US Army Corps of Engineers
Alaska District

ANCHORAGE
Regulatory Division (1145)
CEPOA-RD
Post Office Box 6898
JBER, Alaska 99506-0898

Public Notice of Application for Permit

PUBLIC NOTICE DATE:	**June 23, 2026**
EXPIRATION DATE:	**July 23, 2026**
REFERENCE NUMBER:	**POA-2013-00094-M1**
LOCATION:	**State of Alaska**

Interested parties are hereby notified that the United States (U.S.) Army Corps of Engineers (USACE), Alaska District, in accordance with regulations pursuant to Section 404 of the Clean Water Act (Public Law 95-217, 33 U.S.C. 1344 et. Seq.) is proposing to re-issue and modify Regional General Permit (RGP) POA-2013-00094 M1 (RGP-05), North Slope, for an additional five (5) years.

All comments regarding this public notice should be sent to the address noted above. If you desire to submit your comments by email, you should send it to the email as listed below or to regpagemaster@usace.army.mil. All comments should include the public notice reference number listed above.

All comments should reach this office no later than the expiration date of this public notice to become part of the record and be considered in the decision. Please contact Mr. Steve Moore at (907) 753-5713, toll free from within Alaska at (800) 478-2712, or by email at stephen.a.moore2@usace.army.mil if further information is desired concerning this public notice.

LOCATION: The applicable area includes waters of the U.S. (WOTUS) within the North Slope (as defined by the boundaries of the North Slope Borough, see Authorized Geographic Area).

PURPOSE: The purpose of RGP-05 is to streamline the permitting process for the discharge of dredged and/or fill into WOTUS for the purpose of new construction or the expansion of existing pads and accompanying infrastructure, linear projects, and coastal erosion.

CHANGES FROM PREVIOUS RGP-05 (POA-2013-00094):

- Repeated use of this RGP for the same facility or project may authorize no more than ten (10) acres of total discharge. After impacting ten (10) acres for a project, any additional project modification which results in increased impact to WOTUS, including wetlands, will be evaluated under other permitting mechanisms available at the time of proposed project modification.
- The option for the District Engineer (DE) to issue waivers for the Excluded Areas and Activities section has been removed.
- Additional evaluation / justification will be necessary for road widening projects that exceed 10 acres.

AUTHORIZED ACTIVTIES: the discharge of dredged and/or fill into WOTUS for the purpose of new construction or the expansion of existing pads and accompanying infrastructure, linear projects, and coastal erosion on the North Slope of Alaska.

ADDITIONAL INFORMATION: Regional permits are a type of general permit as defined in 33 CFR 322.2(f) and 33 CFR 323.2(n). They may be issued by a division or district engineer after compliance with the other procedures of this regulation. After a regional permit has been issued, individual activities falling within those categories that are authorized by such regional permits do not have to be further authorized by the procedures of this regulation. The issuing authority will determine and add appropriate conditions to protect the public interest. When the issuing authority determines on a case-by-case basis that the concerns for the aquatic environment so indicate, he may exercise discretionary authority to override the regional permit and require an individual application and review. A regional permit may be revoked by the issuing authority if it is determined that it is contrary to the public interest provided the procedures of § 325.7 of this part are followed. Following revocation, applications for future activities in areas covered by the regional permit shall be processed as applications for individual permits. No regional permit shall be issued for a period of more than five years (33 CFR 325.2(e)(2)).

BACKGROUND: RGP-05 was originally issued on February 11, 2021, under file number POA-2013-00094, in order to expedite authorizations for the general public to place fill material into waters of the United States, including wetlands, for the new construction or the expansion of existing pads and accompanying infrastructure, linear projects, and coastal erosion on the North Slope of Alaska. The original permit was issued an extension of time and is currently scheduled to expire on August 1, 2026.

PERMITTEE PROPOSED MITIGATION:

By following the RGP acreage limitations and avoiding excluded areas and activities as described under Authorized Activities above, the applicant will have ensured that the project has been designed to avoid and minimize impacts to high value functioning WOTUS.

For all projects covered by this RGP, 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 adverse effects, both temporary and permanent to wetlands to the maximum extent practicable at the project site (i.e., on site).

b. Mitigation in all its forms (avoiding, minimizing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effect to the aquatic environment are minimal.

c. Compensatory mitigation will be considered on a case-by-case basis for all wetland losses, unless the district engineer determines in writing that either some other form of mitigation would be environmentally preferable or the adverse effects of the proposed activity are minimal and provides a project-specific waiver for this requirement. For wetland losses the district engineer may determine on a case by case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR 332.

