

# U.S. Army Corps of Engineers Permitting Process Information

The Permit Process consists of a number of steps involving the applicant, the Corps of Engineers, public and/or private organizations, and Federal, state and/or local agencies. General information related to the permitting process is outlined below.

## Processing Steps

The basic form of authorization used by Corps districts is the standard permit. Processing such permits involves evaluation of individual, project specific applications in what can be considered three steps: pre-application consultation (for major projects), project review, and decision-making.

The following is a general description of the step-by-step procedure the Corps uses to evaluate a typical standard permit application:

1. A pre-application consultation is recommended (see below).
2. The applicant submits ENG Form 4345 and plans through this web site or to the appropriate Corps regulatory office.
3. The Corps receives the application and assigns it an identification number.
4. The Corps notifies the applicant if additional information is required to make the application complete.
5. A public notice is issued within 15 days of receipt of a complete application, to solicit comments from the public, adjacent property owners, interested groups and individuals, local agencies, state agencies, and Federal agencies.
6. The public notice comment period is 15 to 30 days, depending upon nature of activity.
7. The Corps provides the applicant an opportunity to respond to comments received in response to the public notice.
8. The Corps may ask the applicant to provide additional information to assess environmental impacts or resolve public interest concerns. The Corps may also ask the applicant to modify the project to reduce environmental impacts.
9. The Corps considers all comments and the applicant's responses to those comments, including any proposed modifications of the project. The Corps may discuss project modifications with state and Federal agencies and other interested parties.
10. A public hearing is held, if necessary.
11. The Corps conducts a public interest review evaluation and, if necessary, a section 404(b)(1) guidelines evaluation.
12. The Corps makes a decision on the permit application and explains its decision in a decision document. This decision document may include an environmental assessment or environmental impact statement, a statement of findings or record of decision, a Section 404(b)(1) guidelines evaluation (if necessary), and a public interest review evaluation.
13. If the Corps decides to issue the permit, a copy of the permit is sent to the applicant for his or her signature. If the applicant signs the permit, he or she agrees to the terms and conditions of the permit. If the permit is denied, the Corps will explain to the applicant why the permit was denied.
14. If the applicant refuses to sign the permit because he or she does not agree with the conditions in the permit, or if the permit is denied, the applicant can request an administrative appeal of the permit decision.

**Pre-application consultation** usually involves one or more meetings between an applicant, Corps district staff and interested resource agencies (Federal, state, or local). The basic purpose of such meetings is to provide for informal discussions about a proposed activity before an applicant makes irreversible commitments of resources (funds, detailed designs, etc.). The pre-application process is intended to provide the applicant with an assessment of the viability of some of the more obvious alternatives available to accomplish the project purpose, to discuss measures for reducing the impacts of the project, and to inform the applicant of the factors the Corps must consider in its decision-making process.

Once a complete application is received, the **review process** begins. Corps districts operate under what is called a project manager system, where one individual is responsible for handling an application from receipt to final decision. The project manager prepares a public notice, evaluates the impacts of the project and all comments received, negotiates necessary modifications of the project, and prepares appropriate documentation to support a recommended permit decision.

The **decision to issue or deny a permit** is based on the public interest review and, where applicable, a Section 404(b)(1) guidelines analysis or an analysis of the ocean dumping criteria. The public interest review involves an analysis of the foreseeable impacts the proposed work would have on public interest factors, such as navigation, general environmental concerns, wetlands, economics, fish and wildlife values, land use, floodplain values, and the needs and welfare of the people. The benefits and detriments to all public interest factors relevant to each case are carefully evaluated. The permit decision document includes a discussion of the environmental impacts of the project, the findings of the public interest review process, and any special evaluation required by the type of activity, such as determining compliance with the Section 404(b)(1) guidelines or ocean dumping criteria.

**The following general criteria are considered in evaluating all applications:**

1. The relevant extent of public and private need for the proposed work;
2. Where unresolved conflicts of resource use exist, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work; and
3. The extent and permanence of the beneficial and/or detrimental effects the proposed structure or work is likely to have on public and private uses to which the area is suited.

No permit is granted if the proposed project is found to be contrary to the public interest. If the proposed work involves discharges of dredged or fill material into waters of the United States, no permit is granted if the proposed activity is found to be contrary to the Section 404(b)(1) guidelines.

The Corps supports strong partnerships with states in regulating water resource development activities. Such partnerships can be achieved through joint permit processing procedures (e.g., joint permit applications, public notices and public hearings), as well as programmatic general permits founded on effective state programs, transfer of the Section 404 program to states, special area management planning, and regional conditioning of nationwide permits.

