U.S. Army Corps of Engineers (USACE)

Fort Worth District

Nationwide Permit (NWP) Pre-Construction Notification (PCN) Template

This application template integrates requirements of the Nationwide Permit Program within the Fort Worth District, including General and Regional Conditions. Please consult instructions included at the end prior to completing this template.

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**DESCRIPTION OF NWP 40 – AGRICULTURAL ACTIVITIES**

Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.

This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds.

This NWP also authorizes discharges of dredged or fill material into non-tidal jurisdictional waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

**Notification**: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

**Note**: Some discharges of dredged or fill material into waters of the United States for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This NWP authorizes the construction of farm ponds that do not qualify for the Clean Water Act section 404(f)(1)(C) exemption because of the recapture provision at section 404(f)(2).

Part I: NWP Conditions and Requirements Checklist

**To ensure compliance with the General Conditions (GC), in order for an authorization by a NWP to be valid, please answer the following questions:**

1. Navigation (Applies to Section 10 waters [i.e. navigable waters of the U.S.], see instruction 4 for link to list):

**a.** Does the project cause more than a minimal adverse effect on navigation?

[ ]  Yes [ ]  No [ ]  N/A

**b.** Does the project require the installation and maintenance of any safety lights and signals prescribed by the U.S. Coast Guard on authorized facilities in navigable waters of the U.S.? [ ]  Yes [ ]  No [ ]  N/A

**c.** Does the Applicant understand and agree that if future operations by the U.S. 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 shall cause unreasonable obstruction to the free navigation of the navigable waters, the Applicant will be required, upon due notice from the USACE, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the U.S.; and no claim shall be made against the U.S. on account of any such removal or alteration?

[ ]  Yes [ ]  No [ ]  N/A

If you answered yes to question a. or b. above, or if you answered no to question c. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

2. Aquatic Life Movements:

**a.** Does the project substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area? [ ]  Yes [ ]  No

**b.** Is the project's primary purpose to impound water? [ ]  Yes [ ]  No

**c.** Will culverts placed in streams be installed to maintain low flow conditions to sustain the movement of those aquatic species? [ ]  Yes [ ]  No [ ]  N/A

If you answered yes to question a. or b. above, or if you answered no to question c. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

3. Spawning Areas:

a. Does the project avoid spawning areas during the spawning season to the maximum extent practicable? [ ]  Yes [ ]  No [ ]  N/A

b. Does the project result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area?

 [ ]  Yes [ ]  No [ ]  N/A

If you answered no to question a. above, or if you answered yes to question b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

4. Migratory Bird Breeding Areas:

**a.** Does the project avoid waters of the U.S. that serve as breeding areas for migratory birds to the maximum extent practicable? [ ]  Yes [ ]  No [ ]  N/A

If you answered no to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

5. Shellfish Beds:

a. Does the project occur in areas of concentrated shellfish populations? [ ]  Yes [ ]  No

If you answered yes to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

6. Suitable Material:

a. Does the project use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.)?

[ ]  Yes [ ]  No

b. Is the material used for construction or discharged in a water of the U.S. free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act)? [ ]  Yes [ ]  No

If you answered yes to question a. above, or if you answered no to question b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

7. Water Supply Intakes:

**a.** Does the project occur in the proximity of a public water supply intake? [ ]  Yes [ ]  No

If you answered yes to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

8. Adverse Effects From Impoundments:

**a.** Does the project create an impoundment of water? [ ]  Yes [ ]  No

**b.** If you answered yes to question a. above, are the adverse effects (to the aquatic system due to accelerating the passage of water, and/or restricting its flow) minimized to the maximum extent practicable? [ ]  Yes [ ]  No [ ]  N/A

If you answered no to question b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

9. Management of Water Flows:

a. Does the project maintain the pre-construction course, condition, capacity, and location of open waters to the maximum extent practicable, for each activity, including stream channelization and storm water management activities? [ ]  Yes [ ]  No

b. Will the project be constructed to withstand expected high flows? [ ]  Yes [ ]  No

c. Will the project restrict or impede the passage of normal or high flows? [ ]  Yes [ ]  No

If you answered no to question a. or b. above, or if you answered yes to question c. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

10. Fills Within 100-Year Floodplains:

a. Does the project comply with applicable FEMA-approved state or local floodplain management requirements? [ ]  Yes [ ]  No [ ]  N/A

If you answered no to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

11. Equipment:

a. Will heavy equipment working in wetlands or mudflats be placed on mats, or other measures be taken to minimize soil disturbance? [ ]  Yes [ ]  No [ ]  N/A

If you answered no to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

12. Soil Erosion and Sediment Controls:

a. Will the project use appropriate soil erosion and sediment controls and maintain them in effective operating condition throughout construction? [ ]  Yes [ ]  No

b. Will all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, be permanently stabilized at the earliest practicable date?

