



**US Army Corps  
of Engineers®**

# **SPECIAL PUBLIC NOTICE**

## **February 25, 2011**

*LOS ANGELES DISTRICT*

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### **NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS**

On February 16, 2011, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue 48 of its existing nationwide permits (NWP) and issue two new NWP.

Nationwide permits 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. Many of the proposed NWP require notification to the district engineer before commencing the work, to ensure that the activities authorized by those NWP have minimal individual and cumulative adverse impacts on the aquatic environment.

National Issues Concerning the Proposed NWP: The Federal Register notice is the public's opportunity to comment on the proposed NWP, general conditions, and definitions. Comments on national issues relating to these NWP should be submitted to docket number COE-2010-0035 at [www.regulations.gov](http://www.regulations.gov), or by email to [NWP2012@usace.army.mil](mailto:NWP2012@usace.army.mil) or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, ATTN: CECW-CO-R, 441 G Street, N.W., Washington, D.C. 20314-1000. Instructions for submitting comments are provided in the February 11, 2011 Federal Register notice. Comments on the proposed NWP are due by **April 11, 2011**.

Regional Issues Concerning the Proposed NWP, Including Regional Conditioning: Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWP are minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWP in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWP may be more than minimal. An enclosure for this public notice (Enclosure 1) lists the proposed regional conditions currently under consideration by the Los Angeles District (the boundaries of the Los Angeles District are defined as the coastal drainages of San Luis Obispo County, the eastern drainages of Mono County to the Conway Summit north of Mono Lake, the eastern drainages of Kern County, all of Inyo, San Bernardino, Riverside, Imperial, Santa Barbara, Ventura, Los Angeles, Orange and San Diego counties in California, and all of the State of Arizona.). The Los Angeles is seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that impacts authorized by the proposed NWP are minimal. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the Los Angeles District. Comments on regional issues relating to the proposed NWP and regional conditions are to be sent to U.S. Army Corps of Engineers, Ventura Field Office, 2151 Alessandro Drive, Suite 110, Ventura, CA 93001, Attn: Antal Szijj. **Do not send comments on the proposed NWP to this address.** Comments relating to regional conditions are due

by **April 11, 2011**. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices.

In conjunction with the Federal Register notice, Corps districts will be announcing proposed regional conditions for these NWP's for public comment. After the final NWP's are issued, the final regional conditions will be issued after they are approved by the Division Commander. After the final NWP are issued, States and Tribes will make their Clean Water Act Section 401 (401) water quality certification and Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 90 days of the Federal Register notice announcing the issuance of the NWP's. The final NWP's will go into effect on or before March 19, 2012.

Draft decision documents, which include environmental documentation required by the National Environmental Policy Act, have been prepared by Corps Headquarters. The decision documents will address compliance of the NWP's with the requirements for issuance under general permit authority. These documents, as well as the proposed NWP's, are available for viewing at Los Angeles District, Regulatory Branch, 915 Wilshire Blvd, Los Angeles, CA 90017 or on the Internet at [www.regulations.gov](http://www.regulations.gov), docket number COE-2010-0035. Final decision documents will be prepared for those NWP's that are issued. In addition, the national NWP decision documents will be supplemented by division engineers to address their decisions concerning regional conditions for the NWP's.

Below is an index of the proposed NWP's and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP's through the Corps Home Page at <http://www.usace.army.mil/CECW/Pages/nmpi.aspx> , [www.regulations.gov](http://www.regulations.gov), docket number COE-2010-0035, or the Federal Register address listed below.

### **Index of Proposed Nationwide Permits, Conditions, and Definitions**

#### ***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. 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]
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. Existing Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
- A. Land-Based Renewable Energy Generation Facilities
- B. Water-Based Renewable Energy Generation Pilot Projects

***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. Discovery of Previously Unknown Remains and Artifacts
15. Proper Maintenance
16. Single and Complete Project
17. Wild and Scenic Rivers
18. Tribal Rights
19. Endangered Species

20. Historic Properties
21. Designated Critical Resource Waters
22. Mitigation
23. Safety of Impoundment Structures
24. Water Quality
25. Coastal Zone Management
26. Regional and Case-by-Case Conditions
27. Use of Multiple Nationwide Permits
28. Transfer of Nationwide Permit Verifications
29. Compliance Certification
30. Pre-Construction Notification

***Definitions***

Best management practices (BMPs)  
Compensatory mitigation  
Currently serviceable  
Discharge  
Enhancement  
Ephemeral stream  
Establishment (creation)  
High Tide Line  
Historic property  
Independent utility  
Intermittent stream  
Loss of waters of the United States  
Non-tidal wetland  
Open water  
Ordinary high water mark  
Perennial stream  
Practicable  
Pre-construction notification  
Preservation  
Re-establishment  
Rehabilitation  
Restoration  
Riffle and pool complex  
Riparian areas  
Shellfish seeding  
Single and complete linear project  
Single and complete non-linear project  
Stormwater management  
Stormwater management facilities  
Stream bed  
Stream channelization  
Structure  
Tidal wetland  
Vegetated shallows  
Waterbody