### **Alternate Forms of Department of Army Permits**

There are alternate forms of authorization used in certain situations. **Letters of permission** may be used where, in the opinion of the district engineer, the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition. In such situations, the proposal is coordinated with Federal and state resource agencies, and in most cases, adjacent property owners who might be affected by the proposal. However, the public at large is not notified. The public interest review process is central to the decision-making process for letters of permission.

Another form of authorization is the **general permit**. There are three types of general permits: nationwide permits, regional general permits, and programmatic general permits. General permits are not normally developed for an individual applicant, but authorize activities the Corps has identified as being substantially similar in nature and causing only minimal individual and cumulative environmental impacts. General permits may authorize activities in a limited geographic area (e.g., county or state), a particular region of the county (e.g., group of contiguous states), or the nation. A regional or programmatic general permit is issued by the division or district engineer that has regulatory jurisdiction over the geographic area in which the general permit will be used. The issuance process for a general permit closely parallels the issuance process for individual permits, with a public notice, opportunity for a public hearing and detailed decision documentation. Activities that qualify for general permit authorization may proceed, provided the terms and

conditions of the general permit are met. However, some general permits may require review of the proposed work by district engineers before the project proponent can begin construction of the project.

A **nationwide permit** is a type of general permit that authorizes activities on a nationwide basis, unless specifically limited through regional conditions or revoked by division or district engineers. The latest reissuance of the nationwide permits was published in the January 15, 2002, issue of the *Federal Register* (67 FR 2020). This *Federal Register* notice contains the text of the nationwide permits, as well as the general conditions and definitions. Division engineers can add regional conditions to nationwide permits to restrict their use to ensure that those activities result in minimal adverse environmental effects. You should contact the appropriate Corps district office to determine if there are any regional conditions for the nationwide permits.

A **regional general permit** is a type of general permit that authorizes activities in a particular state or other geographic region.

A **programmatic general permit** is based on an existing state, local or other Federal agency program and designed to avoid duplication with that program.

## **Public Involvement**

Public involvement plays a central role in the Corps' administration of its regulatory program. The major tools used to interact with the public are public notices and public hearings. The public notice is the primary method of advising all interested parties of a proposed activity for which a permit is sought. The public notice is used to solicit comments and information necessary to evaluate the activity's foreseeable beneficial and detrimental impacts on the public interest. Public notices also contain a statement that any person may request, in writing, that a public hearing be held to provide information for use in the evaluation of the permit application. A public hearing is held when the district engineer determines that a public hearing is necessary to make a decision on a permit application. A public notice is issued to announce the time and date of the public hearing.

Any project for which an Environmental Impact Statement (EIS) will be prepared is subject to additional public involvement. The preparation of an EIS is governed by regulations implementing the National Environmental Policy Act. The first stage of EIS development is the scoping process, which is used to identify substantive issues for further study in the EIS. The scoping process begins with the publication of a Notice of Intent to prepare an EIS. The availability of the draft EIS is announced through public notice. The purpose of that public notice is to announce the availability of the draft EIS for public review and to solicit comments on the draft EIS and the proposed work that requires a Corps permit. Also, a public hearing may be requested. The Corps may decide to hold a public hearing when the draft EIS is made available for comment. In those cases, the public hearing announcement will be incorporated into the notice of availability of the draft EIS. When the final EIS has been prepared, a public notice is issued to announce the availability of the final EIS. The record of decision for an EIS cannot be issued until 30 days have passed from the date of the public notice announcing the availability of the final EIS.

## **Public Interest Review**

The Corps public interest review is the main framework for the overall evaluation of projects. The public interest review requires the careful weighing of all public interest factors relevant to each particular permit application. Thus, one specific factor (e.g., fish and wildlife values or economics) cannot by itself force a specific decision, but rather the decision represents the net effect of balancing all public interest factors, many of which are frequently in conflict.

The public interest review is used to evaluate applications under all authorities administered by the Corps. During the review of a permit application, the Corps evaluates the following public interest review factors:

- Conservation
- Economics
- Aesthetics
- General environmental concerns
- Wetlands
- Historic properties
- Fish and wildlife values
- Flood hazards
- Floodplain values
- Land use
- Navigation
- Shore erosion and accretion
- Recreation
- Water supply and conservation
- Water quality
- Energy needs
- Safety
- Food and fiber production
- Mineral needs
- Considerations of property ownership
- The needs and welfare of the people

### **Section 404(b)(1) Guidelines**

The Section 404(b)(1) guidelines are the criteria used to evaluate discharges of dredged or fill material into waters of the United States, including jurisdictional wetlands, under Section 404 of the Clean Water Act. A fundamental principle of the Section 404(b)(1) guidelines is that dredged or fill material should not be discharged into wetlands and other waters, unless it can be demonstrated that the discharge will not have unacceptable adverse impacts on those waters.

