

SACRAMENTO DISTRICT REGULATORY PROGRAM

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Date: 21 October 2022



US Army Corps
of Engineers®



10/21/2022



TYPES OF PERMITS

A vertical traffic light with three lenses. The top lens is red, the middle is yellow, and the bottom lens is green and illuminated. The traffic light is mounted on a white pole. The background is a blue sky with white clouds.

- **General Permits**
 - ▶ Nationwide
 - ▶ Regional
 - ▶ Programmatic
- **Individual Permits**
 - ▶ Standard
 - ▶ Letters of Permission



TYPES OF PERMITS



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- General Permits
 - For minimal adverse effects to the aquatic environment
 - Most common form are Nationwide Permits
 - NWP 3 (Maintenance), 14 (Linear Transportation Projects), 29 (Residential Developments) , and 39 (Commercial and Institutional Developments).
- Standard / Individual Permits
 - Activities with more than minimal impact



THREE TYPES OF GENERAL PERMITS



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- Nationwide: Issued by Corps HQ for specific activities for use nationwide.
- Programmatic: Founded on an existing state, local, or other federal agency program and designed to avoid duplication with that program. Issued by Corps district or division.
- Regional: Issued by Corps district or division after following standard permit processing procedures for a class or classes of activities in a region.



GENERAL PERMITS

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- Established in advance for activities similar in nature that cause only minimal individual and cumulative environmental effects
- To be “verified” under a GP, the activity:
 - Has to meet specific terms/conditions
 - Requires notification to the Corps if proposed impacts to waters of the U.S. are over certain thresholds and/or trigger other requirements such as potentially affecting federally listed species

33 CFR 322.2(f), 325.2(e), 325.5; 40 CFR 230.11(g)



NATIONWIDE PERMITS



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- Nationwide Permits – a majority of minimal impact activities are authorized under NWPs.
- NWPs cover Rivers and Harbors Act (RHA) Section 10 & Clean Water Act (CWA) Section 404 (see applicability at bottom of each NWP description (10/404/both))
- 57 NWPs have been issued authorizing a variety of minimal impact activities in Waters of the United States.
- Issued by USACE HQ every 5 years
 - E.g. 2021 NWPs expire in 2026



REGIONAL PERMITS



- Regional General Permit 3
Boat Docks and Associated Structures
- Regional General Permit 8
Emergency Repair and Protection Activities
- Regional General Permit 16
Anadromous Salmonid Fisheries Restoration



PROGRAMMATIC PERMITS



- Programmatic General Permit 17
 - South Sacramento Habitat Conservation Plan (SSHCP)
 - Issued 2019

- Programmatic General Permit 18
 - Western Placer County Habitat Conservation Plan/Natural Community Conservation Plan
 - Issued 2021



STANDARD PERMIT



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- Standard Permits (Individual Permit)
 - A type of individual permit (33 CFR 325.2, 325.5) Form 4345
 - For projects with more than minimal impacts to aquatic resources
 - Requires public notice, public interest review, NEPA compliance (EA/EIS) and a 404(b)(1) Alternatives Analysis
 - Permit may be valid up to 5 years – extensions can be requested (case by case basis)



STANDARD PERMIT (LETTERS OF PERMISSION)

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- Issued by a district for a specific activity through an abbreviated processing procedure
 - Requires coordination with resource agencies and a public interest determination
 - No public notice (agency notice instead)
 - Categorically excluded under NEPA

- LOP procedures in CA:
 - Section 10 RHA only activities
 - Section 404 CWA “Minor Impact” activities

33 CFR 325.2(e), 325 Appendix B



COMPLIANCE WITH OTHER RELATED LAWS



- National Environmental Policy Act
- Section 7 of the Endangered Species Act
- Magnuson-Stevens Fishery Conservation Act
- Wild and Scenic Rivers Act
- Section 106 of the National Historic Preservation Act
- Section 401 of the Clean Water Act
- Section 408 (Section 14 of the Rivers and Harbors Act of 1899)



