Corps Regulatory Program
District Boundaries in SWD

- Tulsa District
- Little Rock District
- Albuquerque District
- Fort Worth District
- Galveston District
Corps Regulatory Program

Purpose

- **Protect Navigation:** Sections 9 and 10 of the Rivers and Harbors Act of 1899
- **Restore and maintain the physical, chemical and biological integrity of the Nation's waters:** Section 404 of the Clean Water Act
- **Protect marine resources associated with ocean disposal of dredged material:** Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972
To Achieve the Purpose of the Program, We Evaluate the Impacts of Proposed Projects on Functions of Waters of the U.S. including Wetlands

- Improves water quality
- Filtering of water-borne pollutants
- Provides fish and wildlife habitat
- **Moderates effects of floods by slowing runoff, temporarily storing and absorbing water**
- Storm buffer
- Shoreline protection/erosion control
- Stream flow maintenance
- Groundwater recharge/discharge
- Food Production
- Recreation and aesthetics
Floodplain Values

- In accordance with **Executive Order 11988**, as part of the Corps public interest review, we work with applicants to **avoid** to the extent practicable, long and short term significant adverse impacts associated with the occupancy and modification of floodplains, as well as the direct indirect support of floodplain development whenever there is a practicable alternative.

- **Minimize** impacts of potential flooding on human health, safety, and welfare

- Where practicable, **restore and preserve** the natural and beneficial values served by floodplains
Floodplains w/in the DFW Area

- Due to development within portions of the Trinity River and its tributaries within the metroplex, the Fort Worth District developed a *Regional EIS* completed in 1988.

- Limits Hydraulic Impacts-
  1. No rise in the 100-year or SPF elevation will be allowed.
  2. The max allowable loss in storage capacity for the 100 year and SPF discharge will be 0% and 5% respectively.
  3. Alteration of the Floodplain may not create or increase an erosive water velocity on or off-site.
  4. The floodplain may be altered only to the extent permitted by equal conveyance reduction on both sides of the channel.
Floodplains w/in DFW Area

- Lead to the development of the Corridor Development Certificate (CDC) Manual and Process within the Trinity River Corridor-North Central TX. While local govt.'s retain ultimate control over their own floodplain development decisions, the CDC process provides cities/counties along the Trinity River the opportunity to review and comment on projects providing a peer review process facilitating better floodplain decisions.
Corps Regulatory Program
Basic Elements

- Geographic jurisdiction
- Regulated activities
- Permitting
  - General permits
  - Individual permits
Section 10 of the Rivers and Harbors Act Navigable Waters of the United States

- Section 10 of the Rivers & Harbors Act of 1899
- Definition in 33 CFR 329.4:
  - Waters subject to the ebb and flow of the tide
  - Waters presently used, used in the past, or that may be susceptible for use to transport interstate or foreign commerce
Waters of the US under the Section 404 of the CWA include

- Traditional navigable waters (TNW)
- Interstate waters (IW)
- Wetlands adjacent to TNWs or IWs
- Non-navigable tributaries to TNWs that are relatively permanent (perennial), meaning at least seasonal flow (RPW)
  - Also wetlands abutting these RPW tributaries
- Other tributaries to TNWs or IWs with “significant nexus” (intermittent or ephemeral) (non-RPWs)
- Wetlands adjacent but not directly abutting jurisdictional tributaries to TNWs or IWs with “significant nexus”
- Maybe an isolated water (intrastate) with a significant nexus to interstate or foreign commerce (only with HQ approval – none approved thus far)
Wetlands

Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (33 CFR 328.3 (b))
Wetland Identification and Delineation

- Based on the multi-parameter approach of the 1987 Corps of Engineers Wetlands Delineation Manual and Regional Manuals
  - Hydrology
  - Hydric Soils
  - Hydrophytic Vegetation

- Wetland Delineation Manual and Regional Manuals Purpose: provides technical criteria, field indicators, and recommended methods for identifying wetlands and delineating their upper boundaries for purposes of Section 404 of the Clean Water Act.

- The on-line version of the 87 manual may be downloaded from: http://el.erdc.usace.army.mil/elpubs/pdf/wlman87.pdf
Does not include upland or grass-lined swales
Corps Regulatory Program
Basic Elements

- Geographic jurisdiction
- Regulated activities
  - Activities may fall under one or both regulations
    - Section 10 of the Rivers and Harbors Act
    - Section 404 of the Clean Water Act
- Permitting
  - General permits
  - Individual permits
Section 10 of the Rivers and Harbors Act of 1899
Regulated Activities

- **Structures in navigable waters**: piers, docks, ramps, wharves, pilings, weirs, breakwaters, bulkheads, riprap, power and water transmission lines incl. boring, permanently moored vessels, aids to navigation, *or any other potential obstacle or obstruction*

- **Work in navigable waters**: dredging or disposal of dredged material, excavation, filling, or other modification of a navigable water
Clean Water Act
Section 404 Regulated Activities

- The discharge of *dredged* or *fill* material into waters of the United States is the “trigger” that requires some form of authorization under Section 404 from the U.S. Army Corps of Engineers.
Discharge of Dredged Material

