

## MEMORANDUM FOR RECORD

### **SUBJECT: Department of the Army Statement of Findings for the Above-Referenced Section 10 Letter of Permission Individual Permit Application**

- 1.0 Introduction and Overview: Information about the proposal subject to the Corps' Section 10 Rivers and Harbors Act regulatory authority is provided in Section 1, detailed evaluation of the activity is found in Sections 2 through 7 and findings are documented in Section 8 of this memorandum. Further, summary information about the activity including administrative history of actions taken during project evaluation is attached (ORM2 summary) and incorporated into this memorandum.
- 1.1 Applicant: *Describe here*
- 1.2 Activity location: *Describe here*
- 1.3 Description of activity requiring permit: *Describe here*
  - 1.3.1 Proposed avoidance and minimization measures: *Describe here*
  - 1.3.2 Proposed compensatory mitigation: *Describe here*
- 1.4 Project purpose: *Enter project purpose here*
- 1.5 Existing conditions and any applicable project history: *Describe existing conditions and the project history*
- 1.6 Permit Authority: Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403)
- 2.0 **Scope of review for National Environmental Policy Act (NEPA), Section 7 of the Endangered Species Act (i.e. action area), and Section 106 of the National Historic Preservation Act (i.e. permit area)**
  - 2.1.1 Determination of scope of analysis for (NEPA):

The scope of analysis includes the specific activity requiring a Department of the Army permit. Other portions of the entire project *Select appropriate choice* included because the Corps *Select appropriate choice* have sufficient control and responsibility to warrant federal review.

Final description of scope of analysis: *Describe here*
  - 2.1.2 Determination of the "Corps action area" for Section 7 of the Endangered Species Act (ESA): *Description of ESA scope of review with rationale here.*

2.1.3 Determination of permit area for Section 106 of the National Historic Preservation Act (NHPA):

The permit area includes *Select first option if the permit area includes uplands in addition to waters, and the second option if the permit area includes only waters* those areas comprising waters of the United States that will be directly affected by the proposed work or structures *Select first option if the permit area includes uplands, and the second option if the permit area includes only waters*

Final description of the permit area: *Final description of permit area with rationale here. Include in the rationale the specific upland areas that are determined to be included or excluded from the permit area.*

2.2 Review of Impacts on Environmental Values:

Letters of permission are a type of permit evaluated through an abbreviated processing procedure that 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. For proposals subject to Section 10 of the Rivers and Harbors Act, letters of permission are those cases 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 (33 CFR 325.2(e)(1)(i)).

Activities can only be authorized under Section 10 using a letter of permission if the Corps determines that the proposed work would not have significant individual or cumulative impacts on environmental values. The relevant impacts to consider are those direct, indirect, and cumulative impacts that occur within the NEPA scope of analysis as determined in section 2, accounting for all avoidance, minimization, mitigation, and special conditions. The results of coordination and consultation with other agencies should be considered (see section 6) and may disqualify an action from authorization with a letter of permission if an agency identifies issues that have the potential to have significant impacts on the environment (e.g., a jeopardy Biological Opinion). *Describe the impacts of the activity on environmental values and explain why the impacts are less than significant.*

### 3.0 Coordination

3.1 The results of coordinating the proposal with agencies and others as appropriate are identified in Table 1, including a summary of issues raised, any applicant response and Corps' evaluation of concerns.

CE *Select District-District abbreviation (e.g. RD, O-R)* (File Number, *Select District ORM File Number*)

Table 1 – Coordination of Proposal				
Agency and/or Person provided with notice of proposal:	Response received? Y/N	Date Received:	Applicant replied: Y/N	Comments/Issues Raised, Applicant’s Response and Corps Evaluation:
<i>Name</i>		<i>Date</i>		<i>Select option or enter comment/issue here.</i>
<i>Name</i>		<i>Date</i>		<i>Select option or enter comment/issue here.</i>
<i>Name</i>		<i>Date</i>		<i>Select option or enter comment/issue here.</i>
<i>Name</i>		<i>Date</i>		<i>Select option or enter comment/issue here.</i>
<i>Name</i>		<i>Date</i>		<i>Select option or enter comment/issue here.</i>
<i>Name</i>		<i>Date</i>		<i>Select option or enter comment/issue here.</i>
<i>Name</i>		<i>Date</i>		<i>Select option or enter comment/issue here.</i>

