



ATTACHMENT 9.7 (12509-SPD EIS SOP)
Record of Decision
(Template)

RECORD OF DECISION

CORPS FILE NO. (ACTION ID):

APPLICANT:

PROJECT NAME:

****Note: This recommended ROD template may require Regulatory PMs to add sections or expand the existing template language in order to address case-specific circumstances and facts associated with a given project and to ensure the ROD is appropriately detailed and focused. In general, the level of detail provided in the ROD should be commensurate with the level of impact and severity of issues raised during the NEPA public involvement process****

I have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning the permit application for the proposed action, as well as the stated views of interested agencies and the public. In doing so, I have considered the possible consequences of the proposed action in accordance with regulations published in 33 Code of Federal Regulations (CFR) Parts 320 through 332 and 40 C.F.R. Part 230.

As described in the Final EIS, the proposed action is to **[BRIEFLY DESCRIBE PROPOSED ACTION]**. The proposed action involves the discharge of dredged or fill material into **[XX]** acres of waters of the United States under Section 404 of the Clean Water Act **and/or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act** *[delete latter reference if no Section 10 work is involved]*. As such, a Department of the Army (DA) permit under the Regulatory Program is required for the proposed action.

I. Background

A complete application for a DA permit under Section 404 of the Clean Water Act **and/or Section 10 of the Rivers and Harbors Act** *[delete latter reference if no section 10 work is involved]* for the proposed action was received on **Month Date, 20XX**. The U.S. Army Corps of Engineers, **[INSERT DISTRICT NAME]** (Corps) determined an Environmental Impact Statement (EIS) would be prepared. Scoping for the EIS began on **Month Date, 20XX** with publication of a Notice of Intent to Prepare an EIS in the *Federal Register* **[INSERT REFERENCE]**. The Corps issued a public notice for scoping on **Month Date,**

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20XX. A public scoping meeting(s) was/were held on Month Date, 20XX at [LOCATION]. [LIST AGENCY(S)] agreed to be a cooperating agency on the preparation of the EIS.

In Month 20XX, a Draft Environmental Impact Statement (EIS) was issued by the Corps for a [INSERT # OF DAYS]-day review period. A Notice of Availability was published in the Federal Register on Month Date, 20XX [INSERT REFERENCE]. A public notice for the DEIS was issued on Month Date, 20XX. A public hearing/meeting(s) was/were held on Month Date, 20XX. During the DEIS public review period, [XX] comments were received.

The Corps issued a Final EIS in Month 20XX. A Notice of Availability was published in the *Federal Register* on Month Date, 20XX [INSERT REFERENCE]. A public notice announcing the availability of the FEIS was issued Month Date, 20XX.

II. Project Purpose and Need

a. Purpose:

b. Need:

III. Alternatives Considered

a. Alternative 1 (No Action, no permit issued):

b. Alternative 2:

c. Alternative 3:

d. Environmentally Preferred Alternative:

IV. Comments on the Final Environmental Impact Statement

a.

b.

c.

V. Consideration of Applicable Laws, Regulations, Executive Orders and Policies

a. National Environmental Policy Act (NEPA):

b. Section 401 of the Clean Water Act Section 401 of the CWA: The proposed project is [is not] in compliance with the Section 401 of the CWA. The Water Quality

Certificate/Waiver (WQC/W) was received on [INSERT DATE] and is included in [INSERT LOCATION]. Pursuant to 33 U.S.C. 1341(d), special conditions of the Section 401 WQC/W are special conditions of the DA permit and are included in [INSERT LOCATION].

c. Endangered Species Act of 1973: [Provide brief discussion supporting why or why it is not in compliance. Include a list of any species that were considered and/or designated critical habitat. If a Biological Opinion was issued, include the date and whether and incidental take statement was issued by USFWS or NMFS, as appropriate]

d. Fish and Wildlife Coordination Act: [Provide brief discussion supporting why or why it is not in compliance]

e. Magnuson-Stevens Fishery Conservation and Management Act: The proposed project is [is not] in compliance with the MSFCMA. [Provide brief discussion supporting why or why it is not in compliance]

f. Section 106 of the National Historic Preservation Act: [Provide brief discussion supporting why or why it is not in compliance]

g. Section 176(C) of the Clean Air Act (CAA) General Conformity Rule Review: [Provide brief discussion supporting why or why it is not in compliance]

h. Executive Order 11998: Floodplain Management: Executive Order 11988 requires federal agencies to prepare floodplain assessments for proposed actions located in or affecting floodplains. If an agency proposes to conduct an action in a floodplain, it must consider alternatives to avoid adverse effects and incompatible development in the floodplain. If the only practicable alternative involves siting in a floodplain, the agency must minimize potential harm to or in the floodplain and explain why the action is proposed there.