- Material that is excavated or dredged from waters of the United States 33, CFR 323.2(c)- it’s all in the method and location that determines if a permit is required.
- Material excavated or dredged from waters of the U.S. and re-deposited into waters of the U.S.-33 CFR 323.2(d)
- Runoff or overflow from a contained land or water disposal area
- Redeposit of dredged material other than incidental fallback. Examples: mechanized land-clearing, channelization, back fill and bedding, side-casting, temporary stockpiling
Discharge of Fill Material

- Detailed definition at 33 CFR 323.2(e)
- Material placed into waters of the U.S. where the material has the effect of
  - replacing a water with dry land; or
  - changing the bottom elevation of any portion of a water
- Examples: rock, sand, soil, road construction debris, wood chips, overburden from mining or other excavation activities, materials used to create any structure or infrastructure in waters of the U. S.
Discharge of dredged or fill material does not include:

- Activities involving only cutting or removing vegetation so that root systems are not disturbed
- Incidental fallback of dredged material
- Discharges associated with onshore processing of dredged material extracted for commercial use

- Section 404 authorization not required for incidental addition of dredged material that would not have the effect of destroying or degrading an area of waters of the United States
And With Careful Project Planning…

- By *avoiding* impacts to waters such as boring or spanning, no Section 404 permit is required (may need a Section 10)

- By *minimizing* the impacts to waters, the work may be authorized by a nationwide permit and may not require a pre-construction notification (pcn) or costly compensatory mitigation.
Maintenance Exemption

- 33 CFR 323.4 exempts certain discharges from requiring a Section 404 permit and **may** take care of much of your routine maintenance activities, otherwise the activities may be covered by NWP-3.
- Includes maintenance, incl. emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, *bridge abutments or approaches, and transportation structures*. Maintenance does not include any mod. that changes the character, scope, or size of the original fill design.
- Emergency reconstruction of unserviceable structures should occur w/in a reasonable period of time after damage occurs in order to qualify for the exemption.
Normal farming, silvicultural and ranching activities which includes construction or maintenance of on-channel farm or stock ponds, and farm, ranch, or forestry roads (reference 324.4). Farm ponds must be appropriately sized for the number of cattle. On-channel Frac ponds are not exempt!
Corps Regulatory Program
Basic Elements

- Geographic jurisdiction
- Regulated activities
- Permitting
  - General permits
  - Individual permits
Types of Permits

General Permits
- Nationwide Permits (NWPs)
- Regional Permits (RGPs)
- Programmatic (PGPs)

Individual Permits
- Letters of Permission (LOPs)
- Standard Individual Permits (SIPs)
Nationwide Permits

- 52 NWPs, each with a scope of work of certain activities along with 31 general conditions (ESA, cultural and historic resources, etc.) and 10 regional conditions applicable in the Fort Worth District.
- If your project meets the scope and conditions and does not exceed the pre-construction (pcn) threshold, you may complete the project w/o written Corps authorization.

Permission Slip

Ask yourself:
1. Is it good for my customer?
2. Is it legal and ethical?
3. Is it something I am willing to be accountable for?
If so, don’t ask for permission. You already have it.

Just do it!
Nationwide Permits that may be applicable to your jurisdiction

NWP 3: Maintenance
NWP 12: Utility Line Activities (pipelines, power lines)
NWP 13: Bank Stabilization (bulkheads, riprap)
NWP 14: Linear Transportation Projects (culverts, some road crossings)
NWP 18: Minor Discharges (fill material, 25 CY max)
NWP 25: Structural Discharges
NWP 29: Residential Developments
NWP 31: Maintenance of Existing Flood Control Facilities
NWP 33: Temporary Construction, Access, and Dewatering
NWP 39: Commercial and Institutional Developments
NWP 42: Recreational Facilities
NWP 43: Stormwater Management Facilities

* Each project is unique, not all qualify for a NWP. When in doubt, ASK.
NWP-12 Utility Line Activities

- Activities associated for the construction, maintenance, repair and removal of utility lines and associated facilities including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines provided there is no change in pre-construction contours.

- Includes utility line substations, foundations for overhead utility line towers, poles, and *access roads*.

- Pcn req.: 1) involves mechanized land-clearing in forested wetlands; 2) Section 10 permit req.; 3) utility line in waters of US exceeds 500 LF; 4) runs parallel w/in jurisdictional area; 5) results in loss of >1/10 ac.; 6) perm. roads (above grade) >500 LF; 7) perm. roads on waters constructed w/ impervious materials.
NWP Templates to Expedite Permitting

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the U.S., 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.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the U.S., provided the total discharge from a single and complete project does not cause the loss of greater than 1/2-acre of non-tidal waters of the U.S. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary. Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, accordance with the requirements for temporary fills. Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the U.S. and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the U.S. must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the U.S. even if there is no associated discharge of dredged or fill material (See 33 CFR part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, 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.

