egress routes used to access maintenance project areas will avoid any areas in which plant or animal life or their habitats are either rare or especially valuable and will utilize the minimum tree and vegetation removal necessary for all other sites.

q. 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 and access or dewatering of construction sites are authorized provided that the associated primary maintenance activity is authorized under this permit and provided the following criteria are met:

- (1) Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding.
- (2) Fill must consist of materials, and be placed in a manner, that is not expected to be eroded by expected high flows.
- (3) Following completion of construction, all temporary structures, fill, or discharges shall be removed.
- (4) Cofferdams cannot be used to dewater jurisdictional wetlands to change their use.

r. Best Management Practices (BMPs): When impacts to waters of the US, including wetlands, cannot be avoided or minimized, BMPs will be implemented to minimize the impacts of construction to the water quality of receiving water bodies. BMPs are effective, practical, structural, or nonstructural methods which prevent or reduce the movement of sediment, nutrients, pesticides, and other pollutants from land to surface or ground water, or which otherwise protect water quality from potential adverse effects of construction activities. The applicant would utilize a full range of all available state-of-the-art BMPs on all projects both during and post-construction. At a minimum, each project would implement BMPs as listed in the TCEQ Tier I Certification Checklist. The applicant may, at their discretion, implement additional BMPs as listed in their design specification manual, including but not limited to:

- (1) Silt Fencing;
- (2) Stabilized Construction Access;
- (3) Sodding;
- (4) Filter Dams;
- (5) Seeding;
- (6) Mulch and soil stabilization; and
- (7) Other activities as indicated in the full list of BMPs, as appropriate.

s. The permittee understands and agrees that if future operations by the United States 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 his 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 of Engineers, to remove, relocate or alter the structural work or obstructions caused thereby without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

t. That if the work authorized by a specific site approval is not started within 1 year or if it is not completed within 2 years from its approval date, the authorization, if not previously revoked or specifically extended, shall automatically expire.

Further Information:

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

3. Limits of Federal Liability. In issuing this 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 that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

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

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your 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 contained in 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 you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you 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 for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will

(REVERSE OF ENG FORM 1721)

normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE)

HARRIS COUNTY FLOOD CONTROL DISTRICT

(DATE)

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

(DISTRICT ENGINEER)

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

(DATE)

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

(TRANSFEREE – Typed/Printed Name)

(DATE)

(TRANSFEREE - Signature)

(Mailing Address)