

## Ecology

# Section 404 Individual Permits

Applicability  
Regulations, Guidance and Policy  
Individual Permit

## APPLICABILITY

Section 404 of the Clean Water Act (CWA) permitting requirements apply to all GDOT projects that impact Waters of the US (WOTUS). The Section 404 permit—stipulating Section 404 permitting requirements—must be acquired before construction activities can begin. Typically, Section 404 permits are required prior to Certification for Let. An Individual Section 404 CWA Permit (IP) is required for projects with potentially significant impacts and involves a public interest review.

## REGULATIONS, GUIDANCE AND POLICY

Section 404 of the CWA establishes a program to regulate the discharge of dredged or fill material into WOTUS. The administration of the Section 404 permit program is assigned to the US Army Corps of Engineers (USACE) with Environmental Protection Agency oversight. Proposed activities within WOTUS are regulated through a permit review process. The USACE Savannah District has jurisdiction over Section 404-regulated WOTUS within Georgia. GDOT requirements for Section 404 permitting are specific to the Savannah District.

The USACE Savannah District Regulatory Division administers the Section 404 permit program for GDOT projects under Section 214 of the Water Resources Development Act (33 USC 2352). Savannah District Regulatory Division has dedicated Project Managers solely responsible for assisting with and reviewing permit applications for GDOT projects. Regulatory Division staff are also responsible for coordinating with other USACE District Offices when there is overlapping jurisdiction on GDOT projects, such as USACE managed lakes in Georgia (Mobile District) and projects bordering other states.

Permit applications developed by Ecologists and submitted to USACE by GDOT must demonstrate that all practicable efforts have been made to avoid and minimize impacts to WOTUS, that compensation (mitigation) be provided for all unavoidable impacts, and that the project would not result in significant degradation of water quality (i.e., Section 401 CWA Water Quality Certification [WQC]).

## INDIVIDUAL PERMIT

As noted, an IP is required for projects with potentially significant impacts and involves a public interest review. The USACE has discretionary authority to determine when an IP is required and may require an IP on projects that meet General Permit conditions if there is public controversy or the project is determined to result in substantial impacts to a proposed federal project. An IP requires a Section 404(b)(1) analysis (i.e., a Practicable Alternatives Review [PAR]). Many of the requirements discussed below are covered in greater detail in other guidebooks.

### Pre-Application

Prior to receiving Concept Report Layout (See Appendix O of the GDOT's *Plan Development Process [PDP] Manual*), the project team develops the PAR and other preapplication requirements. Chapter 5 of the PDP and the Local Coordination Procedures detail pre-application procedures and agency coordination required for PAR approval.

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## Local Coordination Procedures

### GDOT Office of Environmental Services

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### Permit Application

The Ecologist prepares an IP application to be submitted to the USACE. The following items are required for a complete application:

1. Aquatic Resource Delineation Verification – The USACE letter that verifies the aquatic resource delineation for the project area.
2. Joint Permit Application (CESAS Form 19) – The completed CESAS Form 19, titled Joint Application For A Department Of The Army, Corps Of Engineers Permit, State Of Georgia Marshland Protection Permit, Revocable License Agreement And Request For Water Quality Certification As Applicable (Joint Permit Application).

The Joint Permit Application was developed by USACE and their State partners (EPD and CRD) for use with State of Georgia Coastal Marshland Protection Permit, Revocable License Agreement, and WQC. Instructions for completing CESAS Form 19 can be found on the USACE Savannah District website. Required information includes names and addresses of adjacent property owners/lessees on pre-typed address labels. For a project that requires an IP and a Section 10 authorization, GDOT may submit a Joint Permit Application.

3. Ecology Resource Survey and Assessment of Effects Report (ERS AOE) and Addenda – The ERS AOE or most recent Addendum documenting all impacts to WOTUS on the project, and containing current figures and tables detailing impacts.
4. Construction Drawings – At a minimum, Mainline Plan (Section 13) drawings with permanent impacts to WOTUS highlighted in color and labeled. The following GDOT plan series shall also be included, as needed to illustrate impacts: Section 19 and 20 (Staging Plans) for Temporary or Short Term Impacts, Section 24 (Utility Plans), Section 29 (Landscaping Plans and Details), Section 30 (Mitigation Plans), Section 35 (Bridge Plans), and Section 36 (Bridge Culvert Plans). Section 54 plans (Erosion Control Plans – Construction BMP Location Details) may also be helpful to show BMP locations. Plan sheets can be pulled from the ERS AOE or Addendum. Duplicate copies of plan sheets from the ERS AOE or most recent Addendum should not be enclosed with a permit application. Refer to the *Impact Example Plan Sheets* for examples of highlighted and labeled impacts on GDOT plan sheets:

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### Impact Example Plan Sheets

### GDOT Office of Environmental Services

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5. Temporary Impacts and Restoration Plans – If temporary impacts are proposed, a description of temporary impacts and restoration plans (if applicable), including timeframes for removal of fill material must be enclosed. Following project completion, all temporary structures and fills used for construction must be entirely removed to upland areas, with affected aquatic resource areas restored to pre-construction elevation; hydrologic and flow regime; bed and bank condition; and vegetation condition, as appropriate.

Clearing and grubbing of wetlands is typically considered a permanent loss by the USACE. In order for clearing and grubbing of wetlands to be considered a temporary or short-term impact, a restoration plan must be included in the permit application.

Common measures for restoring wetlands disturbed by grubbing include but are not limited to removing topsoil prior to construction, storing, and replacing upon construction completion to maintain a viable seedbank; transplanting wetland soils; or grading grubbed areas to pre-construction contours and revegetating with a wetland seed mix. For wetland soils compacted during construction due to placement of access/haul roads or other temporary fills, the restoration plan must include measures to alleviate compaction such as soil ripping (i.e., tilling), composting, or a combination thereof.

*Planting of multi-trophic vegetation (i.e., trees and shrubs) is not included in wetland restoration plans for GDOT projects, because the right-of-way is subject to future*

*clearing*. Duration of forested wetland clearing is considered Reoccurring/Permanent.

For projects involving in-stream temporary construction activities (i.e., jetty, bulkhead, cofferdam, or similar structure) Series 19 or 20 plans depicting impacts must be enclosed. If temporary stream impacts result in bed and/or bank disturbance, stream channel restoration plans must be enclosed with the permit application. The Ecologist must coordinate with Design to ensure that adequate restoration measures complying with Section 404 permit requirements are included in Section 29 and/or Section 30 plans. Refer to Savannah District Regional Permit (RP) 31 and/or Nationwide Permit (NWP) 33 for restoration requirements for temporary access, bypass, dewatering, and other temporary structures and fills in WOTUS.

### Savannah District Required Items for Expedited Review

For an expedited review, the Ecologist must provide the following items:

1. Distances to Federal Projects – Distances to or between the activity and nearby federal projects (i.e., navigation channels) or within five miles of any airports, sanctuaries and/or refuges shall be documented. For a project that would impact waters regulated by the USACE within five miles of an airport or in the vicinity of a refuge or federal project, appropriate coordination and correspondence is required. This includes all project correspondence related to Section 408 permit authorization, for projects impacting USACE Civil Works projects. The Project Manager (PM) is responsible for obtaining a Section 408 permit, if required, and can provide the necessary correspondence. All correspondence shall provide supporting or objecting rationale from the agency responsible for regulating or authorizing the activity.
2. Floodplain Management Statement – A statement that the project would comply with any applicable Federal Emergency Management Agency (FEMA)-approved state or local floodplain management requirements shall be included. For a project that would impact waters regulated by the USACE within a FEMA-regulated floodplain, appropriate coordination and correspondence is required with FEMA. For projects resulting in the placement of fill within a FEMA-regulated floodplain, consult the PM and Design to document FEMA compliance measures for the project. Project related FEMA correspondence should be enclosed with the permit application.
3. Georgia Buffer Variance – For a project that would result in non-exempt disturbance to a stream, open water, or coastal marshlands buffer subject to the jurisdiction of the EPD, a copy of the buffer variance application form submitted to EPD must be enclosed with the IP application, if available.
4. Federally Protected Species – A narrative summary of the effect determinations for federally listed/proposed species and/or designated/proposed critical habitat with supporting justification must be provided. Any Section 7 Endangered Species Act

concurrence letters, early coordination responses, no effect determinations, and any subsequent relevant agency correspondence shall be enclosed or referenced in the enclosed ERS AOE or most recent Addendum.

5. Cultural Resources – A narrative summary of the Section 106 conclusions regarding the presence of cultural, archaeological, and/or historic resources in the project area must be enclosed. This summary should be provided by the GDOT Cultural Resources Section. Alternatively, the information can be taken from the NEPA document for federal-aid projects. State-funded projects subject to the Georgia Environmental Protection Act do not typically require an environmental document. All concurrences from the Georgia Historic Preservation Division must also be enclosed.
6. Mitigation Plan – A mitigation plan in accordance with the Final Compensatory Mitigation Rule (33 CFR 332), must be provided. This mitigation plan must adequately replace the lost functions and values of WOTUS from the proposed project impacts.