Part I: NWP Conditions and Requirements Checklist

To ensure compliance with the General Conditions (GC), in order for an authorization by a NWP to be valid, please answer the following questions:

1. Navigation (Applies to Section 10 waters [i.e. navigable waters of the U.S.], see instruction 4 for link to list):
   a. Does the project cause more than a minimal adverse effect on navigation?
      □ Yes □ No □ N/A
   b. Does the project require the installation and maintenance of any safety lights and signals prescribed by the U.S. Coast Guard on authorized facilities in navigable waters of the U.S.?
      □ Yes □ No □ N/A
   c. Does the Applicant understand and agree that if future operations by the U.S. 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 Applicant will be required, upon due notice from the USACE, to remove, relocate, or alter the
6. **Suitable Material:**
   a. Does the project use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.)?  
      □ Yes  □ No
   b. Is the material used for construction or discharged in a water of the U.S. free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act)?  
      □ Yes  □ No

   If you answered yes to question a. above, or if you answered no to question b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

7. **Water Supply Intakes:**
   a. Does the project occur in the proximity of a public water supply intake?  
      □ Yes  □ No

   If you answered yes to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

8. **Adverse Effects From Impoundments:**
   a. Does the project create an impoundment of water?  
      □ Yes  □ No
   b. If you answered yes to question a. above, are the adverse effects (to the aquatic system due to accelerating the passage of water, and/or restricting its flow) minimized to the maximum extent practicable?  
      □ Yes  □ No  □ N/A

   If you answered no to question b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

9. **Management of Water Flows:**
   a. Does the project maintain the pre-construction course, condition, capacity, and location of open waters to the maximum extent practicable, for each activity, including stream channelization and storm water management activities?  
      □ Yes  □ No
   b. Will the project be constructed to withstand expected high flows?  
      □ Yes  □ No
   c. Will the project restrict or impede the passage of normal or high flows?  
      □ Yes  □ No

   If you answered no to question a. or b. above, or if you answered yes to question c. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

10. **Fills Within 100-Year Floodplains:**
    a. Does the project comply with applicable FEMA-approved state or local floodplain management requirements?  
       □ Yes  □ No  □ N/A

    If you answered no to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:
REGIONAL CONDITIONS CHECKLIST
To ensure compliance with the Regional Conditions within the Fort Worth District, in the State of Texas, in order for an authorization by a NWP to be valid, please answer the following questions (for projects in Texas only):

1. Will the project include required compensatory mitigation at a minimum one-for-one ratio for all special aquatic sites that exceed 1/10 acre and require pre-construction notification, and for all losses to streams that exceed 300 linear feet and require pre-construction notification (unless the appropriate District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement)? □ Yes □ No □ N/A

If you answered no to question 1 above, be aware that the project would not be authorized by a NWP 13 and would require an individual permit application.

2. Does the project involve a discharge into habitat types that are 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.) or wetlands (typically referred to as bald cypress-tupelo swamps) comprised predominantly of bald cypress trees (Taxodium distichum), and water tupelo (Nyssa aquatica), that are occasionally or regularly flooded by fresh water with common associates including red maple (Acer rubrum), swamp privet (Forestiera acuminata), green ash (Fraxinus pennsylvanica), water elm (Platonia aquatica), lizzard's tail (Saururus cernuus), water mermaid weed (Proserpinaca spp.), buttonbush (Cephalanthus occidentalis), and smartweed (Polygonum spp.)? □ Yes □ No

If you answered yes to question 2. above, notification of the District Engineer is required in accordance with NWP GC 31, and the USACE will coordinate with other resource agencies as specified in NWP GC 31(d).

3. Is the project in the area of Caddo Lake within Texas that is designated as a "Wetland of International Importance" under the Ramsar Convention? □ Yes □ No

If you answered yes to question 3. above, notification of the District Engineer is required in accordance with NWP GC 31, and the USACE will coordinate with other resource agencies as specified in NWP GC 31(d).

4. a. Is the project in an area of Dallas, Denton, or Tarrant counties that is within the study area of the "Final Regional Environmental Impact Statement (EIS), Trinity River and Tributaries" (May 1986)? □ Yes □ No

b. If Yes, does the project meet the criteria and follow the guidelines specified in Section III of the Record of Decision for the Regional EIS, including the hydraulic impact requirements? □ Yes □ No □ N/A

If you answered no to question 4b. above, be aware that the project would not be authorized by a NWP 13 and would require an individual permit application.

5. Would the proposed work result in the modification or alteration of any completed Corps of Engineers projects that are either locally or federally maintained or if work would occur within the conservation pool or flowage easement of any Corps of Engineers lake project? □ Yes □ No
If you answered yes to question 5 above, the applicant shall notify the Fort Worth District Engineer in accordance with NWP GC 31. PCNs are not deemed complete until such a time as the Corps has made a determination relative to 33 USC Section 408, 33 CFR Part 208, Section 208.10, 33 CFR Part 320, Section 320.4. If you answered yes to question 3. above, notification of the District Engineer is required in accordance with NWP GC 31, and the USACE will coordinate with other resource agencies as specified in NWP GC 31(d)

6. Is there is the risk of transferring invasive plants to or from your project site?  □ Yes  □ No

If you answered yes to the question above, information concerning state specific lists of invasive species and threats can be found at: http://www.invasivespeciesinfo.gov/unitedstates/bx.shtml. Best management practices can be found at Information concerning state specific lists and threats can be found at: http://www.invasivespeciesinfo.gov/unitedstates/bx.shtml. Known zebra mussel waters within can be found at: http://nas.er.usgs.gov/queries/zmbyst.asp.

