



Public Notice

US Army Corps
of Engineers

Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Number: 199450235

Date: December 7, 2006

Comments Due: January 8, 2007

SUBJECT: The U.S. Army Corps of Engineers, Sacramento District, (Corps) and the Utah Division of Water Quality are evaluating the re-issuance of General Permit 47 (GP 47) which authorizes the discharge of dredged or fill material into waters of the U.S. in support of the Logan Special Area Management Plan (Logan SAMP). In 1995, and upon completion of the Logan SAMP, the Utah Regulatory Office issued GP 47. Such general permits typically expire after 5 years to provide opportunity for review and verification that the programmatic verifications have not resulted in more than minimal individual and cumulative impacts.

The Corps issued a public notice concerning the reissuance of GP 47 on March 21, 2006. The purpose of this Public Notice is to inform interested parties of changes made to the proposal since the March 2006 Public Notice and to solicit comments. To provide context for review, a copy of the original Logan SAMP Document (dated March 1994) and the associated GP 47 is attached. Within the notice itself, the Utah Regulatory Office will provide interested parties with the proposed changes to GP 47, as well as supporting information regarding projects authorized under GP 47 since 1995.

This notice may be viewed at the Corps Regulatory web site at
<http://www.spk.usace.army.mil/regulatory.html>.

AUTHORITY: The proposed GP 47 re-issuance is being evaluated under Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States and under Section 401 for water quality certification.

APPLICANT: Logan City
Issa Hamud
450 North 1000 West
Logan, Utah 84321

LOCATION: The SAMP boundaries exist within an 1024-acre, one-half mile-wide corridor centered on 1000 West between 300 South and 1800 North in Logan City (see attached map). The site encompasses areas of Sections 20, 29, and 32 of Township 12 North, Range 1 East, Cache County, Utah. It also encompasses a portion of Section 5, Township 11 North, Range 1 East. These areas may be referenced from the Smithfield and Logan USGS Topographic Quadrangles.

The City Mitigation site, referenced in the SAMP document and GP 47, is located on approximately 153 acres located within Section 5 of Township 11 North, Range 1 East and Section 32 of Township 12 North, Range 1 East (see attached map) in Cache County, Utah.

BACKGROUND:

The Corps defines the Special Area Management Plan process as a "comprehensive plan providing for natural resource protection and reasonable economic growth containing a detailed and comprehensive

statement of policies, standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in specific geographic areas". The two main goals of the SAMP process according to the Corps are to establish an aquatic resource reserve program and to minimize individual and cumulative impacts of future projects. Typically, the authors of a SAMP determine where, within SAMP boundaries, wetland impacts could be programmatically verified under a General Permit, and where wetlands should be protected. This determination is normally based on analysis of functional values. If it concurs in the SAMP determination, the Corps may authorize the use of a Regional General Permit and apply special conditions to ensure that the resulting impacts will not result in more than minimal individual or cumulative impacts to the aquatic environment.

The City of Logan developed a SAMP for the 10th West Industrial Corridor and the Utah Regulatory Office issued General Permit 47 in support of that SAMP. Both have been in effect since 1995. The attached SAMP document provides the following information for reference:

- Objectives of the Special Area Management Plan;
- Delineation of Jurisdictional wetlands;
- Wetland Functional Assessment;
- Wetlands determined unsuitable for discharge of fill;
- Wetlands not designated as unsuitable for discharge of fill;
- Total potential wetland impacts within 1000 West corridor;
- Consequences of wetland designation;
- Wetland Mitigation Plan;
- Monitoring for wetland establishment success;
- Maintenance and use of the mitigation wetlands; and,
- Mitigation debits and credits.

The attached expired General Permit 47 provides the criteria under which a project must fit in order to qualify for GP 47.

Authorized Discharges: Since 1995, the City of Logan (City) and the Utah Regulatory Office (URO) have utilized GP 47 to authorize wetland impacts for five projects. The attached **Table 1** outlines these five projects, the acreage of wetland impacts authorized under GP 47, the type of wetlands impacted, mitigation requirements, and the status of that mitigation. In summary, the City and the URO authorized a total of 6.41 acres of impact to wet meadow, marsh, and scrub shrub wetlands. The attached **Maps 1a and 1b** illustrate the location of these impacts on the original Management Status Map found within the SAMP document. It is important to note that wetlands occurred within SAMP boundaries that were not mapped under the original 1994 assessment of waters of the U.S. for the SAMP. Project proponents discovered additional waters of the U.S. upon a more detailed review of individual properties, as required under the GP 47 process.

