Types of Permits

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US Army Corps of Engineers
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Overview

- General Permits
 - ► Nationwide Permit
 - ► Regional/Programmatic General Permit

- Individual Permit
 - ► Letter of Permission
 - ► Standard Permit





General Permits

- DA authorization issued on a Nationwide or regional basis for a category or categories of activities when:
 - Activities are substantially similar and cause minimal individual/cumulative environmental effects
 - ➤ Would result in avoiding unnecessary duplication of regulatory control of another Federal, state, or local agency provided environmental consequences are individually and cumulatively minimal (33 CFR 322.2(f), 323.2(h))





Nationwide Permits (NWPs)

- General Permit issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment.
 - ▶ Must comply with all of the terms, general conditions (GCs), and regional conditions (RCs) of the NWP, including any requirements for the submittal of a pre-construction notification (PCN).
 - ▶ Verification may include additional case specific conditions (special conditions) to ensure no more than minimal individual and cumulative impacts, and will state that the verification is valid for a specific period of time (generally until NWPs expire), unless the NWP authorization is modified, suspended, or revoked.
 - Per regulation, the NWPs must be reissued every five years. The reissuance process involves a full interagency and public interest review.



NWPs - Background

- February 21, 2012: NWPs announced in the Federal Register (77 FR 10184). Took effect on March 19, 2012.
- March 16, 2012: South Pacific Division (SPD) approved the Sacramento District (SPK) and Albuquerque District (SPA) supplemental decision documents & regional conditions. Took effect with the 2012 NWPs, on March 19, 2012.
 - ► SPK RCs: California, Nevada, Utah
 - ► SPA RCs: Colorado
- NWPs (and Regional Conditions) are valid until March 18, 2017, unless modified, suspended, or revoked.

Final NWPs

- 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. Response Operations for Oil and Hazardous Substances
- 21. Surface Coal Mining Activities
- 22. Removal of Vessels
- 23. Approved Categorical Exclusions
- 24. Indian Tribe or State Administered Section 404 Programs
- 25. Structural Discharges
- 26. [Reserved]





Final NWPs

- 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- 28. Modifications 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. Repair of Uplands Damaged by Discrete Events
- 46. Discharges in Ditches
- 47. [Reserved]
- 48. Commercial Shellfish Aquaculture Activities
- 49. Coal Remining Activities
- 50. Underground Coal Mining Activities
- 51. Land-Based Renewable Energy Generation Facilities
- 52. Water-Based Renewable Energy Generation Pilot Projects





Use of NWPs

- For 2012, 50 NWPs were approved
- Types of Activities: Residential, commercial & institutional developments; structures in navigable waters; renewable energy; scientific research & survey activities; transportation; recreation; maintenance; restoration; etc.
- Many NWPs require the submittal of a pre-construction notification (PCN) prior to beginning work.
 - PCN requirements found in the terms of the NWP, the General Conditions, and the Regional Conditions. If no PCN is required, applicant may proceed under the authority of the NWP, provided the applicant follow all terms of NWP, general and regional conditions.

NWP Terms

- In order to qualify for use under a NWP, the activity must:
 - ▶ 1. Meet the terms of the NWP
 - ▶ 2. Meet the General Conditions of the NWP
 - ▶ 3. Meet the Regional Conditions of the NWP
 - ▶ 4. Result in no more than minor individual and cumulative adverse effects on the aquatic environment
 - If the activity does not meet 1-3, it does not qualify for the NWP, if does not meet 4, must take discretionary authority

NWP Thresholds

- Thresholds identified in the NWP consist of:
 - ► Acreage and/or linear foot threshold for "loss of waters of the U.S." (e.g. NWP 29, discharge must not cause the loss of greater than ½ acre of non-tidal WOUS, including the loss of no more than 300 linear feet of stream bed)
 - ► Linear foot threshold for impact (e.g. NWP 13, the activity is no more than 500 feet in length along the bank)
 - ► Cubic yard threshold (e.g. NWP 13, the activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line)
 - In some cases, the linear foot or cubic yard thresholds may be waived (with a written determination that the project would have no more than minimal individual or cumulative adverse environmental consequences).
 There are no waivers for acreage of loss

Loss of WOUS

In NWP Definitions

- Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity.
 - Include permanent discharges that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody.
 - Per preamble, the conversion of a forested wetland to a scrub shrub wetland does not constitute a permanent loss of WOUS, and does not count towards acreage limit (although may require compensatory mitigation)
- Acreage is a threshold measurement for determining whether a project may qualify for an NWP



not a net threshold calculated after considering compensatory mitigation



Loss of WOUS

- ▶ Loss of stream bed includes the linear feet of stream bed that is filled or excavated.
- ► Temporary impacts restored to pre-construction contours and elevations after construction, are not included in the measurement
- ► Impacts from exempt activities not considered when calculating loss of WOUS.