The Section 404(b)(1) guidelines also require the following determinations: (1) the project is the least environmentally damaging practicable alternative, (2) the project will not cause or contribute to the violation of applicable state or Federal laws, such as water quality standards or the Endangered Species Act, (3) the project will not result in significant degradation of waters of the United States, and (4) any appropriate and practicable steps have been taken to minimize the adverse impacts of the project on wetlands and other waters.

### **Compliance With Related Laws**

Activities that require Corps permits may also require permits or approvals from other Federal, Tribal, state, or local agencies.

The **Endangered Species Act** requires Federal agencies to consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, as appropriate, if an activity that requires Federal authorization (such as a Corps permit) may affect endangered or threatened species or critical habitat. As a result of the consultation process, the Corps may add special conditions to the permit to ensure that the activity does not jeopardize endangered or threatened species or destroy or adversely modify critical habitat.

The **Magnuson-Stevens Fishery Conservation and Management Act** requires the identification of Essential Fish Habitat, which is defined as those waters necessary for fish for spawning, breeding, feeding,

or growth to maturity. This law requires Federal agencies to consult with the National Marine Fisheries Service and regional Fishery Management Councils on all actions that may adversely affect Essential Fish Habitat. As a result of this consultation, the National Marine Fisheries Service and regional Fishery Management Councils may provide comments and Essential Fish Habitat conservation recommendations.

Section 106 of the **National Historic Preservation Act** requires the Corps to take into account the effects that activities authorized by Department of the Army permits are likely to have on historical properties listed in, or eligible for listing in, the National Register of Historic Places. State Historic Preservation Officers and Tribal Historic Preservation Officers are provided the opportunity to review and comment on all individual permit activities and certain general permit activities. The Advisory Council on Historic Preservation may review certain proposed activities that require a Corps permit.

### **Water Quality Certification**

Section 401 of the Clean Water Act requires any applicant for a permit for an activity that may result in the discharge of a pollutant into waters of the United States to obtain a certification that the discharge will comply with applicable effluent limitations and water quality standards. Applications for water quality certifications are reviewed by states, Tribes, or the U.S. Environmental Protection Agency. Water quality certifications are required for Corps permits that authorize discharges of dredged or fill materials into waters of the United States.

### **Coastal Zone Management Act Consistency Determinations**

If the proposed activity is located in the coastal zone of a state with a Coastal Zone Management Program approved by the Secretary of Commerce, Section 307(c) of the Coastal Zone Management Act of 1972, as amended, requires the applicant to furnish a certification that the proposed project is in compliance with the state's approved coastal zone management program. The state's concurrence with the applicant's certification should be obtained prior to the issuance of the Corps permit.

### **Processing Times**

On average, individual permit decisions are made within two to three months from receipt of a complete application. In emergencies, decisions can be made in a matter of hours or days. Decisions on authorizing activities by general permits are made within three weeks, on average.

### **Administrative Appeal Process**

In 1999, the Corps established an administrative appeal process for denied permits and for individual permits that are declined by permit applicants because they do not agree with the permit conditions. The Corps added an administrative appeal process for approved jurisdictional determinations in 2000.

The administrative appeals process provides opportunities for permit applicants and landowners to contest certain decisions made by district engineers, without challenging those decisions in Federal court. Administrative appeals are reviewed at Corps division offices. To request an administrative appeal of a denied permit, a declined individual permit, or an approved jurisdictional determination, the permit applicant or landowner submits a "Request for Appeal" form to the appropriate division office. Third parties cannot request an administrative appeal of a decision made by a district engineer. General permit authorizations, including nationwide permit authorizations, are not subject to the administrative appeal process.

### **Permit Fees**

Fees are required for most standard permits. The current fee is \$10.00 for a standard permit for a non-commercial activity and \$100.00 for a standard permit for a commercial or industrial activity. The final

decision on the basis of a fee (non-commercial versus commercial) is solely the responsibility of the district engineer. Do not send a fee when you submit an application. When the Corps issues a standard permit, you will be notified and asked to submit the required fee.

Fees are not charged for transferring a permit from one property owner to another, for nationwide or regional general permits, for letters of permission, or for permits issued to governmental agencies.

