



# CWA 404 Letter of Permission Procedure

U.S. ARMY CORPS OF ENGINEERS

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## LETTER OF PERMISSION PROCEDURE FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES WITH LESS THAN SIGNIFICANT IMPACTS ON THE HUMAN ENVIRONMENT

**EFFECTIVE:** 20 September 2024

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The U.S. Army Corps of Engineers (Corps), Albuquerque, Los Angeles, Sacramento, and San Francisco Districts, establish this procedure for issuing a Letter of Permission (LOP) to efficiently authorize activities that involve a discharge of dredged or fill material into waters of the United States (U.S.) under Section 404 of the Clean Water Act (CWA 404) which have minimal or less than significant impacts on the human environment under the National Environmental Policy Act (NEPA).

Note: The term “District” refers to the appropriate District office identified in the *Contacts and Additional Information* section.

**ISSUING OFFICES:** U.S. Army Corps of Engineers, Albuquerque, Los Angeles, Sacramento, and San Francisco Districts (Districts).

**ACTION ID:** SPK-2024-00011

**AUTHORITY:** Section 404 of the Clean Water Act (CWA) for the discharge of dredged or fill material in waters of the United States, including Section 10 of the Rivers and Harbors Act (RHA 10) of 1899 for structures or work in or affecting navigable waters of the U.S., only when the proposed activity requires authorization under both CWA 404 and RHA 10.

**LOCATION:** States of Arizona, California, Nevada, New Mexico, and Utah and counties in southern Colorado, and western Texas (see attachment).

**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 individual 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 publishing an individual public notice. In accordance with 33 CFR Part 325.2(e)(1), LOPs may be used in those cases subject to CWA 404 when:

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1. The district, through consultation with federal and state fish and wildlife agencies, the Regional Administrator, Environmental Protection Agency, and the state water quality certifying agency, develops a list of categories of activities proposed for authorization under LOP procedures.
2. The district issues a public notice advertising the proposed list and the LOP procedures, requesting comments and offering an opportunity for public hearing; and,
3. A CWA 401 water quality certification (WQC) has been issued or waived and, if appropriate, Coastal Zone Management (CZM) consistency concurrence obtained or presumed either on a generic or individual basis.

Most discharges of dredged or fill material into waters of the US with minimal impact are authorized under one or more general permits (nationwide, regional, or programmatic). Proposed discharges that could result in significant effects on the human environment require the preparation of an Environmental Impact Statement under the National Environmental Policy Act (NEPA). This procedure covers activities that cannot be authorized under a general permit but have less than significant individual and cumulative impacts on the human environment.

Under NEPA, the lead federal agency determines whether a federal action has the potential to have significant effects on the human environment.

**CATEGORIES OF ACTIVITIES:** Activities to be authorized include, but are not limited to: residential, commercial, industrial, recreational, agricultural, and municipal development; renewable energy; transportation, infrastructure, and utility lines; mining; flood and sea level rise protection; storm-water management and polishing; survey, research, testing and monitoring; environmental remediation, restoration, and enhancement; repair, rehabilitation, and maintenance; and hydropower, reclamation, and reuse facilities.

**MITIGATION:** Prospective permittees are responsible for ensuring the proposed activity is designed to avoid and minimize effects to the aquatic environment to the maximum extent practicable. In addition, prospective permittees are responsible for proposing necessary compensatory mitigation to ensure the LOP activity will not result in potentially significant impacts on the human environment.

For impacts to waters of the U.S., the amount of compensatory mitigation required must be, to the extent practicable, sufficient to replace lost aquatic resource functions and services (see 33 CFR Part 332.3(f)). If a functional or condition assessment or other suitable metric is not used to determine how much compensatory mitigation is required, a minimum one-to-one acreage or linear foot compensation ratio must be used. Compensatory mitigation proposals must comply with the applicable provisions of 33 CFR Part 332 and applicable regional guidance, such as the *Final 2015 Regional Compensatory Mitigation and Monitoring Guidelines for South Pacific Division*, or most recent update available at: <http://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences.aspx/>.

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The preferred mechanism for providing compensatory mitigation that appropriately offsets impacts to waters of the U.S. is through the purchase of credits from a Corps-approved mitigation bank. When no, or an insufficient number of, mitigation bank credits are available through a bank, compensatory mitigation may be achieved through a Corps-approved, in-lieu fee (ILF) program (see 33 CFR Part 332.3(b)(2) and (3)). If an appropriate number and type of mitigation bank or ILF credits are not available at the time a LOP is requested, the project proponent may submit a draft plan for permittee-responsible mitigation (PRM). A final mitigation plan will need to be approved by the District before a LOP is issued. Note that proposed activities which rely on PRM may require more review time by the District.