NWP General Conditions

- 31 General Conditions
 - ► Apply prior to submittal of PCN
 - ► Apply prior to authorization
 - Apply prior to construction
 - Apply following construction
- Applicant is required to show compliance with all NWP General Conditions





NWP Regional Conditions

- Approved by SPD
 - ➤ Separate Regional Conditions for California (26), Nevada (24), Utah (24), Colorado (11, SPA)
 - ► PCN requirements, reporting requirements, general requirements, NWP specific requirements
 - Apply prior to PCN
 - Apply prior to authorization
 - Apply prior to construction
 - Apply following construction
- Applicant is required to show compliance with all NWP Regional Conditions

NWP – Minimal Effects

- Project must have no more than minimal individual and cumulative adverse effects to the aquatic environment
- Whenever the DE determines that a proposed specific activity covered by an NWP would have more than minimal individual or cumulative adverse effects on the environment or otherwise may be contrary to the public interest, he must either modify the NWP authorization to reduce or eliminate the adverse impacts, or notify the prospective permittee that the proposed activity is not authorized by NWP and provide instructions on how to seek authorization under a regional general or individual permit.(33 CFR 330.4(e)(2)).





NWP - PCN

- NWP terms identify whether PCN is required for NWP
- General Conditions may include additional PCN requirements (e.g. GC 18 and 20)
- Regional Conditions may include additional PCN requirements (e.g. CA RC 2, 19)





NWPs Single and Complete Project

Single and Complete Project

► General Condition 15: The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

► Definition of single and complete linear project

- Linear project: project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point
- Single and complete linear project: that portion of the total linear project proposed or accomplished by one owner/developer, or partnership or other association of owners/developers that includes all crossing of a single WOUS at a specific location

 - Individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc.: Not separate waterbodies and cannot be considered separately



Does not require "independent utility"

NWPs Single and Complete Project

► Definition of single and complete non-linear project

- Defined at 33 CFR 330.2(i)
- Total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers
- Single and complete non-linear project must have independent utility
- Single and complete non-linear projects may not be "piecemealed" to NWP thresholds

Definition of independent utility

- Test to determine single and complete non-linear project
- Has independent utility if it would be constructed absent the construction of other projects in the area
- Portions of a multi-phase project that depend upon other phases of the project do not have independent utility
- Phases of a project that would be considered even if other phases were not built can be considered single and complete projects with independent utility



NWPs – Multiple Use

- Use of Multiple Nationwide Permits (Stacking) General Condition 28
 - Prohibited unless acreage of loss of WOUS does not exceed limit of the NWP with highest specified limit
 - E.g. Road crossing over tidal waters under NWP 14 with bank stabilization under NWP 13, maximum LOSS of WOUS is 1/3 acre
 - ► The use of more than one NWP for one single and complete project should be done only when necessary
 - Temporary Impacts:
 - NWPs 3, 12, 13, 14, 15, 20 and 22 authorize temporary structures and/or fills,
 - NWPs 6, 11, and 33 authorize ONLY temporary impacts
 - NWP 20, 23, 24, 27, 32 in which there is an agreement with another agency
 - Utility Line Activities: NWP 12 authorizes construction of access roads, consider whether stacked w/ NWP 14
 - Linear Transportation Projects: NWP 14 authorizes bank stabilization, consider whether stacked w/ NWP 13