## **TERMS**

This section provides abridged definitions of commonly used terms that are associated with the Corps' regulatory program. For the complete definitions provided in the Corps' regulations, please refer to the Code of Federal Regulations (33 CFR Parts 320 through 331), contact the Corps regulatory office nearest you, or visit our web site.

**404(b)(1) Guidelines (40 CFR Part 230)** are the criteria used in evaluating discharges of dredged or fill material into waters of the United States, including jurisdictional wetlands, under Section 404 of the Clean Water Act. The 404(b)(1) guidelines provide procedures used to evaluate the impacts of discharges of dredged or fill material into waters of the United States. These guidelines restrict discharges of dredged or fill material where less environmentally damaging practicable alternatives exist.

**Activity(ies)** regulated by the Corps include the construction, modification, or removal of structures and other work (such as dredging) in navigable waters of the United States. Other activities that the Corps regulates include discharges of dredged or fill material into waters of the United States, including jurisdictional wetlands.

**Alternatives analysis** is the process the Corps uses to determine, based upon available information, whether the proposed project is the least environmentally damaging practicable alternative. An alternative is practicable if it is available to the applicant and is capable of being done after considering costs, existing technology, and logistics in light of overall project purposes.

**Authorization** means that specific activities that qualify for a general permit may proceed, provided that the terms and conditions of the general permit are met.

**Coastal Zone Management Act** consistency determination means a finding that an activity that affects land or water uses or natural resources in a state's coastal zone is in compliance or not in compliance with that state's Federally-approved Coastal Zone Management Act Program. (See 33 CFR 330.4(d)(1) and 33 CFR 325.2(b)(2).)

**Compensatory mitigation** means, for the purposes of the Corps regulatory program, the restoration, establishment, enhancement, or protection/maintenance of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization have been achieved.

**Complete application** means an application that contains sufficient information to issue a public notice. A complete application contains:

- A complete description of the proposed activity, including necessary drawings, sketches, or plans sufficient for public notice (detailed engineering plans and specifications are not required);
- The location, purpose, and need for the proposed activity;
- Scheduling of the activity;
- The names and addresses of adjoining property owners;
- The location and dimensions of adjacent structures; and

- A list of authorizations required by other federal, interstate, state, or local agencies for the work, including all approvals received or denials already made.
- Corps receipt date means the date the electronic application was received by the Corps district office that will process the permit application. If a paper copy of the permit application is submitted instead of an electronic application, the Corps receipt date is the date the permit application was received by the Corps district office that will process the permit application.

**Date determined complete** means the date on which the Corps determined that the application contained the information required by 33 CFR 325.1(d)(9) for standard permits, General Condition 13 for nationwide permits, or the conditions of regional or programmatic general permits.

**Date received complete** means the date of receipt for all information required by 33 CFR 325.1(d)(9) for standard permits, General Condition 13 for nationwide permits, or the conditions of regional or programmatic general permits. For standard permits, this is the date that starts the 15 day clock for public notices. For nationwide permits, this is the date that starts the 45 day pre-construction notification review period.

**Date submitted via web** means the date the electronic application was received by the Online Permit Application Center.

**Denied with prejudice** means that the request for a Corps permit is denied because the proposed work is contrary to the public interest and/or does not comply with the Section 404(b)(1) guidelines.

**Denied without prejudice** means that the permit applicant can reinstate processing of the permit application if subsequent approval is received from the appropriate Federal, state, or local agency that previously denied authorization.

**Discharge of dredged material** means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States. (See 33 CFR 323.2(d) for the complete definition of this term.)

**Discharge of fill material** means the addition of fill material into waters of the United States. (See 33 CFR 323.2(f) for the complete definition of this term.)

**Dredged material** is material that is excavated or dredged from waters of the United States.

**Fill material means** material placed in waters of the United States where the material has the effect of: (1) Replacing any portion of a water of the United States with dry land; or (2) Changing the bottom elevation of any portion of a water of the United States. Examples of such fill material 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 in the waters of the United States. The term fill material does not include trash or garbage. (See 33 CFR 323.2(e) for the complete definition of this term.)

**General permit means** a Department of the Army authorization that is issued on a nationwide or regional basis for a category or categories of activities that are substantially similar in nature and cause only minimal individual or cumulative environmental impacts. A general permit can be issued on a nationwide, regional, or programmatic basis.