MITIGATION



- Mitigation is required for impacts to waters of the US (33 CFR Part 332 – Federal Mitigation Rule)
- Corps defines mitigation as avoidance, minimization and compensation
 - Avoidance – avoiding the impact
 - Minimization – minimizing impact through BMPs and other measures
 - Compensatory Mitigation – replacing unavoidable impacts through restoration or creation
- **Goal is No Net Loss of Wetlands**



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

TYPES OF PERMITS – OVERVIEW

STANDARD PERMITS

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USACE, Sacramento District
October 21, 2022



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TYPES OF PERMITS





- Regulatory Authority
- Permit Completeness
- Timelines
- Permit Evaluation Criteria
 - Public Interest Review Factors
 - 404(b)(1) Guidelines



STANDARD PERMITS

Individual Permits 325.5(b)

- Standard Permits and Letters of Permission (LOPs)
- Standard Permits - For projects with more than minimal impacts to aquatic resources
- Requires public notice, public interest review, NEPA compliance (33 CFR 325, Appendix B), and a 404(b)(1) Alternatives Analysis
- Permit may be valid up to 5 years. Time extension can be requested and will be reviewed on a case-by-case basis



COMPLETENESS – STANDARD PERMITS

An application is determined to be complete when **sufficient information** is received to issue a public notice to generate meaningful comment (33 CFR 325.3[a])
Specific information requirements are in 325.1(c – d)



STANDARD PERMIT TIMELINES



- Completeness determination: 15 days
- Public Notice issued: Within 15 days of receipt of complete application
- Public Notice comment period, 15* days
- Permit decision within 120 days of Federally-complete application*, or 30 days after consultation complete.





STANDARD PERMIT PROCESS

Pre-application consultation with Corps (optional but recommended)

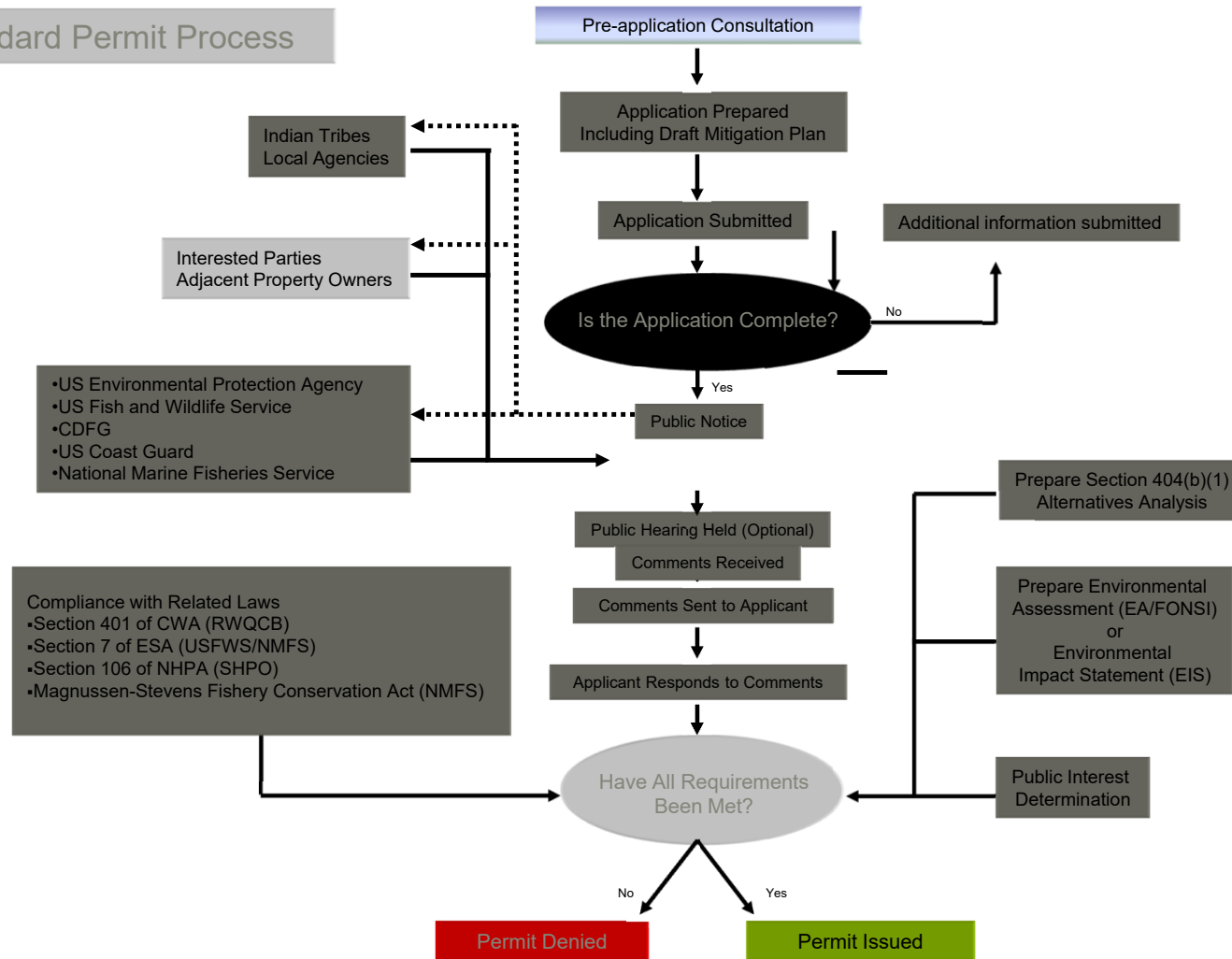
Once complete application submitted to Corps:

Review – main components

- Issue public notice
- Provide comments to applicant to provide responses to Corps
- NEPA compliance (EA or EIS)
- Public interest review factors
- 404(b)(1) alternatives analysis
 - On-site, off-site, characteristics
- Compliance with related laws – ESA, NHPA, Tribal consultation
- Compensatory mitigation - final plan needed prior to permit issuance
- Prepare permit decision documentation
- Issue permit decision



Standard Permit Process





US EPA'S SECTION 404(B)(1) GUIDELINES



- Purpose & Policy: Restore and maintain the chemical, physical, and biological integrity of waters of the U.S. through the control of discharges of dredged or fill material (40 CFR 230.1)
- Compliance with the Guidelines (Subpart B)
- Restrictions on Discharge (230.10)
 - Restrictions Related to Alternatives (230.10(a))
 - Basic and Overall Project Purpose
 - Alternatives



Overall Project Purpose

- Used to identify and evaluate practicable alternatives
- Determined by Corps, but considers applicant's needs and type of project being proposed
- Specific enough to define applicant's needs, but not so restrictive as to constrain the range of alternatives considered



40 CFR 230.10(a)(2)



An alternative is practicable if:

- It is capable of being done after taking into consideration
 - Cost
 - Existing technology
 - Logistics
 - in light of the **overall project purpose**



Water Dependency

- Project requires access or proximity to or sighting within a **special aquatic site** to fulfill its basic purpose.
 - Special aquatic sites: Sanctuaries, refuges, wetlands, mud flats, vegetated shallows, coral reefs, riffle and pool complexes.
- If activity is not water dependent, alternatives presumed available unless demonstrated otherwise
- Even if water dependent, have to demonstrate that proposed activity is the least environmentally damaging practicable alternative (LEDPA)



230.11 – Factual Determinations

- Determine potential short-term or long-term effects of discharge on physical, chemical, and biological components of aquatic environment in light of Subparts C-F
- Used in making findings of compliance/non-compliance
- Evaluation and testing procedures in Subpart G used as necessary
- Determine nature and degree of effect that the discharge will have individually and cumulatively
- Consider possible loss of environmental values and actions to minimize impact (Subpart H)