NWPs - Multiple Use

- Use of Multiple Nationwide Permits (Stacking) General Condition 28 (continued)
 - Categorical Exclusions: If cat-ex document include all activities proposed under NWP 23, unlikely to be stacked
 - Residential, Commercial and Institutional Developments: Allows "associated infrastructure." NWPs 29 and 39 generally not stacked w/ NWPs 7, 12, 14, 18, 42, or 43.
 - Completed Enforcement Actions: Generally not stacked unless portion of activity not in non-judicial settlement agreement, order on consent, or final Federal court decision, consent degree, or settlement agreement
 - Renewable Energy Facilities: NWP 51 and 52 authorize attendant features, and generally not stacked w/ NWPs 7, 14, 18, 39, 42, or 43
 - Also generally utility lines associated with renewable energy facilities are their own single and complete project and therefore NWPs 51 and 52 generally not stacked w/ NWP 12





NWP – PCN Requirements

- General Condition 31
 - ► Name, address, phone number
 - ▶ Location of project
 - Description of proposed project
 - Purpose
 - Direct and indirect adverse environmental effects, inducing amount of "loss" of WOUS in acres, linear feet
 - · Any other NWPs, RGPs, or IPs used or intended to be used
 - · Sufficiently detailed to allow DE to determine adverse effects
 - Sketches should be provided when necessary
 - ▶ Delineation of wetlands, special aquatic sites and other waters
 - · Prepared in accordance with current method required by Corps
 - ► If >1/10 acre of loss of wetlands, and PCN required, statement of how mitigation will be satisfied or why should not be required

NWP - PCN Requirements

General Condition 31

- ▶ If listed species or critical habitat affected or in vicinity, names of species that might be affected. Federal applicants provide documentation
- ▶ If activity may affect historic property, state which property may be affected by proposed work. Federal applicants provide documentation

CA/NV/UT Regional Condition 1

- ► SPD PCN Checklist or DA 4345 with attachment providing information on compliance with all General and Regional Conditions
- Written statement on how activity has been designed to avoid and minimized to avoid temporary and permanent adverse effects to WOUS
- ▶ Plan and cross-section view drawings of the project, meeting current standards
- Numbered and dated pre-project color photos with compass angle and position dentified on plan-view drawings

NWP - Process

- 1. Applicant submits a PCN or permit application
- 2. USACE determines if PCN is complete within 30 days. If PCN is not complete, the applicant will be notified that the PCN is not complete and will be requested to submit the specific info necessary
- 3. If PCN is complete, USACE will determine if the project qualifies for a NWP. If project does not qualify for a NWP, the applicant will be notified within 45 days (of receipt of complete PCN) that the project will need to be evaluated under another type of permit (RGP, LOP or SP). USACE also determines if effects are individually/cumulatively minimal, and if not, take discretionary authority.
- 4. If project qualifies for a NWP, USACE will initiate any required consultations under Section 7 of the Endangered Species Act (ESA) and Section 106 of the National Historic Preservation Act (NHPA) (note: CalTrans is usually the lead Federal agency and conducts this consultation and then provides the information to the Corps)