Additional discussion of submitted comments, applicant response and/or Corps’ evaluation: *Select N/A or provide discussion as appropriate.*

3.2 Were additional issues raised by the Corps following the coordination period including any as a result of coordination with other Corps offices? *Select Yes or No*

If yes, provide discussion including coordination of concerns with the applicant, applicant’s response and Corps’ evaluation of the response: *Select N/A or provide discussion as appropriate.*

3.3 Were comments raised that do not require further discussion because they address activities and/or effects outside of the Corps’ purview? *Select Yes or No*

If yes, provide discussion: *Select N/A or provide discussion as appropriate.*

4.0 **General Public Interest Review (33 CFR 320.4 and RGL 84-09)**

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest as stated at 33 CFR 320.4(a). To the extent appropriate, the public interest review below also includes consideration of additional policies as described in

33 CFR 320.4(b) through (r). The benefits which reasonably may be expected to accrue from the proposal are balanced against its reasonably foreseeable detriments.

- 4.1 All public interest factors have been reviewed and those that are relevant to the proposal are considered and discussed in additional detail. See Table 2 and any discussion that follows.

Table 2: Public Interest Factors	Effects					
	None	Detrimental	Neutral (mitigated)	Negligible	Beneficial	Not Applicable
1. Conservation: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
2. Economics: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
3. Aesthetics: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
4. General Environmental Concerns: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
5. Wetlands: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
6. Historic Properties: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
7. Fish and Wildlife Values: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
8. Flood Hazards: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
9. Floodplain Values: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
10. Land Use: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
11. Navigation: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
12. Shoreline Erosion and Accretion: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
13. Recreation: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						

Table 2: Public Interest Factors	Effects					
	None	Detrimental	Neutral (mitigated)	Negligible	Beneficial	Not Applicable
14. Water Supply and Conservation: : <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
15. Water Quality:: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
16. Energy Needs: <i>Select option, enter discussion here or delete if explanation is not warranted</i>						
17. Safety: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
18. Food and Fiber Production: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
19. Mineral Needs: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
20. Consideration of Property Ownership: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						
21. Needs and Welfare of the People: <i>Select option, enter discussion here or delete if explanation is not warranted.</i>						

Additional discussion of effects on factors above: *Select N/A or describe the above factors as appropriate.*

- 4.1.1 Climate Change. The proposed activities within the Corps federal control and responsibility likely will result in a negligible release of greenhouse gases into the atmosphere when compared to global greenhouse gas emissions. Greenhouse gas emissions have been shown to contribute to climate change. Aquatic resources can be sources and/or sinks of greenhouse gases. For instance, some aquatic resources sequester carbon dioxide whereas others release methane; therefore, authorized impacts to aquatic resources can result in either an increase or decrease in atmospheric greenhouse gas. These impacts are considered de minimis *[If Compensatory Mitigation is Required ADD “and are negated through compensatory mitigation.” otherwise delete this text]*. Greenhouse gas emissions associated with the Corps federal action may also occur from the combustion of fossil fuels associated with the operation of construction equipment, increases in traffic, etc. The Corps has no authority to regulate emissions that result from the combustion of fossil fuels. These are subject to federal regulations under the Clean Air Act and/or the Corporate

CE *Select District-District abbreviation (e.g. RD, O-R)* (File Number, *Select District ORM File Number*)

Average Fuel Economy (CAFE) Program. Greenhouse gas emissions from the Corps action have been weighed against national goals of energy independence, national security, and economic development and determined not contrary to the public interest. [ADD, if determined appropriate, otherwise delete: The applicant voluntarily provided the Corps with an analysis of greenhouse gas emissions that they produced for other local, state, and/or federal requirements, entitled [INSERT NAME], dated [Insert DATE]. The portions of that document pertaining to the actions within the Corps federal control and responsibility are incorporated by reference.