 [ ]  Yes [ ]  No

c. Be aware that if work will be conducted within waters of the U.S., Applicants are encouraged to perform that work during periods of low-flow or no-flow.

If you answered no to question a. or b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

**13. Removal of Temporary Fills:**

**a.** Will temporary fills be removed in their entirety and the affected areas returned to pre-construction elevations? [ ]  Yes [ ]  No [ ]  N/A

**b.** Will the affected areas be revegetated, as appropriate? [ ]  Yes [ ]  No [ ]  N/A

If you answered no to question a. or b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

**14. Proper Maintenance:**

**a.** Will any authorized structure or fill be properly maintained, including maintenance to ensure public safety? [ ]  Yes [ ]  No

If you answered no to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

**15. Single and Complete Project:**

**a.** Does the Applicant certify that the project is a “single and complete project” as defined below? [ ]  Yes [ ]  No

**Single and complete project:**

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

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 a NWP authorization.

**Independent utility:** Defined as a test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

**16. Wild and Scenic River:**

There are no Wild and Scenic Rivers within the geographic boundaries of the Fort Worth District. Therefore, this GC does not apply.

17. Tribal Rights:

a. Will the project or its operation impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights? [ ]  Yes [ ]  No [ ]  N/A

If you answered yes to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

18. Endangered Species (see also Box 8 in Part III):

**a.** Is the project likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or will the project directly or indirectly destroy or adversely modify the critical habitat of such species? [ ]  Yes [ ]  No

**b.** Might the project affect any listed species or designated critical habitat? [ ]  Yes [ ]  No

**c.** Is any listed species or designated critical habitat in the vicinity of the project?

 [ ]  Yes [ ]  No

**d.** If the project “may affect” a listed species or critical habitat, has Section 7 or Section 10(a) ESA consultation addressing the effects of the proposed activity been completed? [ ]  Yes [ ]  No [ ]  N/A

If you answered yes to question a. or b. or c. above, or if you answered no to question d. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

19. Migratory Birds and Bald and Golden Eagles:

Does the project have the potential to impact nests, nesting sites, or rookeries of migratory birds, bald, or golden eagles? [ ]  Yes [ ]  No [ ]  N/A

If you answered yes to the question above, you are responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to obtain any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act.

20. Historic Properties (see also Box 9 in Part III):

**a.** Does the project 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?

 [ ]  Yes [ ]  No [ ]  N/A

If you answered yes to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

21. Discovery of Previously Unknown Remains and Artifacts:

If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, *you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed*. The district engineer 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.

22. Designated Critical Resource Waters:

**a.** Will the project impact critical resource waters, which include NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment? [ ] Yes [ ]  No

If you answered yes to question a. above, be aware that discharges of dredged or fill material into waters of the U.S. are not authorized by NWP 40 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

23. Mitigation (see also Box 10 in Part III):

**a.** Will the project include appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal? [ ]  Yes [ ]  No

If you answered no to question a. above, please include an explanation in Box 10 of why no mitigation would be necessary in order to be in compliance with this GC or be aware that the project would require an individual permit application.

24. Safety of Impoundment Structures:

**a.** Has the impoundment structure been safely designed to comply with established state dam safety criteria or has it been designed by qualified persons? [ ]  Yes [ ]  No [ ]  N/A

If you answered yes to question a above, non-federal applicants may be required to provide documentation that the design has been independently reviewed by similarly qualified persons with appropriate modifications to ensure safety. If you answered no, please include an explanation in Box 10 of why the structure is exempt from state dam safety criteria or be aware that the project may require an individual permit application.

