



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
CHICAGO DISTRICT, CORPS OF ENGINEERS  
231 SOUTH LA SALLE STREET  
CHICAGO, ILLINOIS 60604-1437

June 7, 2024

Regulatory Branch  
LRC-2024-00289

**SUBJECT:** Request for Federal Consistency Determination for the Developments Letter of Permission (LOP) Procedures in Cook, DuPage, Kane, Lake, McHenry, Will, Iroquois, Kankakee, Grundy, and Kendall Counties, Illinois

Cody Eskew  
Illinois Coastal Management Program  
Illinois Department of Natural Resources  
160 North LaSalle Street, Suite 703  
Chicago, Illinois 60601

Dear Mr. Eskew:

The U.S. Army Corps of Engineers, Chicago District (District), is proposing to issue a new Letter of Permission (LOP) for activities which would have minimal individual and cumulative impacts on aquatic resources (enclosed). The LOP would cover activities in Section 10 waterways including piers, minor dredging, and other activities that do not meet the terms of a general permit, as well as commercial, institutional, and recreational developments in Section 404 waters of the United States within the State of Illinois in Cook, DuPage, Kane, Lake, McHenry, Will, Iroquois, Kankakee, Grundy, and Kendall Counties.

The purpose of the LOP is to provide a simplified and expeditious means for review of activities under 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act that meet the specified terms and conditions of the permit.

The LOP is scheduled to be issued on September 1, 2024 and will expire September 1, 2029. The District is requesting concurrence from the Illinois Coastal Management Program with the District's determination that the proposed activity complies with Illinois' approved coastal management program and will be conducted in a manner consistent with such policies.

If you have any questions, please contact Ms. Stasi Brown, Senior Project Manager, by telephone at (312) 846-5544 or email at Stasi.F.Brown@usace.army.mil.

Sincerely,

Teralyn R. Pompeii  
Chief, Regulatory Branch

Enclosure

**SUBJECT:** Implementation of Letter of Permission (LOP) Procedures in Chicago District – U.S. Army Corps of Engineers

**AUTHORITY:** 33 U.S.C. 403 & 1251 *et seq.*, as implemented at 33 CFR 325.2(e)(1)(ii).

**LOCATION:** The Illinois portion of the Chicago District – U.S. Army Corps of Engineers

**PURPOSE:** The Chicago District (District) is implementing Letter of Permission (LOP) procedures to more efficiently authorize activities with minor impacts on the aquatic environment which involve discharges of dredged or fill material into waters of the United States (U.S.) under Section 404 of the Clean Water Act (“Section 404”) and/or work or structures in navigable waters under Section 10 of the Rivers and Harbors Act of 1899 (“Section 10”). The new LOP procedure is an optional abbreviated permit process available to all applicants applying for a Department of the Army (DA) permit for activities meeting the criteria and conditions described herein. If the proposed activity does not meet LOP criteria or the applicant chooses not to use this process, the activity may be authorized under a different permit program (Nationwide Permit, General Permit or Standard Individual Permit).

**BACKGROUND:** In accordance with Title 33 of the Code of Federal Regulations (CFR) Part 325, district engineers are authorized to use alternative procedures, including LOPs, to authorize activities under the Corps Regulatory Program. LOPs 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 or soliciting public comment. In accordance with 33 CFR 325.2(e)(1), LOPs may be used:

- (i) In those cases, subject to section 10 of the Rivers and Harbors Act of 1899 when, in the opinion of the district engineer, the proposed work would be minor, would not have significant individual impacts on environmental values, and should encounter no appreciable opposition.
- (ii) In those cases subject to Section 404 of the Clean Water Act after:
  - a. The district engineer, through consultation with Federal and state fish and wildlife agencies, Environmental Protection Agency, the state water quality certifying agency, and, if appropriate, the state Coastal Zone Management Agency, develops a list of categories of activities proposed for authorization under LOP procedures;
  - b. The district engineer issues a public notice advertising the proposed list and the LOP procedures, requesting comments and offering an opportunity for public hearing; and
  - c. A 401 Water Quality Certification has been issued or waived and, if appropriate, Coastal Zone Management (CZM) consistency concurrence obtained or presumed either on a generic or individual basis.

**PROPOSED CATEGORIES OF ACTIVITIES:** Proposed activities to be authorized under these Letter of Permission Procedures include:

1) Projects subject only to Section 10, when the Corps has determined the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition. Examples of activities that may qualify for a Section 10 LOP include, but are not limited to, maintenance dredging utilizing existing disposal sites for deposit of the dredged material, and structures such as docks and piers that do not meet the terms of a general permit. projects authorized under a Section 10 LOP must result in the loss of no more than one (1) acre of waters of the U.S.

