



Public Notice

US Army Corps
of Engineers

Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Public Notice Number: 200650414

Date: March 19, 2007

Comments Due: April 16, 2007

In reply, please refer to the Public Notice Number

NATIONWIDE PERMIT REISSUANCE - REQUEST FOR COMMENTS ON PROPOSED REGIONAL CONDITIONS TO BE IMPOSED BY THE CALIFORNIA, UTAH AND NEVADA PORTIONS OF THE SACRAMENTO DISTRICT

On March 12, 2007, in Part II of the *Federal Register* (72 FR 11092), the U.S. Army Corps of Engineers (Corps) announced the reissuance of all existing Nationwide Permits (NWP), general conditions, and definitions with some modifications. The Corps is also issued six new NWPs, two new general conditions, and 13 new definitions. The NWPs will be effective on March 19, 2007.

The publication of this *Federal Register* notice also begins the 60-day period for states, Indian Tribes, and the Environmental Protection Agency (EPA) to complete their water quality certification (WQC) process for the NWPs. This 60-day period will end on May 11, 2007. Sacramento District has applied for certification of the Nationwide Permit program in each of the States. While the states, Indian Tribes, and EPA complete their WQC processes, the use of an NWP to authorize a discharge into waters of the United States is contingent upon applicants obtaining individual water quality certification or a case-specific WQC waiver.

Division Engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions, which take into account regional differences in aquatic resource functions and services, are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division Engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal.

In addition to announcing the NWPs, the Sacramento District is seeking comments on proposed regional conditions to be followed in the states of California, Utah and Nevada as well as on the need for additional regional conditions to help ensure that impacts authorized by the proposed NWPs are minimal.

Comments on the proposed regional conditions are due by **April 16, 2007** and must be sent to:

US Army Corps of Engineers, Sacramento District
Regulatory Branch (Attn: Michael Jewell)
1325 J Street, Room 1480
Sacramento, CA 95814-2922
Email: Michael.S.Jewell@usace.army.mil

The March 12, 2007, *Federal Register* notice is available for viewing at [Corps district name and address] or on the Internet at http://www.usace.army.mil/cw/cecwo/reg/nwp/nwp_2007_final.pdf. As an alternate, World Wide Web users can access the Federal Register through the U.S. Government Printing Office at <http://www.gpoaccess.gov/fr/index.html>. The Corps has also issued final decision documents for the new and reissued NWPs. These documents are also available on the Internet at http://www.usace.army.mil/cw/cecwo/reg/nwp/nwp_final.htm and Corps district offices. Furthermore, the NWP decision documents will be supplemented by Division Engineers to address decisions concerning regional conditioning of the NWPs.

Index of Nationwide Permits, Conditions, Further Information, and Definitions

Final Nationwide Permits:

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Operations
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. (Reserved)
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modification of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Emergency Repair Activities
46. Discharges into Ditches and Canals
47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
48. Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities

Final Nationwide Permit General Conditions:

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas

5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills within 100-year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Wild and Scenic Rivers
16. Tribal Rights
17. Endangered Species
18. Historic Properties
19. Designated Critical Resource Waters
20. Mitigation
21. Water Quality
22. Coastal Zone Management
23. Regional and Case-by-Case Conditions
24. Use of Multiple Nationwide Permits
25. Transfer of Nationwide Permit Verifications
26. Compliance Certification
27. Pre-Construction Notification

Final Nationwide Permit Definitions:

Best management practices (BMPs)

Compensatory mitigation

Currently serviceable

Enhancement

Ephemeral stream

Establishment (creation)

Independent utility

Intermittent stream

Loss of waters of the United States

Non-tidal wetland

Open water

Perennial stream

Practicable

Pre-construction notification

Preservation

Re-establishment

Rehabilitation

Restoration

Riffle and pool complex

Riparian areas

Single and complete project

Stormwater management

Stormwater management facilities

Stream bed

Stream channelization

Structure

Tidal wetland

Vegetated shallows

Waterbody

Proposed Nationwide Permit Regional Conditions:

I. State of California

1. When pre-construction notification (PCN) is required by terms of the NWP, the prospective permittee must notify the Corps in accordance with General Condition 27 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or a completed application form (ENG Form 4345). The PCN must also include a written statement explaining how the activity has been designed to avoid and minimize adverse effects to waters of the United States, as well as:

a. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity. The drawings must contain a title block, legend and scale, amount (in cubic yards) and size (in acreage) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or high tide line should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation; and

b. Pre-project color photographs of the project site taken from designated locations documented on the plan drawing.

