

# U.S. Army Corps of Engineers' 404 Permitting Requirements

PDS

Engineering Services Division

ES Policy # 3-02

## **INTRODUCTION:**

In accordance with Section 18.140.040 of the Overland Park Municipal Code, the City may require technical studies to enable the City Planning Commission to evaluate applications for rezonings, special use permits, preliminary development plans or preliminary plats (Note: For the remainder of this policy, all of these applications are referred to inclusively as a "preliminary plan"). To comply with U.S. Army Corps of Engineers (COE) Section 404 permitting requirements, the City may require a technical study to determine if "waters of the U.S." or other jurisdictional wetlands exist on a site and are impacted by the proposed development project. Because 404 permitting requirements can have a significant impact on the development plan, the City requires the affects of these impacts to be determined prior to approval of the preliminary plan. An outline of the City's coordination processes related to 404 permits is included as Attachment A.

## **JURISDICTIONAL DETERMINATIONS AND JURISDICTIONAL DELINEATIONS:**

The first step in complying with 404 permitting requirements is completing a "Jurisdictional Determination" (JD) or "Jurisdictional Delineation" (hereinafter referred to as a "delineation") to verify if there are any "waters of the U.S." on the site and determining if the project impacts those areas. This step must be completed for all preliminary plans unless waived by Engineering Services staff. Waivers to this requirement may be granted on a case-by-case basis, usually on small infill or redevelopment sites with no concentrated drainage courses when it is obvious by inspection that no "waters of the U.S." exist on the site. When a JD or delineation is waived by Engineering Services staff, the applicant shall provide a letter or statement in the preliminary stormwater study stating that there are no "waters of the U.S." on the site.

For all other projects where a waiver has not been granted, a JD or delineations must be documented as follows:

JDs or delineations must be included in the preliminary stormwater study. Acceptable documentation for a JD or delineation includes either a "preliminary" or "approved" JD issued by the COE, or a delineation by the applicant. For an applicant to provide a delineation, they must be a qualified professional. A "qualified professional" means that the person designated to make the determination has completed a minimum of 32 hours of formal training in wetlands delineation and can provide documentation upon request to the City verifying their qualifications. If City staff disagrees with an applicant who provided delineation, staff can require that a Preliminary or Approved JD be issued by the COE.

In addition to the JD or delineation, the preliminary stormwater study shall include maps or exhibits showing the location of all jurisdictional "waters of the U.S." and any proposed impacts to such areas.

### **NATIONWIDE PERMITS (NWP)**

Projects qualifying for a "**Nationwide Permit**" (NWP) usually require a 30 to 45 day review period by the COE, and a public comment period is not required. If a project qualifies for a NWP, City staff will recommend approval to the Planning Commission, provided all other issues are satisfactory. Some NWPs require notification to the Corps of Engineers, while others do not. The Corps of Engineers Kansas City District has a guidance document outlining all available NWPs, qualifying conditions, and notification requirements which is available at:

[http://www.usace.army.mil/CECW/Documents/cecwo/reg/nwp/nwp2007\\_gen\\_conditions\\_def.pdf](http://www.usace.army.mil/CECW/Documents/cecwo/reg/nwp/nwp2007_gen_conditions_def.pdf)

Additional guidance documents are available through third-party sources.

If a Consultant believes that a project qualifies for a NWP, they shall include written correspondence in the preliminary stormwater study addressing the following:

- Type of NWP under which the project qualifies.
- Narrative indicating why the consultant believes that the project qualifies for the NWP.
- Why pre-construction notification to the COE is not required – including verification that "notification thresholds" for the applicable NWP is not exceeded. This information should include the applicable threshold limits and the proposed amount of disturbance for the project.
- For NWPs requiring pre-construction notification, a preliminary or approved JD must be issued by the COE, the notification process completed and all correspondence from the COE, including general and project specific conditions provided in the Preliminary Stormwater Study.

All of the above information must be provided a minimum of 3 weeks prior to the scheduled Planning Commission hearing to provide staff enough time to evaluate the project conditions and make a determination on whether additional project stipulations are required.

## **INDIVIDUAL PERMITS**

An “**Individual Permit**”: These projects are viewed by the COE as having the potential to have more than minimal impact to “waters of the United States.” This permit requires a lengthy review process by the COE, with no guarantee that a permit will be issued. Public comment periods are required and comments by other State and Federal reviewing agencies are considered. The COE is unable to predict whether these individual projects will be approved for an Individual Permit, whether projects will require significant modification in order to issue a permit, or the time it will take for permit approval.

If a project must obtain an Individual Permit, City staff will evaluate the issues that trigger an Individual Permit. Before an application is submitted for Planning Commission consideration, but after the COE permitting public comment period has closed, joint meetings with the City, COE, and applicant will be encouraged. In many cases, the staff will recommend that the Individual Permit be obtained prior to consideration of the application by the Planning Commission, and recommend continuance or denial until the Individual Permit has been obtained. Before a project is submitted for COE review, the City recommends that the applicant have a pre-application meeting with City staff to review the site plan.

Alternately, the staff may recommend that a project proceed to the Planning Commission prior to approval of the Individual Permit if all of the following steps are completed;

- The Individual Permit COE permitting public comment period has closed and the consultant has been provided a copy of all comments received.
- The consultant has provided a written response to the City and the COE on how they intend to address all comments – and plans have been modified if necessary to address the comments.
- The City Staff and applicant have met with the COE to review the comments and consultant’s responses and staff believes based on verbal or written feedback from the COE that the project can be permitted as submitted. If staff believes that significant development plan changes might be necessary to comply with Individual Permitting requirements, staff will recommend continuance or denial of the development plan until the Individual Permit is issued by the COE.

When a preliminary plan has been approved prior to issuance of an Individual Permit, staff will recommend a stipulation requiring that the Individual Permit be obtained prior to application for any Final Development Plan on the site – including Final Development Plans that are not in the area affected by the COE Individual Permit.

**Attachment A**

**City of Overland Park – Corps of Engineers Permitting Requirements  
 Process Flowchart**

