

CESAS-RD
200005090

SUBJECT: Regional Permit No. 90

Effective Date: 05/16/07

Expiration Date: 05/16/12

DEPARTMENT OF THE ARMY
REGIONAL PERMIT FOR
PRIVATE SINGLE FAMILY NON-COMMERCIAL RECREATIONAL PONDS
(LESS THAN FIVE ACRES IN SIZE)
WITHIN THE GEOGRAPHIC LIMITS OF GEORGIA
SAVANNAH DISTRICT

DESCRIPTION OF THE REGIONAL PERMIT: On the recommendation of the United States Army Corps of Engineers (USACE), Chief of Engineers, pursuant to Section 404 of the Clean Water Act (33 USC 1344), authority is hereby given to discharge dredged and/or fill material incidental to the construction of private single family, non-commercial, recreational ponds (less than five acres in size) in non-tidal waters of the United States, in the State of Georgia. This Regional Permit **cannot** be used for stormwater detention and/or retention ponds, sediment ponds, irrigation ponds, or ponds for wastewater treatment or waste disposal. This Regional Permit **cannot** be used for multiple ponds on a single tract of land. Individual project impacts will total no more than two acres of jurisdictional wetland and/or 500 linear feet of jurisdictional stream. The impact area includes any waters of the US (waters) impacted by dams, berms, impounded areas, and any associated fill and/or sidecast. Also included would be those waters impacted by excavation, where the excavation is determined to be a regulated discharge.

I. GENERAL CONDITIONS

1. The prospective permittee shall not begin the activity until notified in writing by the USACE, Savannah District, Regulatory Division, that the activity may proceed under the RP.
2. The project must be designed and constructed to avoid and minimize any adverse effects (impacts) to waters of the US to the maximum extent practicable.
3. Mitigation:
 - a. The Savannah District "Standard Operating Procedure, Compensatory Mitigation, Wetlands, Openwater & Streams (SOP)" must be used to calculate compensatory mitigation credits necessary for all uses of NWPs that would require compensatory mitigation.

b. All impacts to wetlands and open waters must be calculated and reported in acres. Stream impacts must be calculated separately and reported in both linear feet and acres.

c. Compensatory mitigation is required for the use of this RP for any pond that would result in an adverse impact to and/or the loss of 0.1 acre or more of wetlands and/or the loss of 100 linear feet or more of non-tidal stream. Adverse impacts to waters of the US include activities that result in a temporary loss in function and do not result in permanent conversion of one aquatic resource type to another (e.g., placement of rip-rap on a stream bank; or construction of a buried utility line in all types of wetland, where the wetland is restored to its preconstruction contours). A loss of waters of the US includes all filled areas and areas permanently adversely affected by flooding, excavation or drainage (e.g., installation of a culvert/pipe in a stream; construction of a dam and resulting impoundment on a stream; excavation of a pond in a wetland). The US Army Corps of Engineers has discretion to determine if work would result in an impact to or a loss of waters of the US. For site-specific mitigation plans, sufficient information must be included to document that the proposed mitigation would adequately compensate for all wetland/stream impacts. Plans that propose use of an approved commercial mitigation bank or use of in-lieu-fee banking must also document that the mitigation (i.e., credit) would compensate for all wetland/stream impacts.

d. The use of in-lieu-fee banking is not appropriate if commercial mitigation bank credits are available for a project site. For projects where no commercial bank credits are available, and the mitigation plan includes the proposed use of in-lieu-fee mitigation, the plan must include either: (1) a statement that no bank services the project site; or (2) the name(s) of the mitigation bank(s) contacted, the date of contact, and a statement that the banker(s) confirmed that no credits were available. The following conversion factors will be used to convert SOP credit requirements to in-lieu-fee mitigation acre requirements: (a) SOP wetland credits x 0.875 = in-lieu-fee wetland acres; and (b) SOP stream credits x 0.0023 = in-lieu-fee stream acres.

e. For NWPs that have both an acre limit loss of waters of the US and a linear foot stream loss limit, the acreage of stream loss (i.e., the length of the stream bed filled or excavated times the average width of the stream, from the ordinary high water mark to ordinary high water mark, applies towards that acre limit loss of waters of the US). For example, if a proposed NWP 39 activity involves filling 0.1 acre of wetlands and 100 linear feet of a stream bed with an average width of 10 feet, the acreage loss of waters of the US for that activity would be calculated as follows: $0.1 + [(100 \times 10) / 43,560] = 0.123$ acre.

f. For a project that involves an impact to and/or loss of wetlands and streams, if either the 0.1 acre or 100 linear foot threshold is met, compensatory mitigation is required for all impacts and losses.

