

U.S. ARMY CORPS OF ENGINEERS REGULATORY PROGRAM

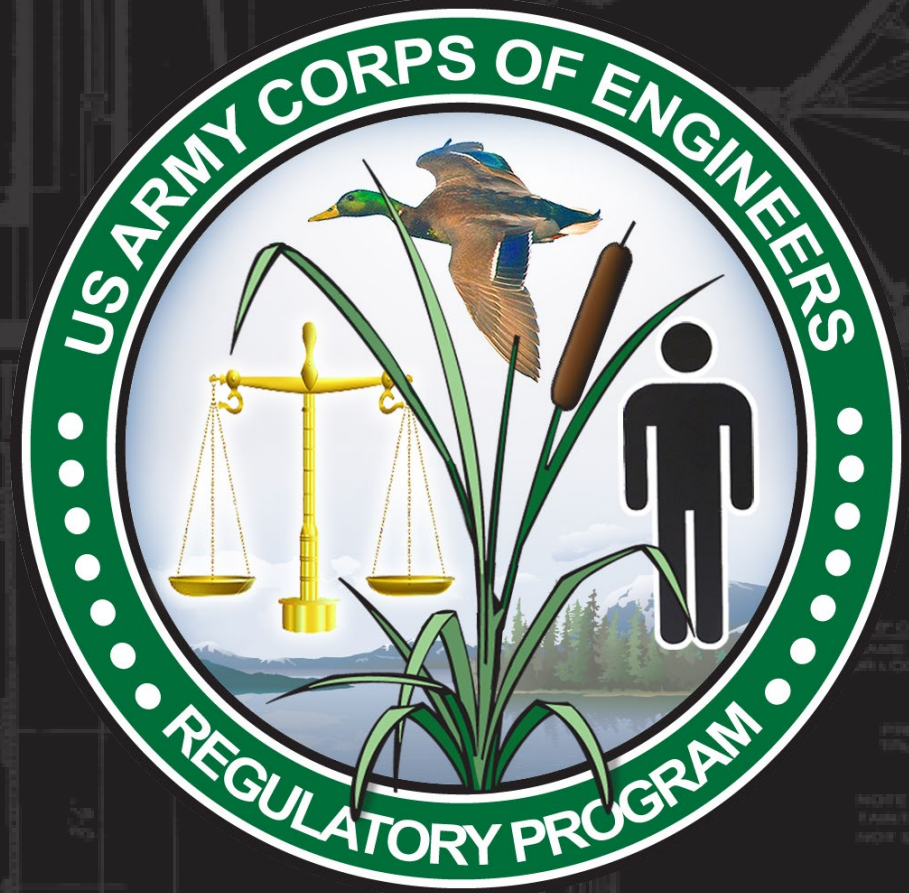
Sarah Atherton

Project Manager, South Branch

Regulatory Division

USACE, Louisville District

September 2024



US Army Corps
of Engineers®

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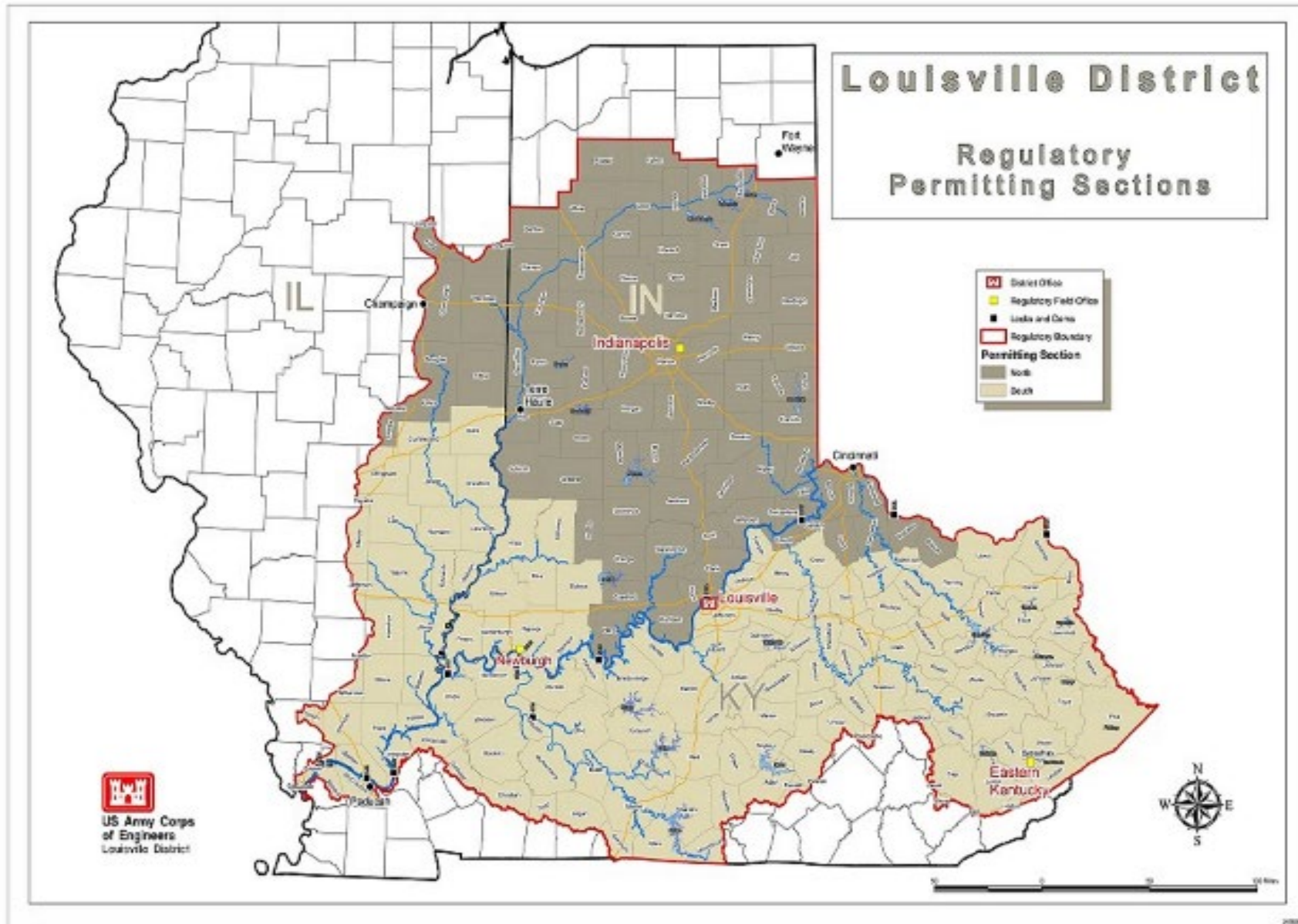
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The Corps of Engineers has 4 Districts in the State of Kentucky.