### **EXCLUSIONS:**

1. This procedure does not apply to activities authorized solely under Section 10 of the Rivers and Harbors Act of 1899 (RHA 10). RHA Section 10-only activities are covered by LOP procedures at 33 CFR Part 325(e)(1)(i). However, this procedure may be used if the proposed activity requires authorization under both CWA 404 and RHA 10.
2. This procedure does not apply to bridges and pipelines constructed over waters covered under Section 10 of the Rivers and Harbors Act of 1899. Bridges and pipelines require authorization by the U.S. Coast Guard under Section 9 of the Rivers and Harbors Act of 1899.
3. This procedure does not apply to any activities in waters of the U.S. that have a potential to significantly impact the human environment under the NEPA, as determined by the District.
4. This procedure does not apply to any activities within Los Angeles District's San Diego Creek Watershed Special Area Management Plan (SAMP) and San Juan Creek/Western San Mateo Creek SAMP areas.

### **TERMS:**

1. Activities proposed under this LOP procedure are subject to the following thresholds:
  - a. The permanent loss of waters of the U.S. shall not exceed one (1) acre.
  - b. The permanent loss of waters of the U.S. shall not exceed 1,000 linear feet of streambed. The permanent loss of streambed shall be included in the acreage threshold identified in 1(a).

For the purposes of this procedure, a permanent loss of waters of the U.S. would occur if the discharge of dredged or fill material would convert a water of the U.S. into dry land (i.e., upland). Conversion of one aquatic resource type to another aquatic resource type (e.g., wetland into open water) is not considered a permanent loss of waters of the U.S.

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2. No activity may 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, unless the appropriate federal agency with direct management responsibility for such river has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status, available at: <https://www.rivers.gov/>.
3. No activity is authorized which is 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 Section 7 of the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation.
4. No activity is authorized which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
5. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
6. No activity may cause more than a minimal adverse effect on navigation. Any 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 in navigable waters of the U.S.
7. No activity may significantly 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, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies must be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
8. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the U.S. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
9. The activity must comply with the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA). The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles,

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including whether "incidental take" permits are necessary and available under the MBTA or BGEPA for any LOP activity.

10. For activities affecting the coastal zone, individual state CZM consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR Parts 325.2(b)(2) and 330.4(d)). The State CZM agency may require additional measures to ensure that the authorized activity is consistent with state CZM requirements. Conditions placed upon a CZM consistency concurrence by the State CZM agency will be incorporated by reference and become special conditions of the LOP.

11. For activities resulting in the discharge of dredged or fill material into waters of the U.S., individual Section 401 WQC, or waiver, must be obtained from the appropriate certifying agency. Conditions placed upon a Section 401 WQC by the certifying agency will be incorporated by reference and become special conditions of the LOP.

12. Activities occurring on the Colorado River, including the discharge of dredged or fill material, must comply with Los Angeles District's February 2022, *Colorado River Guidelines*, or most recent update available at:

<https://www.spl.usace.army.mil/Missions/Regulatory/Permit-Process/>.

13. Bioengineered techniques shall be used to the maximum extent practicable for bank stabilization. Bioengineered techniques include using a combination of biological, mechanical, and ecological concepts to control erosion and stabilize soil through the sole use of vegetation, or a combination of vegetation and construction materials. If bioengineering techniques are not practicable or appropriate, supporting rationale must be provided.

**PROCEDURES:** Applications must be submitted through the Corps' Regulatory Request System (<https://rrs.usace.army.mil>) using the "Apply for a Permit" function. To be considered for authorization under this LOP procedure, the application must include all information required for a standard permit application, pursuant to 33 CFR Part 325.1, as well as the following:

1. An aquatic resources delineation for the proposed activity area, conducted in accordance with the Corps' minimum standards for aquatic resource delineations, or information that an aquatic resources delineation has been verified (including Corps file number) and is still valid.
2. Site location map(s), including the site of the proposed activity, clearly outlined on U.S. Geological Survey 7.5-foot quad sheet drawings, with latitudes and longitudes for the site(s), name of the quad sheet(s) and directions to the site, as well as all appropriate aerial and other imagery available.
3. Plan and profile views of the proposed work, relative to potential or approved waters of the U.S. (e.g., wetlands, tidal waters below (seaward of the high tide line, and open waters below the ordinary high-water mark), showing areas, types, and acreages of waters of the U.S. to be

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impacted by the proposed activity. All available drawings must show proposed impacts on appropriately scaled figures, and should be prepared in accordance with the February 2016, *Updated Map and Drawing Standards for the South Pacific Division Regulatory Program*, or most recent update available at:

<http://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences.aspx/>).