Or,

(2) Projects subject to Section 404 (and, if applicable, Section 10) which may be approved under the following category:

#### 1. RESIDENTIAL, COMMERCIAL, INSTITUTIONAL, & RECREATIONAL PROJECTS

Authorization for the construction of residential, commercial, institutional, and recreational developments ('developments') and associated infrastructure, such as roads, utilities, and detention areas, as defined in Section D. of this document. Single and Complete projects authorized under a Section 404 (or Section 10/404) LOP must result in the loss of no more than one (1) acre of waters of the U.S.

A LOP will be issued only for those activities in the categories above that comply with the General Conditions listed below and would not have significant individual or cumulative impacts on aquatic resources or the human environment. The District reserves the use of its discretionary authority to determine that an activity may be authorized under a LOP; that an activity may be authorized under a LOP with the addition of special conditions; or that an activity may not be authorized by a LOP and will instead require authorization under another permit type.

### **LOP PROCEDURES:**

#### **A. Application Submittal**

To be considered for authorization by LOP, the application must include all information required for a standard permit application pursuant to 33 CFR 325.1, as well as follow the General Conditions listed in Section C of this document. The application package must be submitted to the District in electronic form (pdf), suitable for electronic transmittal and/or posting to the District website and include the following:

1. A cover letter from the applicant requesting a LOP referencing the Corps' identification number, if applicable, and detailed description of the proposed activity;
2. A completed Application Form, (the Illinois Joint Application, NCR Form 426, Protecting Illinois Waters is preferred, but ENG Form 4345 and ENG Form 6082 are also acceptable) signed by the applicant or agent. If the agent signs, notification shall include a signed written statement from the applicant designating the agent as their representative;

3. Site location map(s), including the proposed activity (and where appropriate, mitigation) site(s) clearly outlined, as well as all appropriate aerial and other imagery available;

4. Photographs of the site and all wetland areas or waters. Please include a description of what is shown in each photo, where it was taken on the property, and the direction the photo was taken (e.g., southfacing, northfacing, etc.);

5. A delineation of waters of the U.S., including wetlands, for the project area, and for areas adjacent to the project site (off-site wetlands shall be identified through the use of reference materials including review of local wetland inventories, soil surveys and the most recent available photography), shall be prepared in accordance with the current Corps of Engineers methodology and generally conducted during the growing season. For sites supporting wetlands, the delineation shall include a Floristic Quality Assessment (Swink and Wilhelm. 1994, latest edition, Plants of the Chicago Region). The delineation shall also include information on the occurrence of any high-quality aquatic resources, and a listing of waterfowl and amphibian species observed while at the project area by the applicant, or by others. The Delineation should include an aerial photograph with representative data points of each aquatic resource and associated upland, and wetland boundaries clearly labeled. For more information on how to conduct a wetland delineation, please consult the 1987 Corps of Engineers Wetland Delineation Manual, and Regional Supplements to the Corps Delineation Manual. The District will exercise judgment regarding the requirements of a wetland delineation. Flexibility in these requirements may be allowed by the District on a case-by-case basis only;

The district engineer will consider site specific factors, such as the environmental setting in the vicinity of the proposed work, the type of resource that will be affected by the proposed work, the functions provided by the aquatic resources that will be affected by the proposed work, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the proposed work (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the Letter of Permission to address site-specific environmental concerns.

6. Plans or drawings of the proposed activity, in addition to the information identified under 33 CFR 325.1 (d) "Content of application" shall include at a minimum the following: Plan and profile views of the proposed work relative to the aquatic resources located within the proposed project area;

b. Differentiate between the types of aquatic resources (e.g., wetlands, open water below the Ordinary High Water Mark) and identify the acreage of impact from the proposed activity within each aquatic resource within the project area; and

c. Identify all proposed impacts. The plan or drawing shall include grading contours, proposed and existing structures such as buildings footprints, roadways, road crossings, stormwater management facilities, drainage arrows, utilities, construction access areas and details of water conveyance structures. The drawings shall also clearly depict waters, buffer areas, outlots or open space designations.

