Public Notice

U.S. ARMY CORPS OF ENGINEERS BUILDING STRONG®

Action ID: 201100168 **August 1, 2011**

SUBJECT: Implementation of Minor Impact Letter of Permission (LOP) Procedures in Utah

AUTHORITY: 33 CFR 325.2(e)(1)(ii).

LOCATION: State of Utah

PURPOSE: The Sacramento District (District) is implementing a new Letter of Permission (LOP) procedure to more efficiently authorize activities with minor impacts on the aquatic environment which involve discharges of dredged or fill material into waters of the United States (U.S.) under Section 404 of the Clean Water Act and/or work or structures in navigable waters under Section 10 of the Rivers and Harbors Act. The new "Minor Impact" LOP procedure is an optional abbreviated permit process available to all applicants for DA permit for activities meeting the criteria and conditions described in this notice. If the proposed activity does not meet LOP criteria or the applicant chooses not to use this process, the activity may be authorized under a different permit procedure (Nationwide Permit, General Permit or Standard Individual Permit).

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 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 the publishing of an individual public notice. In accordance with 33 CFR 325.2(e)(1), LOPs may be used:

(i) In those cases subject to section 10 of the Rivers and Harbors Act of 1899 when, in the opinion of the district engineer, the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition.

(ii) In those cases subject to Section 404 of the Clean Water Act after:
- (A) The district engineer, through consultation with Federal and state fish and wildlife agencies, the Regional Administrator, Environmental Protection Agency, the state water quality certifying agency, and, if appropriate, the state Coastal Zone Management Agency, develops a list of categories of activities proposed for authorization under LOP procedures;
- (B) The district engineer issues a public notice advertising the proposed list and the LOP procedures, requesting comments and offering an opportunity for public hearing; and
- (C) A 401 Water Quality Certification has been issued or waived and, if appropriate, Coastal Zone Management (CZM) consistency concurrence obtained or presumed either on a generic or individual basis.

PROPOSED CATEGORIES OF ACTIVITIES: The proposed categories of activities to be authorized by these LOP procedures include those which would result in the loss of no more than one (1) acre of waters of the U.S. and not exceed 500 linear feet of streambed or bank, and would have an overall minor impact, individually and cumulatively, on aquatic resources and the human environment. Examples of activities to be authorized include, but are not limited to, residential, commercial, industrial, recreational, agricultural, and municipal development; transportation and infrastructure; energy; utility line construction, repair and maintenance; mining; flood control and storm-water management; research, testing and monitoring; environmental remediation and restoration; repair, rehabilitation or maintenance including minor maintenance dredging using existing disposal sites; docks; and boat ramps. However, bridges and pipelines constructed over waters covered under Section 9 of the Rivers and Harbors Act of 1899 are not authorized under these LOP procedures and require coordination with the U.S. Coast Guard.

A LOP will be issued only for those activities which meet all of the criteria identified below, including the General Conditions, which only result in minor impacts on the aquatic environment. Applications for the LOP must include a mitigation plan that clearly demonstrates impacts to aquatic resources have been avoided and minimized to the maximum extent practicable and that there will be a net increase in functions of aquatic resources. The District reserves the use of its discretionary authority to determine that an activity may be authorized under a LOP; that an activity may be authorized under a LOP with the addition of special conditions; or that an activity may not be authorized by a LOP and will instead require authorization under another permit type. For purposes of these LOP procedures, a minor impact is defined as meeting Criteria 1-3 below.

<u>To qualify for a LOP under these procedures; activities must meet the following criteria:</u>

1. The loss of waters of the U.S. does not exceed one (1) acre of wetlands or other aquatic habitats or does not exceed 500 linear feet of perennial, intermittent or ephemeral streambed or bank.