The prospective permittee is responsible for proposing an appropriate compensatory mitigation option, if compensatory mitigation is required, to ensure that the activity results in minimal adverse effects on the aquatic environment in the following order of preference:

a. *Mitigation bank credits.* When permitted impacts are located within the service area of an approved mitigation bank, and the bank has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from the sponsor.

b. *In-lieu fee program credits.* Where permitted impacts are located within the service area of an approved in-lieu fee program, and the sponsor has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from the sponsor. Where permitted impacts are not located in the service area of an approved mitigation bank, or the approved mitigation bank does not have the

appropriate number and resource type of credits available to offset those impacts, in-lieu fee mitigation, if available, is generally preferable to permittee-responsible mitigation.

c. *Permittee-responsible mitigation under watershed approach*. Where permitted impacts are not in the service area of an approved mitigation bank or in-lieu fee program that has the appropriate number and resource type of credits available, permittee-responsible mitigation is the only option.

d. *Permittee-responsible mitigation through on-site and in-kind mitigation.* In cases where a watershed approach is no practicable, the district engineer should consider opportunities to offset anticipated aquatic resource impacts by requiring on-site and in-kind compensatory mitigation. The district engineer must also consider the practicability of on-site compensatory mitigation and its compatibility with the proposed project.

e. *Permittee-responsible mitigation through off-site and out-of-kind mitigation.* If, after considering opportunities for on-site, in-kind compensatory mitigation, the district engineer determines that these compensatory mitigation opportunities are not practicable, are unlikely to compensate for the permitted impacts, or will be incompatible with the proposed project, and an alternative, practicable off-site and/or out-of-kind mitigation opportunity is identified that has a greater likelihood of offsetting the permitted impacts or is environmentally preferable to on-site or in-kind mitigation, the district engineer should require that this alternative compensatory mitigation be provided.

WATER QUALITY CERTIFICATION: The RGP will not be issued until a certification or waiver of certification, as required under Section 401 of the Clean Water Act (Public Law 95-217), has been received from the Alaska Department of Environmental Conservation.

CULTURAL RESOURCES: USACE has conditioned the RGP to protect cultural resources. Consultation under Section 106 of the National Historic Preservation Act would occur on an individual basis as needed prior to verifying a project under the RGP. This RGP is being coordinated with the State Historic Preservation Office. Any comments or recommendations they may have will be considered in our final assessment of the described work.

ENDANGERED SPECIES: Following receipt of a complete application USACE will determine if the specific activity proposed for authorization under RGP-05 would affect Federally-listed endangered, threatened species, or their critical habitat, and will initiate consultation with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service, pursuant to Section 7 of the Endangered Species Act, as appropriate.

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH).

Preliminarily, the reissuance of the RGP would not affect EFH. EFH consultation would occur on an individual project basis as needed prior to verifying a project under the RGP. This RGP is being coordinated with the National Marine Fisheries Service (NMFS). Any comments or recommendations they may have concerning EFH will be considered in our final assessment of the described work.

TRIBAL CONSULTATION: USACE fully supports tribal self-governance and government to-government relations between Federally recognized Tribes and the Federal government. Tribes with protected rights or resources that could be significantly affected by a proposed Federal action (e.g., a permit decision) have the right to consult with the USACE, Alaska District on a government-to-government basis. Views of each Tribe regarding protected rights and resources will be accorded due consideration in this process. Tribal consultation would occur on an individual project basis as appropriate prior to verifying a project under the RGP. Tribes within the area potentially affected by an individual project will be invited to participate in the Federal decision-making process regarding the protected Tribal right or resource. Consultation may be initiated by the affected Tribe upon written request to the District Commander.

PUBLIC HEARING: Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, reasons for holding a public hearing.

EVALUATION: 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. Evaluation of the probable impacts, which the proposed activity may have on the public interest, requires a careful weighing of all the factors that become relevant in each particular case. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. The outcome of the general balancing process would determine whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur. The decision should reflect the national concern for both protection and utilization of important resources. All factors, which may be relevant to the proposal, must be considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving 404 discharges, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the

preceding sentence and any other applicable guidelines or criteria (see Sections 320.2 and 320.3), a permit will be granted unless the District Commander determines that it would be contrary to the public interest.

USACE 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 USACE 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 the 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.

AUTHORITY: This permit will be issued or denied under the following authority:

(X) Discharge dredged or fill material into waters of the United States – Section 404 Clean Water Act (33 U.S.C. 1344). Therefore, our public interest review will consider the guidelines set forth under Section 404(b) of the Clean Water Act (40 CFR 230).

Application form and map are enclosed with this public notice.

District Commander
U.S. Army, Corps of Engineers

Enclosures

DEPARTMENT OF THE ARMY
REGIONAL GENERAL PERMIT

Permittee: The General Public

Permit No: RGP-05, North Slope (POA-2013-00094-M1)

Issuing Office: U.S. Army Engineer District, Alaska

Issuance Date:

Expiration Date:

NOTE: The term "wetlands," as used in this permit, refers to jurisdictional wetlands, a category of waters of the United States (WOTUS). The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the Alaska District of the U.S. Army Corps of Engineers (Corps), Regulatory Division, having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

REGIONAL GENERAL PERMIT AUTHORIZATIONS

The general public is authorized to perform work across the North Slope (as defined by the boundaries of the North Slope Borough, see Enclosure 1) in accordance with the terms and conditions of this regional general permit (RGP) as specified below, after satisfying all the applicable conditions.