The Louisville District covers the majority of Kentucky.

Other Districts include Nashville District, Huntington District, and Memphis District





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FEDERAL PERMITTING

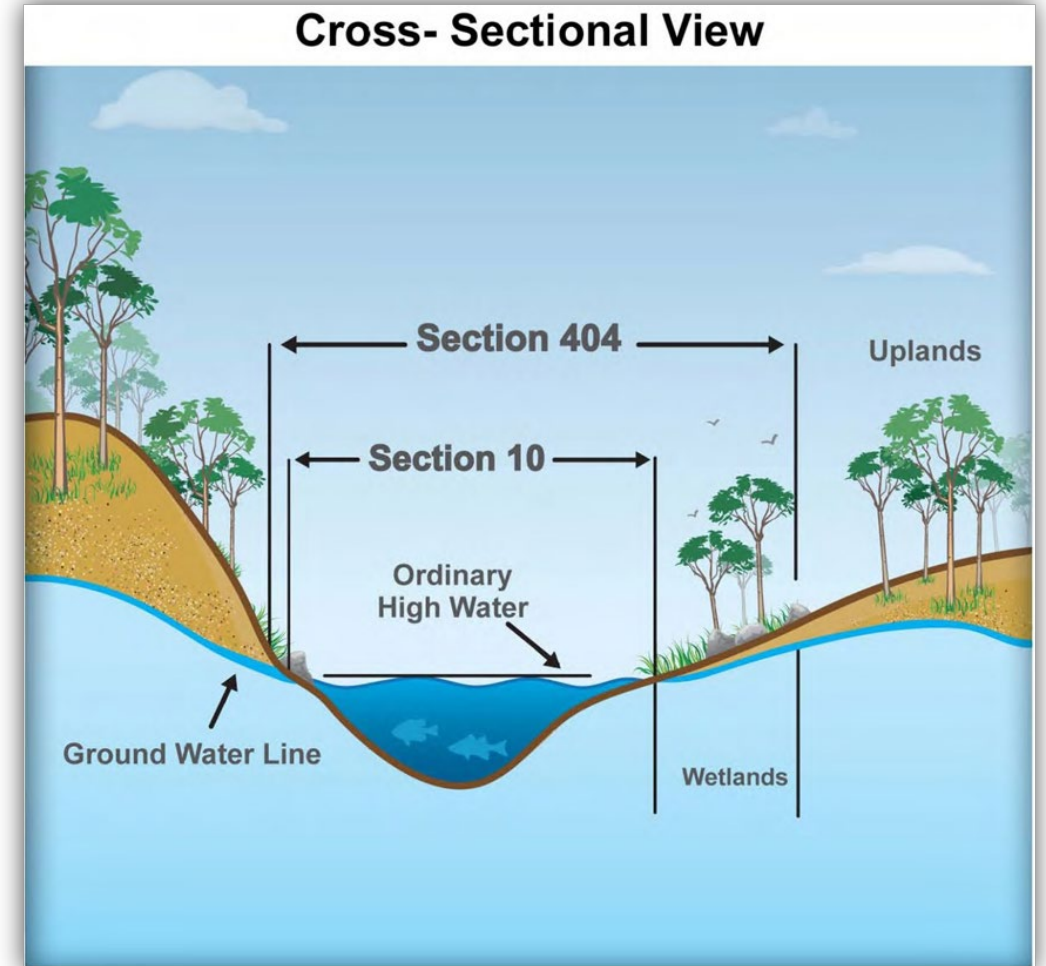
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The Regulatory Program's authority is delegated to the U.S. Army Corps of Engineers (Corps) directly from the U.S. Congress.