2. Compensatory mitigation required as a special condition of the NWP verification shall be completed before or concurrent with construction of the authorized activity, except in extraordinary circumstances as determined by the Corps. When project mitigation involves use of a mitigation bank or in-lieu fee program, payment must be made before commencing construction.

3. For work or structures in navigable waters or project sites with areas preserved to minimize or compensate for project impacts, the NWP verification must be recorded with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property.

4. Wetlands, other aquatic areas and associated vegetative buffers preserved to minimize or compensate for project impacts must be placed into a separate "preserve" parcel prior to discharging dredged or fill material into waters of the United States, except in extraordinary circumstances as determined by the Corps. Permanent legal protection must be established for all preserve parcels, following Corps approval of the legal instrument.

5. Corps representatives will be allowed to inspect the authorized activity at any time deemed necessary to determine compliance with the terms and conditions of the NWP verification. The permittee will be notified in advance of an inspection.

6. NWPs shall not be used to authorize activities to permanently impact more than 0.10 acre of jurisdictional vernal pools.

7. In the Lake Tahoe Basin, all NWPs are revoked. Activities in this area must be authorized under Regional General Permit 16 or through an individual permit.

8. Road crossings must be designed to ensure fish passage, especially for anadromous fisheries. Bridge designs that span the stream or river, including pier or pile supported structures, or design that involve a large arched culvert with natural streambed (i.e., substrate and streamflow conditions approximate undisturbed stream bed channel conditions) shall be employed. Approach embankments in waters of the United States are not authorized under the NWPs, except in extraordinary circumstances as determined by the Corps.

9. Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams must include an evaluation of functions and services of the stream environment that the applicant believes supports granting of the waiver, measures taken to avoid and minimize losses, other measures to avoid and minimize filling but were found not to be practicable, and a mitigation plan as to how the unavoidable losses will be offset.

10. For NWP 12 (Utility Line Activities), clay blocks or bentonite must be used to seal the trench to prevent the utility line from draining wetlands.

11. For NWP 13 (Bank Stabilization), bank stabilization must include the use of vegetation or other biotechnical design to the maximum extent practicable. Activities involving hard-armoring of the bank toe or slope requires a PCN per General Condition 27. This NWP does not authorize bank stabilization activities over 500 feet in length.

12. For NWP 23 (Approved Categorical Exclusions), the PCN must include a copy of the signed Categorical Exclusion document and final agency determinations regarding compliance with Section 7 of the Endangered Species Act (ESA), Essential Fish Habitat (EFH) under the Magnussen-Stevens Act, and Section 106 of the National Historic Preservation Act.

13. NWPs 29 (Residential Developments) and 39 (Institutional and Commercial Developments) do not authorize channelization or relocation of any jurisdictional intermittent or perennial stream water course, regardless of size or rate of flow, except when the relocation is intended for the purposes of enhancing or restoring the aquatic ecosystem.

14. For NWP 33, temporary fills for construction access in waters of the United States supporting fisheries shall be accomplished with clean, washed spawning quality gravels.

15. For NWP 44, the discharge must not cause the loss of greater than 0.50 acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of streambed. For intermittent and ephemeral streams, the 300 linear foot limit may be waived in writing by the Corps. This NWP does not authorize discharges associated with mining in waters of the United States supporting anadromous fish.

16. For NWP 46, the discharge must not cause the loss of greater than 0.5 acres of waters of the United States or the loss of more than 300 linear feet of ditch or canal, whichever is less, unless this 300 foot linear foot limit is waived in writing by the Corps.