25. Water Quality (see also Box 11 in Part III):

a. If in Texas, does the project comply with the conditions of the TCEQ water quality certification for NWP 40? [ ]  Yes [ ]  No [ ] N/A

b. Will the project result in the loss of 1,500 linear feet or more of stream bed? [ ]  Yes [ ]  No

c. If in Louisiana, does the project comply with the conditions of the LDEQ water quality certification for NWP 40? [ ]  Yes [ ]  No [ ] N/A

If you answered no to question a. or c. above, please be aware that the project would require an individual permit application. Additionally, if you answered yes to question b. above, please be aware that the project would require an individual TCEQ 401 water quality certification.

26. Coastal Zone Management:

 The Fort Worth District does not cover any Coastal Zone; therefore, this GC does not apply.

27. Regional and Case-By-Case Conditions:

 See the Regional Conditions checklist below to ensure compliance with this GC.

28. Use of Multiple Nationwide Permits:

**a.** Does the project use more than one NWP for a single and complete project? [ ]  Yes [ ]  No

**b.** If you answered yes to question a. above, be aware that unless the project’s acreage loss of waters of the U.S. authorized by the NWPs is below the acreage limit of the NWP with the highest specified acreage limit, no NWP can be issued and the project would require an individual permit application.

If you answered yes to question a. above, please explain how the project would be in compliance with this GC and what additional NWP number you intend to use:

**29. Transfer of Nationwide Permit Verifications:**

**a.** Does the Applicant agree that if he or she sells the property associated with the nationwide permit verification, the Applicant may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate USACE district office to validate the transfer?

[ ]  Yes [ ]  No

30. Compliance Certification:

a. Does the Applicant agree that if he or she receives the NWP verification from the USACE, they must submit a signed certification regarding the completed work and any required mitigation (the certification form will be sent by the USACE with the NWP verification letter)?

[ ]  Yes [ ]  No

31. Activities Affecting Structure or Works Built by the United States

**a.**  Does the project temporarily or permanently alter and/or occupy a USACE federally authorized Civil Works project? [ ]  Yes [ ]  No

If you answered yes to question a. above, notification is required in accordance with general condition 32, for any activity that requires permission from the Corps. The district engineer may authorize activities under these NWPs only after a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

32. Pre-Construction Notification:

**All activities under NWP 40 require a PCN submittal to the Fort Worth District.**

**To ensure compliance with the NWP 40-specific requirements please answer the following questions:**

1. Does the project cause the loss of greater than 1/2-acre of non-tidal waters of the U.S.?

[ ]  Yes [ ]  No

 If you answered yes to question 1. above, be aware that discharges of dredged or fill material into waters of the U.S. are not authorized by NWP 40 and would require an individual permit application.

2. Does the project cause a discharge into non-tidal wetlands adjacent to tidal waters?

[ ]  Yes [ ]  No

If you answered yes to question 2. above, be aware that discharges of dredged or fill material into waters of the U.S. are not authorized by NWP 40 and would require an individual permit application.

**REGIONAL CONDITIONS CHECKLIST**

**To ensure compliance with the Regional Conditions within the Fort Worth District, in the State of Texas, in order for an authorization by a NWP to be valid, please answer the following questions (for projects in Texas only):**

1. Does the project involve a discharge into any of the following habitat types?:

[ ]  Pitcher plant bogs ((*Sarracenia* spp.) and/or sundews (*Drosera* spp.) and/or Bald Cypress/Tupelo swamps ((*Taxodium distichum*) and/or water tupelo (*Nyssa aquatica*))?

[ ]  Karst Zones 1 and 2 located in Bexar, Travis and Williamson Counties (see <https://www.fws.gov/southwest/es/AustinTexas/Maps_Data.html>).

[ ]  Caddo Lake and associated areas that are designated as “Wetland of International Importance” under the Ramsar Convention (see <http://caddolakedata.us/media/145/1996caddolakeramsar.pdf> or <http://caddolakedata.us/media/144/1996caddolakeramsar.jpg>).

[ ]  Reaches of rivers (and their adjacent wetlands) that are included in the Nationwide Rivers Inventory (see [https://www.nps.gov/subjects/rivers/nationwide-rivers-inventory.htm)/](https://www.nps.gov/subjects/rivers/nationwide-rivers-inventory.htm%29/)

If you answered yes to any of the above choices, notification of the District Engineer is required in accordance with NWP GC 32, and the USACE will coordinate with other resource agencies as specified in NWP GC 32(d).