4. Any structure or fill shall be properly constructed, stabilized and maintained to ensure public safety.

5. No activity may occur in a State designated primary or secondary trout stream. No activity may occur in or directly adjacent to waters designated on the Georgia 303(d) list. Applicants are required to certify that the water to be impacted is not a listed (state impaired) water. The

Environmental Protection Agency maintains a list of state impaired waters on their "Surf Your Watershed" website (www.epa.gov/surl/).

6. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

7. Endangered Species:

a. No activity is authorized under this RP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species. Prospective permittees shall notify the DE if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the DE that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. For activities that may affect Federally-listed threatened or endangered species or designated critical habitat, the notification must include the name(s) of the threatened or endangered species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the US Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS), the DE may add species-specific regional endangered species conditions to this RP.

b. If a proposed project would involve the impounding of an intermittent or perennial stream associated with the Chattahoochee, Conasauga, Coosawatee, Etowah, Flint or Ochlockonee Rivers or River drainage basins, or that portion of the Tallapoosa River basin in Haralson or Paulding Counties, surveys for Federally listed fish and mussel species must be provided to this office as well as to the appropriate USFWS office at the time of the pre-construction notification (PCN) submittal. The submittal of this PCN and endangered species survey will constitute the initiation of informal consultation under Section 7 of the Endangered Species Act for which concurrence on a "no affect" or "may affect but would not likely adversely affect" determination from USFWS will be required.

c. Authorization of an activity by this RP does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act (ESA). In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS on their web pages at <http://www.fws.gov/athens> and http://www.nmfs.gov/prot_res/esahome.html, respectively.

8. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP) is authorized, until the DE has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the DE if the authorized activity may affect any historic properties listed, determined to be eligible, or which

the prospective permittee has reason to believe may be eligible for listing on the NRHP, and shall not begin the activity until notified by the DE that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the NRHP (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the NRHP, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

9. If the applicant intends to withdraw 100,000 gallons/day or more from the proposed pond, then it would be necessary to contact the Georgia Department of Natural Resources, Environmental Protection Division, concerning a surface water withdrawal permit. More information is available at www.dnr.state.ga.us.

10. No activity may occur in close proximity of a public water supply intake.

11. No activity may occur in areas of concentrated shellfish populations, including freshwater mussels.

12. No activity may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharge must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

13. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Typically, the spawning period is approximately 15 March to 15 June in Georgia. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

14. Activities in breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

15. Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing elevation.

16. A pre-construction notification is required for use of this RP. Impacts to wetlands must be calculated and reported in acres. Impacts to intermittent and perennial streams (streams) must be calculated separately from wetland impacts, and reported in linear feet of stream channel.

17. This RP cannot be used to authorize projects that would impact compensatory mitigation sites or an approved compensatory mitigation bank, unless that project's purpose is to enhance the mitigation site or bank. An individual permit application would be required for these projects.

18. All work conducted under this RP shall be located, outlined, designed, constructed and operated in accordance with the minimal requirements as contained in the Georgia Erosion and Sedimentation Control Act of 1975, as amended. Utilization of plans and specifications as contained in "Manual for Erosion and Sediment Control, (Latest Edition)" published by the Georgia

Soil and Water Conservation Commission or their equivalent will aid in achieving compliance with the aforementioned requirements. The latest edition of the manual can be accessed at www.gaswcc.org.

19. Projects authorized under this RP, but not commenced before the expiration date, must be re-coordinated.

20. Use of this RP is prohibited for any project in waters of the US that support anadromous fish, or in those waters that previously supported such fish and where restoration of fish migrations and populations is possible. The established limits for these waters are listed in the attached map and include adjacent and tributary waters located within 1000 feet of these identified waters.

21. This RP cannot be used in conjunction with any other Department of the Army authorization/s in order to enlarge the project size.