Two Sections of Law:

- Section 10 of the River and Harbors Act of 1899 ("Section 10")
- Section 404 of the Clean Water Act ("Section 404")





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REGULATORY PROGRAM GOALS

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Protect the Nation's aquatic resources while allowing reasonable development

Ensure fair, flexible, balanced, and timely decisions





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SECTION 10 OF THE RIVERS AND HARBORS ACT OF 1899

Structure or work in, under, or over a “traditionally navigable water” (TNW).
Structure or work: Utility lines, outfalls, marinas, boat docks, dredging, etc.

Ohio River, Green River, Salt River, Licking River, etc.





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SECTION 404 OF THE CLEAN WATER ACT

Regulates the **discharge** of dredged or fill material into “waters of the U.S.” (WOUS), including adjacent wetlands

“**Dredged material**” is material excavated or dredged from WOUS, such as sediment, soil and rock, etc.

Ordinary High Water Mark (OHWM)





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SECTION 404 OF THE CLEAN WATER ACT

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Fill material is an “effect based” definition: where the material has the effect of 1) replacing the any portion of a WOUS with dry land, or 2) changing the bottom elevation of a WOUS.

Ex: Rock, sand, soil, concrete, riprap, gabions, fords, dams, berms, rock veins, weirs, etc





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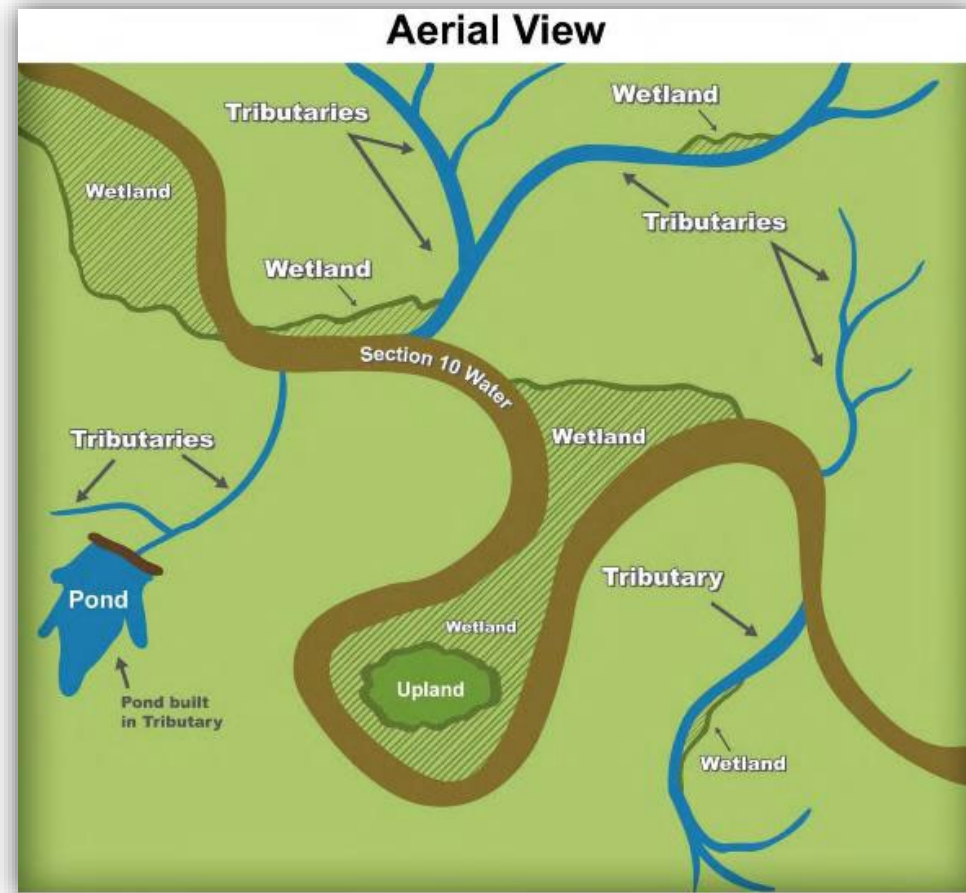
WATERS OF THE UNITED STATES (WOUS)

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Jurisdictional vs Non-Jurisdictional WOUS

- Multiple regulatory changes over the last 4 years to try to better classify “WOUS”
- Each project must be reviewed on a case-by-case basis
- A Preliminary Jurisdictional Determination may be advantageous when time is a consideration.
 - Most impacts are temporary for utility projects and are below mitigation thresholds.





