

WHAT MAKES A COMPLETE APPLICATION

Regulatory Program Workshop July 2017

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TOPICS

- Application Completeness items
 - ▶ Standard and Nationwide Permits
- Timing aspects of completeness reviews
- Tips



WHAT CONSTITUTES A COMPLETE APPLICATION?

■ Standard Permit

- ▶ 33 CFR 325.1 (c), (d) & (e) – *Applications for Permits*
- ▶ 33 CFR 325.3 – *Public Notice*

■ Nationwide Permit

- ▶ General Condition 32. *Pre-Construction Notification*
- ▶ Sacramento District Regional Conditions



SP - WHEN IS IT COMPLETE?

- An application is determined to be complete when **sufficient information** is received to issue a public notice
- The issuance of a public notice will not be delayed to obtain information necessary to evaluate an application

325.1(d)(10)



PUBLIC NOTICE

- The notice must... include **sufficient information** to *give a clear understanding* of the nature and magnitude of the activity to generate meaningful comment 325.3(a)
- Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any, on factors affecting the public interest 325.3(a)(13)



SPECIFIC ITEMS

Completed application form (ENG 4345)

- ▶ Signed by applicant or by authorized agent
 - i. Agent authorization on form or separate written statement.



325.1(c)
325.1(d)(8)



CONTENTS OF APPLICATION

1. a) Complete Description
- b) Drawings, sketches, or plans sufficient for public notice
(Engineering plans and specs are not required)
- c) Location
- d) Purpose & Need
- e) Scheduling of Activity
- f) Names & addresses of adjoining property owners
- g) The location and dimensions of adjacent structures
- h) List of authorization required/received/denied (federal, state, local)



325.1(d)(1)



CONTENTS OF APPLICATION

2. Reasonable related activities

- a) All activities which the applicant plans to undertake which are *reasonably related* to the same project and for which a DA permit would be required should be *included in the same permit application*.

325.1(d)(2)

3. For Dredging in Navigable Waters

- a) A description of the type, composition and quantity of the material to be dredged;
- b) The method of dredging; and
- c) The site and plans for disposal of the dredged material.

325.1(d)(3)



CONTENTS OF APPLICATION

4. **Discharge** of dredged or fill material
- a) The source of the material;
 - b) The purpose of the discharge;
 - c) A description of the type, composition and quantity of the material;
 - d) The method of transportation and disposal; and
 - e) The location of the disposal site.

325.1(d)(4)



CONTENTS OF APPLICATION

5. If activity involves construction of a filled area or pile or float-supported platform
- a) The use of; and
 - b) Specific structures to be erected on the fill or platform



325.1(d)(5)



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CONTENTS OF APPLICATION

6. Construction of an **impoundment structure** applicant may be required to
- a) Demonstrate that the structure complies with established state dam safety criteria;
 - b) Designed by qualified persons; or
 - c) Independently reviewed by similarly qualified persons.



325.1(d)(6)



CONTENTS OF APPLICATION

7. **Mitigation** Statement (for discharges of dredged or fill material into waters of the U.S.)
- a) How impacts to waters of the US are to be avoided and minimized; and
 - b) How impacts to waters of the US are to be compensated for; or
 - c) Why compensatory mitigation **should not be required** for the proposed impacts.

325.1(d)(7)



LOP – COMPLETENESS ITEMS

Section 10 Only

- Include all the information for a complete SP
- Would only require coordination with Federal and State fish and wildlife agencies
- Public interest evaluation



LOP – COMPLETENESS ITEMS

Section 404 Minor Impact LOP

- Include all the information for an SP, except for names/addresses of adjoining landowners (agency notification only for LOPs)
- See list in LOP (Part B, #1-15) for specific submittal items.
 - Delineation required
 - Compensatory mitigation plan



IP - SUMMARY

- An SP application is determined to be complete when **sufficient information** is received to issue a public notice
- 15 days for Corps to review and publish PN if application is complete
- Ample processing information needs are **NOT** required for a complete application, but are often sensible to include in the package to avoid the “30-day” info needs.