1. Is the activity located at a site approved as a compensatory mitigation site (either permittee-responsible, mitigation bank and/or in lieu fee) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899?

[ ]  Yes [ ]  No

If you answered yes to question 2. above, notification of the District Engineer is required in accordance with NWP GC 32.

To ensure compliance with the Regional Conditions within the Fort Worth District, in the State of Louisiana, in order for an authorization by a NWP to be valid, please answer the following questions (for projects in Louisiana only):

1. Does the activity cause the permanent loss of greater than 1/2 acre of seasonally inundated cypress swamp and/or cypress-tupelo swamp? [ ]  Yes [ ]  No

 If you answered yes to question 1. above, be aware that the project would not be authorized by a NWP 40 and would require an individual permit application.

**2.** Does the activity cause the permanent loss of greater than 1/2 acre of pine savanna and/or pitcher plant bogs? [ ]  Yes [ ]  No

 If you answered yes to question 2. above, be aware that the project would not be authorized by a NWP 40 and would require an individual permit application.

**3.** Has the activity been determined to have an adverse impact upon a federal or state designated rookery and/or bird sanctuary? [ ]  Yes [ ]  No

 If you answered yes to question 3. above, be aware that the project would not be authorized by a NWP 40 and would require an individual permit application.

**4.** To the best of the applicant’s knowledge, is any excavated and/or fill material to be placed within wetlands free of contaminants? [ ]  Yes [ ]  No [ ]  N/A

 If you answered no to question 4. above, be aware that the project would not be authorized by a NWP 40 and would require an individual permit application.

**5.** *Regional Condition 5 applies to work within the Louisiana Coastal Zone and/or the Outer Continental Shelf off Louisiana, and therefore does not apply in the USACE Fort Worth District. Work in these areas may require coordination with the USACE Galveston or New Orleans districts.*

**6.** Does the activity adversely impact a designated Natural and Scenic River or a state or federal wildlife management area and/or refuge? [ ]  Yes [ ]  No

 If you answered yes to question 6. above, notification of the District Engineer is required in accordance with NWP GC 32.

**7.** For activities involving the installation of a culvert, will the culvert be sufficiently sized to maintain expected high water flows, and installed at a sufficient depth to maintain low flows to sustain the movement of aquatic species? [ ]  Yes [ ]  No

 If you answered no to question 7. above, be aware that the project would not be authorized by a NWP 40 and would require an individual permit application.

Additional Discussion:

Part II: Project Information (*Project No. SWF-*       )

|  |  |
| --- | --- |
| Box 1. Project Name:      | Applicant Name      |
| Applicant Title      | Applicant Company, Agency, etc.      |
| Mailing Address      | Applicant’s internal tracking number (if any)      |
| Work Phone with area code      | Cell Phone with area code      | E-mail Address      |
| Relationship of applicant to property:[ ]  Owner [ ]  Purchaser [ ]  Lessee [ ]  Other:       |
| Application is hereby made for verification that subject regulated activities associated with subject project qualify for authorization under a USACE nationwide permit or permits as described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the agency to which this application is made the right to enter the above‑described location to inspect the proposed, in-progress, or completed work. I agree to start work only after all necessary permits have been received. |
| Signature of applicant | Date (mm/dd/yyyy)      |