4.2 The relative extent of the public and private need for the proposed structure or work:

*Describe here*

4.3 If there are unresolved conflicts as to resource use, explain how the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work was considered.

Discussion: *Select option or provide discussion as appropriate.*

4.4 The extent and permanence of the beneficial and/or detrimental effects that the proposed work is likely to have on the public and private use to which the area is suited:

Detrimental effects are expected to be *Select the appropriate determination.*

Beneficial effects are expected to be *Select the appropriate determination.*

*Provide rationale here as needed to support the determinations above.*

**5.0 Mitigation**(33 CFR 320.4(r), 33 CFR Part 332, 40 CFR 230.70-77, 40 CFR 1508.20 and 40 CFR 1502.14)

5.1 Avoidance and Minimization: When evaluating a proposal including regulated activities in waters of the United States, consideration must be given to avoiding and minimizing effects to those waters. Avoidance and minimization measures are described above in Section 1.

Were any other mitigative actions including project modifications discussed with the applicant that were implemented to minimize adverse project impacts? (see 33 CFR 320.4(r)(1)(i)) *Select Yes or No*

*Describe here.*

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5.2 Is compensatory mitigation required to offset environmental losses resulting from proposed unavoidable impacts to waters of the United States? *Select Yes or No.*

Provide rationale: *Describe here*

5.3 Type and location of compensatory mitigation

5.3.1 Is the impact in the service area of an approved mitigation bank? *Select Yes or No*

If yes, does the mitigation bank have appropriate number and resource type of credits available? *Select Yes, No, or N/A*

5.3.2 Is the impact in the service area of an approved in-lieu fee program? *Select Yes or No*

If yes, does the in-lieu fee program have the appropriate number and resource type of credits available? *Select Yes, No, or N/A*

5.3.3 Selected compensatory mitigation type/location(s). See Table 3:

Mitigation bank credits	
In-lieu fee program credits	
Permittee-responsible mitigation under a watershed approach	
Permittee-responsible mitigation, on-site and in-kind	
Permittee-responsible mitigation, off-site and/or out of kind	

5.3.4 Does the selected compensatory mitigation option deviate from the order of the options presented in §332.3(b) (2)-(6)? *Select Yes, No, or N/A*

If yes, provide rationale for the deviation, including the likelihood for ecological success and sustainability, location of the compensation site relative to the impact site and their significance within the watershed, and/or the costs of the compensatory mitigation project (see 33 CFR §332.3(a)(1)): *Select N/A or provide rationale here*

5.4 Amount of compensatory mitigation: *Enter amount here*

Rationale for required compensatory mitigation amount: *Provide discussion here*

5.5 For permittee responsible mitigation identified in 5.3.3 above, the final mitigation plan must address the items described in 33 CFR 332.4(c)(2) through (c)(14) at a level of detail commensurate with the scale and scope of the impacts. As an alternative, the district engineer may determine that it would be more appropriate to address any of the items described in (c)(2) through (c)(14) as permit conditions, instead of

components of a compensatory mitigation plan. Presence of sufficient information related to each of these components in the applicant’s mitigation plan is indicated by “Yes” in Table 4. “No” indicates absence or insufficient information in the plan, in which case, additional rationale must be provided below on how these components will be addressed through special conditions or why a special condition is not required or why these components are not needed at all.

Table 4: Permittee-Responsible Mitigation Plan Components		
Included in the Mitigation Plan	Yes	No
Objectives		
Site selection		
Site protection instrument		
Baseline information		
Determination of credits		
Mitigation work plan		
Maintenance plan		
Performance standards		
Monitoring requirements		
Long-term management plan		
Adaptive management plan		
Financial assurances		
Other		

For any “no”, provide rationale on how the subject component(s) of the compensatory mitigation plan will be addressed as special conditions or why no special conditions are required: *Provide discussion here*

**6.0 Compliance with Other Laws, Policies, and Requirements**

6.1 **Section 7(a) (2) of the Endangered Species Act (ESA):** Refer to Section 2.1 for description of the Corps action area for Section 7.