Under the authority of Section 404 of the Clean Water Act (Public Law 95-217, 33 U.S.C. 1344 et. Seq.) and Section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403), the Secretary of the Army authorizes the discharge of dredged and/or fill material by the general public into WOTUS across the North Slope of Alaska in accordance with terms and conditions of this RGP.

AUTHORIZED ACTIVITIES

This RGP-05, authorizes the discharge of dredged and/or fill into WOTUS for the purpose of new construction or the expansion of existing pads and accompanying infrastructure, linear projects, and coastal erosion.

Maximum Acreage Limitations:

1. The following acreage limitations for single and complete projects apply to discharges authorized by RGP-05:
   a. Discharges for development of a new fill pad (and accompanying infrastructure) or the expansion of an existing fill pad authorized under this RGP may not exceed

ten (10) acres of impacts to WOTUS, including wetlands. Repeated use of this RGP for the same facility or project may authorize no more than ten (10) acres of total discharge. After impacting ten (10) acres for a project, any additional project modification which results in increased impact to WOTUS, including wetlands, will be evaluated under other permitting mechanisms available at the time of proposed project modification.

b. Discharges for development of new linear projects may not exceed ten (10) acres to WOTUS, including wetlands. Discharges for widening existing roads may be authorized without a defined acreage limit provided the discharge results in only minimal adverse effects, as determined by the District Engineer (DE) and only after the applicant had identified a clear purpose and need for the expansion.

c. Discharges for coastal erosion projects may not exceed twenty (20) acres.

Excluded Areas and Activities (this exclusion does not apply to coastal erosion projects)**:**

1. Under this RGP, dredged and/or fill material may not be discharged into or within:

   a. Five hundred (500) feet of marine, estuarine, or the major riverine waters listed here: Colville, Kuparuk, Sagavanirktok, Shaviovik, Kadleroshilik, and Canning; or,

   b. One hundred (100) feet of other riverine waters, lacustrine waters, or the following types of palustrine wetlands with:
      i. an unconsolidated bottom (PUB),
      ii. the subclass 2 (PEM2, indicating the presence of *Arctophyla*), or
      iii. a water regime modifier of F, G, H, L, or N (PEMF/G/H/L/N, including beaded streams).

   The 100' and 500' setbacks from the specified waters must be indicated on project plans and staked in the field.

2. Discharges associated with the development of new wastewater treatment facilities or landfills are not authorized by this RGP.

3. Activities that are denied any required local, State or Federal authorization are not authorized by this RGP.

APPLICATION PROCEDURES

Individuals wishing to perform work under this RGP may use the General Permit Site Description (Enclosure 2) and must also include the additional information listed below. Submit the completed application package to the Corps by email to: regpagemaster@usace.army.mil, or at the following address for verification and coverage under this RGP: U.S. Army Corps of Engineers, Regulatory Division, North Section (CEPOA-RD-N), Post Office Box 6898, JBER, Alaska, 99506-0898.

1. Four types of drawings that include:
   a. Vicinity map depicting the location of the project in a map such as a 1:63,360 USGS quadrangle map and on a smaller scale map of Alaska (see enclosed example Figure1).

   b. Delineation of the project should provide a map showing Cowardin wetland classifications, and distances from project activities to the Cowardin classifications (listed in number 1 under Excluded Areas and Activities above), drainage patterns, and topography.

   c. Plan view of the project showing the layout of building, roads, and other projects features in relation to adjacent features such as ponds and creeks (to scale if possible). Plans must include total footprint size of project fill pad and show location and size of proposed culverts. Plans must be appropriately labeled and depict relevant measurements / dimensions.

   d. Cross section of fill including approximate side slopes. The cross section represents the project as it would appear if cut internally for display (see enclosed example Sheet 4 of Figures 1-4). Since drawings may be replicated, use clear, heavy lines. Drawings do not have to be prepared by a professional but should be clear and easily understood. Plans must be appropriately labeled and depict relevant measurements / dimensions.

2. The type of material and location of the material source to be used as fill for the project.

3. Photographs (if available) or any other information that would verify that the proposed work is in WOTUS and meets the conditions of this RGP. This could include the project footprint overlaid on an aerial photo.

4. A mitigation statement should be included describing how impacts to WOTUS are to be avoided, minimized and compensated for. See Mitigation Statement section below and the attached GP Pre-Construction Notification for further information.

5. Previous permit identification numbers for any prior Corps permits associated with the proposed project (such as expansion of an existing fill area).

6. Complete Form 500 Traditional Land Use Inventory (TLUI) Clearance with the North Slope Borough and provide a copy of the completed form with your application submittal. Instructions and the application forms for the TLUI Form 500 can be found at http://www.north-slope.org/ departments/planning-community-services/applications-and-forms.

Corps Verification Process:

1. Applicant submits a request to the Corps for a permit by methods outlined in the verification procedures above. No work may be performed under this RGP until written verification is obtained from the Corps.

