

Guidance for Submittals to the U.S. Army Corps of Engineers by Council Of Government Offices

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The purpose of this document is to provide the Council of Government (COG) offices with guidance to follow when preparing submittals for projects that are sent to the U.S. Army Corps of Engineers (Corps) for review and comment. The information discussed in this document will apply to most projects CBDG projects. It is recommended that the Corps be contacted for additional assistance prior to project submittal for those projects that may not follow the guidance provided. Please note that this document is subject to change and may be revised and updated as needed. Please refer to the date listed above for the latest version of this guidance.

I. Background Information About the Corps

The U.S. Army Corps of Engineers, through the Regulatory Program, administers and enforces Section 10 of the Rivers and Harbors Act of 1899 (RHA) and Section 404 of the Clean Water Act (CWA).

Section 10 of the RHA prohibits the **unauthorized** obstruction or alteration of any **navigable water of the U.S.** **unless you have a permit from the Corps of Engineers.** Navigable waters of the U.S. are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Section 404 of the CWA authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearing, for the **discharge of dredged or fill material into the waters of the U.S.** at specified disposal sites. (See 33 CFR Part 323.) Waters of the U.S. include but are not limited to all Navigable Waters of the U.S., tributaries, and wetlands adjacent to waters of the U.S.

In order to determine if wetlands or other waters are present within a project area and if these aquatic resources are regulated by the Corps under Section 10 of the RHA and/or Section 404 of the CWA, jurisdictional determinations of these aquatic resources must be made by the Corps. Certain activities that may be conducted in jurisdictional wetlands or other waters will require permits from the Corps.

For more information regarding the authorities of the Corps and the Corps permitting process, please visit the Charleston District website at:

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

II. Common Examples of Requests Submitted by COG Offices to the Corps

Below are common examples of the types of requests being made by COG offices to the Corps seeking comments, opinions, determinations, etc., on projects that may be funded by Community Development Block Grants (CDBG) administered by the South Carolina Department of Commerce.

- *“The purpose of this letter is to request, from your agency, an environmental review opinion as to whether the improvements specified below will have an adverse impact on the environment and/or is inconsistent with your agency’s current management plan.”*
- *“ The purpose of this letter is to request, from your agency, an environmental review opinion as to whether the improvements specified below will require a permit from your agency.”*
- *“This information is being provided pursuant to federal regulations to allow responsible agencies an opportunity to comment on proposed projects involving federal funds.”*
- *“In accordance with the procedures outlined in 24 CFR Part 58, _____ is soliciting written comments from the Regulatory Branch, Corps of Engineers, Charleston District, Department of Army. These comments should reference the applicability, if any, of environmental regulations concerning Wetlands Protection, or others you deem appropriate, over which the [Corps] has jurisdictional and a determination of any potential impacts. Your comments will be incorporated into the environmental assessment being conducted in accordance with 24 CFR Part 58. The County has made a preliminary determination that the project is categorically excluded from NEPA requirements. If based on your review, you determine that the project will have no significant impact on environmental regulations, particularly concerning Wetlands Protection, within your agency’s jurisdiction, please sign where indicated below retaining a copy for your files and return the original.....I/We of the Regulatory Branch, Corps of Engineers Charleston District, Department of Army have reviewed the information submitted by _____ County and herby conclude the following concerning the project’s impact on:*

- Agency regulations not applicable to this project
- No impact or potentially beneficial impact
- Consultation with this Agency is required, see attached comments
- Agency review of the project is required, see attached review
- Permits must be issued by this Agency, see attached;
- Determination of Consistency Approvals, Permits, must be obtained, see attached.
- Conditions and/or Mitigation Actions Required, see attached.