7. Would your project meet the scope of work and conditions of NWPs 51 or 52? □ Yes  □ No

If you answered yes, the Corps will provide the PCN to the US Fish and Wildlife Service as specified in NWP General Condition 31(d)(2) for its review and comments.

To ensure compliance with the Regional Conditions within the Fort Worth District, in the State of Louisiana, in order for an authorization by a NWP to be valid, please answer the following questions (for projects in Louisiana only):

1. Does the activity cause the permanent loss of greater than 1/2 acre of seasonally inundated cypress swamp and/or cypress-tupelo swamp? □ Yes  □ No

If you answered yes to question 1. above, be aware that the project would not be authorized by a NWP 12 and would require an individual permit application.

2. Does the activity cause the permanent loss of greater than 1/2 acre of pine savanna, pine flatwoods, and/or pitcher plant bogs? □ Yes  □ No

If you answered yes to question 2. above, be aware that the project would not be authorized by a NWP 12 and would require an individual permit application.

3. Has the activity been determined to have an adverse impact upon a federal or state designated rookery and/or bird sanctuary? □ Yes  □ No

If you answered yes to question 3. above, be aware that the project would not be authorized by a NWP 12 and would require an individual permit application.

4. Does the activity fell or impact by soil compaction any existing den or candidate den trees within areas known to be occupied by the threatened Louisiana black bear? (Existing den trees are those known to be used or have evidence of being used by a denning Louisiana black bear, regardless of size, species, or proximity to water. Candidate den trees are defined as bald cypress and/or tupelo gum with visible cavities, having a minimum diameter-at-breast-height of 36 inches, and associated with rivers, lakes, streams, bayous, sloughs, or other waterbodies.) Additionally, does the activity involve clearing within Louisiana black bear critical habitat? □ Yes  □ No
Location of larger development (If discharge of fill or dredged material is part of a plan of
development, a map of suitable quality and detail for the entire project site should be
included):

| Total area in acres of entire project area (including larger plan of development, where applicable): |

**Box 8  Federally Threatened or Endangered Species** (see instructions)
Please list any federally-listed (or proposed) threatened or endangered species or critical habitat
tentially affected by the project (use scientific names (i.e., genus species), if known):

- Have surveys, using U.S. Fish and Wildlife Service (USFWS) protocols, been conducted?
  - Yes, Report attached
  - No (explain):

- If a federally-listed species would potentially be affected, please provide a description and a
  biological evaluation.
  - Yes, Report attached
  - Not attached

- Has Section 7 consultation been initiated by another federal agency?
  - Yes, Initiation letter attached
  - No

- Has Section 10 consultation been initiated for the proposed project?
  - Yes, Initiation letter attached
  - No

- Has the USFWS issued a Biological Opinion?
  - Yes, Report attached
  - No
  - If yes, list date Opinion was issued (mm/dd/yyyy):

**Box 9  Historic properties and cultural resources**
Please list any historic properties listed (or eligible to be listed) on the National Register of Historic
Places which the project has the potential to affect:

- Has an archaeological records search been conducted?
  - Yes, Report attached
  - No (explain):

- Are any cultural resources of any type known to exist on-site?
  - Yes
  - No

- Has an archaeological pedestrian survey been conducted for the site?
  - Yes, Report attached
  - No (explain):

- Has Section 106 or SHPO consultation been initiated by another federal or state agency?
  - Yes, Initiation letter attached
  - No

- Has a Section 106 MOA been signed by another federal agency and the SHPO?
  - Yes, Attached
  - No
  - If yes, list date MOA was signed (mm/dd/yyyy):

**Box 10  Proposed Conceptual Mitigation Plan Summary** (see instructions)
Measures taken to avoid and minimize impacts to waters of the U.S. (if any):

- Applicant proposes combination of one or more of the following mitigation types:
  - Mitigation Bank
  - On-site
  - Off-site (Number of sites:)
  - None
### Part II: Project Information

<table>
<thead>
<tr>
<th>Box 1 Project Name:</th>
<th>Applicant Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant Title</td>
<td>Applicant Company, Agency, etc.</td>
</tr>
<tr>
<td>Mailing Address</td>
<td>Applicant's internal tracking number (if any)</td>
</tr>
</tbody>
</table>

| Work Phone with area code | Home Phone with area code | Fax # | E-mail Address |

Relationship of applicant to property:
- [ ] Owner
- [ ] Purchaser
- [ ] Lessee
- [ ] Other

Application is hereby made for verification that subject regulated activities associated with subject project qualify for authorization under a USACE nationwide permit or permits as described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the agency to which this application is made the right to enter the above-described location to inspect the proposed, in-progress, or completed work. I agree to start work only after all necessary permits have been received.