2. The Corps reviews the verification submittal and preliminarily determines whether this RGP is applicable, or based upon review, the Corps notifies the applicant that this RGP is not appropriate for the proposed project.

3. The Corps will send the project plans to appropriate agencies and Tribes for review. The agencies have ten (10) calendar days from the date the Corps sends the project plans to them, to contact the Corps by letter or by email with comments on the project. If the agencies need additional time to provide substantive, site-specific comments, the Corps will wait an additional fifteen (15) calendar days to receive the comments before making a permit decision. Specific condition recommendations by the agencies will be incorporated as appropriate.

4. The Corps issues the applicant an RGP verification letter.

Mitigation Statement:

By following the RGP acreage limitations and avoiding excluded areas and activities as described under Authorized Activities above, the applicant will have ensured that the project has been designed to avoid and minimize impacts to high value functioning WOTUS.

For all projects covered by this RGP, 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 adverse effects, both temporary and permanent to wetlands to the maximum extent practicable at the project site (i.e., on site).

b. Mitigation in all its forms (avoiding, minimizing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effect to the aquatic environment are minimal.

c. Compensatory mitigation will be considered on a case-by-case basis for all wetland losses, unless the district engineer determines in writing that either some other form of mitigation would be environmentally preferable or the adverse effects of the proposed activity are minimal and provides a project-specific waiver for this requirement. For wetland losses the district engineer may determine on a case by case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR 332.

The prospective permittee is responsible for proposing an appropriate compensatory mitigation option, if compensatory mitigation is required, to ensure that the activity results in minimal adverse effects on the aquatic environment in the following order of preference:

a. *Mitigation bank credits.* When permitted impacts are located within the service area of an approved mitigation bank, and the bank has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from the sponsor.

b. *In-lieu fee program credits.* Where permitted impacts are located within the service area of an approved in-lieu fee program, and the sponsor has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from the sponsor. Where permitted impacts are not located in the service area of an approved mitigation bank, or the approved mitigation bank does not have the

appropriate number and resource type of credits available to offset those impacts, in-lieu fee mitigation, if available, is generally preferable to permittee-responsible mitigation.

c. *Permittee-responsible mitigation under watershed approach*. Where permitted impacts are not in the service area of an approved mitigation bank or in-lieu fee program that has the appropriate number and resource type of credits available, permittee-responsible mitigation is the only option.

d. *Permittee-responsible mitigation through on-site and in-kind mitigation.* In cases where a watershed approach is not practicable, the district engineer should consider opportunities to offset anticipated aquatic resource impacts by requiring on-site and in-kind compensatory mitigation. The district engineer must also consider the practicability of on-site compensatory mitigation and its compatibility with the proposed project.

e. *Permittee-responsible mitigation through off-site and out-of-kind mitigation.* If, after considering opportunities for on-site, in-kind compensatory mitigation, the district engineer determines that these compensatory mitigation opportunities are not practicable, are unlikely to compensate for the permitted impacts, or will be incompatible with the proposed project, and an alternative, practicable off-site and/or out-of-kind mitigation opportunity is identified that has a greater likelihood of offsetting the permitted impacts or is environmentally preferable to on-site or in-kind mitigation, the district engineer should require that this alternative compensatory mitigation be provided.

Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the RGP authorization, instead of components of a compensatory mitigation plan.

Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of this RGP, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with this RGP.

CONDITIONS

The work authorized by this RGP is subject to the following general conditions and any special conditions necessary to reduce impacts to the minimal level.

Special Conditions: Any verification issued may include special conditions that this office determines are necessary to ensure compliance with the conditions of the RGP and to ensure that the activity will not result in more than minimal individual or cumulative adverse impacts to the aquatic ecosystem or other public interest factors.

General Conditions:

1. **Permit Expiration.** This RGP is effective for 5 years from the date of issuance unless otherwise modified, suspended, or revoked. Discharges authorized by this RGP generally must be completed by the date specified in the Corps authorization letter. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon this RGP will remain authorized provided the activity is completed within twelve months of the date of this RGP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization. Activities completed under the authorization of this RGP continue to be authorized by the RGP.

2. **Notification.** The applicant must submit the required project information to the Corps. Written verification that the project may proceed under RGP-05 must be received from the Corps prior to commencing construction.

3. **Excluded Areas** (this general condition does not pertain to coastal erosion projects). Fill material shall not be discharged within 500 feet of marine or estuarine waters, or the Colville, Kuparuk, Sagavanirktok, Shaviovik, Kadleroshilik, and Canning rivers; or within 100 feet of other riverine waters, lacustrine waters, or the following types of palustrine wetlands with: an unconsolidated bottom (PUB), the subclass 2 (PEM2, indicating the presence of Arctophyla), or a water regime modifier of F, G, H, L, or N (PEMF/G/H/L/N, including beaded streams).

4. **Avoidance and Minimization.** To the maximum extent practicable, the activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent to wetlands on the project site (i.e., on site). Side slopes on fill embankments should generally be no greater than 2:1 horizontal to vertical. For fill pads, the fill area shall be minimized by consolidating activities to the maximum extent practicable.