404(B)(1)S CONT'D



Tips for submittals

- Coordinate early with Corps (Pre-application Meetings)
- On- and off-site alternatives – Developed in coordination with Corps
- Detailed alternative specific site plans
- Alternative-specific information
 - Acres of impacts, avoidance, total WOUS
 - Number of housing units
 - Square footage of commercial space
 - Logistic or technological constraints
- Itemized implementation costs



STANDARD PERMIT DECISION



To be authorized, Corps must find the activity:

- Is not contrary to the public interest
- Is the least environmentally damaging alternative (compliance with 404(b)(1) Guidelines)
- Complies with NEPA
- Complies with other related laws, including ESA and NHPA





THANK YOU





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2021 NATIONWIDE PERMITS & CONDITIONS

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USACE, Sacramento District
October 21, 2022



US Army Corps
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OVERVIEW

What is a Nationwide Permit?
2021 NWP Reissuance
NWP Covered Activities
General Conditions
Regional Conditions





WHAT IS A NATIONWIDE PERMIT?

- Nationwide permits (NWP) are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment.
- Unlike Individual Permits, the NEPA and public notice processes are completed for NWPs when they are issued nationwide. For permittees, NWPs are not “issued” but verified.
- The NWP 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 until the NWP is re-issued, unless the NWP authorization is modified, suspended, or revoked.
- Per regulation, the NWPs must be re-issued every five years. The reissuance process involves a full interagency and public interest review.



NWP BACKGROUND



For 2021, 57 NWPs were approved. The permits were issued on March 14, 2021, and December 27, 2021, and are set to expire on March 14, 2022.

Types of Activities: Residential, commercial and institutional developments; structures in navigable waters; renewable energy; scientific research and survey activities; transportation; recreation; maintenance; restoration; etc.

Many NWPs require the submittal of a pre-construction notification (PCN) prior to beginning work. PCN requirements are found in the terms of the NWP, in the General Conditions, and in the Regional Conditions.





NWPS

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
- If the activity does not meet all of these requirements, it does not qualify for authorization under a NWP





An official website of the United States government [Here's how you know](#)

US Army Corps of Engineers Sacramento District

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Missions

- Civil Works
- Emergency Operations
- Environmental Projects
- Flood Risk Awareness
- Military Projects
- Recreation
- Regulatory
- Tribal Nations Program
- UAS
- Water Control

Regulatory

- Jurisdiction
- Permitting
 - Nationwide Permits
 - Regional and Programmatic General Permits
 - Letters of Permission
 - Standard Permits
 - Section 404 Exemptions
 - WRDA
 - Environmental Impact Statements
 - Water Quality Certifications
 - Endangered Species Agency Consultations
 - Cultural Resources Agency Consultation
 - Tribal Consultation
 - Request for Public Notice Notification
- Mitigation
- Enforcement
- Final Actions
- FAQ
- References
- Contacts
- Delta Conveyance
- Utah Lake Restoration Project

Permitting

- 2017NWP
- 2021NWP
- NWP-CA-Summary-Table
- NWP-NV-Summary-Table
- NWP-UT-Summary-Table

Water Control

Sacramento Levees Update

We completed 1,150 linear feet of erosion protection improvements, continued cutoff wall construction for 2023 and completed 100% design for 2023 construction.

[Project Report \(Oct. 2022\)](#)

Most Requested

In The News

BLUEPRINT
Your Guide to the Sacramento District

PERMITS

CONTROL

ideos

What's that metal thing on your...

"PAPERWEIGHT"

de-
ditions, and



NON-NOTIFYING NWP



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2021 Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide
Permits – February 25, 2022

13. Bank Stabilization. Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects (an exception is for bulkheads—the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);
- (c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects.

