DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
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CESWG-CDR

MEMORANDUM FOR Galveston District Regulatory and Navigation Branch Personnel.

SUBJECT: Standard Operating Procedure – Permit Setbacks along the Sabine-Neches Waterway

1. Purpose. This memorandum provides a standard operating procedure (SOP) for evaluation of Department of the Army (DA) permits along the Sabine-Neches Waterway (SNWW). It is the intent of this SOP to provide a rapid and repeatable procedure for evaluating the construction of structures and/or the deposition of dredge and fill along the SNWW in order to preserve the Government's ability to maintain such waterway, and provide a margin of safety to those who use such waterway by maintaining established setbacks from the SNWW.

2. Applicability. This SOP applies to all DA permit applications pursuant to Section 10 of the Rivers and Harbor Act of 1899, and/or Section 404 of the Clean Water Act, received after the date of this memorandum, where the project site is within or along the SNWW.

3. Definitions.

a. The SNWW is a deep draft navigation channel that is federally maintained with the project depth dimension equal to or less than 48 feet mean lower low water (MLLW).

b. Authorized dimensions are the depth and width of the channel authorized by Congress to be constructed and maintained by USACE.

c. Waterfront structures include any structure placed below the mean high water line or ordinary high water mark of a waterway. The term structure shall include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other obstacle or obstruction.

d. Work shall include, without limitation, any dredging or disposal of dredged material, excavation, filling, or other modification of a navigable water of the United States.

e. Fill means material placed in waters of the United States where the material has the effect of replacing any portion of a water of the United

States with dry land; or changing the bottom elevation of any portion of a water of the United States. Fill materials include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure

f. A setback is defined as the distance from a federally authorized channel, landward, to a proposed structure (i.e., the distance that a structure must be "set back" from the edge of the channel). All setbacks are measured from the near bottom edge of the channel to the nearest point of the structure, whether that point is fixed or floating.

g. Maintenance is defined in Nationwide Permit 3 (NWP #3) as the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, 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, authorizes maintenenace of structures or fill without prior notification to the U.S. Army Corps of Engineers. In addition, NWP 3 authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. DA permit conditions require the applicant to maintain the activity authorized by the permit in good condition and in conformance with the terms and conditions of this permit. If an applicant wishes to cease to maintain the authorized activity or should desire to abandon it they must obtain a modification of their DA, which may require restoration of the area.

h. Redevelopment is the re-building or re-assembling of any structure that is no longer functional or serviceable in its original capacity, specifically pertaining to its framing and structural components. This would include beams, girders, joists, stringers, and/or pilings.

i. Mooring facility is a collection of devices that is fixed in navigable waters to which a vessel can be made fast including buoys, chains, ropes, piles, spars and dolphins.

j. General Permit means a DA authorization that is issued on a nationwide or regional basis for a category or categories of activities when those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts. (See 33 CFR 325.2(e) and 33 CFR part 330.)

k. Letter of Permission means a type of individual permit issued in accordance with the abbreviated procedures of 33 CFR 325.2(e).

l. Individual permit means a DA authorization that is issued following a case-by-case evaluation of a specific structure or work in accordance with the procedures of 33 CFR part 325, and a determination that the proposed structure or work is in the public interest pursuant to 33 CFR part 320.

4. General. The following setbacks are designed to ensure that no structures or fill encroach beyond the top edge of the navigation channel, including appropriate side slopes, and there is sufficient clearance for dredging the navigation channel to its full width and depth, including side slopes. Additionally, considerations are made for safe passage of commercial vessels through the SNWW. Absent unusual circumstances, the following guidelines will apply:

5. Standard Setback. The Standard Setback is designed to establish a distance from the near bottom edge of the SNWW where structures or fill which extend past will clearly interfere with navigation. Other work, such as dredging, will be evaluated on a case-by-case basis due to the temporary nature of the interference with navigation. The Standard Setback for the SNWW is no closer to the near bottom edge of the SNWW Federal channel than 196 feet. This 196-foot setback is calculated by multiplying the 48-foot project depth by 2 (side slope ratio) and added to a 100-feet (safety factor) equaling a 196-feet setback from near bottom edge of the channel. This will allow for the safe passage of vessels appropriately sized to navigate the SNWW.