Signature of Authorized Official”

- A Jurisdictional Determination Request Form (Attached supplemental information varies with submittal

III. Types of Corps Responses and When They Should Be Requested

While the Corps must respond to all requests and/or projects submitted for review, the Corps is limited to the type of responses that can be provided based on the type of information typically provided by the COG offices for projects that are in the early planning stages. As discussed in Section I, the Corps regulates certain activities that occur in wetlands or other waters that are jurisdictional and regulated by Section 10 of the RHA and/or Section 404 of the CWA. Any comments provided by the Corps will be within the specific authorities of the Corps.

The examples of the common requests submitted to the Corps by the COG offices listed in Section II are essentially asking if jurisdictional wetlands are present and if permits from the Corps may be required. Therefore, in response to most of the COG requests for comments, opinions, determinations, etc, on projects, the Corps will typically provide one of the following types of response letters:

- “No Permit Required” Letters
- Jurisdictional Determination Letters

To assist with preparing submittals to the Corps, please read below regarding what “No Permit Required” Letters and Jurisdictional Determination letters are and when they should be specifically requested. Please note that the Corps will determine the most appropriate type of response regardless of what is specifically requested.

A. “No Permit Required” Letters

1. What are “No Permit Required” Letters?

“No Permit Required” letters are letters that can be provided by the Corps documenting that a specific project or activity does not require a permit by the Corps.

2. What are the two types of “No Permit Required” Letters?

a. Activity-Based “No Permit Required” Letter- The Activity- Based “No Permit Required” is a letter that can be provided by the Corps documenting that specific **activities** are not regulated by the Corps, regardless of whether the activities may or may not occur in wetlands or other waters.

b. Jurisdictional Determination (JD) –Based “No Permit Required” Letter- The JD-Based “No Permit Required” Letter is a letter that can be provided by the Corps documenting that a specific activity does not require a permit from the Corps only AFTER issuance of a jurisdictional determination by the Corps for the specific property or project area where the proposed activity will occur.

3. When should a “No Permit Required” Letter be requested?

a. A “No Permit Required” letter should be requested when the proposed activity is an activity that is not regulated by the Corps, regardless of whether the activity may or may not occur in wetlands or other waters.

Activities that generally do not require permits by the Corps are those activities that do NOT involve ground disturbance activities. Filling, land grading, trenching, digging, mechanized land clearing, etc. are all ground disturbance activities that may require a Corps permit.

b. A “No Permit Required” letter can also be requested for a specific project activity that would not require a permit if conducted in uplands or a non-jurisdictional wetland or other water AFTER issuance of a jurisdictional determination by the Corps. No activity requires a permit if conducted in uplands.

3. When should a “No Permit Required” letter NOT be requested?

a. If a determination is needed to identify whether wetlands or other waters are present on a property or within a project area;

b. If a determination is needed that indicates whether wetlands or other waters present are jurisdictional;

c. If a determination is needed to identify whether a project may impact wetlands or other waters;

d. If an activity would not be regulated because the activity would occur outside of wetlands or other waters (In this scenario, a jurisdictional determination would first have to be requested and a determination made by the Corps. A “No Permit Required” request could be submitted concurrently with the jurisdictional determination or after issuance of the jurisdictional determination. An example of this situation would be constructing a sidewalk in uplands. In order to determine if an area is an upland, a jurisdictional determination must first be made on that area. If the area in question is determined to be an upland, then constructing a sidewalk in that location would not require a permit from the Corps).

Refer to Section IV A. of this document for the information that will need to be included in the “No Permit Required” Letter request submitted to the Corps.

B. Jurisdictional Determinations

1. What is a Jurisdictional Determination (JD)?

A JD is a two step process of 1- identifying and locating wetlands and other waters on a site and marking their boundaries (referred to as a wetland delineation) and 2-determining whether those areas are regulated by the Corps under Section 404 of the Clean water Act and/or Section 10 of the Rivers and Harbors Act. In response to a JD request, the Corps can provide a JD letter that will include a statement indicating the presence or absence of wetlands or other waters, identifies the boundaries of wetlands or other waters that may be present, and if the wetlands or other waters are jurisdictional.