(i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity:

- (1) Involves discharges of dredged or fill material into special aquatic sites; or
- (2) is in excess of 500 feet in length; or
- (3) will involve the discharge of dredged or fill material of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See general condition 32.) (Authorities: Sections 10 and 404)

Note: In coastal waters and the Great Lakes, living shorelines may be an appropriate option for bank stabilization, and may be authorized by NWP 54.

tions





COMMONLY USED NWPS IN SPK

NW03 - Maintenance

NW05 - Scientific Measurement Devices

NW06 - Survey Activities

NW07 - Outfall Structures and Associated Intake Structures

NW10 - Mooring Buoys

NW11 - Temporary Recreational Structures

NW12 – Oil or Natural Gas Pipeline Activities

NW13 - Bank Stabilization

NW14 - Linear Transportation Projects

NW17 - Hydropower Projects

NW18 - Minor Discharges

NW23 - Approved Categorical Exclusions

NW25 - Structural Discharges

NW29 - Residential Developments

NW31 - Maintenance of Existing Flood Control Facilities

- NW33 - Temporary Construction, Access, and Dewatering
- NW35 - Maintenance Dredging of Existing Basins
- **NW39 - Commercial and Institutional Developments**
- **NW58 – Utility Line Activity for Water or Other Substances**





GENERAL CONDITIONS (GCS)



32 General Conditions:

- 17 Tribal Rights
 - Corps is required to consult with Federally-recognized Tribes.
- 18 ESA:
 - Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized.
- 20 Historic Properties:
 - Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties.



GCS CONT'D



- 21 Discovery of Previously Unknown Remains and Artifacts:
 - This was included as a special condition but has been added as a GC since the 2012 NWP.
 - Permittees who discover previously unknown remains or artifacts must immediately notify the district engineer and avoid construction that will further affect the potential resource.
- 23 Mitigation:
 - Requires avoidance, minimization, compensation.
 - Compensatory mitigation at a minimum of 1:1 will be required for all wetland losses that exceed 1/10th acre or streambed losses of over 3/100th acre and require a PCN. The DE may require mitigation for losses less than 1/10th acre.
 - The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.
 - If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States
 - Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs.





GCS CONT'D



- 25 Water Quality:
 - Unless previously granted or covered by a general water quality certification, a 401 Certification by a state or regional water quality authority is required prior to NWP verification.
 - <https://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Nationwide-Permits/NWP-CA-Summary-Table/>
- 27 Regional and Case-by-Case Conditions:
 - Activities must comply with Regional and Special Conditions
- 28 Use of Multiple NWPs:
 - The use of more than one NWP for a single and complete project is authorized given the following restrictions:
 - If only one of the NWPs has a specified acreage limit, the total acreage loss of waters for the entire project cannot exceed the highest specified acreage limit.
 - If more than one NWP used to authorize the single and complete project has specified acreages, each impact type cannot exceed their respective limits.



GCS CONT'D



– 32 Pre-Construction Notification:

- Contents of a PCN:
 - Name, address, contact info; location; project description; wetland delineation (**45 day period does not start until the Corps receives a wetland delineation**); mitigation statement; project's effects on listed species and/or historic properties.
- Timing: Corps has 30 days to determine if PCN is complete.
 - Work can begin when – you are notified by the Corps via NWP verification letter or **45 calendar days** have passed from the Corps' receipt of a complete PCN and you have not received written notification from the Corps. **Don't forget about GC 18 or 20 (ESA and Historic Properties Conditions)!**
 - If the district or division engineer notifies the permittee in writing that an individual permit is required within **45 calendar days** of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained.
- PCN Form (ENG Form 6082)



REGIONAL CONDITIONS (RCS)



- Regional Conditions (RCs) are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWP are minimal, both individually and cumulative.
- Drastically reduced from 2017 NWP RCs
- Can be found on our website at:
<https://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2021-nwps/2022.02.25-Final-All-NWP-RCs-CA-SPK-Only.pdf>
- Important requirements that would have been previously referenced in the regional conditions are now included in permit verifications as special conditions





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UP NEXT: NWP PROCESS BY ERIN CAMPBELL

