

City and County of Denver
CWA SECTION 404 & CDPHE REG. 87 DOCUMENTATION FOR
PROJECTS IN/NEAR OPEN WATER OR WETLANDS (JANUARY 2026)

Background:

The City & County of Denver [Floodplain Ordinance](#) Section 56-204(b)(5) requires, prior to issuance of the floodplain permit, that the Floodplain Administrator must “...assure that all necessary water and/or floodplain permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.”

Floodplain Management staff at Denver are not Clean Water Act (CWA) [Section 404](#) or [Regulation No. 87](#) (Reg. 87) experts. The regulatory agency responsible for Section 404 permitting is the US Army Corps of Engineers (USACE). The regulatory agency responsible for Reg. 87 permitting is the Colorado Department of Public Health & Environment (CDPHE). Historically, standard practice was to obtain written documentation from the USACE on all projects in/near open water and/or wetlands, prior to issuing floodplain permits to determine if jurisdictional waters of the U.S. (WOTUS), including adjacent wetlands, were present. After the U.S. Supreme Court drastically limited the scope of federal protection under the Clean Water Act, the State of Colorado developed Reg. 87, a control regulation for avoiding, minimizing, and mitigating the impacts of dredge and fill activity in State waters. The Denver Floodplain Management Group will not obtain water resource protection documentation from USACE or CDPHE. It is the responsibility of the floodplain permit applicant to submit the required documentation. Be aware this process may add time to the project schedule.

Purpose:

The intent of this document is to provide guidance on what documentation is required to be submitted with the floodplain permit application to meet the intent of Section 56-204(b)(5), while ensuring that the project meets Section 404 and/or Reg. 87 permit obligations. **Please be aware that the Denver Floodplain Management Group reserves the right to request additional information to confirm the project complies with the CWA and Reg. 87.**

Notwithstanding this guidance, all floodplain permit applicants are responsible for complying with Section 404 and Reg. 87. Issuance of a City and County of Denver floodplain permit cannot be relied upon as evidence of Section 404 or Reg. 87 compliance. Holding a floodplain permit does not relieve the permittee from Section 404 or Reg. 87 compliance requirements.

The following sections describe the most common scenarios encountered by projects in need of a floodplain permit. The scenarios are organized into Tiers, each of which has its own submittal requirements to document compliance with Section 404 and Reg. 87. Some projects may require more than one Tier. If a project does not fit within in one of these Tiers, contact the Denver Floodplain Management Group to determine documentation requirements.

Some Tiers include providing figures generated from the U.S. Fish and Wildlife Service National Wetland Inventory (NWI) mapper, which can be accessed here: <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>

TIER 1: Projects that occur exclusively in uplands and have no effect on wetlands or on waters:

Project located exclusively in uplands that has no effect on wetlands or on waters, provide the following items in a Memo/Report:

- Description of the project and associated land disturbance activities.
- Project potential land disturbance area identified on a NWI mapper PDF.
- Statement from a qualified professional that the project is located entirely in uplands and will have no effect on wetlands or on waters, regardless of their jurisdictional status.

TIER 2: Projects that impact wetlands and/or WOTUS and/or State waters, but are exempt from CWA Section 404 and CDPHE Reg. 87 regulations:

Project will impact wetlands and/or WOTUS and/or State waters, but the project is claiming the activities are eligible for exemptions under [Section 404\(f\)](#) of the Clean Water Act or Colorado Revised Statute (C.R.S.) [Section 25-8-205.1\(8\)\(b\) and \(d\)](#) for CDPHE Reg. 87, provide the following items in a Memo/Report:

- Description of the project and associated land disturbance activities, including impacts to wetlands and waters.
- Project potential land disturbance area identified on a NWI mapper PDF.
- If the project activities are eligible for 1 of the 6 exemptions under Section 404(f) of the Clean Water Act, provide a copy of the activity exemption letter from the USACE Denver Regulatory Office. Exempt Activities are listed here: <https://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Section-404-Exemptions/>
- If the project activities are eligible for Reg. 87 exemptions or exclusions, provide a copy of the activity exemptions or exclusions letter from CDPHE. Exemptions or exclusions guidance can be found here: <https://cdphe.colorado.gov/dredge-and-fill>

TIER 3: Projects impacting non-jurisdictional wetlands and/or State waters that are covered under CDPHE Reg. 87:

Project will impact non-jurisdictional wetlands and/or State waters, provide the following:

- Statement from a qualified professional that jurisdictional wetlands and WOTUS will NOT be impacted by the project.
- Approved authorization as required under CDPHE's [Reg. 87](#).

TIER 4: Projects that impact jurisdictional wetlands and/or WOTUS and qualify for coverage under a Nationwide Permit (NWP), Regional General Permit (RGP), or Individual Permit (IP).

- Project will impact jurisdictional wetlands and/or WOTUS and is authorized under a NWP or RGP that requires Preconstruction Notification (PCN) or is authorized by an IP, provide the following:
 - A copy of the PCN or IP application and the NWP Verification Letter, RGP Permit Authorization, or signed IP issued by the USACE.
- For projects impacting jurisdictional wetlands and/or WOTUS authorized under a NWP without a PCN required, provide the following:
 - Delineation of WOTUS, including adjacent wetlands, documented by a qualified professional in conformance with current USACE delineation methods. There is no license or certification for wetland delineation professionals that is recognized by the USACE. However, the Association of State Wetland Managers has developed some suggestions for selecting a consultant at www.aswm.org/pdf_lib/consultant0607.pdf.
 - Memo/report on company letterhead, dated and signed by the qualified professional that includes the following, at a minimum:
 - Description of work.
 - Methodology for determination jurisdictional wetlands and/or WOTUS.
 - Area of disturbance below the Ordinary High Watermark and/or to jurisdictional wetlands.
 - Specify the Nationwide Permit(s) that will cover the proposed project impacts to jurisdictional wetlands and/or WOTUS.
 - Clause stating that any changes to the character, scope, or size of the original design may require CWA Section 404 authorization by the USACE, and stating the applicant understands it is applicant's responsibility to determine the need for and acquire necessary authorization.