Under Special Conditions 1c and 1d of the **original** General Permit 47, the Corps outlined mitigation requirements and priorities for proposed wetland impacts within the SAMP boundaries. Those mitigation requirements/priorities included:

- Total avoidance of project impacts to wetlands designated as unsuitable for fill, and buffer areas;
- Adjustment of project plans to avoid all other wetlands on the property to the maximum extent practicable;
- Compensatory mitigation with the following priorities:

First priority would be the restoration and enhancement of on-site wetlands designated as unsuitable for the discharge of fill material. As part of such enhancement, contiguous wetlands would be created and screening vegetation would be planted within the proposed buffer areas associated with those wetlands.

Second priority would be assigned to restoration and enhancement of other on-site wetlands within the property to be developed. Third priority would be assigned to the restoration and enhancement of off-site wetlands at the applicant's discretion and the final priority would be assigned to the creation of off-site wetlands as mitigation. Off-site wetland creation could include the use of mitigation provided by the city-sponsored wetland mitigation site adjacent to the landfill.

The City and the URO authorized wetland mitigation at the city's sponsored mitigation site for three GP 47 projects, one of which included partial on-site mitigation. In summary, for the five projects and 6.41 acres of wetland impact authorized under GP 47, the regulatory agencies required 1.17 acres of on-site wetland creation, 1.63 acres of on-site wetland enhancement, 0.44 acre of wetland creation, 1.54 acres of upland buffer, and 4.47 acres of wetland mitigation at the city-sponsored mitigation site. It is important to note the SAMP document does not recommend mitigation ratios, but instead recommends evaluation on a case-by-case basis. Neither the SAMP document, nor General Permit 47, require in-kind mitigation when proposed at the city-sponsored mitigation site.

PROJECT DESCRIPTION: The City has requested re-issuance of General Permit 47. The URO anticipates that the GP can be reverified with the changes identified in **bold** below.

Definitions:

a. Discharge of dredged material - this term means any addition of dredged material into waters of the United States. The term includes, without limitation, the addition of materials to specified discharge sites located in waters of the United States and the runoff or overflow from a contained land or water disposal areas.

b. Fill material - this term means any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a waterbody or wetland.

c. Discharge of fill material - this term means the addition of fill material in waters of the United States.

d. Wetlands - this term 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.

e. Wetland Review Board (WRB) - This board will consist of representation from the U.S. Army Corps of Engineers (Corps), the City of Logan, the US Fish and Wildlife Service (USFWS), the State of Utah Division of Wildlife Resources (DWR), and the US Environmental Protection Agency (EPA). The role of the WRB shall be to review permit applications that propose impacts to waters of the U.S. in excess of 1.0 acre. The WRB shall provide comments to the Corps within 15 days of notification.

Special Conditions:

1. The developer shall submit to the Corps of Engineers a notification and map of the wetland areas to be filled, a description of the amount and type of fill material to be used and a description of the mitigation activities to be implemented to compensate for unavoidable impacts to wetlands on the project site. This information will be submitted at least 30 days prior to initiation of the work for Corps approval. **A complete notification package shall include:**

a. responsible official's name, address, and telephone number, location of the proposed activity, and volume and type of material to be placed **within waters of the U.S.**

b. **a wetland delineation report of the proposed project site to be verified by the Corps. The report must comply with the Sacramento District Minimum Standards for Acceptance of Preliminary Wetland Delineations. The delineation shall identify those waters of the U.S. that have been determined to be suitable/unsuitable for the discharge of fill material and buffer areas within the property proposed for development;**

c. total avoidance of project impacts to wetlands designated as unsuitable for fill and buffer areas. Adjustment of project plans to avoid all other wetlands on the property to the extent practicable while maintaining the project purpose must be accomplished;

d. **a statement explaining how avoidance and minimization of impacts to waters of the U.S. designated as suitable for fill were achieved;**

e. development of plans to provide mitigation for unavoidable wetland impacts. Priority of wetland mitigation is as follows:

- Priority 1: Restoration and enhancement of on-site wetlands designated as unsuitable
- Priority 2: Restoration and enhancement of other on-site wetlands within the property to be developed;

- **Priority 3: Purchase or creation of wetlands at the off-site City-sponsored wetland mitigation site;**

- **Priority 4: Restoration or enhancement of wetlands off-site at the applicant's discretion;**

- Priority 5: Creation of wetlands off-site at the applicant's discretion.