6.1.1 Has another federal agency been identified as the lead agency for complying with Section 7 of the ESA with the Corps designated as a cooperating agency and has that consultation been completed? *Select Yes or No.*

If yes, identify that agency, the actions taken to document compliance with Section 7 and whether those actions are sufficient to ensure the activity(s) requiring DA authorization is in compliance with Section 7 of the ESA:

*If yes, identify agency and provide description here. Select appropriate conclusion.*

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- 6.1.2 Are there listed species, or designated critical habitat present or in the vicinity of the Corps' action area: *Select appropriate option.*

Effect determination(s), including no effect, for all known species/habitat, and basis for determination(s): *Provide determinations and rationale here.*

- 6.1.3 Consultation with either the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service was initiated and completed as required, for any determinations other than "no effect" (see the attached ORM2 Summary sheet for begin date, end date and closure method of the consultation). *Enter additional discussion here as needed to describe consultation(s) with the Service(s).* Based on a review of the information above, the Corps has determined that it has fulfilled its responsibilities under Section 7(a)(2) of the ESA. The documentation of the consultation is incorporated by reference.

- 6.2 **Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Essential Fish Habitat (EFH).** *Select N/A if appropriate*

- 6.2.1 Has another federal agency been identified as the lead agency for complying with the EFH provisions of the Magnuson-Stevens Act with the Corps designated as a cooperating agency and has that consultation been completed? *Select Yes or No.*

If yes, identify the agency, the actions taken to document compliance with the Magnuson Stevens Act and whether those actions are sufficient to ensure the activity(s) requiring DA authorization is in compliance the EFH provisions.

*If yes, identify agency and provide description here Select appropriate conclusion.*

- 6.2.2 Did the proposed project require review under the Magnuson-Stevens Act? *Enter Yes or No, with discussion as needed*

- 6.2.3 If yes, EFH species or complexes considered: *Enter EFH species or complexes considered here*

Effect determination and basis for that determination: *Provide determination(s) and rationale here.*

- 6.2.4 Consultation with the National Marine Fisheries Service was initiated and completed as required (see the attached ORM2 Summary sheet for begin date, end date and closure method of the consultation) *Enter additional discussion here as needed.* Based on a review of the information above, the Corps has determined that it has fulfilled its responsibilities under EFH provisions of the Magnuson-Stevens Act.

- 6.3 **Section 106 of the National Historic Preservation Act (Section 106):** Refer to Section 2.2 for permit area determination.

CE *Select District-District abbreviation (e.g. RD, O-R)* (File Number, *Select District ORM File Number*)

- 6.3.1 Has another federal agency been identified as the lead federal agency for complying with Section 106 of the National Historic Preservation Act with the Corps designated as a cooperating agency and has that consultation been completed? *Select Yes or No.*

If yes, identify that agency, and whether the undertaking they consulted on included the Corps undertaking(s). Briefly summarize actions taken by the lead federal agency:

*If yes, identify agency and provide description here . Select appropriate conclusion.*

- 6.3.2 Known historic properties present? *Enter Yes or No and provide discussion as appropriate*

Effect determination and basis for that determination: *Provide determination and rationale here.*

- 6.3.3 Consultation was initiated and completed with the appropriate agencies, tribes and/or other parties for any determinations other than “no potential to cause effects.” (see the attached ORM2 Summary sheet for begin date, end date and closure method of the consultation) *Enter additional discussion here as needed.* The Corps has determined that it has fulfilled its responsibilities under Section 106. Compliance documentation incorporated by reference.

#### 6.4 **Tribal Trust Responsibilities**

- 6.4.1 Was government-to-government consultation conducted with Federally-recognized Tribe(s)? *Select Yes or No*

Provide a description of any consultation(s) conducted including results and how concerns were addressed. *Provide additional discussion here as needed or delete if not needed* The Corps has determined that it has fulfilled its tribal trust responsibilities.