**Signature of applicant**:  
**Date (mm/dd/yyyy)**

### Box 2 Authorized Agent/Operator Name and Signature: *(If an agent is acting for the applicant during the permit process)*

<table>
<thead>
<tr>
<th>Agent/Operator Title</th>
<th>Agent/Operator Company, Agency, etc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mailing Address</td>
<td></td>
</tr>
<tr>
<td>E-mail Address</td>
<td></td>
</tr>
</tbody>
</table>

| Work Phone with area code | Home Phone with area code | Fax # | Cell Phone # |

I hereby authorize the above-named agent to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application. I understand that I am bound by the actions of my agent, and I understand that if a federal or state permit is issued, I, or my agent, must sign the permit.

**Signature of applicant**:  
**Date (mm/dd/yyyy)**

I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate.

**Signature of authorized agent**:  
**Date (mm/dd/yyyy)**

### Box 3 Name of property owner, if other than applicant:

- [ ] Multiple Current Owners *(If multiple current property owners, check here and include a list as an attachment)*

<table>
<thead>
<tr>
<th>Owner Title</th>
<th>Owner Company, Agency, etc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mailing Address</td>
<td></td>
</tr>
</tbody>
</table>

Box 4  Project location, including street address, city, county, state, and zip code where proposed activity will occur:

**Nature of Activity**  (Description of project; include all features; see instructions)

**Project Purpose**  (Description of the reason or purpose of the project; see instructions)

Has a delineation of waters of the U.S., including wetlands, been completed?  (see instructions)
- [ ] Yes, Attached
- [x] No

If a delineation has been completed, has it been verified in writing by the USACE?
- [ ] Yes, Date of approved or preliminary jurisdictional determination (mm/dd/yyyy):  
  USACE project:
- [ ] No

Are color photographs of the existing conditions available?  [ ] Yes, Attached  [ ] No
Are aerial photographs available?  [ ] Yes, Attached  [ ] No

- [ ] Multiple Single and Complete Crossings  (If multiple single and complete crossings, check here and complete the table in Attachment D)

**Waterbody(ies)**  (if known; otherwise enter “an unnamed tributary to”):

Tributary(ies) to what known, downstream waterbody(ies):

Latitude & longitude  (Decimal Degrees):

USGS Quad map name(s):

Watershed(s) and other location descriptions, if known:

Directions to the project location:

---

Part III: Project Impacts and Mitigation

Box 5  Reason(s) for Discharge into waters of the U.S.:

Type(s) of material being discharged and the amount of each type in cubic yards:

Total surface area (in acres) of wetlands or other waters of the U.S. to be filled:
Indicate the proposed impacts to *waters of the U.S.* in ACRES (for wetlands and impoundments) and LINEAR FEET (for rivers and streams), and identify the impact(s) as permanent and/or temporary for each waterbody type listed below. For projects with multiple single and complete crossings, the table below should indicate the cumulative totals of those single and complete crossings that require notification as outlined in Part I, GC question 27, and would not determine the threshold for whether a project qualifies for a NWP. The table below is intended as a tool to summarize impacts by resource type for planning compensatory mitigation and does not replace the summary table of single and complete crossings in Attachment D for those projects with multiple single and complete crossings.

<table>
<thead>
<tr>
<th>Permanent Type</th>
<th>Acres</th>
<th>Linear feet</th>
<th>Temporary Type</th>
<th>Acres</th>
<th>Linear feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-forested wetland</td>
<td></td>
<td></td>
<td>Forested wetland</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Perennial stream</td>
<td></td>
<td></td>
<td>Intermittent stream</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ephemeral stream</td>
<td></td>
<td></td>
<td>Impoundment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other:</td>
<td></td>
<td></td>
<td>Total:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Potential indirect and/or cumulative impacts of proposed discharge (if any):

Required drawings (see instructions):
- Vicinity map: □ Attached
- To-scale plan view drawing(s): □ Attached
- To-scale elevation and/or cross section drawing(s): □ Attached

Is any portion of the work already complete? □ Yes □ No
If yes, describe the work:

**Box 6 Authority:** (see instructions)
- Is Section 10 of the Rivers and Harbors Act for projects affecting navigable waters applicable? □ Yes □ No
  *(see Fort Worth District Navigable Waters list)*
- Is Section 404 of the Clean Water Act applicable? □ Yes □ No

**Box 7 Larger Plan of Development:**
- Is the discharge of fill or dredged material for which Section 10/404 authorization is sought intended for a utility line project which is part of a larger plan of development? □ Yes □ No *(If yes, please provide the information in the remainder of Box 7)*
- Does the utility line project have independent utility in addition to the larger plan of development (e.g., major transmission line, main water line, etc.)? □ Yes □ No
If yes, explain:

If discharge of fill or dredged material is part of development, name and proposed schedule for that larger development (start-up, duration, and completion dates):
# Attachment D: Summary Table of Single and Complete Crossings

<table>
<thead>
<tr>
<th>Waterbody ID(^1)</th>
<th>Latitude and Longitude (Decimal Degrees)</th>
<th>Resource Type(^2)</th>
<th>Linear Feet in Project Area</th>
<th>Acres in Project Area</th>
<th>Impact Type(^3)</th>
<th>Linear Feet of Impact</th>
<th>Acres of Impact</th>
<th>Cubic Yards of Material to be Discharged</th>
<th>PCN Required</th>
<th>Reason(^4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>e.g., W-1</td>
<td>32.755°N 97.755°W</td>
<td>NFW</td>
<td>-</td>
<td>0.25</td>
<td>D/P</td>
<td>-</td>
<td>0.15</td>
<td>1210</td>
<td>Yes</td>
<td>A, B</td>
</tr>
</tbody>
</table>

\(^1\) Waterbody ID may be the name of a feature or an assigned label such as "W-1" for a wetland.