4. The total area (in acres), including length and width for linear features, volume (in cubic yards), and composition/type of material to be discharged into each type of aquatic resource.
5. A description of how impacts to waters of the U.S. and associated functions (e.g., water quality and habitat) have been avoided and minimized to the maximum extent practicable within the permit area.
6. A description of potential indirect (secondary) and cumulative impacts to waters of the U.S. and the human environment in the watershed and vicinity of the proposed activity. The description of impacts and any proposed mitigation measures should be sufficiently detailed to allow the District to determine that the adverse environmental effects of the activity will be less than significant on the human environment, and to determine the need for compensatory mitigation or other mitigation measures.
7. If compensatory mitigation is proposed at a Corps-approved mitigation bank and/or ILF program, the proposal must include the name of the bank/ILF, the number and resource type of credits to be secured, and a statement on how these were determined. If PRM is proposed, the project proponent must submit a comprehensive mitigation and monitoring plan, for review and approval by the District. The plan must include the mitigation location and design drawings, vegetation plans, and final success criteria, presented in the format of the *Final 2015 Regional Compensatory Mitigation and Monitoring Guidelines for South Pacific Division*, or most recent update available at:  
<http://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences.aspx/>).
8. Information, in report form, concerning the practicability of on-site alternatives in accordance with 33 CFR Parts 325.1(e) and 323.6(a). The information must address compliance with U.S. Environmental Protection Agency's (USEPA's) Section 404(b)(1) Guidelines (404(b)(1) Guidelines) for Specification of Disposal Sites at 40 CFR Part 230. The report should include all applicable information for the District to determine whether an alternative meets the overall project purpose and is available, practicable (considering cost, existing technology, and logistics), would result in fewer adverse effects to the aquatic environment, or would have other significant adverse environmental consequences.
9. Documentation that a request for an individual section 401 WQC/CZM consistency concurrence was submitted to the appropriate certifying authority/State coastal zone agency, including the date of request. If a request for an individual section 401 WQC/CZM consistency concurrence has not been submitted, the project proponent must identify the date an individual section 401 WQC/CZM consistency concurrence is anticipated to be requested.

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10. For non-Federal permittees, if the activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places (collectively “historic properties”), the application must state which historic property(s) might have the potential to be affected by the proposed activity and include a vicinity map indicating the location of the historic property(s) relative to the proposed activity in waters of the U.S. so the District may determine the potential effect on historic properties and if necessary, consult with the State Historic Preservation Officer or Tribal Historic Preservation Officer (as appropriate) in accordance with Section 106 of the NHPA. Federal permittees must provide documentation demonstrating compliance with Section 106 of the NHPA.

11. For non-Federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the application must include:

- a. a description of the action to be considered;
- b. a description and map of the specific area that may be affected by the action;
- c. a description of any listed species or critical habitat that may be affected by the action;
- d. a description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects and a recommended determination of effect for each species and critical habitat; and,
- e. any other relevant available information on the action, the affected listed species, or critical habitat. Federal permittees must provide documentation demonstrating compliance with Section 7 of the ESA.

12. For non-Federal permittees, if the activity has the potential to adversely affect Essential Fish Habitat (EFH), as designated by the Pacific Fishery Management Council, the application must include an EFH assessment and analysis of effects of the action on EFH, in accordance with 50 CFR Part 600.920(e) so that the District may make a determination of effect on EFH and if necessary, consult with National Marine Fisheries Service in accordance with Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Federal permittees must provide documentation demonstrating compliance with the MSA.

13. For proposed activities where another Federal agency is the lead, the applicant must provide the District with the appropriate documentation to demonstrate compliance with all applicable federal laws, including Section 106 of the NHPA, Section 7 of the ESA, and/or Section 305(b)(2) of the MSA, and if available, documentation demonstrating compliance with

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the National Environmental Policy Act, such as a Categorical Exclusion, Environmental Assessment/Finding of No Significant Impact, or Environmental Impact Statement/Record of Decision.

14. A statement confirming if the proposed activity will require permission from the Corps pursuant to 33 U.S.C. 408 (Section 408) because it would (or “proposes to”) alter or temporarily or permanently occupy or use a Corps federally authorized Civil Works project. If yes, describe if a written request for Section 408 has been submitted. LOP decisions for activities that require Section 408 permission must be rendered concurrent with or following the final Section 408 permission decision and will be processed consistent with existing Corps policy (e.g., EC-1165-2-220), including the District’s procedures for integrating Regulatory and Section 408 programs, as applicable.