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| Box 2. Authorized Agent/Operator Name and Signature: (If an agent is acting for the applicant during the permit process)      |
| Agent/Operator Title      | Agent/Operator Company, Agency, etc.      |
| Mailing Address      |
| E-mail Address      |
| Work Phone(s) with area code      | Cell Phone #      |
| I hereby authorize the above-named agent to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application. I understand that I am bound by the actions of my agent, and I understand that if a federal or state permit is issued, I, or my agent, must sign the permit. |
| Signature of applicant | Date (mm/dd/yyyy)      |
| I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate. |
| Signature of authorized agent | Date (mm/dd/yyyy)      |
| Box 3. Name of property owner, if other than applicant:     [ ]  Multiple Current Owners (If multiple current property owners, check here and include a list as an attachment) |
| Owner Title      | Owner Company, Agency, etc.      |
| Mailing Address      |
| Work Phone with area code      | Cell Phone with area code      |
| Box 4. Project location, including street address, city, county, state, and zip code where proposed activity will occur:      |
| Nature of Activity (Description of project; include all features; see instructions):      |
| Project Purpose (Description of the reason or purpose of the project; see instructions):      |
| Are there any other Federal Permits or Federal Agencies associated with this project?[ ]  Yes If yes, list the agency(ies)      [ ]  No |
| Has a lead Federal Agency been identified?[ ]  Yes If yes, provide the agency name, agency POC, address, phone number, and email address.      [ ]  No |
| Has a delineation of waters of the U.S., including wetlands, been completed? (see instructions)[ ]  Yes, Attached [ ]  NoIf a delineation has been completed, has it been verified in writing by the USACE?[ ]  Yes, Date of approved or preliminary jurisdictional determination (mm/dd/yyyy):       USACE project:      [ ]  No |
| Are color photographs of the existing conditions available? [ ]  Yes, Attached [ ]  NoAre aerial photographs available? [ ]  Yes, Attached [ ]  No |
| [ ]  Multiple Waters of the U.S. (If multiple waters of the U.S., check here and complete the table in Attachment D) |
| Waterbody(ies) (if known; otherwise enter “an unnamed tributary to”):      Tributary(ies) to what known, downstream waterbody(ies):       |
| Latitude & longitude (Decimal Degrees):      |
| USGS Quad map name(s):      |
| Watershed(s) and other location descriptions, if known:      |
| Directions to the project location:      |

Part III: Project Impacts and Mitigation

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| --- |
| Box 5. Reason(s) for Discharge into waters of the U.S.:      |
| Type(s) of material being discharged and the amount of each type in cubic yards:      |
| Total surface area (in acres) of wetlands or other waters of the U.S. to be filled:      |
| Indicate the proposed impacts to **waters of the U.S.** in ACRES (for all aquatic resources) and LINEAR FEET (for rivers and streams) and identify the impact(s) as permanent and/or temporary for each waterbody type listed below. The table below is intended as a tool to summarize impacts by resource type for planning compensatory mitigation and does not replace the table of waters of the U.S. in Attachment D for those projects with impacts to multiple waters of the U.S.

|  |  |  |
| --- | --- | --- |
|  | Permanent | Temporary |
| Waterbody Type | Acres | Linear feet in length | Linear feet in width | Acres | Linear feet in length | Linear feet in width |
| Emergent wetlands |       |       |       |       |       |       |
| Scrub/Shrub wetlands |       |       |       |       |       |       |
| Forested wetlands |       |       |       |       |       |       |
| Perennial streams |       |       |       |       |       |       |
| Intermittent streams |       |       |       |       |       |       |
| Impoundments |       |       |       |       |       |       |
| Other:       |       |       |       |       |       |       |
| Total: |       |       |       |       |       |       |

 |
| Potential indirect and/or cumulative impacts of proposed discharge (if any):      |
| Required drawings (see instructions):Vicinity map: [ ]  AttachedTo-scale plan view drawing(s): [ ]  AttachedTo-scale elevation and/or cross section drawing(s): [ ]  Attached |
| Is any portion of the work already complete? [ ]  Yes [ ]  NoIf yes, describe the work:       |

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| --- |
| Box 6. Authority: (see instructions)Is Section 10 of the Rivers and Harbors Act for projects affecting navigable waters applicable? [ ]  Yes [ ]  No **(see instructions for Fort Worth District Navigable Waters list)**Is Section 404 of the Clean Water Act applicable? [ ]  Yes [ ]  No |