\(^3\) Impact Types: D/P – Direct* and Permanent, D/T – Direct and Temporary, I/P – Indirect** and Permanent, I/T – Indirect and Temporary

* Direct impacts are here defined as those adverse affects caused by the proposed activity, such as discharge or excavation.

** Indirect impacts are here defined as those adverse affects caused subsequent to the proposed activity, such as flooding or effects of drainage on adjacent waters of the U.S.

\(^4\) Reasons for PCN requirement:

- A – Mechanized land clearing in a forested wetland
- B – Require a Section 10 permit
- C – Utility line exceeds 500 feet in waters of the U.S., excluding overhead lines
- D – Utility line is within a jurisdictional area (i.e., water of the U.S.), and the utility line runs parallel to a stream bed that is within that jurisdictional area
- E – The loss of waters of the U.S. exceeds 1/10 acre
- F – Permanent access roads are constructed above grade in waters of the U.S. for a distance of more than 500 feet
- G – Permanent access roads are constructed in waters of the U.S. with impervious materials
- H – Potential endangered species
- I – Potential historic properties
- J – Discharge into pitcher plant bog or bald cypress-tupelo swamp
- K – Discharge into the area of Caddo Lake within Texas that is designated as a “Wetland of International Importance” under the Ramsar Convention
- L – Required by Louisiana Regional Conditions
- M – Other
Linear vs. Non-linear Projects

- **NWPs authorize single and complete activities**

- All losses of waters of U.S. associated with a single and complete project would be considered when determining whether acreage limit or pre-construction notification threshold is exceeded

- **Linear Projects:**
  - Constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point
  - *Each separate and distant crossing is a separate single and complete project (in most cases)*
  - Cumulative effects of overall utility line or road are evaluated to determine if adverse cumulative effects on aquatic environment are more than minimal and therefore do not qualify for NWP

- **Non-linear Projects:** Total project proposed is accomplished by one owner/developer/partnership. Must have independent use (i.e. stand-alone project)
Permit Area and 106 APE*

*APE = Area of Potential Effect
Permit Area and 106 APE

- Substantial Federal Control (Corps permit + National Wildlife Refuge Land)
- Substantial Impacts (Waters of U.S., Endangered Species, Cultural Resources)
- 1 Permit Area
NWP-3 Maintenance

- Covers (a) the repair, rehab, or replacement of previously authorized, currently serviceable structures or fills... *provided that the structure is not to be put to uses differing from those specified in the original permit, or most recent modification.*

- allows for minor changes, also authorizes the repair, rehab, or replacement due to changes in construction techniques, etc.

- (b) Authorizes the removal of accumulated sediments and debris in the vicinity of and within existing structures, (bridges, culverted road crossings including outfall and intake structures- and the placement of new or additional riprap to protect the structure...but cannot extend farther than 200 feet in any direction from the structure (200 ft. limit does not apply to maintenance dredging to remove accumulated sediments)(pcn).

- (c) Authorizes temporary structures, fills, and work necessary to conduct maintenance activities. Temporary fills must be removed and the area returned to preconstruction elevations.
Authorizes bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

(a) no material placed in excess of the min. amount needed for erosion protection;
(b) activity is no more than 500 feet in length, unless waived by the district engineer;
(c) will not exceed an avg. of one cubic yard/running foot placed below the plane of the OHWM, unless waived by the district eng.;
(d) does not involve the discharges of dredged or fill material into special aquatic sites, unless waived by the district eng.;
(e) no material is of the type or is placed in any location or manner, to impair surface water flow;
(f) no material is placed in a manner that will be eroded by normal or expected high flows;
(g) the activity is not stream channelization.
NWP-13 Bank Stabilization cont.

- PCN needed if the work;
- 1) is in a special aquatic site;
- 2) is in excess of 500 LF; or
- 3) involves the discharge of greater than an average of one CY/running foot along the bank below the plane of the ordinary high water mark or high tide line.
NWP-14 Linear Transportation Projects

- Activities req. for the construction, expansion, modification, or improvement of linear transportation projects (roads, highways, railways, trails, runways, and taxiways).
- Does not cause the loss of greater than \( \frac{1}{2} \) acre in waters of the US, and \( \frac{1}{3} \) acre in tidal waters.
- Stream channel modification and bank stabilization limited to the minimum amount necessary to protect the project and must be in the vicinity of the project.
- Authorizes wide range of temporary structures, fills, and work necessary to construct the project (coffer dams, access roads, etc). All temp fills must be removed and returned to pre-const. elevations.
- PCN at >1/10 acre impact and discharges into special aquatic sites
NWP-18 Minor Discharges

- Minor discharges of dredged or fill material into all waters of the US provided the activity meets all of the following criteria:
  - (a) quantity of discharged material and the volume excavated does not exceed 25 CY below the plane of the OHWM;
  - (b) will not cause the loss of more than 1/10 acre of waters of the US.; and
  - (c) discharge is not placed for the purpose of stream diversion.
- PCN required if; (1) the discharge or volume of the area excavated exceeds 10 CY below the OHWM or high tide line, or (2) the discharge is in a special aquatic site, including wetlands.
NWP-29 Residential Developments

- Discharges into waters of the US for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. Attendant features may include roads, parking lots, utility lines, storm water mgt. facilities and recreational facilities.