### **REVIEW AND DECISION:**

1. The District will review each application package to determine if it is complete within 15 calendar days of receipt. If the application is not complete, the District will notify the project proponent within 30 calendar days of the information that is missing.
2. When the District determines an application is complete, but the activity cannot be authorized by a LOP, the District will notify the project proponent within 15 calendar days of the determination with guidance on a potential alternate permit type (general permit or standard permit) and the application will be withdrawn.
3. If at any time during the process the District determines the activity does not meet the requirements for authorization under a LOP, the District will immediately notify the applicant, terminate the LOP process, and proceed to an alternate permitting process. Reasons for terminating the LOP process include the potential for the proposed activity to result in significant impacts on the human environment, non-compliance with USEPA’s 404(b)(1) Guidelines, public interest, appreciable opposition, or controversy.
4. If the application is determined complete and appears to meet the requirements for authorization under a LOP, the District will notify the applicant that the proposed activity is being evaluated for a LOP.
5. The District will notify the applicable state and federal resource and permitting agencies of the proposed application for a LOP by email and request comments within 15 calendar days of receipt of the email notice. The District may extend the comment period at the request of a reviewing agency due to extenuating circumstances, by no more than seven (7) calendar days. Concurrently, the District will initiate consultation(s) as necessary under Section 106 of the NHPA, Section 7 of the ESA, and/or Section 305(b)(2) of the MSA with the appropriate state and federal agencies and/or Tribal governments. Any concerns identified during the notification process with the state and federal review agencies and/or Tribal governments will be resolved before a decision on the LOP application is made.

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6. The District will notify the project proponent of any additional information needed to complete its evaluation, including sufficient information to initiate any required consultation(s) under Section 106 of the NHPA, Section 7 of the ESA, and/or Section 305(b)(2) of the MSA. If the project proponent does not respond to the request for additional information within 30 calendar days, the application will be withdrawn.
7. The project proponent must provide a copy of the Section 401 WQC, or waiver thereof, to the District to ensure the activity complies with CWA 401.
8. The project proponent must provide a copy of the individual state CZM consistency concurrence, or evidence of presumed concurrence, to the District to ensure the activity complies with the Coastal Zone Management Act.
9. The District will make a LOP decision within 30 days of completing any necessary consultation or, if no consultation is necessary, within 30 days of the end of the agency comment period. The decision will be based on whether the activity meets the terms of this procedure, complies with USEPA's 404(b)(1) Guidelines and with other applicable laws, and would not be contrary to the public interest. To ensure less than significant effects and compliance with applicable laws, the District may add special conditions to the LOP.

#### **CONTACTS AND ADDITIONAL INFORMATION:**

For questions, please contact the appropriate District office below.

U.S. Army Corps of Engineers  
Albuquerque District, Regulatory Division  
Office: (505) 342-3419  
Email: SPA-RD-NM@usace.army.mil  
Website: <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/>

U.S. Army Corps of Engineers  
Los Angeles District, Regulatory Division  
Office: (213) 452-3425  
Email: SPLPermitInquiries@usace.army.mil  
Website: <https://www.spl.usace.army.mil/Missions/Regulatory/>

U.S. Army Corps of Engineers  
Sacramento District, Regulatory Division  
Office: (916) 557-5150  
Email: SPKRegulatoryMailbox@usace.army.mil  
Website: <https://www.spk.usace.army.mil/Missions/Regulatory/>

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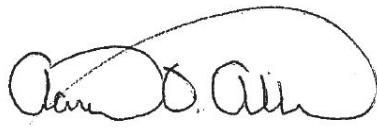
U.S. Army Corps of Engineers  
San Francisco District, Regulatory Division  
Office: (415) 503-6795  
Email: cespn-regulatory-info@usace.army.mil  
Website: <https://www.spn.usace.army.mil/Missions/Regulatory/>

**ATTACHMENTS:**

Regulatory District Office Map

This CWA 404 LOP procedure becomes effective when signed below.

 Date: 20 SEP 2024  
\_\_\_\_\_  
Kelly E. Allen  
Chief, Regulatory Division  
Albuquerque District

 Date: 20 SEP 2024  
\_\_\_\_\_  
Aaron O. Allen, Ph.D.  
Acting Chief, Regulatory Division  
Los Angeles District

 Date: 20 SEP 2024  
\_\_\_\_\_  
Michael S. Jewell  
Chief, Regulatory Division  
Sacramento District

 Date: 20 SEP 2024  
\_\_\_\_\_  
James C. Mazza  
Chief, Regulatory Division  
San Francisco District

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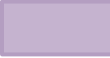

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# SPD District Office Locations & Areas of Responsibility

**Legend**

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	Albuquerque District		San Francisco District
	Los Angeles District		



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