2. The City of Logan **shall** not issue building permits for areas designated as unsuitable for the discharge of fill material and within buffer areas. An overlay of the areas unsuitable for the discharge of fill material and the buffer areas will be developed to aid in communication with developers and planners.

3. All mitigation associated with the Special Area Management Plan **shall** be completed concurrent with or prior to the development within the corridor, **when practicable. In the event an applicant requests to construct mitigation post-development (after authorized impacts to waters of the U.S.), mitigation ratios will be increased to compensate for temporal loss of functions and services.**

4. Logan City will contact Mr. Rory Reynolds with the Division of Wildlife Resources (DWR) at (801) 479-5143 and resource agencies to coordinate the mitigation planning. **This condition will be deleted because Mr. Reynolds is no longer with DWR.**

5. All mitigation wetlands **shall** be monitored annually for **a minimum of five years** following completion, **or until success criteria are met for three consecutive years without human intervention. Monitoring reports shall comply with Regulatory Guidance Letter 06-03 dated August 3, 2006.** This report must be submitted to the Corps of Engineers, Utah Regulatory Office by August 30 of each year of the monitoring period.

6. Activities authorized by this general permit must not affect any threatened or endangered species. **This condition shall be relocated to the Standard Conditions section and changed to read: No activity may be authorized under this permit which is likely to 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 which will destroy or adversely modify the critical habitat of such species.**

7. **No activity, which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR Part 325, Appendix C.** In the event the permittee encounters an archaeological or historic site during construction of an activity authorized by this permit, the permittee shall report the find to the Utah State Historical Society, Division of State History, at (801-533-3500), and the Corps Utah Regulatory Office. **This condition shall be relocated to the Standard Conditions section of this permit.**

8. The permittee shall **employ all reasonable construction best management practices for soil stabilization and stormwater runoff** to protect the waters of the United States from pollution by contaminants or by turbidity and siltation during and after construction.

9. A mitigation debits and credits report **shall** be submitted to the URO by August 30 of each year, **if applicable**. This report shall contain areas of wetlands which have been created by the city and the project for which wetlands were mitigated.

10. Conditions and plans are included in this permit in the Special Area Management Plan dated March 1994 for the 1000 West Industrial Corridor. If there are any changes in the project plans the permittee will send these changes to the Army Corps of Engineers Utah Regulatory Office for approval before any work is done. **This condition shall be deleted because the intent is unclear.**

11. The **WRB** will recommend **how newly created mitigation bank** credits are approved. The Corps will make the final decision on how many credits will be approved.

12. The permittee or developer will place all mitigation sites into a permanent conservation easement, which will be approved by the Corps, Utah Regulatory Office to guarantee habitat preservation in perpetuity via deed restrictions. This will be to offset unavoidable impacts to the wetlands. The restrictions shall include (but not be limited to) no grazing of cattle; and no placing within the Buffer Areas of any permanent structure, nonindigenous vegetation or fill material. The deed shall state, "The Conservation Easement shall be a perpetual easement which runs with the land and which shall be binding on all parties having or acquiring any right, title or interest in or to any portion of the Conservation Easement, whether or not such parties have actual notice of the provisions of the Conservation Easement." **This condition will be changed to read: All avoided and minimized wetland areas and compensatory mitigation sites shall be deed restricted in order to provide long-term protection to these areas. These areas shall be deed restricted in accordance with the attached template. Proof of recordation shall be submitted to the Corps within 30 days of project completion. Where possible, all deed restricted sites shall be recorded with a permanent conservation easement held by an independent third party whose primary focus is conservation.**

13. **The list of wetlands designated as unsuitable for fill is amended to include springs and 50-foot wide buffers around springs.**

14. **General Permit applications for impacts to waters of the U.S. not identified as unsuitable for fill will be processed in the following manner:**

- Discharges up to 1 acre will be processed by the Corps without coordination with the WRB;
- Discharges between 1 acre and 3 acres will be coordinated with the WRB as described above;
- Discharges in excess of 3 acres or within wetlands identified as unsuitable shall be processed as a Standard Individual Permit per the Corps' standard procedures.