   Any portion of a pipeline must maintain a 7-foot minimum clearance, including any vibration dampeners, from the ground surface. The pipelines, when parallel to roads or other pipelines shall be a minimum of 500 feet away from the road wherever practicable to provide for movement of wildlife.

5. **Maintenance of Hydrology Patterns.** Site preparation and fill placement shall be conducted in a manner that prevents adverse hydrologic effects. Natural drainage patterns shall be maintained using appropriate ditching, culverts, storm drain systems, and/or other measures to prevent ponding or drying. Ponding and/or dewatering of areas adjacent to fills that results in a measurable change in site hydrology or drainage from the pre-project condition indicates non-compliance with this condition.

6. **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 must be permanently stabilized at the earliest practicable date. Increased water turbidity and sediment beyond the fill footprint indicates non-compliance with this condition. Erosion control products should be removed when fill has been stabilized and they are no longer necessary.

7. **Flagging.** The boundaries of the fill area in wetlands shall be clearly delineated with stakes and/or flagged prior to construction to prevent inadvertent encroachment beyond the authorized area of fill placement. No fill or construction materials shall be stockpiled in WOTUS outside the delineated project boundary.

8. **Suitable Fill Material.** All fill material shall come from existing, authorizes gravel sources, this RGP does not allow the development of new gravel material sites. Fill material must be comprised of clean materials. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, cement, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

9. **Permafrost.** Fill thickness shall be a minimum of five (5) feet to provide thermal stability and prevent detrimental thermal degradation of underlying permafrost. Signs of thermokarsting or standing water where it didn't previously occur, indicate non-compliance with this condition. Applicants may propose the use of rigid insulation to allow shallower fill embankments. An individual verification approving the use of rigid insulation will include specific conditions identifying the required depth of fill.

10. **Water Quality Certification.** You must comply with all conditions specified as part of the Alaska Department of Environmental Conservation (ADEC) Certificate of Reasonable Assurance, which is part of this RGP. Material must be available at the site to contain and clean up incidental spills and leaks and must be used to contain and clean up any petroleum product spilled as a result of construction activity.

11. **Contaminated Sites.** A soil remediation plan shall be approved by the ADEC prior to commencing work on a site containing contaminated soil as defined by the Toxic Pollutant List referred to as Table 1 in Section 307 of the Clean Water Act and by Alaska State Law, 18 AAC 70 Alaska Water Quality Standards, 18 AAC Oil and Hazardous Substance Pollution Control, and 18 AAC 78 Underground Storage Tanks. If contaminated soils are discovered during the activity, ADEC shall be contacted, and work shall commence only upon receiving ADEC approval.

12. **Hazardous Waste.** This RGP does not allow the construction of landfills including the disposal of hazardous waste. These materials are defined in the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act (RCRA), 42 U.S.C. 6901 et seq., and the Comprehensive Environmental Response,

Compensation, and Liability Act (CERCLA). Contact the ADEC or the U.S. Environmental Protection Agency for information about hazardous substances.

13. **Endangered Species.** Activities covered under this RGP shall follow the Minimization Measures of the current Programmatic Biological Opinion for Wetland Impacts on the North Slope (PBO) written by the Fairbanks Fish and Wildlife Field Office Endangered Species Branch of the U. S. Fish and Wildlife Service (FWS), when the project is within the PBO boundaries (Utqiaġvik and the rest of the Barrow Triangle are outside the boundary of the PBO). These activities will be coordinated with FWS to determine whether the cumulative effect limits identified in the PBO have been reached.

    For projects in the exclusion areas of the PBO the Corps will initiate consultation with FWS as necessary.

14. **Migratory Birds.** Discharges are prohibited from June 1st through July 31st, to avoid impacts to active bird nests, nestlings, and nesting habitat during the bird nesting season. Land-disturbing activities such as clearing, excavation, and hydro-axing should be avoided from June 1st through July 31st, as these activities can damage nests and eggs, and cause injury or death to nestlings.

    Lighting for the project shall be shielded down lighting and shall be attached to buildings unless in the middle of a storage/parking area. Any lighting less than a mile from the coast shall be shielded to the east.

    If utilities (i.e., power, communication and fiber optic lines) are not placed within the fill pad, they shall be hung in trays with pipelines to minimize impacts of potential bird collisions with the lines. New power lines on pad shall have bird diverters.

15. **Essential Fish Habitat.** The activity must not adversely affect Essential Fish Habitat (EFH). Coastal Erosion projects will be designed so that effects to EFH are appropriately minimized.

16. **Floodplains.** The activity must comply with applicable FEMA approved state or local floodplain management requirements. Fuel storage tanks shall be located above the 100-year flood level and must be designed to withstand a 100-year flood event when a 100-year flood level has been established for a site. If the 100-year flood level has not been established for a site, the tank flood design shall be developed by an engineer to withstand flood levels based on anecdotal evidence, physical evidence, climate data, and good engineering judgment.

