

Introduction:

Permit Compliance with Other Laws

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Regulatory Program Mission

*To protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced **permit decisions**.*



“No Net Loss of Wetlands”



Authorities to Issue Permits



33 CFR Parts 320.2

- Section 9 of the Rivers and Harbors Act of 1899
- **Section 10 of the Rivers and Harbors Act of 1899**
- Section 11 of the Rivers and Harbors Act of 1899
- Section 13 of the Rivers and Harbors Act of 1899
- Section 14 of the Rivers and Harbors Act of 1899 (Section 408)**
- **Section 404 of the Clean Water Act**
- Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972



Section 10 of the Rivers and Harbors Act of 1899

(33 CFR Part 322)

Permit required for construction of **structures** in, over, or under, **excavating** from or **depositing material** into, and any other work affecting the course location, condition, or capacity of **navigable waters and interstate lakes or rivers.**



Section 404 of the Clean Water Act

(33 CFR Part 323)

Permit required to **discharge dredged or fill material** into “waters of the United States”

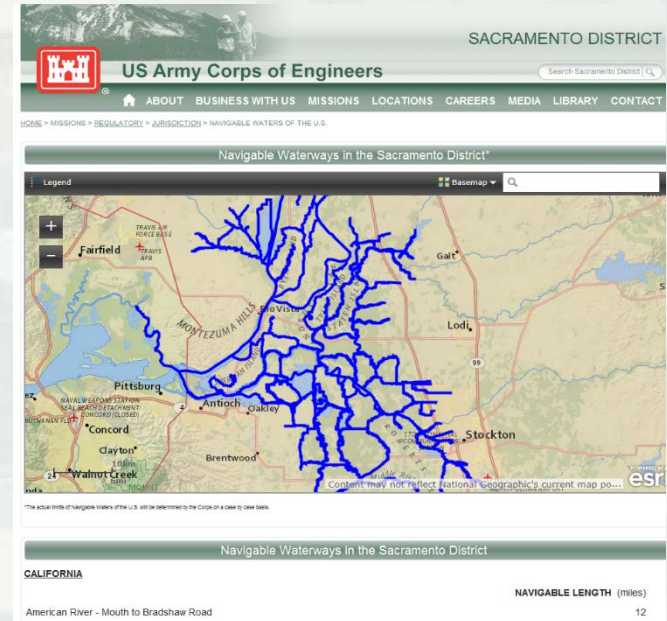


Navigable Waters

(33 CFR Part 329)

- 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 for use to transport interstate or foreign commerce.
- Not extinguished by later actions or events which impede or destroy navigable capacity.

<http://www.spk.usace.army.mil/Missions/Regulatory/Jurisdiction/NavigableWatersoftheUS.aspx>



Waters of the United States

(definition at 33 CFR 328)

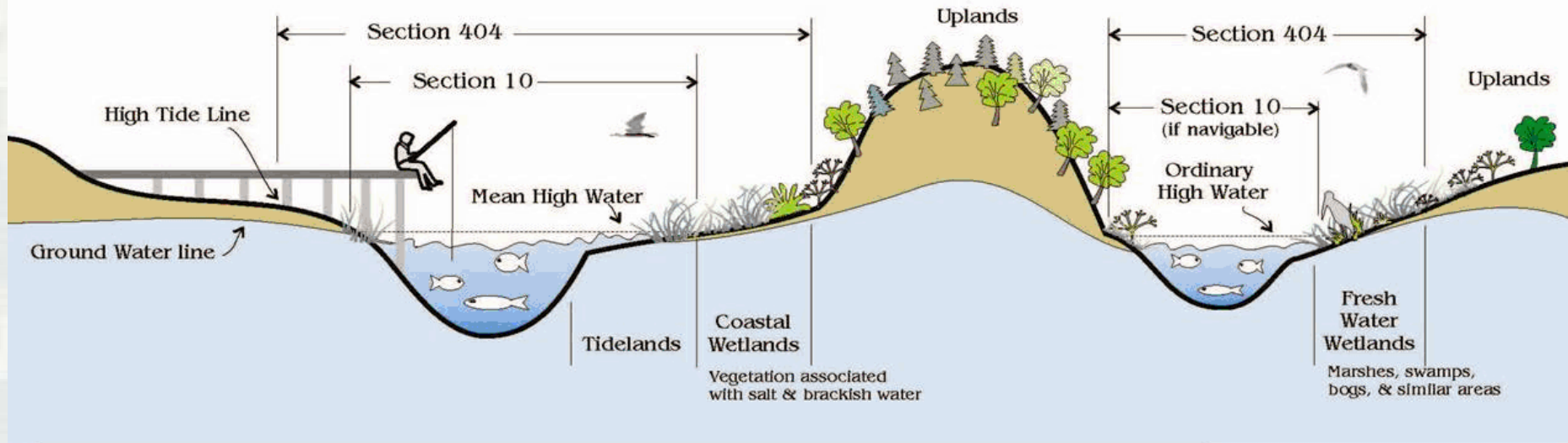
- Navigable waters and the territorial seas
- Interstate waters, including wetlands
- Impoundments, tributaries, and adjacent wetlands to the above