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WETLANDS

1987 Wetland Delineation Manual

Regional Supplements (2 in Kentucky)

- Eastern Mountains and Piedmont Region
- Atlantic and Gulf Coastal Plain

- Soils
- Vegetation
- Hydrology*

*Wetlands do not always have standing water!



WETLANDS

These are examples of emergent wetlands. They usually will contain sedges, rushes, cattails, etc.





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WETLANDS

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**This is an
example of a mix
of emergent and
scrub-shrub
wetlands.**



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WETLANDS

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These are examples of forested wetlands.

TYPES OF STREAMS

Relatively
Permanent
Flow

Perennial Stream – Water flowing year-round under normal conditions.

Intermittent Stream – Water flowing during certain times of the year.

Non-
Relatively
Permanent
Flow

Ephemeral Stream – Water flowing only for short duration after precipitation events.

STREAMS

PERENNIAL STREAMS



STREAMS

INTERMITTENT STREAMS





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STREAMS

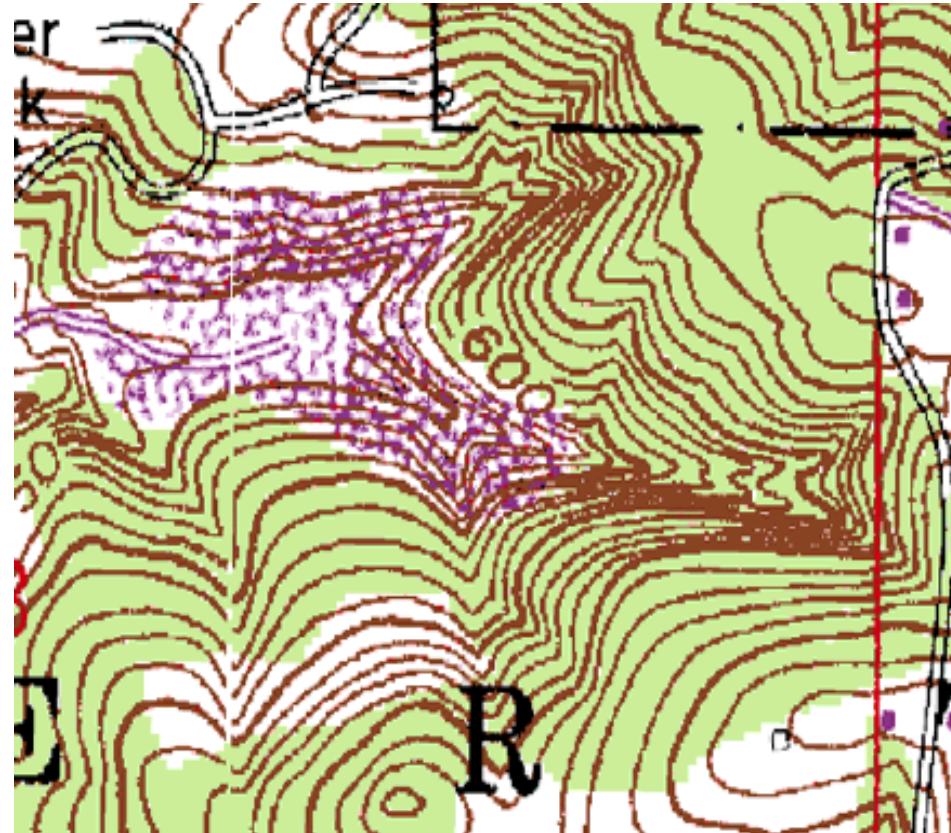
EPHEMERAL STREAMS

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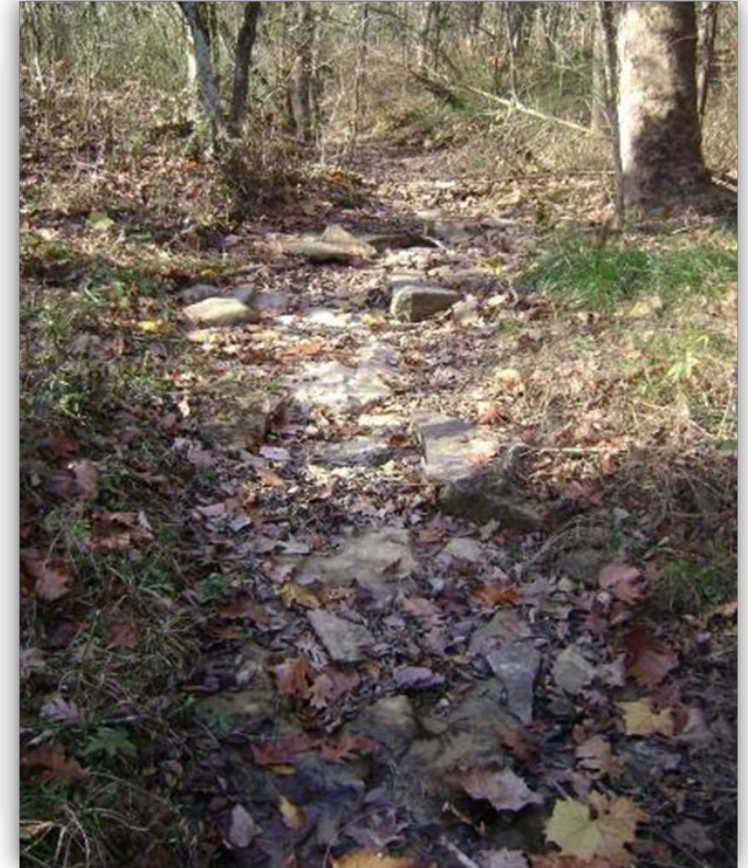
Ephemeral streams do not show up as any type of blue-line on USGS quadrangle maps

Specific topographic lines on a quadrangle map are indicative of the possible presence of an ephemeral stream-determined by a site visit



STREAMS

EPHEMERAL STREAMS





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STREAMS

EPHEMERAL STREAMS

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EXAMPLES OF ACTIVITIES THAT MAY NEED A CORPS PERMIT

- Bank stabilization
 - Stream restoration structures
 - Culverts
 - Re-routing of a stream
 - Tiling/draining a wetland
 - Dredging
 - Mechanized land-clearing
 - Channelization of a stream
 - Roads
 - **Utility lines**
 - Residential construction projects
 - Commercial construction projects
 - Boat ramps
 - Boat docks
 - Marinas
 - Barge facility
- *These are some examples and are not limited to these activities



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PROJECT DESIGN

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1. Determine Location of Waters on Site
2. Assess Potential Impacts to Waters
 - Avoid Impacts
 - Minimize Impacts
 - Mitigate Impacts which cannot be avoided
3. Apply for Authorization when design plans and impacts are known



TYPES OF PERMITS

Standard Permits

Individual Permits (IPs)

- Full Public Interest Review