NWP – INFORMATION REQUIRED FOR A COMPLETE PCN

- Information can be found in:
 - General Condition 32
 - District Regional Conditions
 - Final RC for CA (excl Lake Tahoe Basin): B(1), B(2)(e), B(12)
 - Final RC for NV and the Lake Tahoe Basin: B(1), B(2),
- Requirements are for **EACH** single and complete project that requires a PCN
 - If linear project with 20 crossings that are each a single and complete project and each require a PCN, the information must be submitted for each of the 20 crossings (can be in one document)



NWP - PRE-CONSTRUCTION NOTIFICATION

- General Condition 32(b) *must be in writing*
 1. Name, address, and telephone numbers
 2. Location of proposed activity
 3. Specific NWP/NWPs the prospective permittee wants to use
 4. Description of the proposed activity
 - Activities purpose
 - Direct & indirect adverse environmental effects including anticipated amount of loss of wetlands, other special aquatic sites, or other WOUS in acres, linear feet, or other appropriate measure
 - Description of proposed mitigation measures to reduce adverse environmental effects (not compensatory mitigation)
 - Any other permits used/intended to be used to authorize any part of project or any related activity, including other separate/distant crossings for linear projects that require DA permit but not PCN
 - Sketches containing sufficient detail to provide description of proposed activity



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CONTENTS OF A PCN

5. Delineation of aquatic resources prepared in accordance w/ current method required by the Corps
6. If $>1/10$ acre loss of wetlands and PCN required, how mitigation requirements will be satisfied or why adverse effects minimal & no compensatory mitigation should be required (as an alternative, may submit conceptual or detailed mitigation plan)
7. For non-Federal permittees, name(s) of T&E species that might be affected by the proposed work or utilize designated critical habitat OR for Federal agencies, documentation demonstrating compliance with ESA



CONTENTS OF A PCN

8. For non-Federal permittees, any known historic properties that may be affected must be identified and list the potential for eligibility for inclusion in the National Register of Historic Places
9. Identify whether the activity will occur in a component of the National Wild and Scenic River System, or in river officially designated by congress as a “study river”
10. Identify whether the activity requires permission from the Corps pursuant to 33 U.S.C 408 because it will alter or temporarily or permanently occupy or use a USACE federally authorized civil works project.



**LIST OF ADDITIONAL INFORMATION REQUIRED
FOR COMPLETE PRE-CONSTRUCTION NOTIFICATION (PCN)
FOR CALIFORNIA, NEVADA, AND UTAH**

A complete PCN may be submitted either through the completion of the *South Pacific Division Preconstruction Notification (PCN) Checklist*¹, or an application form (ENG Form 4345)² with an attachment providing information on compliance with all general and regional conditions.

☐ **Requirements of General Condition 32**

- ☐ Name, address and telephone numbers of the prospective permittee.
- ☐ Location of the proposed activity.
- ☐ Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity.
- ☐ Description of the proposed activity
 - ☐ the activities purpose;
 - ☐ direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure;
 - ☐ a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity;
 - ☐ any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification;
 - ☐ Sketches containing sufficient detail to provide an illustrative description of the proposed activity.
- ☐ Delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site, prepared in accordance with the current method required by the Corps.
- ☐ If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, a statement describing how the mitigation requirements will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required.
- ☐ For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the name(s) of endangered or threatened species that might be affected by the proposed work, or utilize the designated critical habitat that may be affected by the proposed work, OR, for Federal agencies, documentation demonstrating compliance with the Endangered Species Act.
- ☐ For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic properties. OR, for Federal agencies, documentation demonstrating compliance with the National Historic Preservation Act.



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Instructions for the South Pacific Division Nationwide Permit Pre-Construction Notification (PCN):

This PCN integrates the requirements of the U.S. Army Corps of Engineers (Corps) Nationwide Permit Program within the South Pacific Division (SPD), including the Albuquerque, Los Angeles, San Francisco, and Sacramento Districts. Boxes 1-10 must be completed to include all information required by General Condition 32 of the NWPs. Box 11 (or other sufficient information to show compliance with all General Conditions) must be completed for activities in Arizona, California, Nevada, and Utah, and is recommended for activities in Colorado, New Mexico, and the portions of Texas within the Albuquerque District Boundaries.

Table 1 contains excel spreadsheets with separate worksheets regarding the NWP activity, aquatic resources, impacts, and compensatory mitigation. These tables may be completed for any proposed NWP activity, and it is recommended that these tables (or similar tables) be submitted for activities consisting of multiple single and complete projects. Please contact your District regulatory office for assistance in completing these worksheets. Table 2 contains alternate excel spreadsheets with separate worksheets regarding the location, description of effects, and compensatory mitigation that may be submitted for activities consisting of multiple single and complete projects.

Attachment 1 includes additional PCN requirements and a checklist for compliance with Los Angeles District Regional Conditions for Arizona and California. Attachment 2 includes additional PCN requirements and a checklist for compliance with San Francisco District Regional Conditions for California. Attachment 3 includes additional PCN requirements and a checklist for compliance with Sacramento District Regional Conditions for California, Nevada, and Utah.