17. In the Primary and Secondary Zones of the Legal Delta, NWPs 29, 39, 40 and 46 are revoked.

18. For NWPs 29, 39, 40, 42, and 43, upland vegetated buffers must be established and maintained in perpetuity, to the maximum extent practicable, next to all preserved open waters, streams and wetlands including created, restored, enhanced or preserved waters of the U.S., consistent with General Condition 20. Except in unusual circumstances, vegetated buffers shall be at least 50 feet in width. Greater widths may be required, depending on water quality or habitat loss concerns.

19. All NWPs, except 3, 6, 20, 27, 32, 38, and 47, are revoked for activities in fens. Fens are regionally important wetlands characterized by water-logged spongy ground and contain, in all or part, soils classified as Histosols* or mineral soils with a histic epipedon. Histosols have 40 centimeters (16 inches) or more of the upper 80 centimeters (32 inches) of organic solid material (less over bedrock). Organic soil material has an organic carbon content by weight of 12 to 18 per cent, or more, depending on the clay content of the soil. Histic epipedons have a 20-to-60 centimeter-thick (8 to 24 inches) organic soil horizon that is at or near the surface of a mineral soil. Histosols and histic epipedons are widely recognized as organic soils formed by slow accumulation of plant debris in water-logged situations where it cannot decompose.

20. All NWPs, except 3, 6, 20, 27, 32, 38 and 47, are revoked for activities within 100 feet of the point of groundwater discharge of a natural spring, unless the Corps determines there would be no adverse effect on the spring source. A spring source is defined as any location where ground water emanates from a point in the ground. For purposes of this regional condition, springs do not include seeps or other discharges which do not have a defined channel

II. State of Nevada

1. When pre-construction notification (PCN) is required by terms of the NWP, the prospective permittee must notify the Corps in accordance with General Condition 27 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or a completed application form (ENG Form 4345). The PCN must also include a written statement explaining how the activity has been designed to avoid and minimize adverse effects to waters of the United States, as well as:

a. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity. The drawings must contain a title block, legend and scale, amount (in cubic yards) and size (in acreage) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or high tide line should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation; and

b. Pre-project color photographs of the project site taken from designated locations documented on the plan drawing.

2. Compensatory mitigation required as a special condition of the NWP verification shall be completed before or concurrent with construction of the authorized activity, except in extraordinary circumstances as determined by the Corps. When project mitigation involves use of a mitigation bank or in-lieu fee program, payment must be made before commencing construction.

3. Corps representatives shall be allowed to inspect the authorized activity and any mitigation, preservation, or avoidance areas at any time deemed necessary to determine compliance with the terms and conditions of the NWP verification. The permittee will be notified in advance of an inspection.

4. In the Lake Tahoe Basin, all NWPs are revoked. Activities in this area must be authorized under Regional General Permit 16 or through an individual permit.

5. Road crossings must be designed to ensure fish passage, especially for anadromous fisheries. Bridge designs that span the stream or river, including pier or pile supported structures, or design that involve an large arched culvert with natural streambed (i.e., substrate and streamflow conditions approximate undisturbed stream bed channel conditions) shall be employed. Approach embankments in waters of the United States are not authorized under the NWPs, except in extraordinary circumstances as determined by the Corps.

6. Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams must include an evaluation of functions and services of the stream environment that the applicant believes supports granting of the waiver, measures taken to avoid and minimize losses, other measures to avoid and minimize filling but were found not to be practicable, and a mitigation plan as to how the unavoidable losses will be offset.

7. For NWP 12 (Utility Line Activities), clay blocks or bentonite must be used to seal the trench to prevent the utility line from draining wetlands.

8. For NWP 13 (Bank Stabilization), bank stabilization must include the use of vegetation or other biotechnical design to the maximum extent practicable. Activities involving hard-armoring of the bank toe or slope requires a PCN per General Condition 27. This NWP does not authorize bank stabilization activities over 500 feet in length.

9. For NWP 23 (Approved Categorical Exclusions), the PCN must include a copy of the signed Categorical Exclusion document and final agency determinations regarding compliance with Section 7 of the Endangered Species Act (ESA), Essential Fish Habitat (EFH) under the Magnussen-Stevens Act, and Section 106 of the National Historic Preservation Act.

10. For NWP 33, temporary fills for construction access in waters of the United States supporting fisheries shall be accomplished with clean, washed spawning quality gravels.