- Alternatives Analysis - Section 404(b)(1) Guidelines
 - Least Environmentally Damaging Practical Alternative (LEDPA)
 - Special Aquatic Sites – presumption that there is upland alternative
- Agency Coordination
- Typical issuance in 120 days (for non-controversial projects)
- Mitigation is usually involved and compensates for impacts; i.e., replaces the lost wetland, enhancements to the impacted stream, etc.



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TYPES OF PERMITS

Standard Permits

Letters of Permission (LOPs)

- Abbreviated Processing Procedure
- Non-Controversial
- Agency Coordination
- Typical issuance < 120 days
- Mitigation not applicable to this permit type



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TYPES OF PERMITS

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General Permits

- Minimal Aquatic Impacts (<1/2 acre)
- Activity-Specific
- Nationwide Permits (NWP)
- May or may not require a preconstruction notification.
- Verifications are typically issued within 45 to 60 days of receipt of a complete application.
- Free!



NATIONWIDE PERMITS (NWP)



- NWP# 3 – Maintenance
- NWP# 57 – Electric Utility Line and Telecommunications Activities



2021 Nationwide Permit Summary

US Army Corps
of Engineers
Louisville District ®

Issued: March 15, 2021

Expires: March 14, 2026



MITIGATION



“Single and Complete”

If any single crossing would result in permanent impacts greater than 0.03 acre of stream or 0.10 acre of wetland, compensatory mitigation would be required.

Mitigation requirements will be discussed during permit application review.



APPLICABLE NATIONWIDE PERMITS



NWP# 3 - Maintenance

- Repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill
- Allows for temporary structures, fills, and work, including the use of temporary mats to conduct the maintenance activity

NWP# 57 – Electric Utility Line and Telecommunications Activities

- Activities required for the construction, maintenance, repair, and removal of electric utility lines, telecommunication lines, and associated facilities
- Each crossing is “single and complete”



TYPES OF IMPACTS – SECTION 404



Temporary*

- Open trench installation of lines
- Timber matting
- Temporary stream crossings

Permanent

- Permanent access roads
- Conversion of forested wetland to scrub shrub/emergent wetland
- Permanent attendant features

*must be returned to preconstruction contours and elevation when construction is complete



TYPES OF IMPACTS – SECTION 10



- Any structure or work in, over, under, or affecting the course, location, or condition of any navigable water of the United States requires authorization.