7. The total quantity (acreage/linear feet) and types of aquatic resources to be directly and/or indirectly affected by the proposed activity, the volume (in cubic yards) and type of material to be placed into aquatic resources, a description of habitat types (including plant communities within and surrounding the activity site), and a description of how the proposed activity would affect all the above resources;

8. A written description and figures/maps demonstrating how impacts to aquatic resources and their functions (e.g., water quality and habitat) have been avoided and minimized to the maximum extent practicable and proposed compensatory mitigation for unavoidable impacts, in accordance with 33 CFR part 332;

9. Documentation and record of all pre-application coordination with the District and other agencies (if conducted), including any activity-specific comments or concerns made by each agency, as well as the applicant's responses to the comments or concerns; and

10. For Category 2 activities, information, in report form, concerning off-site and on-site practicable alternatives and the relative environmental impacts of those alternatives as compared to the environmental impacts of the proposed activity, in accordance with 33 CFR 325.1 (e) and 323.6 (a).

## **B. Processing**

1. Within 15 days of receipt of application the Corps will review the applicant's submittal for completeness.

a. If the application is incomplete, the assigned Corps project manager will notify the applicant and request the additional information necessary to complete the application for further processing.

b. If the Corps determines the application is complete, but the activity cannot be authorized under a LOP, the District will notify the applicant within the initial 15-day period and proceed to an alternate permitting process (Regional General Permit, Nationwide Permit, or Standard Permit).

c. If the application is determined to be complete and appears to meet LOP criteria, the Corps will notify the applicant that the proposed activity is being evaluated for LOP authorization and notify the state and Federal coordination agencies via e-mail of the proposed activity requesting comments within fifteen (15) calendar days of such notice. The Corps will also initiate consultation(s) as necessary with other agencies.

2. Agencies are required to provide comments to the District within fifteen (15) calendar days of receipt of the notice. The Corps may extend the comment period at the request

of a reviewing agency due to extenuating circumstances, by no more than seven (7) calendar days.

3. The District will review the comments received and, if otherwise complete, make a determination within 60 calendar days after the close of the comment period as to whether LOP authorization is warranted, and whether special case-specific conditions are needed. If the activity meets the criteria for LOP authorization and has an overall minor effect on aquatic resources and the human environment, an LOP will be issued.

4. If at any time during the process the District determines the activity may not be authorized by a LOP, District staff will immediately notify the applicant, terminate the LOP process, and proceed to an alternate permitting process, as described in B(1)(b) above.

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## C. General Conditions

1. State 401 Water Quality Certification - Water quality certification under Section 401 of the Clean Water Act may be required. The District may consider water quality, among other factors, in determining whether to exercise discretionary authority and require a Standard Permit. Please note that Section 401 Water Quality Certification is a requirement for projects carried out in accordance with Section 404 of the Clean Water Act. On [Date], the Illinois EPA granted Section 401 certification, with conditions, for all LOPs processed under these procedures. Please see the attached Water Quality Certification for conditions imposed by the Illinois EPA. (LINK)

2. Coastal Management Program - On [Date], the Illinois Department of Natural Resources, Coastal Management Program (ICMP) granted the Federal Consistency Determination for these LOP procedures. This determination is confirmation that the activities authorized by LOP pursuant to these procedures are consistent with the policies of the ICMP. PDF maps of the ICMP's Zone Boundaries can be found at the bottom of the page at: [www.dnr.illinois.gov/cmp/Pages/boundaries.aspx](http://www.dnr.illinois.gov/cmp/Pages/boundaries.aspx).

### 3. Threatened and Endangered Species

a) For applications where a Federal agency other than the District is designated as the lead agency, the designated lead agency shall follow agency specific procedures for complying with the requirements of Section 7 of the Endangered Species Act of 1973 (ESA). Federal permittees must provide the District with the following documentation to demonstrate compliance with those requirements: the species list; your effects determination for each species; and the rationale for your effects determination for each species.

b) For Non-Federal permittees, if the District determines that the activity may affect Federally listed species or critical habitat, the District must initiate section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) in accordance with the Endangered Species Act of 1973, as amended (ESA). Applicants must provide additional information that would enable the District to conclude that the proposed action will have no effect on Federally listed species. The application packet must indicate whether resources (species, their suitable habitats, or critical habitat) listed or designated under the ESA, may be present within areas affected by the proposed project. Applicants must provide a section 7 species list for the action area using the online process at the USFWS website. You can access "U.S. Fish and Wildlife Service Endangered Species Program of the Upper Midwest" website at [www.fws.gov/midwest/Endangered](http://www.fws.gov/midwest/Endangered).

Regulated activities which are likely to directly or indirectly jeopardize the continued existence of a federally threatened or endangered species or a species proposed for such designation, as identified under the ESA, or which will directly or indirectly destroy or adversely modify the critical habitat of such species, are ineligible for use of these LOP Procedures. No regulated activity will be authorized which "may affect" a listed species or critical habitat until ESA Section 7 consultation addressing the effects of the proposed activity has been completed by the lead Federal agency.