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| --- |
| Box 7. Larger Plan of Development:Is the discharge of fill or dredged material for which Section 10/404 authorization is sought intended for a commercial/institutional development project which is part of a larger plan of development? [ ]  Yes [ ]  No (If yes, please provide the information in the remainder of Box 7) |
| Does the commercial/institutional development project have independent utility in addition to the larger plan of development? [ ]  Yes [ ]  NoIf yes, explain:       |
| If discharge of fill or dredged material is part of development, name and proposed schedule for that larger development (start-up, duration, and completion dates):      |
| Location of larger development (If discharge of fill or dredged material is part of a plan of development, a map of suitable quality and detail for the entire project site should be included):      |
| Total area in acres of entire project area (including larger plan of development, where applicable):      |
| Box 8. Federally Threatened or Endangered Species (see instructions)Please list any federally-listed (or proposed) threatened or endangered species or critical habitat potentially affected by the project (use scientific names (i.e., genus species), if known):      |
| Have surveys, using U.S. Fish and Wildlife Service (USFWS) protocols, been conducted?[ ]  Yes, Report attached [ ]  No (explain):       |
| If a federally-listed species would potentially be affected, please provide a description and a biological evaluation.[ ]  Yes, Report attached [ ]  Not attached |
| Has Section 7 ESA consultation been initiated by another federal agency?[ ]  Yes, Initiation letter attached [ ]  No |
| Has Section 10(a) ESA consultation been initiated for the proposed project?[ ]  Yes, Initiation letter attached [ ]  No |
| Has the USFWS issued a Biological Opinion?[ ]  Yes, Report attached [ ]  NoIf yes, list date Opinion was issued (mm/dd/yyyy):       |

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| Box 9. Historic properties and cultural resourcesPlease list any historic properties listed (or eligible to be listed) on the National Register of Historic Places which the project has the potential to affect:      |
| Has an archaeological records search been conducted?[ ]  Yes, Report attached [ ]  No (explain):       |
| Are any cultural resources of any type known to exist on-site?[ ]  Yes [ ]  No |
| Has an archaeological pedestrian survey been conducted for the site?[ ]  Yes, Report attached [ ]  No (explain):       |
| Has Section 106 or SHPO consultation been initiated by another federal or state agency?[ ]  Yes, Initiation letter attached [ ]  No |
| Has a Section 106 MOA been signed by another federal agency and the SHPO?[ ]  Yes, Attached [ ]  NoIf yes, list date MOA was signed (mm/dd/yyyy):       |

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| Box 10. Proposed Conceptual Mitigation Plan Summary (see instructions) |
| Measures taken to avoid and minimize impacts to waters of the U.S. (if any):      |
| Applicant proposes combination of one or more of the following mitigation types:[ ]  Mitigation Bank [ ]  On-site [ ]  Off-site (Number of sites:      ) [ ]  None |
| Applicant proposes to purchase mitigation bank credits: [ ]  Yes [ ]  NoMitigation Bank Name:      Number of Credits:       |
| Indicate in ACRES (for all aquatic resources) and LINEAR FEET (for rivers and streams) the total quantity of waters of the U.S. proposed to be created, restored, enhanced, and/or preserved for purposes of providing compensatory mitigation. Indicate mitigation site type (on- or off-site) and number. Indicate waterbody type (emergent wetland, scrub-shrub wetland, forested wetland, perennial stream, intermittent stream, ephemeral stream, impoundment, other) or non-jurisdictional (uplands1).

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Mitigation Site Type and Number | Waterbody Type | Created | Restored | Enhanced | Preserved |
| *e.g., On-site 1* | *Forested wetland* | *0.5 acre* |  |  |  |
| *e.g., On-site 1* | *Intermittent stream* |  | *500 LF* | *1000 LF* |  |
|       |       |       |       |       |       |
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|       | Totals: |       |       |       |       |

1 For uplands, please indicate if designed as an upland buffer. |
| Summary of Mitigation Work Plan (Describe the mitigation activities listed in the table above):      |
| If no mitigation is proposed, provide a detailed explanation of why no mitigation would be necessary to ensure that adverse effects on the aquatic environment are minimal:      |
| Has a conceptual mitigation plan been prepared in accordance with the USACE regulations and guidelines? [ ]  Yes, Attached [ ]  No (explain):       |
| Mitigation site(s) latitude & longitude (Decimal Degrees):       | USGS Quad map name(s):      |
| Other location descriptions, if known:      |
| Directions to the mitigation location(s):      |

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| Box 11. Water Quality Certification (see instructions):For Texas:Does the project meet the conditions of the Texas Commission on Environmental Quality (TCEQ) Clean Water Act Section 401 certification for NWP 40? [ ]  Yes [ ]  NoDoes the project include soil erosion control and sediment control Best Management Practices (BMPs)? [ ]  Yes [ ]  NoDoes the project include BMPs for post-construction total suspended solids control? [ ]  Yes [ ]  NoWill the project result in the loss of 1,500 linear feet or more of stream bed? [ ]  Yes [ ]  NoIf you answered yes to this question, you will need an individual TCEQ 401 certification review. |
| For Louisiana:Individual water quality certification issued by LDEQ? [ ]  Yes, Attached [ ]  NoWater quality certification waiver or other approval by LDEQ? [ ]  Yes, Attached [ ]  NoExplain:       |