15. **The City of Logan shall not issue an Occupancy Permit until the Corps has determined that the applicant is in full compliance with all conditions of their respective GP 47 verification.**

16. Within 1 year of re-issuance of this General Permit, the City shall review the status of waters of the U.S. within the SAMP boundaries to ensure that the extent and type of waters of the U.S. has not changed since the original delineation in 1994. The City shall provide a map that indicates the location and extent of existing waters of the U.S. relative to uplands and fills within pre-existing waters of the U.S. If changes have occurred, the WRB will make a determination of whether fill suitability designations should be altered.

17. As outlined in the Logan SAMP document, the City shall submit yearly monitoring reports to the Corps for the City Mitigation site until the mitigation site reaches and maintains success for three consecutive years. Prior to the verification of additional General Permits (47), the City shall submit to the Corps for approval, a monitoring plan outline that includes the use of wetland delineation criteria for success determinations.

Standard Conditions:

- 1) That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and condition of this permit which may result in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended, or revoked in whole or in part.
- 2) That all activities authorized herein shall be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to Section 301, 302, 306, and 307 of the Federal Water Pollution Act of 1972 (PL 92-500; 86 Stat 816), or pursuant to applicable state and local law.
- 3) That all activities authorized herein shall, if applicable water quality standards are revised or modified during the term of this permit, be modified if necessary, conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.
- 4) That the permittee agrees to make every reasonable effort to prosecute the work authorized herein in a manner so as to minimize any adverse impact of the work on fish, wildlife, and natural environmental values.
- 5) That the permittee shall **allow** the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.
- 6) That the permittee shall maintain the work authorized herein in good condition and in accordance with submitted plans and drawings.
- 7) That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or infringement of Federal, State, or local laws or regulations, nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.
- 8) That this permit does not authorize the interference with any existing or proposed Federal project and

that the permittee shall not be entitled to compensations for damage or injury to the work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

9) That this permit may be summarily suspended, in whole or in part, upon a finding by the District Engineer that immediate suspension of an activity would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice there of which shall indicate (a) the extent of a suspension, (b) the reasons for this action, and (c) any corrective or preventive measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of the notice. Within ten days following receipt of this notice of suspension, the permittee may request a hearing in order to present information relevant to a decision as to whether his activity should be permitted, modified, or terminated. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the activity will either be permitted, modified, or terminated.

10) That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

11) That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

12) That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

13) That, if and when the permittee desires to abandon the activity authorized herein, he must restore the area to a condition satisfactory to the District Engineer.

ADDITIONAL INFORMATION:

Environmental Setting. The environmental setting, including wetland types, is described in the SAMP document.

Alternatives. Alternatives reviewed under this process include the No Action Alternative which would result in discontinuation of General Permit 47. Other alternatives include reverification of GP 47 in its current form, or revision of the SAMP document and GP 47 to reflect the changes listed in this Public Notice.

OTHER GOVERNMENTAL AUTHORIZATIONS: Water quality certification or a waiver, as required under Section 401 of the Clean Water Act from the Utah Division of Water Quality, is required for this project. The Utah Division of Water Quality intends to issue certification, provided that the proposed work will not violate applicable water quality standards. Projects are usually certified where the project may create diffuse sources (nonpoint sources) of wastes which will occur only during the actual construction activity and where best management practices will be employed to minimize pollution effects. Written comments on water quality certification should be submitted to Ms. Shelly Quick, Utah Division of Water Quality, 288 North 1460 West, Post Office Box 144870, Salt Lake City, Utah 84114-4870, **on or before January 8, 2007.**

HISTORIC PROPERTIES: The Utah Regulatory Office has reviewed the latest published version of

the National Register of Historic Places and its monthly supplements. There are no places either listed or recommended as eligible which would be affected. Presently unknown cultural resources may be located in the permit area.

ENDANGERED SPECIES: The project will not affect any Federally-listed threatened or endangered species or their critical habitat that are protected by the Endangered Species Act.

EVALUATION FACTORS: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the described activity, must be balanced against reasonably foreseeable detriments. All factors which may be relevant to the described activity will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The activity's impact on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230).

The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SUBMITTING COMMENTS: Written comments, referencing Public Notice 199450235, must be submitted to the office listed below **on or before January 8, 2007**:

Jason Gipson
US Army Corps of Engineers, Sacramento District
Utah Regulatory Office
533 West 2600 South, Suite 150
Bountiful, Utah 84010-7744
Email: jason.a.gipson@usace.army.mil

The Corps is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information please contact the applicant or the Corps' project manager Jason Gipson, 801-295-8380, extension 14.