CORPS OF ENGINEERS REGULATORY JURISDICTION

Tidal Waters

Fresh Waters



Section 103

Ocean Disposal
of Dredged Material

Ocean discharges of
dredged material

Typical examples
of regulated activities

Section 404

Discharge of Dredged or Fill Material
(all waters of the U.S.)

All filling activities, utility lines, outfall structures,
road crossings, beach nourishment, riprap,
jetties, some excavation activities, etc.

Section 10

All Structures and Work
(navigable waters)

Dredging, marinas, piers, wharves,
floats, intake / outtake pipes,
pilings, bulkheads, ramps, fills,
overhead transmission lines, etc.



Section 14 of the Rivers and Harbors Act of 1899

(33 U.S.C. 408)

- Commonly referred to as “**Section 408**”
- Authorizes the Secretary of the Army, on recommendation of the Chief of Engineers of the USACE, to grant **permission for the alteration or occupation or use of a USACE civil works project** if determined that the activity will not be injurious to the public interest and impair the usefulness of the project.



Section 14 of the Rivers and Harbors Act of 1899

(33 U.S.C. 408)

- Engineer Circular (EC) 1165-2-216, *Policy and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408* (July 31, 2014)
 - ▶ Requires **coordination** between Navigation and Regulatory
 - ▶ The decision on a Department of the Army permit application pursuant to **Section 10/404/103 cannot** and will not **be rendered prior to** the decision on the **Section 408** request.



Section 14 of the Rivers and Harbors Act of 1899

(33 U.S.C. 408)

- CVFPB encroachment permit application for projects within 300 feet of a Designated Floodway or regulated stream: <http://www.cvfpb.ca.gov/>
- Requires review by Office of Counsel and higher signature authority - be aware of increased timelines.



National Levee Database: http://nld.usace.army.mil/egis/f?p=471:32:14808124515916:LOAD_SEARCH:NO:2



Compliance with Related Laws



33 CFR 320.3 – Related Laws

- *National Environmental Policy Act (NEPA)*
- *Clean Water Act (CWA) - Section 401*
- *Endangered Species Act (ESA)*
- *Magnuson-Stevens Fishery Conservation and Management Act*
- *National Historic Preservation Act (NHPA)*
- *Wild and Scenic Rivers Act*
- *Marine Mammal Protection Act*
- *And more.....*



NEPA

(42 U.S.C. 4321-4347)

Section 102: “To the fullest extent possible: (1) The policies, regulations, and public laws of the U.S. shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall [...] insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations [...]”



NEPA

(42 U.S.C. 4321-4347)

- Implementing regulations at 33 CFR Part 325, Appendix B (effective 1988)
 - ▶ **General Permits (GP):** preparation of a *single document* with no additional NEPA requirement for subsequent activities under the GP.
 - ▶ **Letters of Permission (LOP):** *categorically excluded* - do not require NEPA documentation.
 - ▶ **Standard Permits (SP):** require issuance of *public notice* and completion of an environmental assessment (*EA*) or, if impacts are determined to be significant, an environmental impact statement (*EIS*).



CWA – Section 401

(33 U.S.C. 1341)

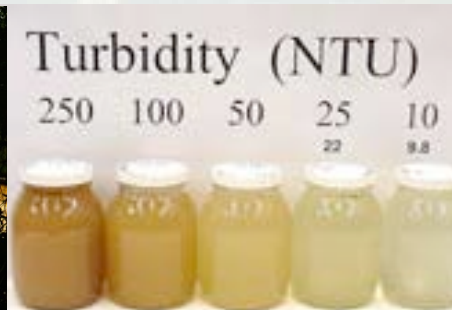
Requires **any *applicant* for a federal license or permit to conduct any activity that may result in a discharge of a pollutant into waters of the U.S. to obtain a *certification from the State* [...]** that the discharge will comply with the applicable effluent limitations and water quality standards. The certification obtained for the construction of any facility must also pertain to the subsequent operation of the facility.



