



**US Army Corps  
of Engineers** ®  
Fort Worth District

# Public Notice

Flood Recovery and Repair Activities in the Fort Worth District,  
U.S. Army Corps of Engineers May 26, 2015

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The purpose of this public notice is to provide guidance and a summary of exemptions and permits which may be required for the protection and repair of existing flood damaged structures, damaged land areas, and damaged fills under the authority of Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344).

## **Regulatory Program**

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

## **Section 10**

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States*. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

## **Section 404**

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the *discharge of dredged and fill material into all waters of the United States, including wetlands*. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

## Flood Recovery and Repair Activities in the Fort Worth District

In response to the severe flooding and other storm related damages in the Fort Worth District, it is anticipated that municipalities and owners of damaged property will want to conduct repair activities in the near future. A U.S. Army Corps of Engineers (USACE) Section 404 Clean Water Act permit may be required for dredging or placing fill in waters of the United States, including rivers, lakes, streams, creeks, and wetlands. **However**, many of the permits have scopes of work and thresholds which allow you to accomplish your project without delay or waiting for an authorization.

Division engineers are authorized to approve special processing procedures in emergency situations. An emergency is defined as a situation that would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. For more information regarding emergency authorizations, click on [Emergency Procedures](#).

For any activities that are not emergency protective measures (i.e., permanent work or final reconstruction), all regular permitting and regulatory processes apply, as outlined below. Therefore, communities should keep the long-term recovery requirements in mind as they move through the initial construction stages of emergency protective measures. This advisory is a summary for municipalities and property owners of existing regulations which may streamline many activities within waters of the United States including repair and maintenance of existing facilities, bank stabilization, emergency watershed protection and rehabilitation, repair of upland areas, dredging in and around water intake structures, boat slips, and docks. Clearing and removal of floating debris, such as tree trunks and limbs and trash, from around culverts, bridge crossings, boat docks or retaining walls, provided no material removed is placed permanently in a water of the U. S. does not require a permit.

Depending upon the size and location of your proposed work, you may be required to provide an application or preconstruction notification (PCN) for our review and prior to authorization of your project. Please note that all Regional and General Conditions, such as compliance with the Endangered Species Act and Section 106 of the National Historic Preservation Act still apply. For more information regarding each of the following permitting options go to <http://www.swf.usace.army.mil/Missions/Regulatory.aspx> . These permits do not authorize any damage to private property, invasion of property rights, or any infringement of federal, state, or local laws or regulations. Check with the local reservoir or water authority prior to any activities. *If you are unsure if the work you are proposing to accomplish may need a permit, use our [pre-application form](#) and we will assign a project manager to you to provide additional guidance.*

## **Maintenance Exemptions**

Certain activities that result in a discharge of dredge or fill material may not require Section 404 authorization. Examples of activities meeting this exemption may include maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures, provided there is no change in the lines, grades or character of the original features. Exemptions are also available for the -construction or maintenance of farm or stock ponds and construction of temporary sedimentation basins. See [33 CFR 323.4](#) for more information.

## **Nationwide Permit (NWP) 3 Maintenance**

While this NWP is used to authorize the minor deviations associated with the repair, rehabilitation and replacement of currently serviceable structures or fills and temporary fills to undertake such work, it also authorizes the removal of accumulated sediments and debris that involve regulated discharges within 200 feet of existing structures such as bridges, culverted road crossings, and intake and outfall structures. The 200 feet limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall or intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall or intake structures. A PCN is required for the removal of sediments. For more information go to [NWP-3](#) and [here](#) for an application.

## **NWP 13 Bank Stabilization**

Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;
- (c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;
- (e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
- (g) The activity is not a stream channelization activity.

This NWP also authorizes temporary structures, fills, and work necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Invasive plant species shall not be used for bioengineering or vegetative bank stabilization.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. Click [NWP 13](#) for the application form (See general condition 31.) (Sections 10 and 404)

#### **Linear Transportation Projects NWP 14**

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 31.) (Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

### **NWP 19 Minor Dredging**

This NWP allows for the dredging of no more than 25 cubic yards below the plane of the ordinary high water mark, the mean high water mark or reservoir conservation level from navigable waters of the United States (i.e., Section 10 waters). No PCN is required for this limited amount of dredging. *Best management practices must be used to control sediments from re-entering the water.* This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)). (Sections 10 and 404)

#### **[NWP-19](#)**

### **NWP 37 Emergency Watershed Protection and Rehabilitation**

Work done by or funded by:

(a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);

(b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13);

(c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);

(d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR Subchapter R), where the activity does not involve coal extraction; or

(e) The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).