11. For NWP 44, the discharge must not cause the loss of greater than 0.50 acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of streambed. For intermittent and ephemeral streams, the 300 linear foot limit may be waived in writing by the Corps. This NWP does not authorize discharges associated with mining in waters of the United States supporting anadromous fish.

12. For NWP 46, the discharge must not cause the loss of greater than 0.5 acre of waters of the United States or the loss of more than 300 linear feet of ditch or canal, whichever is less, unless this 300 foot linear foot limit is waived in writing by the Corps.

13. For NWPs 29, 39, 40, 42, and 43, upland vegetated buffers must be established and maintained in perpetuity, to the maximum extent practicable, next to all preserved open waters, streams and wetlands including created, restored, enhanced or preserved waters of the U.S., consistent with General Condition 20. Except in unusual circumstances, vegetated buffers shall be at least 50 feet in width. Greater widths may be required, depending on water quality or habitat loss concerns.

14. All NWPs, except 3, 6, 20, 27, 32, 38, and 47, are revoked for activities in fens. Fens are regionally important wetlands characterized by water-logged spongy ground and contain, in all or part, soils classified as Histosols* or mineral soils with a histic epipedon. Histosols have 40 centimeters (16 inches) or more of the upper 80 centimeters (32 inches) of organic solid material (less over bedrock). Organic soil material has an organic carbon content by weight of 12 to 18 per cent, or more, depending on the clay content of the soil. Histic epipedons have a 20-to-60 centimeter-thick (8 to 24 inches) organic soil horizon that is at or near the surface of a mineral soil. Histosols and histic epipedons are widely recognized as organic soils formed by slow accumulation of plant debris in water-logged situations where it cannot decompose.

15. All NWP, except 3, 6, 20, 27, 32, 38 and 47, are revoked for activities within 100 feet of the point of groundwater discharge of a natural spring, unless the Corps determines there would be no adverse effect on the spring source. A spring source is defined as any location where ground water emanates from a point in the ground. For purposes of this regional condition, springs do not include seeps or other discharges which do not have a defined channel.

III. State of Utah

1. When pre-construction notification (PCN) is required by terms of the NWP, the prospective permittee must notify the Corps in accordance with General Condition 27 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or a completed application form (ENG Form 4345). The PCN must also include a written statement explaining how the activity has been designed to avoid and minimize adverse effects to waters of the United States, as well as:

a. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity. The drawings must contain a title block, legend and scale, amount (in cubic yards) and size (in acreage) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or high tide line must be shown (in feet), based on NGVD or other appropriate referenced elevation; and

b. Pre-project color photographs of the project site taken from designated locations documented on the plan drawing.

2. A PCN is required for all proposed activities that would affect waters of the United States below the elevation 4217 feet mean sea level (msl) adjacent to the Great Salt Lake and below 4500 feet msl adjacent to Utah Lake.

3. A PCN is required for all bank stabilization activities in a perennial stream that would affect more than 100 feet of stream length as measured from the upstream portion of the affected bank to the downstream section, would narrow the cross-section of the stream, would substantially reduce the riparian vegetation and/or would increase velocities.

4. Compensatory mitigation required as a special condition of the NWP verification shall be completed before, or concurrently with, construction of the authorized activity, except in extraordinary circumstances as determined by the Corps. When project mitigation involves use of a mitigation bank or in-lieu fee program, payment must be made before commencing construction.

5. Wetlands, other aquatic areas and associated vegetative buffers preserved to minimize or compensate for project impacts must be placed into a separate "preserve" parcel prior to discharging dredged or fill material into waters of the United States, except in extraordinary circumstances as determined by the Corps. Permanent legal protection must be established for all preserve parcels, following Corps approval of the legal instrument.

6. For work or structures in navigable waters or project sites with areas preserved to minimize or compensate for project impacts, the NWP verification must be recorded with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property.

7. Corps representatives shall be allowed to inspect the authorized activity and any mitigation, preservation, or avoidance areas and any mitigation, preservation, or avoidance areas at any time deemed necessary to determine compliance with the terms and conditions of the NWP verification. The permittee will be notified in advance of an inspection.