2. The loss of waters of the U.S. is compensated for at the following ratios:

   a. A minimum of 2:1 for permittee-responsible mitigation resulting in the creation of the aquatic resources impacted. The mitigation ratio may increase if other forms of compensatory mitigation (i.e. enhancement, preservation, out-of-kind mitigation) are proposed.

      i. Use of a Corps approved functional assessment method can be use to demonstrate that permittee-responsible mitigation of less than 2:1 mitigation ratio is appropriate to compensate for losses of waters, however, the ratio shall never be less than 1:1. Any functional assessment method must be developed explicitly for use, or be directly applicable in Utah, and be approved by the Corps.

   b. 1:1 through a Corps approved in-lieu-fee program and/or mitigation bank.

3. The proposed activity must not violate General Conditions 1-24 listed below.

LOP PROCEDURES:

A. Before submitting an application

The applicant **must** attend a pre-application meeting conducted by the Utah or Grand Junction Regulatory Offices. District staff will assign the proposed activity an identification number if one has not previously been assigned. Pre-application coordination should also include the U.S. Environmental Protection Agency (USEPA); the U.S. Fish and Wildlife Service (USFWS); Utah Division of Wildlife Resources (DWR);Utah Division of Water Quality (DWQ); Utah State Office of Historic Preservation (SHPO); Tribes and any other appropriate State or local wildlife and resource agencies with a potential interest in the activity. The following information must be provided to the District and other agencies at least two weeks before the pre-application meeting:

1. A Corps verified delineation of wetlands and other waters of the U.S. for the proposed activity site. Wetland delineations must be prepared in accordance with the current method required by the Corps;

2. A location map and appropriate aerial and other imagery of the activity site and a vicinity map showing the proposed site and its geographical, physical and environmental context;

3. A complete description of the proposed activity, including the purpose and need of the activity. This shall include as much of the information identified under 33 CFR 325.1 (d) "Content of application" as is available, including plan and profile views of the proposed work relative to potential waters of the U.S., showing areas, types and acreages of aquatic resources proposed to be impacted;

4. Draft information, in report form, concerning off-site and on-site practicable alternatives and the relative environmental impacts of those alternatives as compared to the environmental impacts of the proposed activity, in accordance with 33 CFR 325.1 (e) and 323.6 (a). The information must address compliance with the Environmental Protection Agency's 404(b)(1) Guidelines at 40 CFR part 230, and;

5. An explanation of how impacts associated with the proposed activity are to be avoided, minimized, and compensated for, and a draft compensatory mitigation plan for the impacts and losses of waters of the U.S., in accordance with 33 CFR part 332.

6. Documentation of coordination with the Utah Division of Water Quality Certification Coordinator.

B. Application Submittal

To be considered for authorization by LOP, the application must include all information required for a standard permit application, pursuant to 33 CFR 325.1. The application package must be submitted to the District in both paper and electronic form (pdf), suitable for electronic transmittal and/or posting to an FTP site, and include the following:

1. A cover letter from the applicant requesting an LOP under the Minor Impact LOP procedures for the proposed activity, referencing the Corps' identification number and including contact information for the applicant and their designated agents or primary points-of-contact. This must include mailing and e-mail addresses and telephone and fax numbers;

2. A completed Department of the Army Engineering Form 4345, which refers to the Corps' identification number;

3. An approved or preliminary Corps' jurisdictional determination for the activity area, including a copy of the delineation map/drawing;

4. Site location map(s),including the proposed activity (and where appropriate, mitigation) site(s) clearly outlined on USGS 7.5' 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.