In general, the prospective permittee should wait until the district engineer issues an NWP verification or 45 calendar days have passed before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification and any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

Notification: Except in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). (Sections 10 and 404) [NWP 37](#)

## **NWP 41 Reshaping Existing Drainage Ditches**

Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the ditch as originally constructed (i.e., the capacity of the ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.

This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity, if more than 500 linear feet of drainage ditch will be reshaped. (See general condition 31.) (Section 404) [NWP 41](#)

## **NWP 45 Repair of Uplands Damaged by Discrete Events**

This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

This NWP does not authorize beach restoration or nourishment.

Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 31) within 12-months of the date of the damage. The pre-construction notification should include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Sections 10 and 404)

Note: The uplands themselves that are lost as a result of a storm, flood, or other discrete event can be replaced without a section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5.) This NWP authorizes discharges of dredged or fill material into waters of the United States associated with the restoration of uplands. [NWP-45](#)

### **Regional General Permit (RGP) 8-Boat Ramps and Minor Facilities**

Among other activities, RGP-8 *allows for the removal of accumulated sediments and debris in the vicinity of, and within, existing structures (e.g., boat ramps, boat slips, boat docks, bridges, culverted road crossings, etc.)* and the placement of new rip rap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. If the area to be dredged is less than 1/10 acre, does not result in permanent or temporary adverse effects to forested wetlands and does not occur within the habitat types listed in criteria 6.c.1-2, or d. (page 4 of the RGP), and best management practices are used to control sediments from re-entering the water, no PCN would be required. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the USACE. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the USACE.

### **PRECONSTRUCTION NOTIFICATIONS**

Preconstruction notifications (PCNs) requesting verification from the USACE of authorization under this RGP must include a written description of the project, proposed construction schedule, and the name, address and telephone number of a point of contact who can be reached during normal business hours. The information may be assembled and submitted in a format convenient to the applicant. The detail of the information should be commensurate with the size and environmental impact of the project. Available for use in the Fort Worth and Albuquerque Districts within the State of Texas. See [RGP-8](#) for additional information.

### **Letter of Permission Procedure for Activities at Certain Reservoirs and Federal and State Sponsored Projects (LOP-1)**

The scope of work that may be authorized by this LOP procedure includes *any activity at a USACE, Bureau of Reclamation, state river authority, regional water district, city, county, or utility reservoir, including, but not limited to, bank stabilization, beach nourishment, property protection, and sediment removal.* Work authorized by this LOP may also include any projects conducted, sponsored, or funded, in whole or in part, by the USACE, U. S. Fish and Wildlife Service (FWS), U. S. Environmental Protection Agency (EPA), Natural Resources Conservation Service (NRCS), Texas Parks and Wildlife Department (TPWD), Texas Commission on

Environmental Quality (TCEQ), or the Texas Water Development Board (TWDB). Activities associated with such programs as the Water Resources Development Act of 1986, as amended, Section 1135 Project Modifications for Improvement of Environment, Partners for Wildlife, the North American Waterfowl Management Plan, and the Wetlands Reserve Program and activities at National Wildlife Refuges, State Wildlife Management Areas, and State Parks are eligible for authorization under this procedure. For application procedures and additional information, see [LOP-1](#).

### **Letter of Permission Procedure for Excavation Activities (LOP-2)**

The scope of work for the LOP-2 is limited to discharges of dredged or fill material associated with excavation activities in waters of the United States, including navigable waters of the United States. *Activities that may be authorized by LOP under this procedure include, but are not limited to, removal of accumulated sediment at road crossings, dredging of new and maintenance dredging of boat slips, boat access lanes and channels, intake and outfall structures, mining of sand and gravel, and work associated with these activities, such as the construction of temporary coffer dams to perform such work.* This procedure may be used to authorize the disposal of material excavated under authority of a LOP into waters of the United States provided the purpose of the disposal is not land reclamation. Impacts to waters of the United States, including wetlands, shall be avoided or minimized through the use of practicable alternatives. Reasonable compensation for unavoidable adverse impacts to waters of the United States shall be required. Work that would have substantial adverse impacts on the aquatic environment or cause a substantial reduction in the reach of waters of the United States shall not be authorized by LOP under this procedure.