CWA – Section 401

(33 U.S.C. 1341)

- Nationwide permits may be verified conditionally pending issuance or waiver of certification.
- Certification must be issued or waived prior to issuance of an individual permit.
- Central Valley Regional Water Quality Control Board: http://www.waterboards.ca.gov/water_issues/programs/cwa401/



ESA - Section 7

(50 CFR Part 402)

Requires that federal agencies, in consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, insure that any action authorized, funded, or carried out by the Agency is not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat for such species.



Magnuson-Stevens Fisheries Conservation and Management Act

(50 CFR Part 600)

- Magnuson-Stevens Fisheries Conservation and Management Act Amendment of 1996 requires Federal action agencies to consult with the National Marine Fisheries Service on essential fish habitat, or EFH.
- <http://www.habitat.noaa.gov/protection/efh/efhmapper/index.html>



NHPA - Section 106

(16 U.S.C. 470 et seq.)

- Requires the head of any Federal department or independent agency having authority to license any undertaking to take into account the effect of the undertaking on any district, site, building, structure, or object included in or eligible for inclusion in the National Register prior to the issuance of any license.
- Also requires any such Federal agency to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment.



NHPA - Section 106

(16 U.S.C. 470 et seq.)

- Corps' Regulatory Program's implementing regulations at 33 CFR Part 325, Appendix C and Interim Guidance
 - ▶ Sacramento District 106 Guidelines (checklist)
(http://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/2011-02-25_Section_106_Guidelines.pdf)
 - ▶ Be aware of differences between CEQA, NHPA, and Appendix C guidelines for cultural resources



NHPA - Section 101

(16 U.S.C. 470)

- **Section 101(d)(6)(B):** “In carrying out its responsibilities under section 106 of this Act, *a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).*”
- **Section 101(d)(6)(A):** “Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization *may be determined eligible for inclusion on the National* Register.”



In What Other Ways Does the Corps Comply with These Laws?



Evaluation of Proposed Project

- Complete applications!
 - ▶ Pre-Construction Notification (PCN) Form for NWP's, *including General and Regional Conditions Checklists*
 - ▶ Individual permits require completion of ENG form 4345
 - ▶ All appropriate figures and attached reports (i.e. impact map, delineation, BA, cultural resources evaluation, etc.)
 - ▶ Additional information available on our website:

<http://www.spk.usace.army.mil/Missions/Regulatory.aspx>



U.S. Army Corps of Engineers
South Pacific Division



Nationwide Permit Pre-Construction Notification (PCN) Form

This form satisfies requirements of the U.S. Army Corps of Engineers Nationwide Permit Program within the South Pacific Division (SPD), including General and Regional Conditions. You MUST fill out all boxes related to the work being done. Fillable boxes in this form expand if additional space is needed.

Box 1 Project Name			
Applicant Name		Applicant Title	
Applicant Company, Agency, etc.		Applicant's internal tracking number (if any)	
Mailing Address			
Work Phone with area code	Mobile Phone with area code	Home Phone with area code	Fax # with area code
E-mail Address		Relationship of applicant to property: <input type="checkbox"/> Owner <input type="checkbox"/> Purchaser <input type="checkbox"/> Lessee <input type="checkbox"/> Other:	
Application is hereby made for verification that subject regulated activities associated with subject project qualify for authorization under a U.S. Army Corps of Engineers Nationwide Permit or Permits as described herein. I certify that I am familiar with the information contained in this application and, that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the agency to which this application is made the right to enter the above-described location to inspect the proposed, in-progress or completed work. I agree to start work only after all necessary permits have been received and to comply with all terms and conditions of the authorization.			
Signature of applicant			Date (mm/dd/yyyy)

If anyone other than the person named as the Applicant will be in contact with the U.S. Army Corps of Engineers representing the Applicant regarding this project during the permit process, Box 2 MUST be filled out.

Box 2 Authorized Agent/Operator Name	Agent/Operator Title
Fax # with area code ng of the application and to at I am bound by the actions of Date (mm/dd/yyyy) best of my knowledge and Date (mm/dd/yyyy)	

