

## Ecology

# Miscellaneous Permits

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## RIVERS AND HARBORS ACT PERMITTING ACTIVITIES

### Section 9 US Coast Guard Permit

Section 9 of the Rivers and Harbors Act of 1899, as amended (33 US Code 403) prohibits the construction or modification of any bridge across navigable Waters of the US (WOTUS) unless first authorized by the US Coast Guard (USCG). Through the Section 9 permitting process, the USCG approves the location, plans, and navigational clearances of bridges. Construction of bridges or causeways over or in any navigable river or other navigable water are subject to USCG permit requirements.

If the project involves construction of a bridge over a navigable water, the Environmental Analyst and the Office of Bridge Design coordinate to complete a USCG Bridge Project Questionnaire to be submitted to the lead Federal Agency (typically either Federal Highway Administration [FHWA] or US Army Corps of Engineers [USACE]). If the lead Federal Agency responds to the questionnaire by indicating that the project requires a USCG permit, the Office of Bridge Design will prepare and submit the permit application. The Ecologist's only role is to document agency coordination regarding the need to obtain a USCG permit within the USACE Section 404 Permit Pre-Construction Notification (PCN) or Joint Application.

For the purposes of USCG permitting, the limits for navigable rivers in Georgia include:

- > Chattahoochee River – from the dam at West Point Reservoir, downstream to the Georgia-Florida border;
- > Flint River – from Lake Blackshear above Albany, downstream to its confluence with the Chattahoochee River at Lake Seminole;
- > Coosa River – from the confluence of the Etowah River and the Oostanaula River, downstream to the Georgia-Alabama border; and
- > Etowah River – from the Norfolk-Southern Railway bridge immediately east of the US 27/SR 1 bridge near Rome, downstream to the junction with the Coosa River.

The limits for navigable Federal Project Channels in Georgia include:

- > St. Mary's River – from the US 301 bridge near Folkston, downstream to the Coastal Boundary Area;
- > Oconee River – from approximately 1.5 miles upstream of State Route 319/E. Jackson Street in Dublin, GA downstream to the confluence with the Ocmulgee River;
- > Altamaha River – from the confluence of the Oconee River and the Ocmulgee River, downstream to the Coastal Boundary Area; and
- > Savannah River – from the dam at Clarks Hill Reservoir, downstream to the Coastal Boundary Area.

### Section 10 Authorization

Section 10 of the Rivers and Harbors Act requires USACE authorization prior to any work in, under, or over navigable WOTUS (33 CFR Part 329), or which affects the course, location, condition, or capacity of such waters. Navigable WOTUS are defined as waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. Refer to the USACE Savannah District Regulatory Division website for a list of Section 10 waters in Georgia. A GIS layer depicting the unofficial extent of Section 10 waters in Georgia is also available on the GDOT Ecology Section SharePoint, but the Ecologist should cross-check it with the aforementioned USACE list.

Typical GDOT activities requiring authorization in Section 10 waters include bridge construction and maintenance, including use of bulkheads and jetties during construction, and bank stabilization. Projects requiring General Permit (i.e., Nationwide Permit [NWP] or Regional General Permit [RGP]) authorization do not require separate Section 10 authorization. The Ecologist may be required to prepare and submit a PCN for activities that may otherwise qualify for a non-reporting General Permit, if they occur in Section 10 waters. The Ecologist must refer to NWP General and Regional Conditions and RPs 30-35 for notification requirements for projects occurring in Section 10 waters. For projects that require an Individual Permit (IP) and Section 10 authorization, the submittal of a Joint Application (CESAS Form 19) is sufficient to address Section 10 requirements.

### TENNESSEE VALLEY AUTHORITY PERMIT

Approval from the Tennessee Valley Authority (TVA) is required under Section 26a of the TVA Act prior to construction, operation, or maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The rules governing such TVA approval are codified at 18 CFR Part 1304.

TVA's Section 26a jurisdiction extends to the limits of the Tennessee River Watershed. On TVA reservoirs jurisdiction typically applies to the limits of the 500-year floodplain or to the

upper limits of TVA flowage rights, whichever is higher. On-reservoir jurisdiction generally equates to the area where TVA has obtained land and/or land rights. On regulated river and stream reaches where TVA has not obtained land or land rights and on all unregulated tributary streams, jurisdiction typically applies to the limits of the 100-year floodplain.

Section 26a regulation is limited to construction of obstructions affecting navigation, flood control or public lands. Obstruction is defined as “any man-made physical condition that during its continuance after completion impounds, checks, hinders, restricts, retards, diverts or otherwise interferes with the movement of water or of objects on or in the water.” Obstructions across, along, or in the Tennessee River, TVA reservoirs, and stream reaches downstream of TVA dams require a Section 26a permit. Commonly regulated activities may include, but are not necessarily limited to the following:

- a. Placement of culverts in streams and relocation of stream channels;
- b. Addition of lanes to highways that require culvert extensions;
- c. New location roadways that would cross or relocate a stream;
- d. Bridge replacements when lanes are added; and
- e. New bridge construction upstream or downstream of the existing bridge.

Refer to the TVA Interpretive Rule (81 Federal Register 169) Table 2 for a listing of TVA reservoirs and downstream reaches.