You must complete boxes 1-10 (and 11 where applicable) and should include the appropriate attachment for the District where the proposed activity is located. Per Los Angeles District Regional Conditions for Arizona and California, San Francisco District Regional Conditions for California, and Sacramento District Regional Conditions for California, Nevada, and Utah, if you do not provide the attachment applicable to the District, you must provide information sufficient to show compliance with the Regional Conditions for the District.

If additional space is needed, provide as an attachment to the form.

You may review the 2017 NWPs, including the terms, General Conditions, and Definitions, at the Corps headquarters website at: <http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>.

You may review the Regional Conditions for the 2017 NWPs on your District regulatory website as follows:

Albuquerque District:	http://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/NWP/
Los Angeles District:	http://www.spl.usace.army.mil/Missions/Regulatory/Permit-Process/
San Francisco District:	http://www.spn.usace.army.mil/Missions/Regulatory/Regulatory-Overview/Nationwide/
Sacramento District:	http://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Nationwide-Permits/

If you need additional assistance or have questions regarding completion of the PCN and/or any of the attachments, please contact your District Regulatory Office. Please submit the PCN to your local District Regulatory Office. Contact information, including website, mailing and email addresses, and telephone numbers are found beginning on Page 10 of these instructions.



B. Regional Conditions Applicable Before Authorization

1.* When pre-construction notification (PCN) is required, the permittee shall notify the U.S. Army Corps of Engineers, Sacramento District (Corps) in accordance with General Condition 32 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or an application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. In addition, the PCN shall include:

a.* A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States (U.S.);

b.* Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity, as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. Unless specifically waived by the Sacramento District, all drawings shall follow the South Pacific Division February 2016, *Updated Map and Drawing Standards for the South Pacific Division Regulatory Program*, or most recent update (available on the South Pacific Division website at: <http://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences.aspx/>);

c.* Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the site, and all waters of the U.S. proposed to be avoided on and immediately adjacent to the project site. The compass angle and position of each photograph shall be identified on the plan-view drawing(s) required in subpart b of this Regional Condition;

d.* Delineation of aquatic resources in accordance with the Sacramento District's Minimum Standards for Acceptance of Aquatic Resources Delineation Reports (available at http://www.spk.usace.army.mil/Portals/12/documents/regulatory/jd/minimum-standards/Minimum_Standards_for_Delineation_with_Template-final.pdf), or updated standards adopted by the Sacramento District, unless specifically waived by the Sacramento District;

e. A description of proposed construction Best Management Practices (BMPs) and highly visible markers to be used during construction of the proposed activity, as required by Regional Conditions C(3) and C(4). If no BMPs or highly visible markers are proposed, the PCN shall provide a description of why their use is not practicable or necessary;



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f. For all activities proposed for the purpose of temporary access and construction which would result in the placement of dredged or fill material into waters of the U.S.:

- (1) The reason(s) why avoidance of temporary fill in waters of the U.S. is not practicable;
- (2) A description of the proposed temporary fill, including the type and amount (in cubic yards) of material to be placed;
- (3) The area (in acres) of waters of the U.S. and, for drainages (e.g. natural or relocated streams, creeks, rivers), the length (in linear feet) where the temporary fill is proposed to be placed; and
- (4) A proposed plan for restoration of the temporary fill area to pre-project contours and conditions, including a plan for the re-vegetation of the temporary fill area, if vegetation would be removed or destroyed by the proposed temporary fill;

g. For all dewatering activities that propose structures or fill in waters of the U.S. that require authorization from the Corps:

- (1) The proposed methods for dewatering;
- (2) The equipment that would be used to conduct the dewatering;
- (3) The length of time the area is proposed to be dewatered;
- (4) The area (in acres) and length (in linear feet) in waters of the U.S. of the structure and/or fill;
- (5) The method for removal of the structures and/or fill; and



(6) The method for restoration of the waters of the U.S. affected by the structure or fill following construction.

h. For linear transportation crossings that propose to alter the pre-construction course, condition, capacity or location of open waters, the PCN shall include sufficient justification to determine that the proposed activity would result in a net increase in aquatic resource functions and services. Functions and services to be considered in the justification include, but are not limited to: short- or long-term surface water storage, subsurface water storage, moderation of groundwater flow or discharge, dissipation of energy, cycling of nutrients, removal of elements and compounds, retention of particulates, export of organic carbon, and maintenance of plant and animal communities.