5. A complete description of the proposed activity, including all of the information identified under 33 CFR 325.1 (d) "Content of application", including plan and profile views of the proposed work, relative to potential or approved waters of the U.S. (e.g., wetlands and open waters below the Ordinary High Water Mark), showing areas, types and acreages of waters and other aquatic resources to be impacted by the proposed activity. All available drawings must be provided and must show proposed impacts and mitigation and be on appropriately scaled figures, generally 1"=200' and no larger than 11" x 17" size. Pre-construction, color, ground photographs of the site and representative aquatic resources, taken from appropriate locations that are identified on plan-view drawing(s) or aerials must also be provided;

6. The total area (acreage/linear feet) and types of aquatic resources to be directly and/or indirectly affected by the proposed activity, the volume (in cubic yards) and type of material to be placed into the aquatic resources., a description of habitat types, including plant communities, within and surrounding the activity site, and a description of how the proposed activity would affect all of the above resources;

7. A written description and figures/maps demonstrating how impacts to aquatic resources and their functions (e.g., water quality and habitat) have been avoided and minimized to the maximum extent practicable and proposed compensatory mitigation for unavoidable impacts, in accordance with 33 CFR part 332. This must identify all best management practices proposed to be employed before, during and after construction to control siltation and erosion and avoid and minimize impacts to the environment;

8. A description of potential secondary and/or indirect impacts to aquatic resources and the human environment in the watershed and vicinity of the proposed activity;

9. Proposed construction schedule;

10. Documentation and record of all pre-application coordination with the District and other agencies (if conducted), including any activity-specific comments or concerns made by each agency, as well as the applicants responses to the comments or concerns. If coordination with any of the other agencies did not occur, the applicant must explain why such coordination was not done and identify potential responses to general agency concerns, if known;

11. Information, in report form, concerning off-site and on-site practicable alternatives and the relative environmental impacts of those alternatives as compared to the environmental impacts of the proposed activity, in accordance with 33 CFR 325.1 (e) and 323.6 (a). The information must address compliance with the Environmental Protection Agency's 404(b)(1) Guidelines at 40 CFR part 230;

12. A final compensatory mitigation plan for impacts to aquatic resources, in accordance with 33 CFR 332 and the District's Mitigation and Monitoring Guidelines.

13. If compensatory mitigation is proposed at a Corps approved mitigation bank or in-lieu fee program, the proposed bank/in-lieu fee and type of credits to be obtained must be identified;

14. Copies of state and local approvals, a list of pending applications or approvals, and any other evidence that the proposed activity has been or is currently being reviewed by the appropriate state and local agencies and is consistent with their land use plans and policies, particularly wetland policies, programs, ordinances and/or laws. For all proposed activities, evidence of application for or issuance of a Section 401 Water Quality Certification or waiver for the proposed activity must be submitted;

15. Two copies of a biological assessment (BA) prepared in accordance with 50 CFR 402 and the District's requirements for consultations. The biological assessment must include a description of: (1) the action to be considered, (2) the specific area that may be affected by the action, (3) any listed species or critical habitat that may be affected by the action, (4) the manner in which the action may affect any listed species or critical habitat, (5) and an analysis of any cumulative impacts. The BA must identify and include relevant reports, the proposed mitigation plan, and any other relevant available information on the action and its effects on listed species and/or their critical habitat;

16. Two hardcopies and one electronic copy of a cultural resources report completed in accordance with the District's guidelines for compliance with Section 106 of the National Historic Preservation Act of 1966, As Amended". This must be provided as a separate hardcopy and PDF for confidentiality.

C. Processing

1. Within 15 days of receipt of application the Corps will review the applicant's submittal for completeness.

    a. If the application is incomplete, the appropriate District staff person will notify the applicant and request the additional information necessary to complete the application for further processing.

    b. If the Corps determines the application is complete but the activity cannot be authorized by a LOP, the District will notify the applicant within the initial 15-day period and proceed to an alternate permitting process (Regional General Permit, Nationwide Permit, or Standard Permit).

    c. If the application is determined to be complete and appears to meet LOP criteria, the District will notify the applicant that the proposed activity is being evaluated for LOP authorization and post the complete application and all appropriate supporting documents to an FTP site within that 15-day period. The District will notify the state and Federal coordination agencies via e-mail of the proposed LOP for the activity, and request any comments within fifteen (15) calendar days of such notice. The District will also initiate consultation(s) as necessary with other agencies.