22. That the District Engineer or their authorized representative(s) or designee(s) be allowed to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

23. That an activity authorized to a permittee under this Regional Permit may not be transferred to a third party without prior written notice and approval by the District Engineer, requiring either the transferee's written agreement to comply with all terms and conditions of the Regional Permit and the permittee's authorization for the activity issued under the permit or by the transferee subscribing to an authorization issued to them under the permit and thereby agreeing to comply with all terms and conditions of the Regional Permit and their authorization. In addition, if a permittee's interests authorized herein are transferred by conveyance or realty, the deed shall reference the permittee's authorization and the Regional Permit and the terms and conditions specified herein, and their authorization under this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

24. That the Savannah District Engineer may determine that an Individual Permit application is required on a case-by-case basis if he or she feels it is in the public interest.

25. No activity may occur in any tidal waters.

26. The applicant will coordinate with the Safe Dams Program if the dam exceeds 15 feet in height. For all dams below 25 feet in height, the applicant will coordinate with any local jurisdictions which maintain ordinance control over the design for small dams below the threshold exercised by the Georgia Safe Dams Program. In both instances, the applicant will provide the DE with evidence of this coordination. (Safe Dams can be contacted at the Georgia Department of Natural Resources, Environmental Protection Division, Safe Dams Program, 4240 International Parkway, Atlanta, Georgia 30354, 404-362-2678.)

27. The project shall not serve as a storm water detention/retention facility. No activity authorized under this RP will alter the jurisdiction of the US Army Corps of Engineers (USACE)

over the area as jurisdictional waters of the US, nor does it convert the jurisdictional waters into non-jurisdictional waters of the US, nor render these waters isolated from the upstream or downstream waters or the adjacent wetlands.

28. The permittee must maintain downstream water flows. Downstream low water flows will match pre-construction downstream low water flows at the 7Q10 minimum (average minimum annual flow for seven consecutive days that has a recurrence interval of ten years) or the natural inflow. High downstream water flows will match pre-construction downstream high water flows at the 7Q10 peak (average peak annual flow for seven consecutive days that has a recurrence interval of ten years) or the natural inflow. Special outflow design may be necessary to maintain these minimum flows.

29. This RP cannot be used to authorize projects that would impact compensatory mitigation sites or an approved compensatory mitigation bank, unless that project's purpose is to enhance the mitigation site or bank.

30. This RP cannot be used to authorize projects that involve the discharge of wet or otherwise uncured concrete below the ordinary high water mark unless the concrete is contained within waterproof forms until the concrete cures.

II. NOTIFICATION (APPLICATION) REQUIREMENTS

To perform work under the authority of this RP, the prospective permittee must notify the USACE by submitting a pre-construction notification (PCN) as early as possible. However, if the prospective permittee does not provide all of the requested information, then the USACE will notify the prospective permittee that the PCN is still incomplete and what information is necessary. The PCN review process will not commence until all of the requested information has been received by the USACE. The prospective permittee shall not begin the activity until authorization is received in writing from the USACE. The PCN must be in writing and include the following information:

1. Property owner's name, mailing address and daytime telephone number, city, county, latitude/longitude, and maps identifying the project and property boundaries. Maps should be of an appropriate scale to locate the site by nearby landmarks. If the property owner is an organization, identify a contact person. If the property owner is not the applicant, also identify the person making the request including name, mailing address and daytime telephone number:
2. A brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other Department of the Army authorization/s used, or intended to be used, to authorize any part of the proposed project or any related activity;
3. A delineation of jurisdictional waters on the site, including wetlands, streams and open water. Delineations must be prepared in accordance with the current method required by the Corps. Wetland delineations will likely need to be prepared by a qualified environmental consultant:

4. Plan and section view drawings of the pond showing the dimensions of the dam and pond, the acres of wetlands to be impacted (impacts include filling, flooding, clearing or excavating) and/or the linear feet and acreage of stream that would be impacted;

5. An alternatives analysis showing why further measures to avoid/minimize impacts to the aquatic ecosystem are not practicable;