**High tide line** is a line or mark left upon a tidal flat, a beach, or along the shore that indicates the intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined by tidal gages, physical markings or characteristics, vegetation lines, a more or less continuous deposit of fine shell or debris on the foreshore or berm, or other suitable means such as a line of oil or scum along the shore that delineate the general height reached by a rising tide. The term

includes spring high tides and other high tides that occur with periodic frequency, but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

**Incidental fallback** is the redeposit of small volumes of dredged material that is incidental to excavation activity in waters of the United States when such material falls back to substantially the same place as the initial removal. Examples of incidental fallback include soil that is disturbed when dirt is shoveled and the back-spill that comes off a bucket when such small volume of soil or dirt falls into substantially the same place from which it was initially removed. (See 33 CFR 323.2(d)(2)(ii) for the complete definition of this term.)

**Individual permit** means a standard permit or a letter of permission.

**Jurisdictional determination** means a written Corps determination that a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act or a written determination that a waterbody is subject to regulatory jurisdiction under Sections 9 or 10 of the Rivers and Harbors Act of 1899. (See 33 CFR 331.2 for the complete definition of this term.)

**Letters of permission** are a type of permit issued through an abbreviated processing procedure which includes coordination with Federal and state fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation, but without the publishing of an individual public notice. A letter of permission cannot be used to authorize the transportation of dredged material for the purpose of dumping it in ocean waters.

**Mitigation** means avoiding, minimizing, rectifying, reducing, or compensating for resource losses.

**Nationwide permits** are a type of general permit issued by the Chief of Engineers to authorize, with little delay or paperwork, activities across the country that have minimal adverse environmental impacts.

**Navigable waters of the United States** are those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water line and/or those waters that are presently used, or have been used in the past or may be susceptible to use for interstate or foreign commerce. These are waters that are navigable in the traditional sense. Permits are required in these waters pursuant to Section 10 of the Rivers and Harbors Act. This term should not be confused with the term "waters of the United States", which is defined below.

**Ordinary high water line**, with respect to non-tidal waters, is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed upon the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

**Pre-application meeting** is a meeting between Corps staff and a potential permit applicant and/or agent regarding a proposed activity within the Corps regulatory jurisdiction. The meeting may also involve representatives of Federal and state resource agencies. The meeting may involve discussions of jurisdiction, practicable alternatives, environmental documents, National Environmental Policy Act procedures, and mitigation. Such meetings often benefit the applicant by providing useful information which could prevent delays during permit evaluation. For dredging permits, a pre-application meeting may facilitate the process by determining what, if any, sediment testing may be required.

**Pre-construction notification** means advance notification to be submitted to a district engineer, so that the district engineer can determine whether the proposed work qualifies for nationwide permit authorization (see General Condition 13 of the nationwide permits).

**Programmatic general permits** are a type of general permit founded on an existing state, local, or other Federal agency program and are designed to avoid duplication with that program.

**Public hearings** are held to acquire additional information in connection with a permit application. The Corps may conduct a hearing or participate in joint public hearings with other Federal or state agencies. In addition, any person may request a public hearing in writing during the comment period specified in the public notice. Specific reasons must be given as to the need for a hearing. Public hearings are held at times and places that are convenient for the interested public. A public hearing is occasionally needed to complete the decision process.

**Public interest review** refers to the evaluation of a proposed activity to determine whether issuance of the permit is in the public interest. Expected benefits are balanced against reasonably foreseeable detriments. All relevant public interest factors are weighed. The Corps policy is to provide each applicant with a timely and carefully weighed decision which reflects the public interest.

**Public notice** is the primary method of advising interested public agencies and private parties of a proposed activity. The public notice is used to solicit comments and information necessary to evaluate the probable impacts of the project on the public interest. Upon request, the Corps will add anyone's name to the distribution list to receive public notices.

**Regional permit (or regional general permit)** means a type of general permit issued by a division or district engineer after public notice and comment. If the public interest so requires, the division or district engineer may condition the regional permit to require a case-by-case reporting and acknowledgment system. However, no separate applications or other authorization documents will be required.

**Standard permit** means a permit that has been processed through the public interest review procedures, including public notice and receipt of comments.

**Tidal waters** are those waters that rise and fall in a predictable and measurable rhythm or cycle due to gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practicably measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

**Water quality certification** means that a state, Tribe, or the Environmental Protection Agency has issued or waived a Clean Water Act Section 401 water quality certification for an activity that involves discharges of dredged or fill material into waters of the United States. If water quality certification is denied, the Corps permit is denied without prejudice.

**Waters of the United States** is a broader term than "navigable waters of the United States," which is defined above. This term includes navigable waters and all their tributaries, adjacent wetlands and other waters or wetlands where degradation or destruction could affect interstate or foreign commerce. Permits are required for the discharge of dredged or fill material in these waters pursuant to Section 404 of the Clean Water Act.

**Wetlands** means those areas that are inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal circumstances support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.