2. What are the types of Jurisdictional Determinations?

The Corps offers four different types of jurisdictional determinations that can be requested and they are as follows:

- **Accurate-Approved**
- **Approximate-Approved**
- **Accurate-Preliminary**
- **Approximate-Preliminary**

The “**Accurate**” and “**Approximate**” terminology refers to the **type of wetland delineation**. An “**Accurate**” wetland delineation means that the flags marking the boundaries of the wetlands and other waters are surveyed and shown on a plat. An “**Approximate**” wetland delineation means that the flags marking the boundaries of the wetlands and other waters are NOT surveyed but are instead approximated and shown on a sketch or other depiction.

The “**Approved**” and “**Preliminary**” terminology refers to the **type of jurisdictional determination**. An “**Approved**” jurisdictional determination means that the Corps will determine whether the wetlands or other waters on a site are jurisdictional and regulated by the Corps or are non-jurisdictional and non-regulated by the Corps. A “**Preliminary**” jurisdictional determination means that the Corps will presume that ALL wetlands and other waters on a site are jurisdictional and regulated by the Corps. “**Approved**” jurisdictional determinations may take a little longer than “**Preliminary**” jurisdictional determinations due to the additional investigation and paperwork that is required by the Corps.

3. When should a Jurisdictional Determination be requested?

- a. If a determination is needed to identify whether wetlands or other waters are present on a property or within a project area;
- b. If a determination is needed to that indicates whether wetlands or other waters present are jurisdictional;

c. If a determination is needed to identify whether a project may impact wetlands or other waters;

d. If a determination is needed indicating if a permit may be required by the Corps;

4. How long will it take to receive a Jurisdictional Determination from the Corps?

a. Requests that the Corps conduct the wetland delineation for a project may take up to **6 months or more** to complete due to Corps workload and staffing levels. Once the wetland delineation is completed, the JD can be issued. Please note that the Corps does NOT survey wetland boundaries. Therefore, unless the COG office has the wetland boundary that was flagged in the field by the Corps surveyed and provided on a plat, the JD will be an **Approximate JD**. The types of JDs that may be requested for Corps conducted wetland delineations are:

- **Approximate-Approved**
- **Approximate-Preliminary**

b. Wetland delineations conducted by environmental consultants that are submitted to the Corps are typically reviewed and JDs issued within **approximately 60-90 days** of receipt of complete submittals. The types of JDs that may be requested are:

- **Accurate-Approved**
- **Approximate-Approved**
- **Accurate-Preliminary**
- **Approximate-Preliminary**

5. What type of Jurisdictional Determination should be requested?

The type of wetland delineation and jurisdictional determination that may be requested and submitted is at the discretion of the COG office. Please note that the Corps does NOT survey wetland boundaries. Therefore, for wetland delineations conducted by the Corps, the JD will be an **Approximate JD** unless the COG office has the wetland boundary surveyed and provided on a plat. The type of JD can be changed at any time during the Corps' review and prior to issuance. At the request of the property owner/applicant, a previously issued JD can also be changed from one type to another type. An example would be having an original JD that was an "Approximate-Approved" but the wetland flags were later surveyed and an "Accurate-Approved" is then requested. While the decision as to what type of jurisdictional determination may be requested for a project is at the discretion of the COG office and/or property owner, the Corps can assist with making a decision as to which one will best fit the proposed project.

Refer to Section IV B. of this document for the information that will need to be included in jurisdictional determination requests submitted to the Corps.

IV. Information to Submit to the Corps with the Requests

A. “No Permit Required” Requests

The following information should be submitted to the Corps for “No Permit Required” requests. Please note that the Corps may determine that a jurisdictional determination will be required after review of the submitted information.

1. Name and contact information of applicant/property owner
2. Name and contact information for agent (COG office)
3. Written location of proposed activity
3. Location map with project location marked
3. Description of the proposed activity. The description should include enough detail so that the Corps can determine if the proposed activity is regulated. The description may include what equipment or materials will be used to conduct the activity, how the work will occur (construction techniques, sequencing etc.)