6. Compensatory mitigation through the purchase of commercial mitigation bank credits is required for the use of this RP for any pond that would result in an adverse impact to and/or the loss of 0.1 acre or more of wetlands and/or the loss of 100 linear feet or more of non-tidal stream. Proposed mitigation must meet the following requirements:

a. The Savannah District "Standard Operating Procedures, Compensatory Mitigation, Wetlands, Openwater & Streams (SOP)" must be used to calculate compensatory mitigation credits necessary for all uses of NWP that would require compensatory mitigation;

b. All impacts to wetlands and open waters must be calculated and reported in acres. Stream impacts must be calculated separately and reported in both linear feet and acres;

c. Adverse impacts to waters of the US include activities that result in a temporary loss in function and do not result in permanent conversion of one aquatic resource type to another (e.g., placement of rip-rap on a stream bank; or construction of a buried utility line in all types of wetland, where the wetland is restored to its preconstruction contours). A loss of waters of the US includes all filled areas and areas permanently adversely affected by flooding, excavation or drainage (e.g., installation of a culvert/pipe in a stream; construction of a dam and resulting impoundment on a stream; excavation of a pond in a wetland). The US Army Corps of Engineers has discretion to determine if work would result in an impact to or a loss of waters of the US. For site-specific mitigation plans, sufficient information must be included to document that the proposed mitigation would adequately compensate for all wetland/stream impacts. Plans that propose use of an approved commercial mitigation bank or use of in-lieu-fee banking must also document that the mitigation (i.e., credit) would compensate for all wetland/stream impacts;

d. The use of in-lieu-fee banking is not appropriate if commercial mitigation bank credits are available for a project site. For projects where no commercial bank credits are available, and the mitigation plan includes the proposed use of in-lieu-fee mitigation, the plan must include either: (1) a statement that no bank services the project site; or (2) the name(s) of the mitigation bank(s) contacted, the date of contact, and a statement that the banker(s) confirmed that no credits were available. The following conversion factors will be used to convert SOP credit requirements to in-lieu-fee mitigation acre requirements: (a) SOP wetland credits x 0.875 = in-lieu-fee wetland acres; and (b) SOP stream credits x 0.0023 = in-lieu-fee stream acres;

e. For NWP that have both an acre limit loss of waters of the US and a linear foot stream loss limit, the acreage of stream loss (i.e., the length of the stream bed filled or excavated times the average width of the stream, from the ordinary high water mark to ordinary high water mark, applies towards that acre limit loss of waters of the US). For example, if a proposed pond involves filling 0.1 acre of wetlands and 100 linear feet of a stream bed with an average width of

10 feet, the acreage loss of waters of the US for that activity would be calculated as follows: $0.1 + [(100 \times 10) / 43,560] = 0.123$ acre;

f. For a project that involves an impact to and/or loss of wetlands and streams, if either the 0.1 acre or 100 linear foot threshold is met, compensatory mitigation is required for all impacts and losses (both wetlands and streams);

7. Any structure or fill shall be properly constructed, stabilized and maintained to ensure public safety;

8. A statement that the proposed pond is not in a State designated primary or secondary trout stream;

9. A statement that the proposed pond would not occur in, or within 1,000 feet of, waters designated on the Georgia 303(d) impaired water list. The Environmental Protection Agency maintains a list of state impaired waters on their "Surf Your Watershed" website (www.epa.gov/surf/);

10. A statement that the proposed pond would not impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights;

11. A statement regarding the presence of endangered species present on the project site, if a survey has been performed and that the pond would involve the impounding of an intermittent or perennial stream associated with the Chattahoochee, Conasauga, Coosawatee, Etowah, Flint or Ochlockonee Rivers or River drainage basins. If so, surveys for Federally listed fish and mussel species must be provided. Information regarding Endangered Species can be found at http://athens.fws.gov/endangered/counties_endangered.html, <http://www.fws.gov/athens> and http://www.nmfs.gov/prot_res/esahome.html;

12. A statement regarding the presence of cultural resources (historic properties listed, or eligible for listing, in the National Register of Historic Places) present on or near the project site and if a survey has been performed. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office, the National register of Historic Places and at <http://www.nr.nps.gov/>;

13. Distance from the proposed pond to the nearest public water supply intake;

14. Distance from the proposed pond to the nearest shellfish populations, including freshwater mussels;

15. Description of the material to be used for construction and that it will not contain any trash, debris, car bodies, asphalt or toxic pollutants;