2. Agencies are required to provide comments to the District within fifteen (15) calendar days of receipt of the notice. The Corps may extend the comment period at the request of a reviewing agency due to extenuating circumstances, by no more than seven (7) calendar days.

3. The District will review the comments received and, if otherwise complete (e.g., ESA, NHPA consultations and 401 Water Quality Certification), make a determination within 30 calendar days after the close of the comment period as to whether LOP authorization is warranted, and whether special case-specific conditions are needed. If the activity meets the criteria for LOP authorization and would have an overall minor effect on aquatic resources and the human environment, an LOP will be issued.

4. If at any time during the process the District determines the activity may not be authorized by a LOP, District staff will immediately notify the applicant, terminate the LOP process, and proceed to an alternate permitting process, as described in C(1)(b) above.

5. Evidence of a valid Section 401 Water Quality Certification of the proposed work must be provided to the District before any final LOP decision is made. A LOP will not be issued until and unless all necessary certifications, consultations and/or authorizations (e.g., 401 Water Quality Certification, ESA and/or NHPA) have been completed and/or issued.

D. General Conditions

1. Histosols and Fens. LOP authorization is revoked for activities in histosols, fens, bogs and in wetlands contiguous with fens. Histosols are soils that are composed mainly of organic materials that contain at least 20-30% organic matter by weight and are more than 40 cm thick. Fens are defined as slope wetlands with a histic epipedon that are hydrologically supported by groundwater. Fens are normally saturated throughout the growing season, although they may not be during drought conditions. A bog is similar to a fen but is supported by surface water.

2. Springs. LOP authorization is revoked for activities resulting in impacts to springs. A spring source is defined as any location where ground water emanates from a point in the ground. For purposes of this condition, springs do not include seeps or other discharges which lack a defined channel.

3. Wild and Scenic Rivers. LOP authorization is revoked for activities 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.

4. Designated Critical Resource Waters. LOP authorization is revoked for activities in critical resource waters, including wetlands adjacent to such waters, unless the District Engineer, in coordination with appropriate resource agencies, determines that the impacts to the critical resource waters will be no more than minimal. Critical resource waters include NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

5. **Stream Relocation.** LOP authorization is revoked for channelization or piping of perennial or intermittent drainage(s) except when, as determined by the District, it would result in no net loss of functions of the aquatic ecosystem within the watershed.

6. **Aquatic Life Movements.** No activity may substantially 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. Culverts placed in streams must be installed to maintain low flow conditions.

   a. All above ground crossings of streams must ensure fish passage. Permittees must employ bridge designs that span the stream or river, utilize pier or pile supported structures, or involve large culverts with a natural streambed, where the substrate and streamflow conditions approximate existing channel conditions. Approach fills within the ordinary high water mark of waters of the U.S. are not authorized except where avoidance has specifically been determined to be impracticable by the District.

7. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. 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 activities).

8. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

9. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

10. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

11. **Adverse Effects from Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

12. **Bank Stabilization.** Any bank stabilization shall include the use of vegetation or other biotechnical design to the maximum extent practicable and must be reviewed by the Corps on a case-by-case basis otherwise the project may not qualify for LOP authorization, unless the Corps determines the impact would be minor.

13. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. Decontamination of equipment to prevent the spread of invasive species prior to working in waters is required.

14. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the U.S. during periods of low-flow or no-flow.

15. **Temporary Fills.** Temporary fills must use only suitable material and be removed in their entirety and the affected areas returned to pre-construction elevations, contours and conditions within 90 days of activity completion. The affected areas must be revegetated with appropriate plants native to the area and approved by the District prior to planting.