Example 1: The applicant proposes to cut down 5 trees on the property. The trees will be cut by hand using chainsaws and various other hand-held equipment. No heavy machinery or equipment will be used. The trees will be cut just above the roots and the stumps will remain in place. The removed trees will be hauled away once the work is completed and sold as firewood. No ground disturbance will occur.

Example2: The applicant proposes to re-paint the exterior of an existing building. The painting will occur by hand and ladders will be used to provide access. No heavy machinery or equipment will be used. No ground disturbance will occur.

B. Jurisdictional Determinations (JDs)

The following information should be submitted to the Corps for JD requests. Please note that incomplete submittals may cause a delay for issuance of JDs.

1. Jurisdictional Determination Request Form: A Jurisdictional Determination Request form is required for all jurisdictional determination requests. If you are requesting that the Corps conduct the wetland delineation, then you will only need to complete page 1 and provide the required information. If you hire an environmental consultant to conduct the wetland delineation, then the environmental consultant will provide the additional information required that is listed in the rest of the Jurisdictional Determination Request Form packet.

To ensure that your submittals are complete and to avoid delay, please follow the below guidelines when preparing your submittals:

- a. Please obtain the Jurisdictional Determination Request Form directly from the Corps website as the form may be revised by the Corps as needed. The latest version of the Jurisdictional

Determination Request Form can be found at <http://www.sac.usace.army.mil/Missions/Regulatory/PermittingProcess>.

b. On the Jurisdictional Determination Request Form, the “Property Owner” box refers to the current legal property owner. The property owner’s name and contact information MUST be provided and the Corps MUST have the permission of the property owner to conduct a jurisdictional determination on their property. This requirement also pertains to right-of-ways or easements that are owned by the South Carolina Department of Transportation, a county, entity, etc. The Corps must have the permission of the right-of-way/easement owner. The property owner permission requirement applies to BOTH wetland delineations conducted by the Corps AND wetland delineations conducted by an environmental consultant and reviewed by the Corps.

Corps personnel will NOT enter ANY property WITHOUT written permission from the property owner(s).

For projects occurring in SCDOT owned right-of-ways or easements, please contact the appropriate SCDOT office found listed in the below websites prior to submitting a jurisdictional determination request to the Corps:

Resident Maintenance Engineer by District
http://www.scdot.org/inside/employment/dist_contacts.aspx

Resident Maintenance Engineer by County
http://www.scdot.org/inside/engineering_directory.aspx

c. If the project crosses multiple properties and there is no right-of-way/easement owner, then one of the following must be provided:

i. Multiple Jurisdictional Determination Request Forms with the name, address and signature of EACH property owner, with the COG office listed as the agent. The COG office may sign the form on behalf of the property owner as long as they have been given the authority to do so. A Jurisdictional Determination Request Form for EACH property that is part of the project area will be required.

OR

ii. The COG office may obtain a letter from EACH property owner that includes their name, address, signature, and statement that they are giving the Corps permission to conduct a wetland delineation on their property. The letters MUST be provided to the Corps along with the Jurisdictional determination Request Form.

2. Location Map: A map that shows the project location is required. If the project is a linear type project, then the entire project alignment should be shown. Please note that the location map should only be used as a location map and not used to identify the project boundaries. Road names should be included on the location map.

3. Plat, Tax Parcel Map, or other depiction with GPS coordinates: In order for the Corps to make a jurisdictional determination, the EXACT project/property boundary must be provided with the submittal. This requirement is necessary to clearly identify the area that is being reviewed by the Corps and also gives the ability to re-locate or reproduce the exact project area in the future.