17. **Stream Crossings.** This condition applies to the construction of culverts and bridges within/over fish bearing waters. Natural stream channels conveying perennial flow are presumed to be fish bearing. It does not apply to culverts whose sole purpose is to provide cross-drainage or equalization within wetlands.

All culverts and road-stream crossings must be designed and installed to maintain low flows and expected high flows and to provide for the passage of aquatic organisms during all flow conditions.

Stream crossing structures that do not meet the criteria as described above require authorization via individual permit.

18. **Cultural Resources.** This RGP requires consultation with the State Historic Preservation Office (SHPO) for projects determined by USACE to be an undertaking with the potential to affect historic properties. If a determination of eligibility for a potential historic property in the project area has not been previously completed, an evaluation of its potential significance using the National Register Criteria (36 CFR 60.4) must be completed. If USACE determines the project would have 'no effect', or 'no adverse effect' the RGP may be verified after SHPO review. Discharges that are determined to have an 'adverse effect' to a historic property would be required to go through the individual permit process. The activity must not adversely affect subsistence resources.

19. **Inadvertent Discoveries.** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

20. **Invasive Plant and Animal Species.** Measures should be implemented to prevent the introduction and spread of invasive plant and animal species, such as washing equipment to remove dirt and debris that might harbor invasive seeds before entering the jobsite, using weed-free fill, disposing of spoil and vegetation contaminated with invasive species appropriately, and re-vegetating with local native plant species.

21. **Maintenance.** You must maintain the authorized activity in good state, and in conformance with the conditions of this RGP. The permittee may transfer the permit

to a third party in compliance with the Section on **Transfer of General Permit Verification**. Should the permittee cease to maintain the authorized activity, or should they desire to abandon the project without a transferee, then the permittee must obtain approval from this office, which may require restoration of the area.

22. **Inspections.** You must permit the district engineer, or his designated representative(s), to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the conditions of this RGP. Reports shall be prepared for all field inspections and entered into the official RGP file.

23. **Modification by Other Authorizations.** If the work proposed under this RGP is subsequently modified by other Federal, State, or local governmental organization, a modification of the RGP including verification by the Corps to perform activities under this RGP may need to be obtained.

24. **Use of Multiple General Permits, including Nationwide Permits.** The use of this RGP in conjunction with other RGPs or Nationwide Permits (NWPs) for a single and complete project is prohibited, except when the acreage loss of WOTUS authorized by the RGP and/or NWPs does not exceed the acreage limit of the RGP/NWP with the highest specified acreage limit.

25. **Transfer of Regional General Permit Verification.** If the permittee sells or transfers the lease on the property associated with a RGP verification, the permittee may transfer this RGP verification to the new owner by submitting a letter to the Corps to validate the transfer. A copy of this RGP verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures of work authorized by this RGP are still in existence at the time the property is transferred, the conditions of this RGP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this RGP and the associated liabilities associated with compliance with its conditions, the signature of the transferee and date appear below."

_____ _____

(*Transferee signature*) (*Date*)

_____

(*Printed name*)

COMPLIANCE

Compliance with the RGP requires strict adherence to the conditions specified both herein and any special conditions within the verification letter. Corps representatives may inspect sites to determine whether the work is being, or has been, performed in accordance with the conditions of this RGP.

Should the Corps determine that an activity is not in compliance with the RGP, the permittee may be required, at their expense, to implement corrective measures, remove fill and/or restore any areas affected by the noncompliance, in accordance with 33 CFR Part 326 and Section 309 of the Clean Water Act. Noncompliance could also result in suspension, revocation or modification of the RGP authorization (pursuant to 33 CFR 325.7), initiation of legal action by the Federal Government, issuance of a monetary penalty ranging from $21,934 to $53,833 per day of violation, and/or imprisonment for up to one year.

In addition, periodic field inspections shall be undertaken by this office of projects authorized under this RGP. Reports shall be prepared for all field inspections and entered into the official RGP file. The Regulatory Division shall maintain a file of RGP-related documents and monitoring efforts. Information contained in this RGP file shall provide the basis for the decision whether or not to revise or renew this RGP. If it is determined that projects authorized by this RGP result in greater than minimal adverse environmental impacts, then this RGP shall be modified, suspended, or revoked to prevent further impacts.

FURTHER INFORMATION

1. **Congressional Authorities.** Authorization to undertake the activities descried above is pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403)

2. **Limits of this Authorization.**
   a. This permit does not obviate the need to obtain other Federal, State, or local authorization required by law.
   b. This RGP does not grant any property rights, either in real estate or material, or any excusive privileges; and it does not authorize any injury to property, invasion of rights, or infringement of federal, state, or local laws or regulations.
   c. This permit does not authorize the interference with any existing or proposed federal projects.