Credit purchase from a USACE-approved mitigation bank serving the project is the preferred mitigation for GDOT projects. In-lieu fee payment shall only be considered when mitigation bank credits are not available in the primary or secondary service area and documentation of the credit absence or shortage must be provided. Consult the GDOT Ecology Special Projects Coordinator if mitigation bank credits are not available for a project.

For credit purchase from a USACE-approved mitigation bank(s), the GDOT preferred mitigation bank must be identified and an analysis in accordance with the USACE Savannah District *Regulatory Guidelines to Evaluate Proposed Mitigation Bank Credit Purchases in the State of Georgia* must be provided. The GDOT Ecology Special Projects Coordinator must be consulted regarding the preferred mitigation bank, prior to IP application submittal. A Section 404 permit cannot be issued without credits first being acquired and documentation of credit purchase provided to the USACE.

7. 303(d) Listed Streams – Project proximity to any 303(d) listed stream segment(s) not supporting its designated use along with the impaired segment name, designated use, and criteria violated must be provided. Listed segments can be found on the current Georgia 305(b)/303(d) Integrated Report published by EPD. For projects that may affect an impaired stream segment, the IP application must document project measures to avoid or minimize adverse effects to the impaired stream reach.
8. Trout Streams – If the project is located on a designated trout stream or in a designated trout watershed, provide the name of the trout stream or watershed along with information about the project's proximity to the trout stream (i.e., is the entire project or just part of the corridor located within a trout watershed? Are

individual streams in the project corridor listed as trout streams but their watershed is not designated a trout watershed?). Designation of trout streams and watersheds by county is listed at GADNR Rule 391-3-6-.03. For projects that may affect a trout stream, the IP application must document project measures to avoid or minimize adverse effects to trout streams.

9. **Project Phasing** – If the roadway project will be constructed in phases, with future wetland/stream impacts planned, cumulative impacts to WOTUS for all project phases must be reported. This permitting strategy must be discussed with the GDOT Ecologist or Ecology Team Leader prior to submitting the IP application.

Refer to the IP Checklist for more detailed information:

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## Individual Permit Application Checklist

### USACE Savannah District

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#### Public Interest Review Factors

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) must be provided. All public interest factors must be reviewed and those that are relevant to the project shall be considered and discussed in additional detail. For each factor, the evaluation shall include an effects determination with the rationale used to support the findings provided.

#### Draft 404(b)(1) Document

A standalone Draft 404(b)(1) document for the project shall be prepared and enclosed with the IP application. Guidelines for completing a 404(b)(1) document can be found on the USACE Savannah District, Regulatory Division website.

#### Culvert Restrictions for Perennial Streams

For projects involving construction of a new culvert or replacement of an existing culvert on a perennial stream, all information listed in NWP Regional Condition C.4 and RP PCN Requirements VII.7.j must be provided, as well as documentation of project compliance with *Culvert Restrictions for Perennial Streams* (NWP Regional Condition E and RP Special Condition V.16).

### Joint Public Notice

When USACE has determined that the IP application is complete, USACE publishes a Joint Public Notice (JPN) for the project. The JPN process must be complete prior to USACE issuance of the Section 404 Permit.

### 401 Water Quality Certification

The Joint Permit Application includes a request to EPD for the Section 401 WQC. The WQC is required prior to USACE issuance of the Section 404 Permit.

### Revocable License Agreement

For projects resulting in impacts to coastal marshlands and/or tidal waters in the 11 coastal counties, the Joint Permit Application must include a Revocable License Request to CRD. A Letter of Authorization and executed Revocable License from CRD is required prior to USACE issuance of the Section 404 Permit.

### Permit Compliance

Upon IP issuance, the Ecologist must review all Permit Conditions. In some cases, GDOT Environmental Commitments and/or Special Provisions may need to be revised to comply with Permit Conditions. For example, the discovery of a federally-listed species on the project site requires the contractor to immediately stop work and notify the USACE within 24 hours.

Upon completion of authorized work in WOTUS, GDOT must submit a Certification of Compliance to the USACE, which is typically attached to the issued permit. At that time the USACE may schedule a compliance inspection of the project.

*Guidebook Revision History*

Revision Description	Relevant Sections	Revision Date
Initial Publication	All	5/22/2019
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