i. For replacement linear transportation crossings that would result in a reduction in the pre-construction bankfull width and depth of open waters of the U.S. at the crossing, as compared to the upstream and downstream open waters:

(1) Information on why it is not practicable to approximate the pre-construction bankfull width of the upstream and downstream open waters, and;

(2) Sufficient justification to determine that the reduction in the pre-construction bankfull width would result in a net increase in aquatic resource functions and services. Functions and services to be considered in the justification include, but are not limited to: short- or long-term surface water storage, subsurface water storage, moderation of groundwater flow or discharge, dissipation of energy, cycling of nutrients, removal of elements and compounds, retention of particulates, export of organic carbon, and maintenance of plant and animal communities.

j.* For any requests to waive the applicable linear foot limitations for NWP's 13, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52 and 54:

(1) A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characteristics observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the adjacent areas (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information;

(2) An analysis of the proposed impacts to the waterbody, in accordance with General Condition 32 and Regional Condition B(1);

(3) Measures taken to avoid and minimize losses to waters of the U.S., including other methods of constructing the proposed activity(s); and

(4) A compensatory mitigation plan describing how the unavoidable losses are proposed to be offset, in accordance with 33 CFR 332.



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k. For NWP 23: A copy of the signed Categorical Exclusion document and final agency determinations regarding compliance with Section 7 of the Endangered Species Act (ESA), Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), and Section 106 of the National Historic Preservation Act (NHPA), in accordance with General Conditions 18 and 20 and Regional Condition B(12).

l. For NWP 27: Sufficient justification to determine that the proposed activity would result in a net increase in aquatic resource functions and services. Functions and services to be considered in the justification include, but are not limited to: short- or long-term surface water storage, subsurface water storage, moderation of groundwater flow or discharge, dissipation of energy, cycling of nutrients, removal of elements and compounds, retention of particulates, export of organic carbon, and maintenance of plant and animal communities.

m. For any NWP 29 or 39 activities that propose channelization or relocation of perennial or intermittent drainages: Justification on how the proposed relocation would result in a net increase in aquatic resource functions and services. Functions and services to be considered in the justification include, but are not limited to: short- or long-term surface water storage, subsurface water storage, moderation of groundwater flow or discharge, dissipation of energy, cycling of nutrients, removal of elements and compounds, retention of particulates, export of organic carbon, and maintenance of plant and animal communities.

n. For construction activities that would occur within standing or flowing waters: Information on why it is not practicable to conduct construction activities when the area is dewatered naturally or through an approved dewatering plan.

o. For all new bank stabilization activities that would not involve the sole use of native vegetation or other bioengineered design techniques: Information on why the sole use of vegetated techniques to accomplish the bank stabilization activity is not practicable.

p. For activities located in designated critical habitat for Federally-listed threatened and/or endangered anadromous fish species where the activity would result in a reduction or alteration in the quality and availability of the Physical and Biological Features (also known as Essential Features or Primary Constituent Elements):

(1) The reasons why it is not practicable to avoid the reduction or alteration in the quality and availability of the Physical and Biological Features of the designated critical habitat.

(2) Information demonstrating that the reduction or alteration will have no more than minimal individual or cumulative adverse effects.

Information regarding the Physical and Biological Features of designated critical habitat may be found at the following websites:

- Winter-run Chinook Salmon (Essential Features beginning on page 33218): <http://www.westcoast.fisheries.noaa.gov/publications/fm/1993/58fr33212.pdf>

- Steelhead and Spring-run Chinook salmon (Primary Constituent Elements beginning on page 52521):

<http://www.westcoast.fisheries.noaa.gov/publications/fm/2005/70fr52488.pdf>

- Green Sturgeon (Primary Constituent Elements/Physical and Biological Features beginning on page 52322): http://www.westcoast.fisheries.noaa.gov/publications/protected_species/other/green_sturgeon/vg_s_critical_habitat/fm_10092009_green_sturgeon_ch.pdf