- Not to exceed ½-acre loss of waters including the loss of no more than 300 LF of streambed, unless for intermittent and ephemeral stream beds this 300 LF is waived in writing (pcn req.).
NWP 31 Maintenance of Existing Flood Control Facilities

- Discharges of dredged or fill material associated with the maintenance of existing flood control facilities, including detentions basins, retention/detention basins, levees and channels that: 1) were previously authorized by the Corps or did not require a permit at the time of construction, or 2) were constructed by the Corps and transferred to a non-federal sponsor. Maintenance to activities within the “maintenance baseline”. Does include an “Emergency Situation” where permitting is deferred until after the emergency has been resolved. May require a one-time mitigation plan. (pcn)
NWP-33 Temporary Construction, Access, and Dewatering

- Temporary structures, work, and discharges, necessary for construction activities or access fills or dewatering of construction sites, provided the associated primary activity is authorized by the USACE or CG.
- PCN must include a restoration plan (pcn req.)
- *Good for projects that have already been authorized and now need additional access by the contractor*
NWP- 39 Commercial and Institutional Developments

- Discharges into waters of the US for the construction or expansion of commercial and institutional building foundations and pads, including roads, parking lots, utility lines, storm water mgt. facilities and recreational facilities. Includes retail stores, restaurants, business parks, etc.

- Not to exceed ½-acre loss of waters including the loss of no more than 300 LF of streambed, unless for intermittent and ephemeral stream beds this 300 LF is waived in writing (pcn req.).
NWP-42 Recreational Facilities

- Discharges into waters of the US for the construction or expansion of recreational facilities including playing fields (football fields, baseball fields), basketball courts, tennis courts, hiking and bike path, golf courses, horse paths and nature centers, support facilities (maintenance storage buildings, and stables), etc.

- Not to exceed ½-acre loss of waters including the loss of no more than 300 LF of streambed, unless for intermittent and ephemeral stream beds this 300 LF is waived in writing (pcn req.).
NWP-43 Stormwater Mgt. Facilities

- Discharges into waters of the US for the construction and maintenance of stormwater mgt. facilities, including the excavation of stormwater ponds/facilities, detention basins, and installation and maintenance of water control structures, outfall structures and emergency spillway; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins.

- Does not exceed ½-acre loss of waters including the loss of no more than 300 LF of streambed, unless for intermittent and ephemeral stream beds this 300 LF is waived in writing (pcn req.).
Regional General Permits

- **RGP-8 Boat Ramps and Minor Facilities**: scope includes boat ramp construction and minor activities including boat docks, boathouses, boat stalls, piers, fish attractors.

- **RGP-11 Exploration and Production Wells**: construction of drilling and production pads, reserve and mud pits, access roads, coffer dams and staging areas.
Letters of Permission

- For minor work that has no significant individual or cumulative environmental impact and no appreciable opposition
- Abbreviated evaluation procedure
  - Coordination with federal and state fish and wildlife agencies
  - Public interest evaluation, but no public notice
- LOP procedures may not have expiration dates
- Two Section 404 LOP procedures currently in place in Texas (both statewide):
  
  **LOP-1:** Activities at Certain Reservoirs and Federal and State Sponsored Projects
  
  **LOP-2:** Excavation Activities
Standard Individual Permits

- When an activity cannot be authorized by general permit or LOP, a standard individual permit is required
- Must submit application form (Eng Form 4345) or template form with information about the proposed activity
Regulatory Individual Permit Process Flow Chart

Corps receives application, conducts an initial review and assigns it to a Project Manager (PM)

- Corps considers the application withdrawn
- PM receives a reply to the RAI
- PM writes a Request for Additional Information (RAI) within 15 days of receipt of application

- The application complete?
  - NO: PM writes a Request for Additional Information (RAI) within 15 days of receipt of application
  - YES: Does the project require coordination?
    - NO: PM compiles the decision recommendation document (such as the Environmental Assessment – Statement of Finding document or the Nationwide Permit Memorandum For Record) for permit decision
    - YES: Compile coordination document (such as a Public Notice or Letter of Permission Coordination within 15 days of receipt of complete application) also compile Endangered Species Consultation, and/or Essential Fisheries Habitat Coordination, Historic Resource Coordination

- Any objections, adverse comments or issues?
  - NO: PM coordinates the concerns/issues with the applicant
  - YES: PM compiles the decision recommendation document (such as the Environmental Assessment – Statement of Finding document or the Nationwide Permit Memorandum For Record) for permit decision

- Have the concerns/issues been resolved?
  - NO: PM compiles a recommendation for denial of a Department of the Army permit
  - YES: Resolve the concerns/issues