16. **Utility lines.**

    a. Installation of a utility line must not be designed or constructed (e.g., backfilling technique) in such a manner as to drain waters of the U.S. Impermeable trench breaks (such as compacted clay or bentonite) must be used.

    b. Any trench constructed must be backfilled and returned to pre-activity contours and conditions. During construction, the top 6 –12 inches of topsoil must be removed and stockpiled separately. Following installation, the stockpiled topsoil will be replaced on top, and seeded with appropriate vegetation native to the area and approved by the District prior to planting.

    c. Material resulting from trench excavation may be temporarily sidecast into waters of the U.S. for no more than three (3) months, provided the material is not placed in such a manner that it may be dispersed by currents or other forces.

17. **Endangered Species.**

    a. In cases where the District Engineer determines that the activity may affect federally-listed species, or their designated critical habitat, the activity is not authorized and the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation under the Endangered Species Act (ESA) has been completed.

        i. Lead Federal agencies should follow their own procedures for complying with the requirements of the ESA. However, it is incumbent upon the lead agency to coordinate early and often in the project planning process. Federal permittees must ensure the Corps' permitting activity is included in the Lead Federal Agencies' consultation request.

        ii. Non-federal permittees shall notify the District Engineer if any Federally-listed species or designated critical habitat may be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat. For activities that might affect Federally-listed endangered

or threatened species or designated critical habitat, a Biological Assessment must be submitted to the Corps and include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The District Engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination.

b. As a result of formal or informal consultation with the USFWS the District Engineer may add species-specific regional endangered species conditions to the LOP.

c. Authorization of an activity by a LOP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information regarding threatened and endangered species and their critical habitat can be obtained directly from the USFWS World Wide Web page at http://www.fws.gov/ or the Utah Conservation Data Center at http://dwrcdc.nr.utah.gov/ucdc/.

d. No activity is authorized under a LOP 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. No activity is authorized under an LOP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

18. <u>Historic Properties</u>.

a. In cases where the District Engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized and the applicant shall not begin the activity until notified by the District Engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the National Historic Preservation Act (NHPA) has been completed.

i. Lead Federal agencies should follow their own procedures for complying with the requirements of Section 106 of the NHPA. However, it is incumbent upon the lead agency to coordinate early and often in the project planning process. Federal permittees must ensure the Corps' permitting activity is included in the Lead Federal Agencies' consultation request to the State Historic Preservation Office.

ii. Non-federal permittees must notify the District Engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the notification must state which historic properties may be affected by the proposed work and include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as

appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The District Engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the District Engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties.

b. Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

19. <u>Mitigation</u>. The District Engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

a. The activity must be designed and constructed to avoid and minimize both temporary and permanent adverse effects to waters of the U.S. to the maximum extent practicable at the activity site (i.e., on site).

b. Mitigation, in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) is required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

c. For development activities, unless specifically authorized by the Corps (e.g. discrete crossing, wetland fills, bank stabilization, stream and/or riparian habitat enhancement) as part of the activity, all perennial, intermittent and ephemeral streams, open waters, wetlands and other special aquatic sites within the site must be avoided and preserved with the following elements:

i. The permittee shall place all wetlands, other aquatic areas, and any vegetative buffers preserved as part of mitigation for impacts into a separate “preserve area” parcel prior to discharging dredged or fill material into waters of the U.S., except where specifically determined to be impracticable by the District. Permanent legal protection shall be established for all preserve area parcels, following District approval of the legal instrument.

ii. A buffer, extending a minimum of 50-feet from either side of the wetland boundary or ordinary high water mark of the stream, or to the property boundary, shall be established and maintained. At the discretion of the District Engineer, this may not apply to linear activities with a narrow right-of-way perpendicular to the stream.

iii. Any trails, utilities, roads and other infrastructure, except specifically designated crossings and/or water quality/storm water management facilities, must be located outside of the prescribed preserve area.

iv. All detention or water quality basins must be constructed and sited outside of the preserve area and the activity may not adversely affect pre-construction flows within a stream.