The TVA Interpretive Rule conversely identifies several obstructions that do not affect navigation, flood control, or public lands or reservation when located across, along, or in upstream tributary reaches of the Tennessee River. These obstructions, therefore, do not require a Section 26a permit from TVA. However, these permit exemptions only apply to stream reaches upstream of the control or influence of TVA reservoir system operation. Examples of exempt obstructions under the TVA Interpretive Rule include, but are not limited to bank stabilization, bridges, culverts, outfall structures, utilities, roads and driveways, and grading and fill not involving dam or impoundment constructions.

Georgia Counties found within the Tennessee Valley Watershed include Catoosa, Dade, Fannin, Gilmer, Rabun, Towns, Union, Walker, and Whitfield. TVA reservoirs located in Georgia include Blue Ridge (Fannin County) and Nottely (Union County), as well as portions of Chatuge (Towns County). Stream reaches downstream of TVA dams in Georgia include the Toccoa River (Georgia/Tennessee State Line to Blue Ridge Dam) and Nottely River (Mouth to Nottely Dam). For projects impacting TVA reservoirs or downstream reaches, the Ecologist consults with TVA to determine if a Section 26a permit is required. For example, bridge construction across the Toccoa River downstream of Blue Ridge Reservoir in Georgia that includes in-water support structures would require a Section 26a permit.

Please note, a TVA Section 26a permit is not typically required for GDOT projects as TVA reservoirs in Georgia and stream reaches downstream of TVA dams are limited. Prior to

applying for a TVA permit, the Ecologist must coordinate with TVA to verify that a permit is required for the project.

Refer to the Section 26a Checklist available on the TVA website for items required to be included with a Joint Department of the Army Section 404/TVA Section 26a Permit Application. The Ecologist should enclose the following additional items with the permit application:

- > Transmittal Letter which includes:
  - Brief project description
  - Brief discussion of wetland and/or stream impacts
  - Brief discussion of any federally listed threatened or endangered species and state-listed species effects
  - Short discussion of any archaeology and/or history effects
  - A short statement confirming approval of the NEPA document from the lead Federal Agency, if available (typically FHWA for federal aid projects and USACE for state-funded projects)
  - A short statement respectfully requesting issuance of the Section 26a permit
- > KMZ file (Google Earth) of project center point
- > Project Figures
  - Project Vicinity Map
  - Survey Area Map
  - TVA Map (map showing the project location in relation to the nearest TVA reservoir)
- > Project Description (pulled from the most recent Ecology Resource Survey and Assessment of Effects Report or Addendum)
- > Mainline Plan Sheets (13 Series)

The Ecologist should also enclose a completed Section 26a Checklist with the application, which must be submitted 12 months in advance of project letting.

## COASTAL MARSHLANDS PROTECTION ACT

The Coastal Marshlands Protection Act (CMPA) (OCGA 12-5-280 et seq.) regulates activities and water dependent structures in jurisdictional marshlands. GDOT projects are exempt from the CMPA as listed at OCGA 12-5-295. However, for impacts to coastal marshlands

from projects and entities that are exempt from the CMPA, such as GDOT, the Georgia Department of Natural Resources (GADNR) Coastal Resources Division (CRD) issues a Revocable License (RL) and/or Letter of Authorization (LOA).

### REVOCABLE LICENSE AUTHORITY

The Revocable License (RL) Authority (OCGA 50-16-61 et seq.) of the State of Georgia allows for permanent structures to occupy state-owned marshland or water bottoms, including tidal streams and coastal marshlands. Any permanent impact below the CMPA Jurisdictional Determination (JD) Line in the 11 coastal counties requires submittal of a RL Request to CRD. For coastal marshlands, the CMPA JD Line must be delineated by the Ecologist (See the Waters Delineation Guidebook) and verified by CRD in the field prior to issuance of a RL. As the name implies, this license can be revoked if project compliance is not met.

The Ecologist submits a RL Request to CRD when the PCN is submitted to the USACE for General Permit authorization. For projects requiring an IP, the Ecologist includes the RL Request with the Joint Application (CESAS Form 19) (See the Individual Section 404 Permits Guidebook). CRD reviews the request to determine if additional information is required. If no information is requested, CRD issues a Letter of Authorization (LOA) and executed RL.

Please note, for projects impacting tidal stream or coastal marshlands that do not require a PCN (i.e., non-reporting NWP or RPs), the Ecologist submits a GADNR Notification Form (included in Appendix A of the 2017 Savannah District NWP Regional Conditions or RGP 30-35 Appendix E) to CRD. The form can be submitted with the RL Request or under separate cover.

The RL request should include construction/maintenance plan drawings, figures depicting the project location and extent of CRD jurisdiction, as well as any previous CRD project correspondence. The request should also include square footage and linear footage of all impacts (temporary and permanent) to resources under CRD jurisdiction, as well as a description of the means, methods, and materials used for impact.

A RL is not required for projects with only temporary impacts in state-owned coastal marshlands or tidal water bottoms. However, a LOA must be obtained from CRD prior to temporary work in coastal marshlands or tidal waters. The Ecologist must submit the same information required for a RL Request for CRD authorization of temporary structures or work in coastal marshlands or tidal waters.

*Guidebook Revision History*

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