#### **APPLICATION PROCEDURES:**

An application for authorization of work under this LOP procedure must include a written description of the entire project, proposed work schedule, and the address and telephone number of a point of contact who can be reached during working hours. The information may be submitted on an Application for Department of the Army Permit form ([ENG Form 4345](#)) or in any other form convenient to the applicant. A description of the project must include at least the following information, as applicable:

1. A vicinity map showing the location of the entire project, including all disposal site(s).
2. Plan and typical cross-section views of the proposed work.
3. A description of the type, amount, and location of all permanent and temporary fills and excavations that would be located in waters of the United States, including adjacent wetlands. A description of each disposal site shall also be included.
4. A statement disclosing whether any species listed as threatened or endangered under the

Endangered Species Act might be affected by, or found in the vicinity of, the proposed project should be included. Direct coordination with the U.S. Fish and Wildlife Service (FWS) regarding the entire project is encouraged. A written response from the FWS should be included in the application whenever possible.

5. Any other available relevant information, such as information regarding cultural resources, the proximity of the project to ecologically sensitive areas, results of previous sediment sampling, and project impacts on local/regional hydrology should be included. For application procedures and additional information, see [LOP-2](#)

### **Programmatic General Permit-2 (PGP-2)-Activities Authorized by Lower Colorado River Authority Lakewide Permits**

Applicable only at Lake Travis, Lake Marble Falls, Lake Lyndon B. Johnson, Inks Lake, and Lake Buchanan, work authorized by this PGP is limited to discharges of dredged and fill material into waters of the United States (U.S.), excluding wetlands, associated with activities specifically authorized by the Lower Colorado River Authority (LCRA) in a lakewide permit during planned lake drawdowns and other events that result in lake levels 5 feet or more below the when-full elevation of the lake. Lakewide permitted activities eligible for authorization are:

1. Maintenance dredging of up to 2,000 cubic yards of material below the when-full elevation of the lake (currently 681 feet National Geodetic Vertical Datum (NGVD) at Lake Travis, 738 feet NGVD at Lake Marble Falls, 825 feet NGVD at Lake Lyndon B. Johnson, 888.22 feet NGVD at Inks Lake, and 1020.35 feet NGVD at Lake Buchanan) to maintain access, use, and navigability of lake waters, provided that: no dredged material is placed permanently into a water of the U. S., or into an area or in such a way that would likely be returned to waters of the U. S. during a storm event, other than as necessary to meet the terms and conditions of this permit; dredged areas are gradually sloped downward from the shoreline so as to blend the newly dredged area into the existing channel bottom contour and smoothed to prevent any irregular surfaces or cuts that might collapse or erode; dredged areas are maintained so as not to allow water to become isolated from the remainder of the lake; dredged material obtained from areas near marine service stations, boat refinishing or repair operations are disposed of at approved disposal sites for this type of material in accordance with all applicable local, state, and federal laws and regulations. If dredged material is placed on land and it drains into any water of the U.S, temporary erosion controls, such as silt fences, must be used around the material until the material is stabilized by permanent vegetation. No dredging is authorized that is either more than 15 feet below the normal or conservation pool elevation of the lake or below the original or previously dredged bottom elevations.

2. Clearing of debris, such as tree trunks and limbs and trash, from around boat docks or retaining walls, provided no material removed is placed permanently in a water of the U. S.

3. Repair of existing retaining walls and bulkheads, including the placement of up to 2 cubic yards of 6- to 12-inch diameter rock riprap per linear (running) foot at the base of the structure, provided the work otherwise complies with the requirements of USACE nationwide permit 3 for maintenance, USACE nationwide permit 13 for bank stabilization, or USACE, Fort Worth and Albuquerque Districts Regional General Permit (RGP) 8 (CESWF-09-RGP-8) for boat ramps and minor facilities. For work in the highland lakes, contact Highland Lakes Watershed Ordinance, Lower Colorado River Authority, P. O. Box 220, Austin, Texas 78767-0220 or telephone (800) 776-5272, extension 2324). For application procedures and additional information, go to [PGP-2](#)

**FOR FURTHER INFORMATION CONTACT:** U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300 Fort Worth, TX 76102-0300, telephone 817-886-1731, <http://www.swf.usace.army.mil/Missions/Regulatory.aspx>.