v. Fencing and appropriate signage must be installed around the perimeter of the preserve area and avoided wetlands, as appropriate. All fencing surrounding mitigation, preservation, avoidance, and buffer areas must allow unrestricted visibility of these areas to discourage vandalism or disposing of trash or other debris in these areas. Signage must contain the District's identification number, contact information for the preserve manager, if applicable, and a statement that the site is a preserve.

vi. To ensure proper management of the preserve area(s), a specific and detailed preserve management plan for the preserve should be developed and submitted to the Corps. This plan must describe in detail any activities that are proposed within the preserve area(s) and the long term funding and maintenance of each of the preserve area(s).

d. Compensatory mitigation will not be used to increase the acreage impact or losses allowed by the LOP. However, compensatory mitigation will be used, as necessary, to ensure that an activity already meeting the established acreage limit also has minimal impacts.

e. Compensatory mitigation plans for activities in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of vegetated riparian areas next to open waters. Vegetated riparian areas shall consist of locally native species. The width of the required vegetated riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area must be a minimum of 50 feet wide on each side of the stream, but the District Engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the site, the District Engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

f. The permittee may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

g. Where certain functions and services of waters of the U.S. are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to an herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the activity to the minimal level.

h. The permittee shall complete compensatory mitigation required by special conditions of the LOP verification before or concurrent with construction of the authorized activity, except when specifically determined to be impracticable by the District. When compensatory mitigation involves use of a mitigation bank or in-lieu fee program, payment shall be made before commencing construction.

i. The permittee shall record the LOP with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property against areas (1) designated to be preserved as part of mitigation for authorized impacts, including any associated covenants or restrictions, or (2) where structures such as boat ramps or docks, marinas, piers, and permanently moored vessels will be constructed in or adjacent to navigable waters (Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act). The recordation shall also include a map showing the surveyed location of the authorized structure and any associated areas preserved to minimize or compensate for adverse impacts.

20. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

21. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

22. Water Quality. Where States and authorized Tribes, or USEPA where applicable, have not previously certified LOP's to be issued in this process, individual 401 Water Quality Certification must be obtained or waived. The District Engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality. The activity must comply with any special case-specific conditions added by the Corps or by the State, Tribe, or USEPA in its section 401 Water Quality Certification.

23. Single and Complete Activity. The activity to be covered under an LOP must be a single and complete activity. Only one LOP may be used for the same single and complete activity.

24. Federal Agencies. For activities undertaken by other federal agencies, the application shall include a copy of the National Environmental Policy Act, including signed Categorical Exclusion, document(s) and final agency determinations regarding compliance with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

FURTHER INFORMATION:

These LOP procedures are subject to the December 1992 MOA between the Corps and USEPA and the December 1992 MOA between the Corps and USFWS.

These LOP procedures will be reassessed after a period of three years from the date they are finalized to determine their overall effectiveness and cumulative effects to the aquatic ecosystem.

Compliance Certification. Each permittee who receives a LOP from the Corps must submit a signed certification regarding the completed work and any required mitigation within 45-days of completion of all construction activities (including the return of any temporary fills to preconstruction contours). The certification form must be forwarded by the Corps with the LOP and will include:

a. A statement that the authorized work was done in accordance with the LOP authorization, including any general or specific conditions;

b. A statement that any required mitigation was completed in accordance with the permit conditions; and

c. The signature of the permittee certifying the completion of the work and mitigation.

Transfer of LOP's. If the permittee sells the property associated with a LOP, the permittee may transfer the LOP to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the LOP and the name and all available contact information, including company name, addresses, telephone numbers and e-mail, must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this LOP are still in existence at the time the property is transferred, the terms and conditions of this LOP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this LOP and the associated liabilities associated with compliance with its terms and conditions, the transferee must sign and date below."

_____ _____
(Transferee) (Date)

_____
Printed Name

_____
Address, Phone Number

Inspections. The permittee shall allow Corps representatives to inspect the authorized activity and any mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the LOP. The permittee will be notified in advance of an inspection.