8. For NWP 12 (Utility Line Activities), a PCN in accordance with General Condition 27 must be submitted to the appropriate field office for any utility activity in Utah that would cross perennial waters of the U.S., playas, or special aquatic sites, including wetlands. Post-construction notification is required for crossings of other jurisdictional waters. The post-construction notification package shall include a signed Department of the Army permit application or signed equivalent information including supporting drawings and maps. The post-construction notification must also include a statement certifying that the completed activity was constructed in accordance with the General Conditions of the Nationwide Permit program. Clay or bentonite trench plugs shall be placed around the utility to seal the trench to prevent the utility line from acting as a French drain.

9. For NWP 13 (Bank Stabilization), bank stabilization must include the use of vegetation or other biotechnical design to the maximum extent practicable. Activities involving hard-armoring of the bank toe or slope requires a PCN per General Condition 27. This NWP does not authorize bank stabilization activities over 500 feet in length.

10. NWP 27 (Aquatic Habitat Restoration, Establishment, and Enhancement Activities) may not be used to authorize mechanisms for controlling stormwater runoff for the purpose of reducing downstream erosion, water quality degradation, or flooding. Grade control structures shall not exceed 1 foot vertical drop, except where additional vertical drop is clearly demonstrated as necessary to restore aquatic resource functions. For any stream restoration projects, the post-project stream sinuosity will be equal to, or greater than, pre-project sinuosity, as appropriate to the geomorphology of the surrounding area. Sinuosity is defined as the ratio of stream length to project reach length. Stream restoration activities are limited to 1500 linear feet as measured on the stream thalweg, and in-stream structures are limited to 50 cubic yards per structure. Structures shall allow the passage of aquatic organisms, recreational water craft or other navigational activities unless specifically waived in writing by the District Engineer. The use of grout and/or concrete to construct in-stream structures is not authorized by NWP 27. The construction of water parks (i.e., kayak courses) is not authorized by NWP 27.

11. NWPs 29 (Residential Developments) and 39 (Institutional and Commercial Developments) do not authorize channelization or relocation of any jurisdictional intermittent or perennial stream water course, regardless of size or rate of flow, except when the relocation is intended for the purposes of enhancing or restoring the aquatic ecosystem.

12. For NWPs 29, 39, 40, 42, and 43, upland vegetated buffers must be established and maintained in perpetuity, to the maximum extent practicable, next to all preserved open waters, streams and wetlands including created, restored, enhanced or preserved waters of the U.S., consistent with General Condition 20. Except in unusual circumstances, vegetated buffers shall be at least 50 feet in width. Greater widths may be required, depending on water quality or habitat loss concerns.

13. For NWP 44, the discharge must not cause the loss of greater than 0.50 acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of streambed. For intermittent and ephemeral streams, the 300 linear foot limit may be waived in writing by the District Engineer.

14. For NWP 46, the discharge must not cause the loss of greater than 0.50 acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of streambed. For intermittent and ephemeral streams, the 300 linear foot limit may be waived in writing by the District Engineer.

15. All NWPs, except 3, 6, 20, 27, 32, 38, and 47, are revoked for activities in fens. Fens are regionally important wetlands characterized by water-logged spongy ground and contain, in all or part, soils classified as Histosols or mineral soils with a histic epipedon. Histosols have 40 centimeters (16 inches) or more of the upper 80 centimeters (32 inches) of organic solid material (less over bedrock). Organic soil material has an organic carbon content by weight of 12 to 18 per cent, or more, depending on the clay content of the soil. Histic epipedons have a 20-to-60 centimeter-thick (8 to 24 inches) organic soil horizon that is at or near the surface of a mineral soil. Histosols and histic epipedons are widely recognized as organic soils formed by slow accumulation of plant debris in water-logged situations where it cannot decompose.

16. All NWPs, except 3, 6, 20, 27, 32, 38 and 47, are revoked for activities within 100 feet of the point of groundwater discharge of a natural spring, unless the Corps determines there would be no adverse effect on the spring source. A spring source is defined as any location where ground water emanates from a point in the ground. For purposes of this regional condition, springs do not include seeps or other discharges which do not have a defined channel.