#### 4. Historic Properties

Federal permittees designated as the lead agency shall follow agency specific procedures for complying with the requirements of Section 106 of the National Historic Preservation Act (Section 106). Federal permittees must provide the District with the appropriate documentation to demonstrate compliance with those requirements.

If the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties, non-Federal permittees must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer and Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)).

When reviewing permit submittals, this office will comply with the current procedures for addressing the requirements of Section 106. Based on the information submitted and these efforts, this office will determine whether the proposed activity has the potential to cause an effect on historic properties and consult with the consulting parties as identified under 36 CFR 800.2(c) if any of the following effect determinations for the purposes of Section 106 is made: (1) No historic properties affected, (2) no adverse effect, or (3) adverse effect. Where the non-Federal permittee has identified historic properties to which the activity may have the potential to cause effects and so notified this office of such, the non-Federal permittee must not commence the activity until notified by this office either that the activity has no potential to cause effects, or that consultation under Section 106 has been completed.

Once all issues pertaining to historic properties have been resolved through the consultation process to the satisfaction of this office, Illinois SHPO, and the Advisory Council on Historic Preservation, this office may at its discretion, authorize the activity under LOP procedures.

Permittees are encouraged to obtain information on historic properties from the Illinois SHPO and the NRHP at the earliest stages of project planning. Please refer to our website for the most recent contact information (<https://www.lrc.usace.army.mil/Missions/Regulatory.aspx>).

If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity, you must immediately notify this office of what you have found, and to the maximum extent practicable, stop activities that would adversely affect those remains and artifacts until the required coordination has been completed. The District will initiate the Federal, Tribal and State coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

## 5. Soil Erosion and Sediment Control

Measures must be taken to control soil erosion and sedimentation at the project site to ensure that sediment is not transported to waters of the U.S. during construction. Soil erosion and sediment control measures must be implemented before initiating any clearing, grading, excavating or filling activities. All temporary and permanent soil erosion and sediment control measures must be maintained throughout the construction period and until the site is stabilized. All exposed soil and other fills, and any work below the Ordinary High Water Mark must be permanently stabilized at the earliest practicable date. Applicants are required to prepare a soil erosion and sediment control (SESC) plan, including temporary best management practices (BMPs), to be implemented during construction. It is recommended that the plan be designed in accordance with the Illinois Urban Manual, current edition ([www.aiswcd.org/illinois-urban-manual](http://www.aiswcd.org/illinois-urban-manual)).

At the District's discretion, an applicant may be required to submit the SESC plan to the local Soil and Water Conservation District (SWCD), the Lake County Stormwater Management Commission (SMC), or other local regulating agency for review. The SWCD/SMC may require a pre-construction meeting with the permittee to review SESC plans for the project, and shall conduct inspections during construction to determine compliance with the plans. Applicants are encouraged to begin coordinating with the appropriate SWCD/SMC office at the earliest stages of project planning.

6. Total Maximum Daily Load - For projects that include a discharge of pollutant(s) to waters for which there is an approved Total Maximum Daily Load (TMDL) allocation for any parameter, the applicant must develop plans and BMPs that are consistent with the assumptions and requirements in the approved TMDL. The applicant must incorporate into their plans and BMPs any conditions applicable to their discharges necessary for consistency with the assumptions and requirements of the TMDL within any timeframes established in the TMDL. The applicant must carefully document the justifications for all BMPs and plans, and install, implement and maintain practices and BMPs that are consistent with all relevant TMDL allocations and with all relevant conditions in an implementation plan.

7. Floodplain - Discharges of dredged or fill material into waters of the United States within the 100-year floodplain (as defined by the Federal Emergency Management Agency) resulting in permanent above-grade fills must be avoided and minimized to the maximum extent practicable. When such an above-grade fill would occur, the applicant may need to obtain approval from applicable state agency which regulates activities affecting the floodway and the local governing agency (e.g., Village or County) with jurisdiction over activities in the floodplain. Applicants are encouraged to obtain information from state and the local governing agency with jurisdiction at the earliest stages of project planning.

For information on floodway construction, contact:

IDNR/OWR  
2050 Stearns Road Bartlett, IL 60103  
(847) 608-3100  
[www.dnr.illinois.gov/WaterResources/](http://www.dnr.illinois.gov/WaterResources/)

For information on floodplain construction, please contact the local government. Pursuant to 33 CFR 320.4(j), the District will consider the likelihood of the applicant obtaining approval for aboveground permanent fills in floodplains in determining whether to issue a LOP.

#### 8. Navigation

Regulated activities may not cause more than a minimal adverse effect on navigation. Safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities within navigable waters of the United States.