ACTIVITIES THAT WOULD NOT REQUIRE A PERMIT



Projects that would not require the discharge of fill material into WOUS and projects that would not be constructed in, over, or under a Section 10 water.

- Directional boring (non-section 10)
- Clear Span Crossings
- Tree Clearing by hand in wetland areas





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OTHER FEDERAL LAWS

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- Section 401 of the Clean Water Act
 - Energy and Environment Cabinet, Department for Environmental Protection, Kentucky Division of Water
- Section 7 of the Endangered Species Act
 - U.S. Fish and Wildlife Service
- Section 106 of the National Historic Preservation Act
 - Kentucky Heritage Council (State Historic Preservation Office)
- Section 408 of the Rivers and Harbors Act 1899
 - Army Corps of Engineers Civil Works

The Corps initiates and facilitates the coordination with other state and federal agencies



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OTHER FEDERAL LAWS - SECTION 401

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Coordination with the Kentucky Division of Water

- A federal agency may not issue a license or permit to conduct any activity that may result in any discharge into “water of the United States” unless the Certifying Authority affirms that the discharge would not violate state water quality standards.
- General Certification of the NWP
- Individual Water Quality Certification
- Waiver
- Denial





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OTHER FEDERAL LAWS - SECTION 7

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Coordination with the U.S. Fish and Wildlife Service

- Requires the federal agencies to ensure their activities are not likely to jeopardize the continued existence of federally listed species or destroy or adversely modify designated critical habitat.
 - Mussels, bats, plants, insects, birds, etc.
- Information for Planning and Consultation (IPAC) - <https://ipac.ecosphere.fws.gov/>
 - Official Species List





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OTHER FEDERAL LAWS - SECTION 106

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Coordination the Kentucky Heritage Council (KHC)/State Historic Preservation Officer

- Requires federal agencies to consider the effects of their actions on historic properties.
 - Archaeological Sites, Historic Properties, bridges, etc.





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ENG FORM 6082 – PRECONSTRUCTION NOTIFICATION

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U.S. Army Corps of Engineers (USACE) NATIONWIDE PERMIT PRE-CONSTRUCTION NOTIFICATION (PCN) 33 CFR 330. The proponent agency is CECW-CO-R.		Form Approved - OMB No. 0710-0003 Expires: 02-28-2022	
DATA REQUIRED BY THE PRIVACY ACT OF 1974			
Authority	Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Regulatory Programs of the Corps of Engineers; Final Rule 33 CFR 320-332.		
Principal Purpose	Information provided on this form will be used in evaluating the nationwide permit pre-construction notification.		
Routine Uses	This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public and may be made available as part of the agency coordination process.		
Disclosure	Submission of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued.		
The public reporting burden for this collection of information, 0710-0003, is estimated to average 11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil . Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.			
PLEASE DO NOT RETURN YOUR RESPONSE TO THE ABOVE EMAIL.			
One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and/or instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.			
(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)			
1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETE
(ITEMS BELOW TO BE FILLED BY APPLICANT)			
5. APPLICANT'S NAME First - Middle - Last - Company - Company Title - E-mail Address -		8. AUTHORIZED AGENT'S NAME AND TITLE (agent is not required) First - Middle - Last - Company - E-mail Address -	
6. APPLICANT'S ADDRESS: Address - City - State - Zip - Country -		9. AGENT'S ADDRESS: Address - City - State - Zip - Country -	
7. APPLICANT'S PHONE NOS. with AREA CODE a. Residence b. Business c. Fax d. Mobile		10. AGENT'S PHONE NOS. with AREA CODE a. Residence b. Business c. Fax d. Mobile	
STATEMENT OF AUTHORIZATION I, _____, to act in my behalf as my agent in the processing of this this nationwide permit pre-construction notification and to furnish, upon request, supplemental information in support of this nationwide permit pre-construction notification. SIGNATURE OF APPLICANT DATE			
NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY			
12. PROJECT NAME or TITLE (see instructions)			

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PREVIOUS EDITIONS ARE OBSOLETE.