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| Box 12. List of other certifications or approvals/denials received from other federal, state, or local agencies for work described in this application:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Agency | Approval Type2 | Identification No. | Date Applied | Date Approved | Date Denied |
|       |       |       |       |       |       |
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2 Would include but is not restricted to zoning, building, and floodplain permits |

Part IV: Attachments

 Included

A. List of Property Owners [ ]

B. Delineation of Waters of the U.S., Including Wetlands [ ]

C. Color Photographs [ ]

D. Table of Waters of the U.S. Impacted by the Proposed Project [ ]

E. Required Drawings/Figures [ ]

F. Threatened or Endangered Species Reports and/or Letters [ ]

G. Historic Properties and Cultural Resources Reports and/or Letters [ ]

H. Conceptual Mitigation Plan [ ]

I. Other:       [ ]

End of Template

Attachment D: Table of Waters of the U.S. Impacted by the Proposed Project

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| **Waterbody ID1** | **Latitude and Longitude****(Decimal Degrees)** | **Resource Type2** | **Acres in Project Area** | **Impact Type3** | **Average Length of Impact** | **Average Width of Impact** | **Acres of Impact** | **Cubic Yards of Material to be Discharged** |
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1 Waterbody ID may be the name of a feature or an assigned label such as “W-1” for a wetland.

2 Resource Types: EW – Emergent Wetland, SW – Scrub-Shrub Wetland, FW – Forested Wetland, PS – Perennial Stream,

 IS – Intermittent Stream, ES - Ephemeral Stream, I – Impoundment

3 Impact Types: D/P – Direct\* and Permanent, D/T – Direct and Temporary, I/P – Indirect\*\* and Permanent, I/T – Indirect and Temporary

\* Direct impacts are here defined as those adverse affects caused by the proposed activity, such as discharge or excavation.

 \*\* Indirect impacts are here defined as those adverse affects caused subsequent to the proposed activity, such as flooding or effects of drainage on adjacent waters of the U.S.

Instructions: [please do not include these pages when submitting template]

1. The Fort Worth District accepts paperless/electronic submittals as the primary means of accepting applications. All initial application materials should be sent to CESWF-Permits@usace.army.mil.
2. Complete Part I of the template first to determine if the project meets the conditions and requirements of NWP 40, including the General and Regional Conditions as well as the notification requirements. Additional information on the general conditions is available at the following website:

 <http://www.swf.usace.army.mil/Missions/Regulatory/Permitting/GeneralPermits.aspx>

1. Boxes 1 to 3: Provide contact information for the Applicant, Agent, Owner, etc.
2. Box 4:
	1. Nature of Activity: Describe the overall activity or project. Give appropriate dimensions of the fill activities associated with the mining operation such as processing, screening and sorting areas, or excavation of material from waters of the United States (length, width, and height). Indicate whether discharge of dredged or fill material is involved. Also, identify any structure to be constructed on a fill, piles, or float-supported platforms. The written descriptions and illustrations are an important part of the application. Please describe, in detail, what you wish to do. If more space is needed, attach a separate sheet marked “Box 4 Nature of Activity.”
	2. Proposed Project Purpose: Describe the purpose and need for the proposed project. What will it be used for and why? Also include a brief description of any related activities to be developed as the result of the proposed project.

c. **Delineation of waters of the U.S.**:

Waters of the U.S. are defined under 33 CFR part 328.3 (a) as:

1. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
	1. Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
	2. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
	3. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the U.S. under the definition;
5. Tributaries of waters identified in paragraphs (a) (1) through (4) of this section;
6. The territorial seas;
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1) through (6) of this section.

In addition, 33 CFR part 328.3 (b) states: The term wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, the ordinary high water mark, as well as any adjacent wetlands, demarcate the limits of non-tidal waters of the U.S. Wetlands are identified and delineated using the methods and criteria established in the USACE *Wetlands Delineation Manual* (1987 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils, and wetland hydrology) as well as any applicable interim regional supplements.