- Can concerns/issues be resolved through additional coordination or project revisions?
  - NO: Rewrite
  - YES: Recommendation and draft permit is presented to management

- Does management accept the recommendation?
  - NO: Re-write
  - YES: Permit issuance

- Permit denial

Note: this flowchart is a very basic representation of the process; and, the process is affected by several exterior factors (ESA, etc) that add to, or alter it
Standard Individual Permit Evaluation Process

- **Primary Components**
  - Public Interest Review-Public Notice
  - Section 404(b)(1) Guidelines analysis
  - National Environmental Policy Act review

- **Documentation – Combined Decision Document**
  - Statement of Findings
  - Section 404(b)(1) evaluation
  - NEPA
    - Environmental Impact Statement (EIS)
    - Finding of No Significant Impact (FONSI)
    - Categorical Exclusion
Public Interest Review

- Permit decision based on probable impacts, including cumulative impacts, of the proposed activity on the public interest (33 CFR 320.4)

- Public interest factors include water quality, fish and wildlife, historic properties, floodplain values, water supply and conservation, economics, land use, navigation, recreation, energy needs, safety, and other factors

- Permit granted if not contrary to the public interest and meets other legal requirements, such as 404(b)(1) guidelines
Agency Coordination

- US Environmental Protection Agency (EPA)
- US Fish and Wildlife Service (USFWS)-Endangered Species Act
- National Marine Fisheries Service (NMFS)-ESA’s
- Tribal Governments
- Natural Resources Conservation Service (NRCS)-Cropland Impacts
- US Coast Guard (CG)-Bridges on Nav. Waters
- County or City Floodplain Administrator-Compliance w NFIP
- Texas Commission on Environmental Quality (TCEQ)-401 Cert.
- Railroad Commission of Texas (TRC)-Coal, Oil and Gas Resources
- Texas Parks and Wildlife Department (TPWD)-Natural Resources
- Texas General Land Office (GLO)-State Lands
- Texas Historical Commission (THC)-Cultural and Historic Resources
Compliance with Other Laws

- Section 401 of the Clean Water Act - Water quality certification by state water quality agency
- National Environmental Policy Act
- Fish and Wildlife Coordination Act
- Endangered Species Act
- National Historic Preservation Act
- Native American Grave Repatriation Act
- Archaeological Resources Protection Act
- Coastal Zone Management Act
- Executive Order 11988 (Floodplain Mgmt.)
Compensatory Mitigation Rule

- Published April 10, 2008, to improve the planning, implementation, and mgt. of mitigation projects
- **Goal** – level playing field (permittee, Mitigation Banks, ILFs) to the maximum extent practicable
- **Performance Standards** – ecologically-driven, equivalent/effective standards, best available science
- **Compliance** – increase compliance visits, establish enforceable success criteria, prescribed monitoring reports
- **Mitigation Sequence Preserved** - avoid, minimize, compensate for unavoidable impacts and lost aquatic functions
- Does not change *when* mitigation is required
- Does change *where* and *how*
Principles in 2008 Mitigation Rule

- Mitigation sequencing
  - avoid, minimize, compensate
- Preference hierarchy for mitigation and three types of mitigation options:
  - Mitigation bank credits
  - In-lieu fee (ILF) program credits
  - Permittee-responsible mitigation under a watershed approach
    - On-site and/or in-kind permittee-responsible mitigation
    - Off-site and/or out-of-kind permittee-responsible mitigation
Tips for Streamlining the Corps of Engineers Permitting Process

- **AVOID, MINIMIZE, COMPENSATE** – ensure that protection of the aquatic environment is integrated into your planning process to the maximum extent practicable
- Develop a good environmental assessment for every case
- Get to know the personnel in the district(s) you work with and become familiar with their procedures
- Think like the Corps and other natural resource agencies on protecting the aquatic environment
- Conduct pre-application coordination, when appropriate
Tips for Streamlining the Corps of Engineers Permitting Process

- Develop and share ways to protect the aquatic environment and use them, when appropriate
- Read guidance/instructions carefully, CALL if you have questions
- Provide detail commensurate with the complexity of the case, but always SHOW YOUR WORK
- Use straightforward, clearly-reproducible drawings with complete legends
- Check submittals for accuracy
  - Consistency among sections, including figures
  - Math
Tips for Streamlining the Corps of Engineers Permitting Process

- More = Better? Not necessarily
- Make sure your submittals would be clear to an uninformed third-party (don’t make assumptions)
- Develop good well-thought-out plans, and follow them
- Suggest constructive ways for the process to go more smoothly
- Seek the advice of a good environmental consultant, when appropriate
Questions?
Corps Regulatory Program Information

- National Regulatory Program Home Page:

- Fort Worth District Regulatory Home Page: http://www.swf.usace.army.mil/regulatory
  Fort Worth District (817) 886-1731
  David Madden (817) 886-1741 david.e.madden@usace.army.mil

- Register to receive Regulatory Branch Public Notices:

- If this program assisted you, please help us improve our services by completing the survey on the following website: http://per2.nwp.usace.army.mil/survey.html