16. A statement explaining how the proposed pond will avoid spawning areas during spawning seasons to the maximum extent practicable. Typically, the spawning period is approximately 15 March to 15 June in Georgia;

17. A statement explaining how the proposed pond will avoid activities in breeding areas for migratory waterfowl to the maximum extent practicable.
18. Distance from the proposed pond to the nearest anadromous fish habitat. The established limits for these waters are shown on the attached map and include adjacent and tributary waters located within 1000 feet of these identified waters.
19. Distance from the proposed pond to tidal waters.
20. A statement explaining how downstream low water flows will match pre-construction downstream low water flows at the 7Q10 minimum (average minimum annual flow for seven consecutive days that has a recurrence interval of ten years) or the natural inflow.
21. A statement explaining how high downstream water flows will match pre-construction downstream high water flows at the 7Q10 peak (average peak annual flow for seven consecutive days that has a recurrence interval of ten years) or the natural inflow.
22. A maintenance plan including a statement explaining if other State and local requirements exists and how those requirements will be met;
23. Distance from the proposed pond to the nearest public water intake structure.
24. Distance from the proposed pond to the nearest National Wildlife Refuge.
25. A signed statement that the applicant (and landowner if different) understands the RP's conditions and will comply with them.

IV. FURTHER INFORMATION

1. Congressional Authorities: Authorization to undertake the activities described above are pursuant to Section 404 of the Clean Water Act (33 USC 1344).
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 injury to the property or rights of others.
 - d. This Permit does no 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's interest.
- c. Damages to person, 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. Re-evaluation of Permit Decision. The US Army Corps of Engineers may re-evaluate its decision on any activity authorized at any time the circumstances warrant. Circumstances that would require a re-evaluation include, but are not limited to, the following:

- a. The permittee's failure to comply with the terms and conditions of the Permit.
- b. The information provided by the permittee in support of his Permit application proves to be false, incomplete or inaccurate.
- c. Significant new information surfaces which the US Army Corps of Engineers did not consider in reaching the original public's interest decision.

Re-evaluation 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 provided in 33 CFR 326.4 and 326.5. The reference enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of his Permit authorizations and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by the US Army Corps of Engineers, and if the permittee fails to comply with such a directive, the US Army Corps of Engineers may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.

This Regional Permit becomes effective on May 16, 2007, when the Federal official, designated to act for the Secretary of the Army, has signed below.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

A handwritten signature in black ink that reads "Mark S. Held". The signature is written in a cursive style with a horizontal line underneath it.

Mark S. Held
Colonel, US Army
District Commander

Georgia Rivers Supporting Anadromous Fish Habitat

1. Savannah River from the Atlantic Ocean west northwest to Clark Hill Dam at Clark Hill Lake.
2. Ogeechee River from Ossabaw Sound west northwest to the town of Millen, Georgia.
3. Canoochee River from its confluence with the Ogeechee River west northwest to the town of Groveland, Georgia.
4. Medway River from St. Catherines Sound west northwest including the extent of Mt. Hope Creek.
5. Altamaha River from Altamaha Sound west northwest encompassing the entire Altamaha River. The following tributaries are also included:
 - The Oconee River from its confluence with the Altamaha River and north northwest to Lake Sinclair.
 - The Ohoopce River from its confluence with the Altamaha River north to the town of Ohoopce, Georgia.
 - The Little Ocmulgee River from its confluence with the Altamaha River north northwest to the town of Helena, Georgia.
 - The extent of Sturgeon Creek from its confluence with the Altamaha River.
 - The Ocmulgee River from its confluence with the Altamaha River north northwest to Jackson Lake.
 - The entire extent of Tobesofkee Creek from its confluence with the Ocmulgee River.
6. Little Satilla River from St. Andrew Sound west northwest to just north of the town of Waverly, Georgia.
7. Satilla River from St. Andrew Sound west northwest to just south of the town of Dixie Union, Georgia.
8. Flint River from Lake Seminole east northeast to Lake Blackshear.
9. Chattahoochee River from Lake Seminole north to the Walter F. George Reservoir at the Walter F. George Lock and Dam.