For activities in navigable waters of the United States, the permittee understands and agrees that if future operations by the United States 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 will cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim will be made against the United States on account of any such removal or alteration.

9. Proper Maintenance - Authorized structures or fill must be properly maintained, including that maintenance is necessary to ensure public safety.

10. Aquatic Life Movements - Regulated activities may not substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including species that normally migrate through the area, unless the activity's primary purpose is to impound water.

11. Equipment - Soil disturbance and compaction in regulated areas must be minimized through the use of low ground pressure equipment, matting for heavy equipment, or other measures as approved by the District.

12. Wild and Scenic Rivers - Regulated activities may not occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status. Information on Wild and Scenic Rivers may be obtained from the appropriate land management agency in the area, such as the National Park Service and the U.S. Forest Service.

13. Tribal Rights - Regulated activities or their operation may not impair reserved Tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

14. Water Supply Intakes - Discharges of dredged or fill material may not occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

15. Shellfish Production - Discharges of dredged or fill material may not occur in areas of concentrated shellfish production.

16. Suitable Material - Discharges of dredged or fill material may not consist of unsuitable material. Material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act). Unsuitable material includes trash, debris, vehicle parts, asphalt, and creosote treated wood.

17. Spawning Areas - Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

18. Obstruction of High Flows - Discharges must not permanently restrict or impede the passage of normal or expected high flows. All crossings must be culverted, bridged or otherwise designed to prevent the restriction of expected high water flows and designed so as not to impede low water flows or the movement of aquatic organisms.

19. Impacts From Impoundments - If the discharge creates an impoundment of water, adverse impacts on aquatic resources caused by the accelerated passage of water and/or the restriction of its flow must be avoided to the maximum extent practicable.

20. Waterfowl Breeding Areas - Discharges into breeding areas utilized by migratory waterfowl must be avoided to the maximum extent practicable.

21. Removal of Temporary Fills - Temporary fill material must be removed in its entirety and the affected area returned to preexisting condition.

22. Mitigation - All appropriate and practicable steps must first be taken to avoid and minimize impacts to aquatic resources. For unavoidable impacts which are considered more than minor, compensatory mitigation is required to replace the loss of wetland, stream, and/or other aquatic resource functions (33 CFR 332). Where an appropriate watershed plan is available, mitigation site selection should consider recommendations in the plan.

Compensatory mitigation at a minimum one-to-one ratio will be required for all wetland losses that exceed 1/10-acre, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate, or the adverse environmental effects of the proposed activity are no more than minimal. For wetland losses of 1/10 acre or less, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

Compensatory mitigation at a minimum one-to-one ratio will be required for all losses of stream bed that exceed 3/100-acre, unless the district engineer determines in writing

that either some other form of mitigation would be more environmentally appropriate, or the adverse environmental effects of the proposed activity are no more than minimal. For losses of stream bed of 3/100-acre or less, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult to replace resources (see 33 CFR 332.3(e)(3)).

23. Activities Affecting Structures or Works Built by the United States. An activity that also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers ("USACE") federally authorized Civil Works project (a "USACE project"), may not be authorized by LOP until the appropriate Corps office issues the Section 408 permission or completes its review to alter, occupy, or use the USACE project. Activities requiring a Section 408 review shall not be considered a "complete" LOP application until the appropriate USACE office has issued a letter stating that the Section 408 request is complete, or that Section 408 permission is not needed for the activity.

24. Compliance Certification - Any permittee who has received authorization by LOP from the District must submit a signed certification stating that the authorized work has been completed. The certification will be forwarded by the District with the authorization letter and will include a) a statement that the authorized work was done in accordance with the District's authorization, including any general or specific conditions; b) a statement that any required mitigation was completed in accordance with the authorization conditions; and c) the signature of the permittee certifying the completion of the work and mitigation.

25. Other Required Authorizations - Authorization by LOP does not obviate the need to obtain other Federal, State or local permits, approvals, or authorizations required by law nor does it grant any property rights or exclusive privileges, authorize any injury to the property or rights of others or authorize interference with any existing or proposed Federal project.

## **D. Definitions**

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or nonstructural.

Commercial Development: The construction or expansion of commercial building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. The construction of new golf courses is not included in commercial development.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Industrial Development: The construction or expansion of institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses are not included in industrial development.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently

adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on 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.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Recreational Development: The construction of playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). The construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but not the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former

aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Residential Development: The construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: Reestablishment and rehabilitation.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tribal lands: Any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.



Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Waterbody: For purposes of the NWP, a waterbody is a “water of the United States.” If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

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