3. **Limits of Federal Liability.** In issuing this permit, the federal government does not assume any liability for the following:
   a. Damages to the permitted project or uses thereof resulting from other permitted or non-permitted activities or from natural causes.
   b. Damages to the permitted project or uses thereof resulting from current or future activities undertaken by or on behalf of the United States which in the public interest.
   c. Damages to persons, property, or to other permitted or non-permitted activities or structures caused by an activity authorized by this permit.
   d. Design or construction deficiencies associate with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. **Reliance on Applicant's Data.** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information provided by the applicant.

5. **Reevaluation of Decision.** This office may reevaluate its decision on RGP verification at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
   a. The permittee fails to comply with the conditions of this permit.
   b. The information provided by the permittee in support of the application proves to have been false, incomplete, or inaccurate (See 4 above).
   c. Significant new information surfaces, which this office did not consider in reaching the original public interest decision.

   Reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for conditions of the permit and for the initiation of legal action where appropriate.

6. **Reevaluation of this RGP.** This office may also reevaluate its decision to issue the RGP-05 at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following: significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7.

This RGP becomes effective when the federal official, designated to act for the Secretary of the Army, has signed below.

FOR THE DISTRICT COMMANDER:

_____ _____

Janet Post Date
Chief, North Branch
Regulatory Division
Alaska District Corps of Engineers

Appendix A – Glossary

Compensatory mitigation: means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Credit: means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic functions at a compensatory mitigation site. The measure of aquatic functions is based on the resources restored, established, enhanced, or preserved.

Debit: means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the loss of aquatic functions at an impact or project site. The measure of aquatic functions is based on the resources impacted by the authorized activity.

Enhancement: the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s) but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions.

Functions: means the physical, chemical, and biological processes that occur in ecosystems.

In-lieu fee program: a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. However, the rules governing the operation and use of in-lieu fee programs are somewhat different from the rules governing operation and use of mitigation banks. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument. https://ribits.usace.army.mil/.

Mitigation bank: a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits. In general, a

mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument. https://ribits.usace.army.mil/.

Performance standards: mean observable or measurable physical (including hydrological), chemical and/or biological attributes that are used to determine if a compensatory mitigation project meets its objectives.

Permittee-responsible mitigation: an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

Practicable: available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Preservation: the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Restoration: the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Service Area**:** means the geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu fee program, as designated in its instrument.

Single and complete project: all aspects of development including those planned for the future must be included in the application.

Attachment 1, RGP-05, North Slope
Authorized Geographic Area

U.S. Army Corps of Engineers, Alaska District

North Slope Activities

GENERAL PERMIT SITE DESCRIPTION

May be used instead of Form ENG 4345 to request verification under Regional General Permit (RGP-05)

Applicant:		Phone:
Address:		Fax:
City, State, Zip:		Cell/Direct Line:
Point of Contact:	e-mail:	

Agent:		Phone:
Address:		Fax:
City, State, Zip:		Cell/Direct Line:
Point of Contact:	e-mail:	

Location of the Proposed Project Site:

Nearest Waterway:	
Section, Township, Range, and Meridian (if known):	
Latitude and Longitude (Decimal Degrees, NAD-83):	
Nearest City:	Subdivision:
Borough:	USGS Quad(s) (if known):
Driving Directions to Site:	

Project purpose:

Have any permits been issued for this site/project in the past (if known, how many acres of impact occurred for that project) and what is the POA #?

Your application must also include:

- **Drawings to include a vicinity map, project plan view, and cross sections with toe-to-toe dimension (For more information on acceptable drawings and plans, please visit our website at http://www.poa.usace.army.mil/Missions/Regulatory/Permits/**
- **Delineation of the project should provide a map showing Cowardin wetlands classifications, and distances from project activities to the Cowardin classifications (listed under Excluded Areas and Activities of the RGP), drainage patterns, and topography. https://www.fws.gov/wetlands/Data/Mapper.html**
- **Provide a description of the soils (Refer to the 'Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Alaska Region', pages 18 – 45).**
- **Attach proof of application for the North Slope Borough TLUI Form 500. Instructions and the application forms for Form 500 can be found at http://www.north-slope.org/ departments/planning-community-services/ applications-and-forms.**

Description of the proposed project:

Provide a delineation showing the setbacks of 500' or 100' from specified waters of the U.S, and listed high value wetlands as described in the RGP under Excluded Areas and Activities.

Provide information on type(s) (i.e. sand, gravel, cobble, topsoil etc…) of Material Being Discharged and the Amount of Each Type in Cubic Yards:

Type	Type	Type
Amount in Cubic Yards	Amount in Cubic Yards	Amount in Cubic Yards

Describe methods for rehabilitation of disturbed areas. If you intend to use other locally-obtained native materials, identify the source.

You must satisfy the requirements in the Mitigation Regional General Condition attached.

Describe how you will satisfy the requirement that you avoid and minimize adverse impacts to wetlands and other waters to the maximum extent practicable. Provide examples of avoidance measures to include site selection, routes, design configurations, etc. Minimization measures include limiting fill discharges to the minimum amount/size necessary to achieve the project purpose.

Would your proposed project result in the loss of greater than 1/10 of an acre of wetlands?