i. Executive Order 11990: Protection of Wetlands: Executive Order 11990 requires federal agencies to prepare wetland assessments for proposed actions located in or affecting wetlands. Agencies must avoid undertaking new construction in wetlands unless no practicable alternative is available and the proposed action includes all practicable measures to minimize harm to wetlands.

j. Executive Order 13175: Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians:

k. Environmental Justice (Title VI of the Civil Rights Act and Executive Order 12898): The proposed action is not expected to negatively impact any community, and therefore is not expected to cause disproportionately high and adverse impacts to minority or low-income communities. [Provide a reference to the Final EIS chapter where EJ is discussed in greater detail]

l. Other:

VI. Consideration of Mitigation Measures

VII: Compliance with 404(b)(1) Guidelines

Based on the discussion in **[INSERT REFERENCE TO EIS CHAPTER]**, are there available, practicable alternatives having less adverse impact on the aquatic ecosystem and without other significant adverse environmental consequences that do not involve discharges into “waters of the U.S.” or at other locations within these waters?

Yes ____ No ____

If the project is in a special aquatic site and is not water dependent, has the applicant clearly demonstrated that there are no practicable alternative sites available?

Yes ____ No ____

Will the discharge:

Violate state water quality standards?

Yes ____ No ____

Violate toxic effluent standards under Section 307 of the Clean Water Act?

Yes ____ No ____

Jeopardize endangered or threatened species or their critical habitat?

Yes ____ No ____

Violate standards set by the Department of Commerce to protect marine sanctuaries?

Yes ____ No ____

Evaluation of the information above indicates that the proposed discharge material meets testing exclusion criteria for the following reason(s):

() based on the above information, the material is not a carrier of contaminants.

() the levels of contaminants are substantially similar at the extraction and disposal sites and the discharge is not likely to result in degradation of the disposal site and pollutants will not be transported to less contaminated areas.

() acceptable constraints are available and will be implemented to reduce contamination to acceptable levels within the disposal site and prevent contaminants from being transported beyond the boundaries of the disposal site.

Will the discharge contribute to significant degradation of “waters of the U.S.” through adverse impacts to:

Human health or welfare, through pollution of municipal water supplies, fish, shellfish, wildlife and/or special aquatic sites?

Yes ____ No ____

Life stages of aquatic life and/or wildlife?

Yes ____ No ____

Diversity, productivity, and stability of the aquatic life and other wildlife? Or wildlife habitat or loss of the capacity of wetlands to assimilate nutrients, purify water or reduce wave energy?

Yes ____ No ____

Recreational, aesthetic and economic values?

Yes ____ No ____

Will all appropriate and practicable steps be taken to minimize adverse impacts of the discharge on the aquatic ecosystem? Does the proposal include satisfactory compensatory mitigation for losses of aquatic resources?

Yes ____ No ____

VIII. Public Interest Review

a. The relative extent of the public and private need for the proposed work has been considered: **[Provide a brief discussion for each relevant public interest factor that was considered in the decision-making]**

b. The practicability of using reasonable alternative locations and/or methods to accomplish the objective of the proposed structure or work has been evaluated:

c. The extent and permanence of the beneficial and/or detrimental effects that the proposed structures or work may have on the public and private uses which the area is suited has been reviewed:

IX. Special Conditions

The following special conditions will be included in the permit to ensure the project is not contrary to the public interest and complies with the 404 (b)(1) Guidelines:

1.

2.

3.

X. Findings

a. The evaluation of the proposed action and alternatives was done in accordance with all applicable laws, executive orders, regulations, and agency regulations. The EIS and supporting documents are adequate and contain sufficient information to make a reasoned permit decision.

b. The selected alternative is [INSERT NAME OF ALTERNATIVE], and with appropriate and practicable mitigation measures to minimize environmental harm and potential adverse impacts of the discharges on the aquatic ecosystem and the human environment, the applicant's proposed project, as mitigated by these conditions, is considered the environmentally preferred alternative.

c. The discharge complies with the Section 404(b)(1) guidelines, with the inclusion of appropriate and practicable general and special conditions in the permit to minimize pollution or adverse effects to the affect ecosystem.

d. Issuance of a Department of the Army permit, with the inclusion of special conditions on the permit, as prescribed by regulations published in 33 C.F.R. Parts 320 to 332, and 40 C.F.R. Part 320 is not contrary to the public interest.

SIGNATURE BLOCK