2. For all NWPs, the permittee shall submit a PCN in accordance with General Condition 32 and Regional Condition B(1), in the following circumstances:

a. For all activities that would result in the discharge of fill material into any vernal pool;

b. For all activities in the Primary and Secondary Zones of the Legal Delta, the Sacramento River, the San Joaquin River, and navigable tributaries of these waters, when the Corps has not designated another Federal agency as the lead for compliance with ESA, MSFCMA, and NHPA, as specified in Regional Condition B(12);

c. For all new or replacement linear transportation crossings of perennial, intermittent, or ephemeral drainages (e.g. natural or relocated streams, creeks, rivers) or other open waters of the U.S., where the pre-construction bankfull width of waters of the U.S. at the crossing would be reduced;

d. For all activities in waters of the U.S. proposed within 100 feet of the point of discharge of a known natural spring source (i.e. which is any location where ground water emanates from a point in the ground excluding seeps or other discharges which lack a defined channel);

e.* For all activities proposed by non-Federal applicants located in areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council, and that would result in an adverse effect to EFH, in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: http://www.westcoast.fisheries.noaa.gov/habitat/fish_habitat/efh_consultations_go.html, or

f.* For Water Quality Certificate issuance considerations, all activities in waters of the U.S. on Tribal Lands.



INFORMATION NOT REQUIRED FOR A COMPLETE PCN

- Biological assessment/information sufficient to initiate consultation for Section 7 ESA
- Cultural Resources Report/other information sufficient to initiate consultation for Section 106 NHPA
- Verified aquatic resource delineation or aquatic resources delineation that the PM agrees with
 - Delineation meeting SPK minimum standards required by CA/NV/UT RCs
- Plan/Cross-section view drawings meeting SPD map and drawing standards
 - Required by CA/NV/UT RCs
- Signature of prospective permittee or authorized agent
- Proposed compensatory mitigation for less than 1/10 acre wetlands or any amount of other special aquatic sites or other waters of the U.S.
- Draft/Final mitigation/monitoring plan/long-term management plan for proposed permittee-responsible compensatory mitigation



TIMING ASPECTS: NWP

- 30 days – review period to determine completeness of new application.
- Once NWP considered complete, the 45-day clock starts.
 - E.g., if delineation submitted as last completeness item, 45-day clock starts then.
 - If Corps asked to do delineation, 45-day clock starts when we have completed delineation.
- **NWP can't be verified before compliance is confirmed with ESA and NHPA**

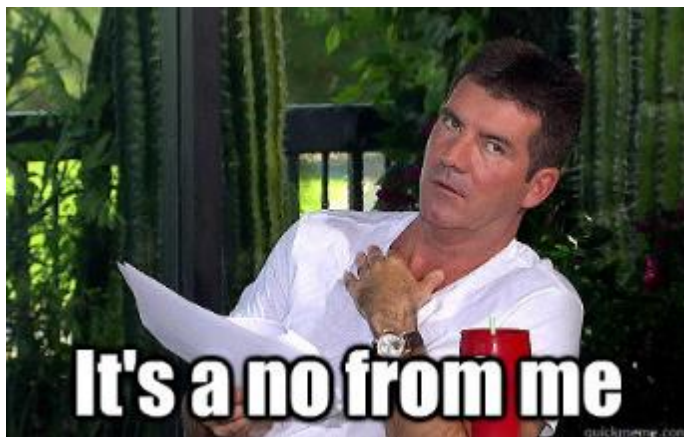


INCOMPLETE

IP – Applicant notified, Corps requests additional information within 15 days of receipt of the application.

NWP – Prospective permittee notified, Corps requests additional information within 30 days of receipt of the PCN.

- a) Specify the information needed to make the PCN Complete
- b) “General Rule” request additional information only once



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COMPLETE

IP – Issue Public Notice/conduct agency coordination within 15 days of receipt of the complete application.

NWP – Verify use of NWP within 45 days of receipt of the complete PCN.

*****Must complete compliance with Sec 7 of ESA and Sec 106 of NHPA*****



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TIPS



- To support timely processing:
 - Do your best to submit a complete application/PCN
 - PCN checklist and associated attachments and instructions are located at:
<http://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Nationwide-Permits>
 - Include other necessary processing items (e.g., Sec. 7 ESA and Sec. 106 NHPA supporting materials)
- When in doubt, refer to the regs or call us



ADDITIONAL RECOMMENDED INFORMATION

- SPD Map and Drawing Standards:
 - <http://www.spd.usace.army.mil/Missions/Regulatory/Public-Notices-and-References/Article/651327/updated-map-and-drawing-standards/>
- ESA Compliance
 - http://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/ESA_Template_Guidance.pdf
- NHPA Compliance
 - http://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/FINAL_2014-03-24_Section-106-Guidelines.pdf
- Compensatory Mitigation Compliance Documentation
 - <http://www.spd.usace.army.mil/Portals/13/docs/regulatory/mitigation/MitMon.pdf>



QUESTIONS



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