



DEPARTMENT OF THE ARMY
WASHINGTON DC 20310

MEMORANDUM OF UNDERSTANDING
BETWEEN THE U.S. ARMY CORPS OF ENGINEERS
AND THE DEPARTMENT OF THE ARMY
FOR THE PURPOSE OF COORDINATING WETLAND PERMITTING
AND MITIGATION ON ARMY INSTALLATIONS/FACILITIES

I. INTRODUCTION

The purpose of this Memorandum of Understanding (MOU) between the U.S. Army Corps of Engineers (USACE) and the Department of the Army (DA) is to provide a framework for coordinating wetland and stream impacts requiring a permit under the Section 404 of the Clean Water Act (CWA) and/or Section 10 of the Rivers and Harbors Act. This MOU describes how this coordination will occur and it strongly encourages Army installations/facilities and USACE and District Engineers to develop permitting procedures in coordination with the U.S. Environmental Protection Agency (EPA), the U.S. Fish & Wildlife Service (FWS) and other appropriate agencies.

The responsibilities of EPA under CWA Section 404 include promulgating environmental guidelines per [404(b)(1) and the USACE implementing regulations at 33 CFR 323.6(a)] used in evaluating permit applications under Section 404(b)(1), and coordinating with USACE in the review of Section 404 permit applications. USACE and EPA share responsibilities for determining the geographic scope of CWA jurisdiction. FWS also coordinates with the USACE in the review of Section 404 permit applications. FWS's role in this program is established by the Fish and Wildlife Coordination Act (FWCA), the Endangered Species Act (ESA), and CWA Section 404 (m).

The USACE is responsible for making final permit decisions pursuant to Section 10 of the Rivers and Harbors Act and Section 404(a) of the Clean Water Act, including final determinations of compliance with the USACE permit regulations and the Section 404(b)(1) Guidelines.

The DA and USACE will work with the Department of Defense (DoD) and other Components, Tribes, states, EPA and FWS regional or field offices, to develop collaborative procedures that emphasize early and close interagency coordination, while maintaining applicable and independent jurisdictional roles. It is in the best interest of the government, public, and regulated communities to integrate regulatory programs into a single, coordinated process to avoid duplication of effort and information.

The DA and USACE enter into this agreement with the following goals, to the extent practicable and allowable by law, to:

- avoid and minimize adverse environmental impacts from military installation/ facility

activities as a result of the placement of dredged and/or fill materials in the waters of the U.S.;

- improve decision-making by making the permit process more transparent and available to the public, more predictable and understandable for the regulated community, and reliant on sound scientific information;
- more effectively evaluate natural and cultural resources to include: proactive identification and consideration of threatened and endangered (T&E) species, historic properties, cultural and archeological assets, wetlands, and potential mitigation issues and at the earliest possible stages of permit review;
- enhance communications through joint pre-permit application meetings;
- create a collaborative permitting review process with early, close coordination that results in concurrent reviews and in agency decisions that ensure compliance with all applicable Federal and state regulations, laws and guidance;
- improve the efficiency and effectiveness of permitting steps including timelines, clarity, and predictability in the permit decision-making process; and,
- improve decision-making under the respective programs and enhance communication among stakeholders and regulators.

II. SCOPE AND APPLICABILITY

1. The 2005 Defense Base Closure and Commission recommendations, Army Transformation, the Grow the Army initiative, and ongoing range modernization efforts require changes to various Army installations/facilities, including changes in existing facilities and/or expansion or change in mission. Work on Army installations/facilities to meet these requirements may affect waters of the U.S. and require authorization from the USACE pursuant to its authorities under Section 404 of the Clean Water Act and the Section 10 of the Rivers and Harbors Act.

2. To that end, Army installations/facility staffs should work closely with the regulatory staff of the appropriate USACE District as early as possible in the planning process to:

- identify high-value aquatic resources,
- design activities to avoid high-value aquatic resources to the maximum extent practicable, and
- understand current policy, guidance and regulations regarding compensatory mitigation.

3. In order to accomplish this, USACE Districts and Army installations/facilities should each identify points of contact to coordinate planning efforts. These efforts should include development of joint, local installation/facility plans for implementation to include, to the extent available, baseline aerial or satellite imagery, topographic maps, desktop wetland delineations with appropriate field level verification, and general installation/facility plans.

4. USACE Districts should help installations/facilities identify offsite mitigation options such as the presence of nearby mitigation banks and approved in-lieu fee programs as well as proposed ecosystem restoration projects. The USACE and Army installations/facilities will work together

to identify other mitigation opportunities such as those on other Federal lands and non-profit organization holdings.

5. DA will coordinate with USACE on major programmatic changes that may affect wetlands and waters of the United States, and USACE will coordinate with the office of the Assistant Secretary of the Army for Installations and Environment (ASA-I&E) and HQDA on policy changes that may affect the permitting process and compensatory mitigation.

SIGNATORIES:

 20 Nov 07
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