YES ☐ or NO ☐

If YES, describe your proposed compensatory mitigation to offset unavoidable impacts to waters of the U.S., or, alternatively, why compensatory mitigation is not appropriate or practicable for your project. Compensatory mitigation may involve the restoration, enhancement, establishment (creation), and/or the preservation of aquatic sites.

Information for the following section can be found at locations listed below:

U.S. Fish and Wildlife Service and the National Marine Fisheries Service or their world wide Web pages at http://www.fws.gov or http://www.fws.gov/ipac and http://www.nmfs.noaa.gov/pr/species/esa/

Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer.

Information on the location of the USACE projects in Alaska are listed on the world wide web pages at http://www.poa.usace.army.mil/About/Offices/Construction-Operations/Rivers-and-Harbors/ and at http://www.poa.usace.army.mil/About/Offices/Construction-Operations/Erosion-and-Flood-Mitigation/.

For a full list of Nationwide Permit General Conditions please visit our web page at http://www.poa.usace.army.mil/Missions/Regulatory/Permits/Nationwide-Permits/

Are there any listed species or designated critical habitat that might be affected or is in the vicinity of the project, or is the project located in designated critical habitat? Federal agencies must provide the appropriate documentation to demonstrate compliance with the agency's procedures for compliance with the ESA. Information on the location of threatened or endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. (see General Condition 18 and 22)

YES ☐ or NO ☐

If YES, list all species:

Are there historic properties (listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties) that the proposed activity may have the potential to effect? Federal agencies must provide documentation demonstrating compliance with the Section 106 of the National Historic Preservation Act. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer. (see General Condition 20)

YES ☐ or NO ☐

If YES, state which property or properties may be affected and/or attach a vicinity map indicating the location of the historic property or properties.

Are there any U.S. Army Corps of Engineers (USACE) federally authorized Civil Works projects (i.e. 'Harbor, Navigation Channel, flood control, etc.') in the vicinity of your project?

YES ☐ or NO ☐

If YES, state which USACE project is in the vicinity of your project.

Jurisdictional Determination

The Corps has received new guidance (Regulatory Guidance Letter 16-01) which states that the Corps will only complete a jurisdictional determination (JD) form if the applicant requests it. <u>If the applicant does not request a JD, we will proceed straight into our permit evaluation, without completing a JD form.</u>

If you wish to obtain a JD there are two types you may request:

An Approved Jurisdictional Determination (AJD) is completed when we can state definitively that we do or do not have authority over the aquatic resource in question. Approved JDs often require a site visit during the growing season. An AJD is appealable and expires after five years.

A preliminary jurisdictional determination (PJD) is when the Corps determines that we may have authority over the aquatic resources in the project area. A PJD often doesn't require a site visit and is expedited. It is not appealable and does not expire. Applicants who want a JD may request a PJD because it is often more expedient than an AJD.

Please indicate which you prefer:

NO JD REQUESTED ☐ or AJD ☐ or PJD ☐

Application is hereby made for a permit or permits to authorize the work described in this preconstruction notification form. I certify the information in this preconstruction notification form is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

SIGNATURE OF APPLICANT	DATE	SIGNATURE OF AGENT	DATE

Regional General Condition for RGP-05: Mitigation

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (*i.e.,* on site).
(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.
(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1⁄10-acre, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1⁄10-acre or less, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.
(d) For losses of streams or other open waters, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).
(e) Compensatory mitigation plans for activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (*e.g.,* conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 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. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project 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 minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.
(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.
(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. The preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the GPAF is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.
(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.
(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the RGP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).
(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.
(5) Compensatory mitigation requirements (*e.g.,* resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed

through conditions added to the RGP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of thisRGP, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the no more than minimal impact requirement for this RGP.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee responsible mitigation, the special conditions of the RGP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

Mitigation Definitions

Banking Instrument (or in-lieu fee program instrument): means the legal document for the establishment, operation, and use of the bank (or in-lieu fee program)

Compensatory mitigation: means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Credit: means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic functions at a compensatory mitigation site. The measure of aquatic functions is based on the resources restored, established, enhanced, or preserved.

Debit: means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the loss of aquatic functions at an impact or project site. The measure of aquatic functions is based on the resources impacted by the authorized activity.

Enhancement: the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions.

In-lieu fee: a fee paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for Department of the Army permits.

In-lieu fee program: a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. However, the rules governing the operation and use of in-lieu fee programs are somewhat different from the rules governing operation and use of mitigation banks. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument. https://ribits.usace.army.mil/

Functions: means the physical, chemical, and biological processes that occur in ecosystems.

Mitigation bank: a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument. https://ribits.usace.army.mil/

Performance standards: mean observable or measurable physical (including hydrological), chemical and/or biological attributes that are used to determine if a compensatory mitigation project meets its objectives.

Permittee-responsible mitigation: an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

Mitigation Definitions (continued)

Practicable: available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Preservation: the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Restoration: the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Service Area**:** means the geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu fee program, as designated in its instrument.