6. Setback Hazard Zone. The Setback Hazard Zones are designed and established to identify areas of the SNWW that are narrow and of which the placement of structures and/or fill would have a higher probability of interfering with navigation. The Hazard Zone areas have been designed and established based on maximum zone width of the open water areas between the existing structure/ bank (shoreline) and the near bottom edge (toe). Zones are aligned with channel station and dredge survey reaches.

7. Proposed Department of the Army Permits Evaluation Procedure. The U.S. Army Corps of Engineers Regulatory program regulations, specifically 33 CFR 320.4, require permit decisions in navigable waters balance the inherent right to reasonable private land use with the rights and interests of the public. When the activity is in the area of a federal project, such as the SNWW, the activity must be evaluated to ensure that they are compatible. In the case where a permit proposal will create undo interference with access to, or use of, a navigable water, the authorization will be generally denied after a thorough case-by-case evaluation. The following procedures will be implemented for permit applications located along the SNWW.

a. Standard Setback Procedure. DA permits for structures and/or fill proposed within the SNWW Standard Setback area will be evaluated based on their proximity to the setback. Proposed projects located shoreward of the setback will be evaluated using the hazard zone procedures identified for

that reach. Proposed projects on or seaward of the standard setback will be evaluated using High Hazard Zone procedures. The district engineer is authorized under 33 CFR 325.8(b) to deny permits without issuing a public notice or taking other procedural steps where he determines that the activity will clearly interfere with navigation.

b. Setback Hazard Zone Procedure. The purpose for the setback hazard zones are to ensure that structures and/or fill placed outside of the 196-foot setback line are evaluated commensurate with their impacts to navigation. Hazard zones have been graphically identified and represented by color coded zones. (Attachment 1)

    a. High Hazard Zone (red). The High Hazard Zone is defined as the zones where the shore is located 250-feet or less from the shoreline to the toe of the SNWW channel. DA permit applications proposed in the High Hazard Zones will be evaluated using a permit type commensurate with the proposed impact.

        i. DA permits with proposed structure and/or fill located on or within high hazard areas will be evaluated using a standard permit with a 30-day public notice and Environmental Assessment.

        ii. DA permits for proposed work, i.e. dredging, within the Standard Setback areas of the SNWW will be evaluated using the permit type commensurate with the proposed impact.

        iii. The use of general permits in High Hazard areas will be suspended.

    b. Medium Hazard Zone (yellow). The Medium Hazard Zone is defined as the zones where the shore is located between 250-500feet from toe of the SNWW channel. . DA permits with proposed in Medium Hazard Zone areas will be evaluated using an individual permit, including letter of permission if applicable. A minimum 15-day public notice and an Environmental Assessment.

        i. DA permits for proposed work, i.e. dredging, within medium risk areas of the SNWW will be evaluated using the permit type commensurate with the proposed impact.

ii. The Corps will include a regional condition on all general permits to require reporting to the Corps prior to initiating work. The Corps will use discretionary authority to elevate general permit applications to individual permit applications commensurate with the proposed project's impact to navigation.

c. Low Hazard Zone (green). The Low Hazard Zone is defined as the zones where the shoreline is located further than 500 feet from the toe of the SNWW channel. DA permit applications proposed in Low Hazard Areas will be evaluated using a permit type commensurate with the proposed impact.

c. General Permits. All general permits, including Nationwide General Permits, Programmatic General Permits and Regional General Permits, will have a regional general condition added to require pre-construction notification if proposed along the SNWW and will prohibit their use in Standard Setback and High Hazard Zone areas.

8. Existing Structures and Non-reporting Nationwide Permits. Previously authorized or existing piers, docks, fill or other waterfront structures will not be required to be removed. However, if these structures and/or fill are damaged or destroyed beyond repair by a storm, act of nature, or other sudden event, the evaluation of their replacement shall be conducted in accordance with this SOP. The change in purpose and need, redevelopment and/or expansion of existing piers, docks, fill or other waterfront structures, (e.g., the conversion of commercial seafood docks to a residential marina), shall be subject to the setback SOP and any required regulatory permit action. The general and routine maintenance and repair of existing piers, docks, fill or other waterfront structures located in the SNWW setback may be authorized under NWP 3 provided the work does not increase the footprint of the existing structure and does not result in additional encroachment into the setback.

9. Application. This SOP, as well as all setbacks graphics and applicable documents will be downloadable from the Galveston District's Regulatory and Navigation webpage.

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Commanding