- 6.4.2 Other Tribal including any discussion of Tribal Treaty rights? *Select N/A or provide discussion.*

#### 6.5 **Coastal Zone Management Act (CZMA)**

Is a CZMA consistency concurrence required, and if so, has the concurrence been issued, waived or presumed? *Select appropriate option*

#### 6.6 **Wild and Scenic Rivers Act**

CE *Select District-District abbreviation (e.g. RD, O-R)* (File Number, *Select District ORM File Number*)

- 6.6.1 Is the project located 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? *Select Yes or No.*

If yes, summarize coordination and the determination on whether activity will adversely affect the Wild and Scenic River designation or study status: *Enter additional discussion here as needed.* The Corps has determined that it has fulfilled its responsibilities under the Wild and Scenic Rivers Act.

## 6.7 **Effects on Corps Civil Works Projects (33 USC 408)**

- 6.7.1 Does the applicant also require permission under Section 14 of the Rivers and Harbors Act (33 USC 408) because the activity, in whole or in part, would alter, occupy or use a Corps Civil Works project? *Select appropriate option*

If yes, provide date decision was made and whether permission was granted or denied. *Enter date received or delete this box if no 408 is required.*

*Provide additional discussion here as needed or delete.*

- 6.8 **Other (as needed):** *Select N/A or enter text*

## 7.0 **Special Conditions**

- 7.1 Are special conditions required to protect the public interest and/or ensure compliance of the activity with any of the laws above? *Select Yes or No*

If no, provide rationale: *Describe rationale*

- 7.2 Required special condition(s)

Special condition(s): *Enter specific condition(s)*

Rationale: *Enter rationale here*

## 8.0 **Findings and Determinations**

- 8.1 The activity authorized has been determined to be minor after considering the input from the coordination with other agencies, the avoidance and minimization measures taken, the mitigation required (if any), and any special conditions specified. *Briefly explain how the determination that the activity is minor was made.*

- 8.2 Less Than Significant Impacts on Environmental Values; Categorical Exclusion (from NEPA).

Based on the analysis in Section 2.2, this activity is will not have significant individual or cumulative impacts on environmental values, and there are no extraordinary circumstances that suggest the impact could rise to the level of significance. This activity is therefore categorically excluded from the need to prepare an environmental assessment or an environmental impact statement (33 CFR 325, Appendix B, Paragraph 6.a.)

### 8.3 Public Opposition

- 8.3.1 A public hearing *Select was or was not* requested.  
*If requested, provide description as needed. Delete this box if a public hearing was not requested.*

Based on a review of the public interest factors in Section 4 and any information or requests for a hearing received from the public, the action should encounter no appreciable opposition. *Include a brief summary supporting this determination.*

- 8.4 Compliance with the Section 404(b) (1) Guidelines: This proposal is not subject to Section 404 of the Clean Water Act and therefore this determination is not required.

- 8.5 Section 176(c) of the Clean Air Act General Conformity Rule Review: The proposed permit action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed de minimis levels of direct or indirect emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.

### 8.6 Presidential Executive Orders (EO):

- 8.6.1 EO 13175, Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians: *Select response or provide discussion here.*

- 8.6.2 EO 11988, Floodplain Management: *Select response or provide discussion here*

- 8.6.3 EO 12898, Environmental Justice: *Select response or provide discussion here.*

- 8.6.4 EO 13112, Invasive Species: *Select response or provide discussion here*

- 8.6.5 EO 13212 and EO 13302, Energy Supply and Availability: *Select response or provide discussion here*

CE *Select District-District abbreviation (e.g. RD, O-R)* (File Number, *Select District ORM File Number*)

8.7 Public interest determination: Having reviewed and considered the information above, I find that the proposed project is not contrary to the public interest.

**PREPARED BY:**

\_\_\_\_\_  
*Project Manager*

Date:\_\_\_\_\_

**REVIEWED BY:**

\_\_\_\_\_  
*Enter name of appropriate level reviewer*

Date:\_\_\_\_\_

**APPROVED BY:**

\_\_\_\_\_  
*Enter name of appropriate level approver*

Date:\_\_\_\_\_