

DEPARTMENT OF THE ARMY REGULATORY PERMITTING CONSIDERATIONS

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December 5, 2012



US Army Corps of Engineers
BUILDING STRONG®



Legal Authorities

- Section 10, Rivers and Harbors Act, 1899 (All work, including construction and dredging in navigable waters)
- Section 404, Clean Water Act, 1972 (Placement or discharge of dredged or fill material)
- Section 103, Marine Protection, Research and Sanctuaries Act, 1972 (Transportation of dredged material for ocean disposal)



Where Is A Corps Permit Needed? (Waters of the U.S.)

- Section 10 (Rivers and Harbors Act)
 - All marine and ocean waters, including adjacent wetlands, stream mouths and estuaries
 - High tide line seaward to 3 nautical miles offshore
- Section 404 (Clean Water Act)
 - All marine and ocean waters, relatively permanent tributaries, and adjacent wetlands. and all wetlands and waters with significant nexus to navigable waters
 - Ordinary high water mark and below
 - Within boundary of wetland if material is placed in a wetland
- Section 4(f) (Outer Continental Shelf Lands Act)
 - High tide line seaward to 200 nautical miles offshore for artificial islands, installations, and other devices permanently or temporarily attached to the seabed



What Kind of Work Requires A Corps Permit?

- All projects in navigable (ocean/marine) waters including dredging, construction, utility/communication line installation, artificial islands or other devices attached to sea bed.
- All projects involving discharge of dredged material or fill into a jurisdictional water body or wetland including:
 - earthwork, footings, slabs, abutments, bedding, paving;
 - temporary causeways, pads, access ramps;
 - backfill for trenching
 - structures cast in place (concrete)
 - pilings, when placement has or would have effect of discharge of fill
- Transportation of dredged material proposed for ocean disposal at EPA-approved disposal sites.



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
- Property Ownership



CWA 404(b)(1) Guidelines

- Substantive Environmental Criteria
 - No discharge shall be permitted if there is a practicable alternative that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences (40 CFR 320.10)
 - LEDPA – Least Environmentally Damaging Practicable Alternative
 - Corps required to authorize project that is LEDPA
 - Practicable in terms of cost, logistics & existing technology
 - Focus of Corps' Guidelines analysis is impacts to aquatic resources/special aquatic sites



Required State Permits

- Coastal Zone Management (CZM) Consistency Determination
 - Required for all projects
 - Federal law requires all issued State conditions to be incorporated in Corps' permit
 - Corps required to deny permit w/o prejudice if State CZM denied
- Section 401 Water Quality Certification (WQC)
 - Required only for all projects involving discharge of fill or dredged material (i.e., Section 404)
 - Federal law requires all issued State conditions to be incorporated in Corps' permit
 - Corps required to deny permit w/o prejudice if State 401 WQC denied



Other Laws

- National Environmental Policy Act of 1969
- Endangered Species Act
- National Historic Preservation Act (Section 106)
- Fish and Wildlife Coordination Act
- Magnuson-Stevens Fishery Conservation and Management Act



What is Mitigation?

- Avoiding, minimizing, rectifying, reducing, or compensating for resource losses
- Compensatory mitigation:
 - Restore, establish, enhance, and/or preserve aquatic resources to offset unavoidable loss of waters and wetlands authorized by DA permits
- Applicant must first avoid and minimize to maximum extent practicable
- Permit applicants are responsible for proposing appropriate compensatory mitigation option
- Corps is decision-maker
 - Compensatory mitigation may not be required for all permit actions



Types of Compensatory Mitigation Projects

- Restoration
 - Returning natural or historic functions to a degraded or former aquatic resource
 - Preferred, in general
- Establishment (creation)
 - Manipulate an upland site to develop an aquatic resource
- Enhancement
 - Manipulate an existing aquatic resource to increase one or more specific functions
- Preservation
 - Remove a threat to an existing aquatic resource



CONTACT INFORMATION

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