There are three depiction options that may be used to show the project/property boundary that is under review:

a. Plat: The project/property boundary may be provided on a plat that is prepared by a registered land surveyor.

b. Tax Parcel Map: A Tax Parcel Map may be used to show a project/property boundary if the project area includes the entire parcel. If a project area includes only a section of a larger parcel, then a Tax Parcel Map cannot be used. Tax Parcel Maps may be used for project areas that include all of multiple parcels. Tax Parcel Maps may be obtained from the website of the subject county if available.

c. Depiction with GPS Coordinates: If a survey plat or tax parcel map is not available for a project area, a depiction that shows the property/project area boundary with corresponding GPS coordinates may be provided. The coordinates must also be provided.

4. Additional Information: Additional information such as site photos, soil survey information, National Wetland Inventory mapping information, etc. may be provided but are not required if the Corps is conducting the wetland delineation and jurisdictional determination.

V: List of Typical CDBG Activities and Type of Request that May Be Required

Below is a list of typical CDBG Activities. The Corps has identified whether No Permit Required Letters (NPR) or Jurisdictional Determination (JD) will likely be required for these typical activities. This list should be used for preparing submittals but does not indicate official Corps determinations as to whether an activity qualifies for an NPR. After review of submittals, the Corps may determine that a jurisdictional determination will be needed. All JDs will require a wetland delineation conducted by the Corps or by an environmental consultant.

Please note that certain activities conducted in jurisdictional wetlands or other waters will require permits from the Corps and permit applications should be submitted as appropriate.

a. Purchase of fire trucks- NPR

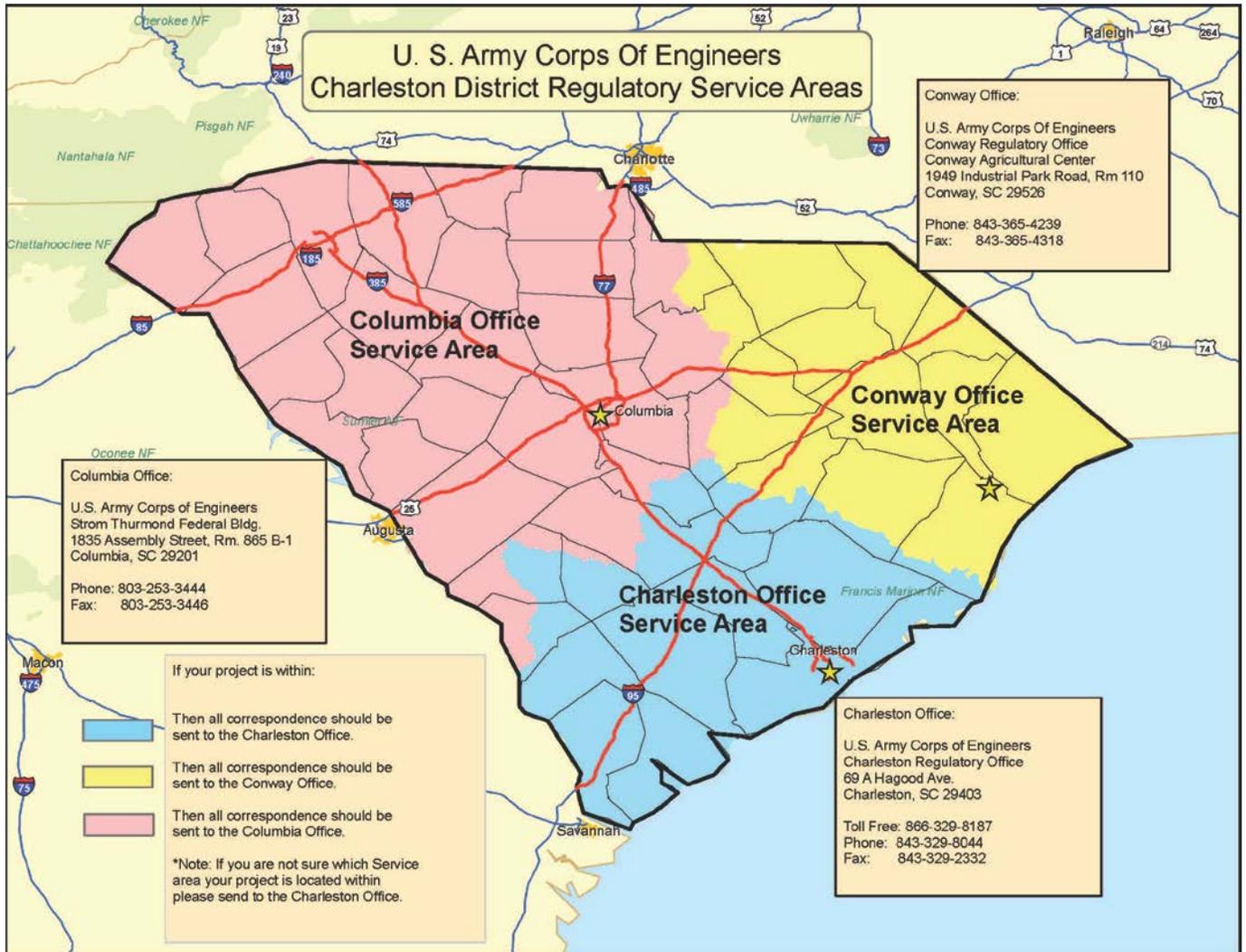
b. Purchase of machinery/equipment in a building with no change in the footprint- NPR