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NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY	
13. NAME OF WATERBODY, IF KNOWN (if applicable)	14. PROPOSED ACTIVITY STREET ADDRESS (if applicable)
15. LOCATION OF PROPOSED ACTIVITY (see instructions) Latitude "N Longitude "W	City: State: Zip:
16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions) State Tax Parcel ID Municipality Section Township Range	
17. DIRECTIONS TO THE SITE.	
18. IDENTIFY THE SPECIFIC NATIONWIDE PERMIT(S) YOU PROPOSE TO USE:	
19. DESCRIPTION OF PROPOSED NATIONWIDE PERMIT ACTIVITY (see instructions)	
20. DESCRIPTION OF PROPOSED MITIGATION MEASURES (see instructions)	
21. PURPOSE OF NATIONWIDE PERMIT ACTIVITY (Describe the reason or purpose of the project, see instructions)	
22. Quantity of Wetlands, Streams, or Other Types of Waters Directly Affected by Proposed Nationwide Permit Activity (see instructions) Acres Linear Feet Cubic Yards Dredged or Discharged	
Each PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site.	
23. List any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project on any related activity (see instructions)	
24. If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and requires pre-construction notification, explain how the compensatory mitigation requirement in paragraph (c) of general condition 23 will be satisfied, or explain why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required for the proposed activity.	

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25. Is Any Portion of the Nationwide Permit Activity Already Complete? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, describe the completed work:
26. List the name(s) of any species listed as endangered or threatened under the Endangered Species Act that might be affected by the proposed NWP activity or utilize the designated critical habitat that might be affected by the proposed NWP activity. (see instructions)
27. List any historic properties that have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic property or properties. (see instructions)
28. For a proposed NWP activity that will 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, identify the Wild and Scenic River or the "study river":
29. If the proposed NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, have you submitted a written request for section 408 permission from the Corps district having jurisdiction over that project? <input type="checkbox"/> Yes <input type="checkbox"/> No If "yes", please provide the date your request was submitted to the Corps District: _____
30. If the terms of the NWP(s) you want to use require additional information to be included in the PCN, please include that information in this space or provide it on an additional sheet of paper marked Block 30. (see instructions)
31. Pre-construction notification is hereby made for one or more nationwide permit(s) to authorize the work described in this notification. I certify that this information in this pre-construction notification is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant. SIGNATURE OF APPLICANT DATE SIGNATURE OF AGENT DATE
The Pre-Construction Notification must be signed by the person who desires to undertake the proposed activity (applicant) and, if the statement in block 11 has been filled out and signed, the authorized agent.
18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

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EXAMPLE IMPACT TABLE

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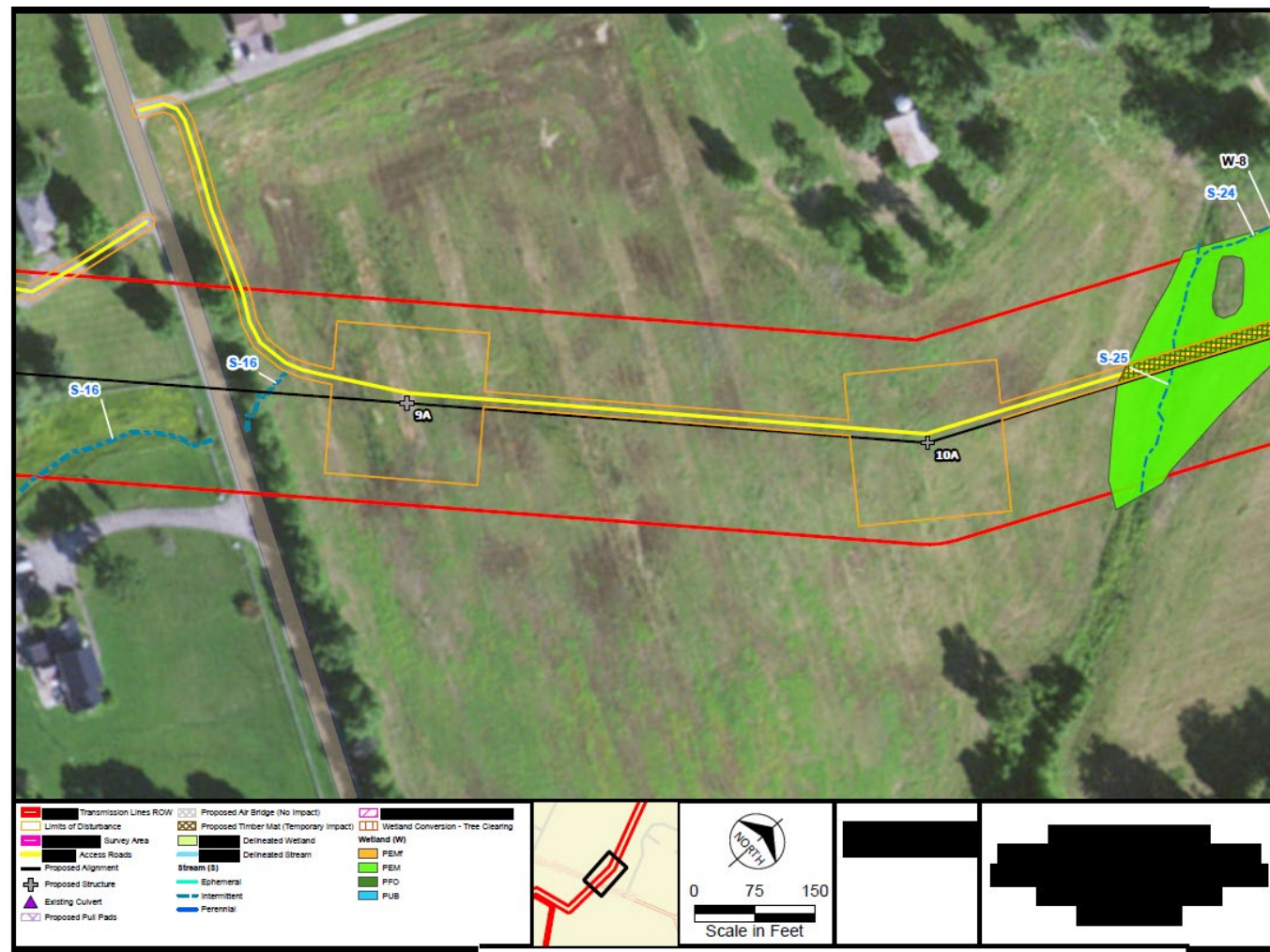
Crossing Number	Water Name	Type	Temporary Impact (lf/ac)	Permanent Impact (ac)	Description of Disturbance	Coordinates
1	S-AA	Ephemeral	15/0.003	--	Temporary timber mat	
2	S-AB	Ephemeral	16/0.005	--	Temporary timber mat	
3	S-8	Ephemeral	15/0.001	--	Temporary timber mat	
4	S-9	Ephemeral	16/0.003	--	Temporary timber mat	
5	S-11	Perennial	15/0.004	--	Open Trench Crossing	
6	S-12	Intermittent	127/0.006	--	Temporary timber mat	
7	S-25	Intermittent	16/0.001	--	Temporary timber mat	
	W-8	PEM	0.07	--	Temporary timber mat	
8	S-23	Intermittent	15/0.001	--	Open Trench Crossing	
9	W-6	PEM	0.035	--	Temporary timber mat	
10	S-18	Ephemeral	15/0.001	--	Temporary timber mat	
	W-3	PEM	0.092	--	Temporary timber mat	
11	W-2	PFO		0.185	W-2 will be converted from a PFO to a PEM.	
	W-2	PFO	0.016	--	Temporary timber mat	