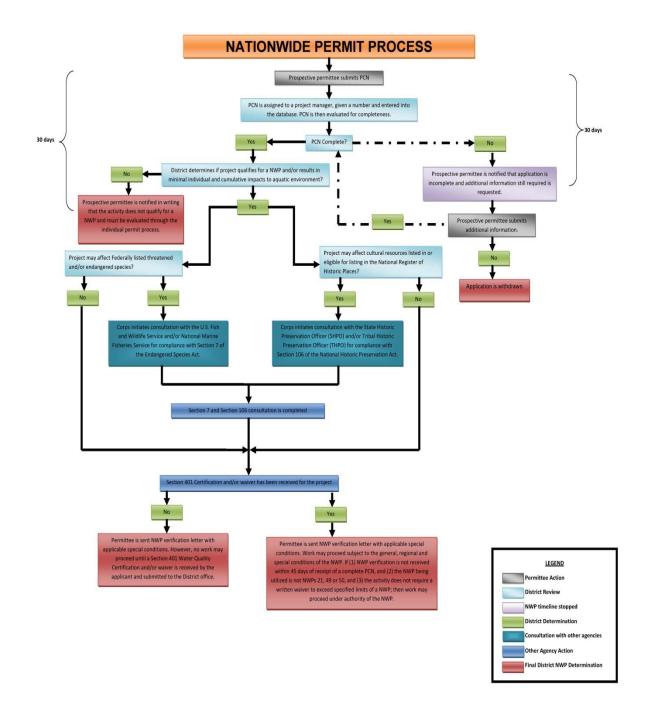


NWP - Process

- 5. Following completion of ESA or NHPA consultation, Corps will then **verify** the use of the NWP, and will generally add special conditions to the verification, in order to further avoid, minimize, or compensate for impacts to waters of the U.S.
- 6. If a Section 401 Water Quality Certification (WQC) has not been issued for the NWP, the applicant must apply for individual Certification from the Regional Water Quality Control Board. No work may begin under authority of a NWP until the Section 401 WQC has been issued or waived. Conditions of the Section 401 WQC become conditions of the USACE NWP verification.







NWP – 45 days

- Prospective permittee shall not begin the activity until
 - ► He/she is notified that the activity may proceed under the NWP with special conditions imposed, or
 - ▶ 45 calendar days have passed from DE receipt of complete PCN, and prospective permittee has not received written notice from district or division engineer, <u>unless</u>
 - Permittee required to notify pursuant to GC 18 for ESA or 20 for NHPA
 - NWPs 21, 49, or 50 until received written approval from USACE
 - If activity requires written waiver to exceed specified limits of NWP until DE issues waiver
 - If prospective permittee notified by district or division engineer within 45 days that an IP is required





Regional General Permits

- Issued on a Regional basis
- Minimal individual and cumulative impacts
- Must comply with all terms and conditions of the RGP.
 - ▶ Terms and conditions specific to the RGP
- Sacramento District RGPs
 - ► RGP 1: Minimal Impact Activities within the Plan Area of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan
 - ▶ RGP 2: City of Elk Grove Routine Channel Maintenance Activities
 - ▶ RGP 3: Small, Private, Recreational Boat Docks and Associated Access
 - ► RGP 5: Small Erosion Repair Program
 - ► RGP 8: Emergency Actions
 - ► RGP 9: Minor Discharges Associated with the Sacramento Municipal Utility District's Upper American River Project





Individual Permits

- Activities that cannot be authorized under a General Permit.
- May have more than minimal individual or cumulative environmental impacts
- Consists of
 - ► Letter of Permission
 - ► Standard Permit





Letter of Permission

- Individual permit issued through abbreviated processing procedure
 - Includes coordination with Federal and state fish and wildlife agencies
 - Required public interest evaluation
 - ▶ Does not require publishing of an individual public notice
 - ► Categorically excluded from NEPA (33 CFR 325, Appendix B(6)





Letter of Permission

May be used:

- ► Cases subject to Section 10 of RHW when the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter not appreciable opposition.
- ▶ Cases subject to Section 404 of the CWA after:
 - DE, through consultation develops a list of categories of activities proposed for authorization under LOP process
 - DE issues PN advertising proposed list and procedures, requesting comments and offering opportunity for public hearing.
 - 401 WQC has been issued/waived, and CZM consistency concurrence obtained or presumed on generic or individual basis
 - Sacramento District released Section 404 LOP procedures for CA, NV, UT: (see: http://www.spk.usace.army.mil/Missions/Regulatory/Permitting/LettersofPermission.aspx)



Standard Permit

- Individual permit processes through public interest review procedures including public notice and receipt of comments
- Generally projects that don't qualify under NWP, RGP, or LOP.
- Generally more time consuming
- Procedures in 33 CFR 325





Standard Permit - Process

- Applicant submits a complete and signed Department of the Army Permit Application form (DA 4345) (33 CFR 325.1(d))
- Within 15 days of receipt of complete application, USACE issues Public Notice
 - ► Comment period minimum 15 days, may be extended
- USACE evaluates projects for:
 - ► Compliance with ESA, MSFCMA, NHPA, Tribal
 - Alternatives
 - Avoid, minimize, compensate
 - EPAs Section 404(b)(1) Guidelines





Standard Permit - Process

- USACE prepared combined decision document and makes permit decision
 - Compliance with NEPA (EA/EIS)
 - ► Compliance with Section 404(b)(1) Guidelines (if Section 404 permit required)
 - ▶ Public Interest Review
- May require EIS if significant effects to human environment
- Decisions available
 - ► Issue the permit
 - ▶ Issue with modifications
 - ▶ Deny the permit