c. Renovation of existing buildings without expansion of the footprint- NPR

- d. Purchase of existing buildings, with no new construction –**NPR**
- e. Exterior housing rehabilitation with no increase footprint (never stand alone, always with other activities)- Possibly **NPR** depending on what “other activities” are involved. If other activities may include any ground disturbance outside of existing footprint, a **JD** request should be submitted.
- f. Renovation of existing buildings with no expansion of footprint- **NPR**
- g. Demolition of blighted residential buildings (grading and seeding after, no new construction)- **JD** because work involves ground disturbance (grading).
- h. Demolition of blighted industrial or commercial buildings (grading and seeding after, no new construction)- **JD** because work involves ground disturbance (grading).
- i. Clean-up and removal of debris in existing brownfields (grading and seeding after, no new construction) - **JD**
- j. Remove and replace water/sewer pipe- **JD**
- k. Install new water/sewer pipe adjacent to existing pipe- **JD**
- l. Slip lining, Pipe bursting, Cured in place pipe (CIPP)- **NPR** or **JD** if ground disturbance will occur
- m. Upgrades to existing pump stations- **NPR** if work is confined to pump station footprint, **JD** if work will occur outside of footprint.
- n. Streetscape projects upgrading existing facilities- **JD**
- o. Reconstruction of existing sidewalks, curbs and gutters- **JD**
- p. Repaving of streets- **NPR** if repaving within footprint of existing paved road, **JD** if outside of footprint of existing paved road.
- q. Installation of ramps for accessibility- **NPR** if ramp being built within footprint of an existing structure or fill, such as on a paved sidewalk. **JD** if outside of a footprint of an existing structure or fill.
- r. New Streetlights- **NPR** if street light is being built within footprint of an existing structure or fill, such as on a paved sidewalk or road. **JD** if outside of a footprint of an existing structure or fill.
- s. New security cameras- **NPR** if cameras are being added inside of a building, attached to an existing structure, or within footprint of an existing fill, such as on a paved sidewalk or road. **JD** if outside of a footprint of an existing structure or fill.
- t. Associated landscaping, typically within ROW- **JD**
- u. Construction of new buildings- **JD**
- v. Renovation of existing building with expansion of footprint- **JD**

- w. Installation of new water and sewer lines- **JD**
- x. Construction of new water and sewer plants- **JD**
- y. Installation of new pump stations- **JD**
- z. New water tanks- **JD**
- aa. New drainage facilities- **JD**
- bb. New sidewalks- **JD**

VI. Corps Contact Information and Field Offices



Charleston District Regulatory Division Website- Information for COG Offices:

<http://www.sac.usace.army.mil/Missions/Regulatory/PermittingProcess>

Under heading "Information for COG Offices"