U.S. ARMY CORPS OF ENGINEERS APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT 22 CFR 325 The project agency is CECCO-GO-IL		Form Approved OMB No. 0710-0003 Expires: 30 SEPTEMBER 2015	
Public reporting for this collection of information is estimated to average 19 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters, Executive Services and Communications Division and the Office of Management and Budget, Paperwork Reduction Project (0710-0003). Respondents should be aware that notwithstanding any other provision of law, no person shall be subjected to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to either of these addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.			
PRIVACY ACT STATEMENT Authorities: Rivers and Harbors Act, Section 10; 33 USC 403; Clean Water Act, Section 404; 33 USC 1346; Marine Protection, Research, and Sanctuaries Act, Section 103; 33 USC 1413; Regulatory Programs of the Corps of Engineers, Final Rule 33 CFR 320.332. Principal Purpose: Information provided on this form will be used to evaluate the application for a permit. Respondents: This information may be shared with the Department of Justice and other Federal, state, and local government agencies, and the public and may be made available as part of a public notice as required by Federal law. Submission of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued. One set of original, computer or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and/or instructions); and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be rejected.			
ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS			
1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETE
ITEMS BELOW TO BE FILLED BY APPLICANT			
5. APPLICANT'S NAME First - Middle - Last - Company - E-mail Address -		6. AUTHORIZED AGENT'S NAME AND TITLE (agent is not required) First - Middle - Last - Company - E-mail Address -	
7. APPLICANT'S ADDRESS: Address - City - State - Zip - Country -		8. AGENT'S ADDRESS: Address - City - State - Zip - Country -	
9. APPLICANT'S PHONE NOS. W/AREA CODE a. Residence b. Business c. Fax		10. AGENT'S PHONE NOS. W/AREA CODE a. Residence b. Business c. Fax	
STATEMENT OF AUTHORIZATION I, the undersigned, do hereby authorize the U.S. Army Corps of Engineers to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.			
SIGNATURE OF APPLICANT _____ DATE _____			
NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY			
11. PROJECT NAME OR TITLE (see instructions)			
12. NAME OF WATERBODY, IF KNOWN (if applicable)		13. PROJECT STREET ADDRESS (if applicable) Address - City - State - Zip -	
14. LOCATION OF PROJECT Latitude - N Longitude - W 15. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions) State Tax Parcel ID Municipality		16. LOCATION OF PROJECT Latitude - N Longitude - W 17. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions) State Tax Parcel ID Municipality	
Section - Township - Range -		Section - Township - Range -	

ENG FORM 4345, DEC 2014

PREVIOUS EDITIONS ARE OBSOLETE.

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NWP 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. Single and Complete Project
- 16. Wild and Scenic Rivers**
- 17. Tribal Rights**
- 18. Endangered Species**
- 19. Migratory Bird and Bald and Golden Eagle Permits**
- 20. Historic Properties**
- 21. Discovery of Previously Unknown Remains and Artifacts**
- 22. Designated Critical Resource Waters**
23. Mitigation
24. Safety of Impoundment Structures
- 25. Water Quality**
- 26. Coastal Zone Management**
27. Regional and Case-by-Case Conditions
28. Use of Multiple Nationwide Permits
29. Transfer of Nationwide Permit Verifications
30. Compliance Certification
- 31. Pre-Construction Notification**



NWP General Conditions

1. Navigation

2. Aquatic Life Movements

3. Spawning Areas

18. Endangered Species

19. Migratory Bird and Bald and Golden Eagle Permits

16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. Wild and Scenic Rivers

17. Tribal Rights

29. Transfer of Nationwide Permit Verifications

30. Compliance Certification

31. Pre-Construction Notification



NWP Regional Conditions

- **26 Regional Conditions for California** for the 2012 NWPs (excludes Lake Tahoe)
 - ▶ RC15 - For all activities located in the **Mather Core Recovery Area** in Sacramento County, as identified in the U.S. Fish and Wildlife Service's Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon dated December 15, 2005, **NWPs 14, 18, 23, 29, 39, 40, 42, 43 and 44 are revoked** from use in vernal pools that *may contain* habitat for Federally-listed threatened and/or endangered vernal pool species.



Consultation

- In the case of ESA and NHPA, the Corps makes an effect determination following information review.
- The Corps will initiate consultation with appropriate agency if necessary, and permit will not be verified/issued without ensuring compliance.
- Terms and conditions implemented via project specific special conditions.



Project-Specific Special Conditions

- Used for both General and Individual Permits
 - ▶ The attached Memorandum of Agreement (MOA), entitled ____, and signed by these entities, will be implemented in its entirety. The Corps of Engineers (Corps) has been designated the lead federal agency responsible for implementing and enforcing the Memorandum of Agreement as signed. If you fail to comply with the implementation and associated enforcement of the MOA by DATE the Corps may determine that you are out of compliance with the conditions of the Department of the Army permit/verification and suspend the permit/verification. Suspension may result in modification or revocation of the authorized work.
 - ▶ All terms and conditions of the Section 401 Water Quality Certification are expressly incorporated as conditions of this permit.



Fin



Questions?