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EXAMPLE PROJECT MAPS

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HOW TO SUBMIT REQUESTS ELECTRONICALLY



- Regulatory Request System (RRS) - <https://rrs.usace.army.mil/rrs>
- Via email: CELRL.Door.To.The.Corps@usace.army.mil

The screenshot shows the homepage of the Regulatory Request System (RRS). At the top left is the RRS logo, which includes a red castle icon and the text "RRS REGULATORY REQUEST SYSTEM". To the right of the logo are links for "Home" and "Help", and a blue "Sign In" button. Below the logo, a message states: "The Regulatory Request System (RRS) is currently operating as a beta version [Learn More](#)". The main heading is "Welcome to the Regulatory Request System", followed by the subtext "Apply Online • Learn about the Regulatory Program • Track Request Status". A blue "Get Started" button is centered below this text. The page features eight white cards arranged in a 2x4 grid, each with a circular icon and a title. The cards are: 1. "Regulatory Program Information" (scales icon) with the description "Learn the basics about the Regulatory Program, including recent announcements." 2. "Jurisdiction" (green circle with a white path icon) with the description "Does the property in question contain wetlands/waters? If so, does the USACE have jurisdiction?" 3. "Permitting" (green circle with a white document icon) with the description "Do you need a permit? Need to schedule a pre-application meeting?" 4. "Mitigation" (teal circle with a white plant icon) with the description "Discover how we help avoid and minimize impacts to aquatic resources." 5. "Report Violations" (blue circle with a white megaphone icon) with the description "Submit a report of unauthorized activity or permit non-compliance." 6. "RRS Support" (dark blue circle with a white "RRS" text icon) with the description "Get general system support, district contact information, submit feedback, and". 7. "Public Notices" (blue circle with a white globe icon) with a yellow banner that says "UNDER CONSTRUCTION" and the description "Visit the HQ Regulatory website to find". 8. "Apply for a Permit" (purple circle with a white arrow icon) with the description "If you're ready to apply for a permit, click here to login or start a new request".



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QUESTIONS?

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Contact Information

Sarah Atherton

U.S. Army Corps of Engineers

CELRL-RDS

P.O. Box 59

Louisville, KY 40201-0059

(502) 315-6711

Sarah.E.Atherton@usace.army.mil



More info on the web:

<https://www.lrd.usace.army.mil/Wetlands-Permits/Kentucky/>