Applicants should follow the USACE Fort Worth District procedures for jurisdictional determinations found at the following website:

<http://media.swf.usace.army.mil/pubdata/environ/regulatory/jurisdiction/jurisdictionaldeterminationprocedures.pdf>

d. Multiple Waters of the U.S.: If the project impacts multiple waters of the U.S., include information for each water in the table in Attachment D.

1. Box 5:

 **Required drawings (see examples in separate file):** Submit one legible copy of all drawings (8 1/2 x 11-inch or 11 x 17-inch) with a 1-inch margin around the entire sheet. The title box shall contain the title of the proposed project, date, and sheet number.

* 1. Vicinity map: Cover an area large enough so the project can be easily located; include arrow marking the project area, identifiable landmarks (e.g., named waterbody, county, city), name or number of roads, north arrow, and scale.
	2. Plan view: Include features such as existing bank lines, ordinary high water mark line(s), average water depth around the activity, dimensions of the proposed project, dimensions of any structures immediately adjacent to the proposed activity, north arrow, and scale.
	3. Elevation and/or cross-section views: Include features such as water elevation as shown on plan view drawing, existing and proposed ground level, dimensions of the proposed project, dimensions of any structures immediately adjacent to the proposed activity, and scale.
1. Box 6: A list of navigable waters in the Fort Worth District can be found at the following website:

 <https://swf-apps.usace.army.mil/pubdata/environ/regulatory/introduction/navlist.pdf>

 Under Section 404 of the Clean Water Act, the USACE regulates the discharge of dredged or fill material into waters of the U.S. More information on regulated activities can be found at the following website:

 <http://www.swf.usace.army.mil/Missions/Regulatory/RegulatedActivities.aspx>

1. Box 8: Information on federally threatened or endangered species may be found on the U.S. Fish and Wildlife Service website and the Texas Parks and Wildlife Department website. Include an attachment if additional space is required for listing species or critical habitat potentially affected by the project.

<https://ecos.fws.gov/ecp/report/species-listings-by-state?stateAbbrev=TX&stateName=Texas&statusCategory=Listed>

<https://ecos.fws.gov/ecp/report/species-listings-by-state?stateAbbrev=LA&stateName=Louisiana&statusCategory=Listed>

<http://www.tpwd.state.tx.us/huntwild/wild/species/endang/index.phtml>

<http://www.tpwd.state.tx.us/landwater/land/maps/gis/ris/endangered_species/index.phtml>

1. Box 10: When completing this box, be aware that the USACE will consider if the project has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the U.S. to the maximum extent practicable at the project site when determining appropriate and practicable mitigation necessary to ensure that adverse effects to the aquatic environment are minimal. The USACE may also require compensatory mitigation at a minimum one-for-one ratio for losses of wetlands, streams, and open waters to ensure that the project results in minimal adverse effects on the aquatic environment. See the USACE Fort Worth District Regulatory Branch website for a mitigation plan template and requirements.

 <http://www.swf.usace.army.mil/Missions/Regulatory/Permitting/Mitigation.aspx>

1. Box 11: Projects in Texas should meet the conditions of the Texas Commission on Environmental Quality (TCEQ) Clean Water Act Section 401 certification for NWP 40. The TCEQ conditions of Section 401 certification for NWP 40 as well as a description of Best Management Practices can be found at the following website:

<https://www.swf.usace.army.mil/Portals/47/docs/regulatory/Permitting/General%20Permitting/TX_401_cert.pdf?ver=rIe8wttu6MRCA2s6Q4QQMg%3d%3d>

Projects in Louisiana require water quality certification from the Louisiana Department of Environmental Quality (LDEQ). Information about water quality certification from LDEQ can be found at the following website:

<https://www.swf.usace.army.mil/Portals/47/docs/regulatory/Permitting/General%20Permitting/LA_401_Cert.pdf?ver=ngbtr2e_QEGvADQ9cCTLNg%3d%3d>

1. Attachments: Check the boxes in Part IV for those attachments that are included and place a cover sheet or tab with each attachment behind the last page of the template. If Attachment D is not needed, discard this page, but if more room is necessary, include an additional table.