## Proposed Regional Conditions for the Los Angeles District

1. For all projects within waters that contain suitable habitat for Federally listed fish species, all road crossings shall employ a bridge crossing design that ensures that the passage and/or spawning of fish is not hindered unless determined to be impracticable by the Corps. In these areas, bridge designs that span the stream or river, including designs for pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed shall be employed, unless it can be demonstrated that the subject waters do not contribute to the recovery of Federally listed fish species.
2. Nationwide Permits (NWP) 3, 7, 12-15, 17, 18, 21, 23, 25, 29, 35, 36, or 39-46, 48-50 cannot be used to authorize structures, work, and/or the discharge of dredged or fill material that would result in the "loss" of wetland or pool and riffle complex as defined at 40 CFR Part 230.40-45. The definition of "loss" for this regional condition is the same as the definition of "loss of waters of the United States" used for the Nationwide Permit Program. Furthermore, this regional condition applies only within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California. The desert region in California is limited to four USGS Hydrologic Unit Code (HUC) accounting units (Lower Colorado - 150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).
3. When a pre-construction notification (PCN) is required, the appropriate U.S. Army Corps of Engineers (Corps) District shall be notified in accordance with General Condition 30 using either the South Pacific Division PCN Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. The PCN Checklist and application form are available at: <http://www.spl.usace.army.mil/regulatory>. 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;
  - 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 project 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. All drawings for projects located within the boundaries of the Los Angeles District shall comply with the most current version of the *Map and Drawing Standards for the Los Angeles District Regulatory Division* (available on the Los Angeles District Regulatory Division website at: [www.spl.usace.army.mil/regulatory/](http://www.spl.usace.army.mil/regulatory/)); and
  - c. Numbered and dated pre-project color photographs showing all waters proposed to be impacted on the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing.
4. Submission of a PCN pursuant to General Condition 30 and Regional Condition 3 shall be required for all regulated activities in the following locations:
  - a. All perennial waterbodies and special aquatic sites within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California, excluding the Colorado River in Arizona from Davis Dam to River Mile 261 (northern boundary of the Fort Mojave Indian Tribe Reservation). The desert region in California is limited to four USGS HUC accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).

- b. All areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas). The PCN shall also include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: <http://www.swr.noaa.gov/efh.htm>.
  - c. All watersheds in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south.
  - d. The Santa Clara River watershed in Los Angeles and Ventura counties, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the main-stem of the Santa Clara River.
5. Individual Permits shall be required for all discharges of fill material in jurisdictional vernal pools, with the exception that discharges for the purpose of restoration, enhancement, management or scientific study of vernal pools may be authorized under the appropriate NWP with the submission of a PCN in accordance with General Condition 30 and Regional Condition 3.
  6. Individual Permits shall be required in Murrieta Creek and Temecula Creek watersheds in Riverside County for new permanent fills in perennial and intermittent watercourses otherwise authorized under NWPs 29, 39, 42 and 43, and in ephemeral watercourses for these NWPs for projects that impact greater than 0.1 acre of waters of the United States. In addition, when NWP 14 is used in conjunction with residential, commercial, or industrial developments the 0.1 acre limit would also apply.
  7. Individual Permits (Standard Individual Permit or 404 Letter of Permission) shall be required in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County for bank stabilization projects, and in Gaviota Creek, Mission Creek and Carpinteria Creek in Santa Barbara County for bank stabilization projects and grade control structures.
  8. In conjunction with the Los Angeles District's Special Area Management Plans (SAMPs) for the San Diego Creek Watershed and San Juan Creek/Western San Mateo Creek Watersheds in Orange County, California, the Corps' Division Engineer, through his discretionary authority has revoked the use of the following 24 selected NWPs within these SAMP watersheds: 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49, and 50. Consequently, these NWPs are no longer available in those watersheds to authorize impacts to waters of the United States from discharges of dredged or fill material under the Corps' Clean Water Act section 404 authority.
  9. Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams for NWPs 29, 39, 40 and 42, or to waive the 500 linear foot limitation along the bank for NWP 13, must include the following:
    - a. 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 characters 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 associated vegetation community (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information.

- b. An analysis of the proposed impacts to the waterbody in accordance with General Condition 30 and Regional Condition 3;
  - c. Measures taken to avoid and minimize losses, including other methods of constructing the proposed project; and
  - d. A mitigation plan describing how the unavoidable losses are proposed to be compensated.
10. Any compensatory mitigation required by special conditions of the NWP verification shall be completed before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, proof of payment shall be submitted to the appropriate Corps district prior to commencement of construction of the authorized activity.
  11. Corps representatives shall be allowed to inspect the authorized activity and any mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the NWP verification.
  12. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
  13. Submission of a PCN pursuant to General Condition 30 and Regional Condition 3 shall be required for NWP 29, 39, 42 or 44 in any Clean Water Act 303(d) impaired waters.
  14. For projects in which the Corps designates another federal agency as the NEPA lead, the lead Federal agency shall provide all relevant documentation to the appropriate Corps District demonstrating any previous consultation efforts in accordance with Section 7 of the Endangered Species Act (ESA) of 1973 as amended (50 CFR Part 402.14), Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (EFH) and Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. § 470f et seq.), as it pertains to the Corps Regulatory permit area (for Section 7 and EFH compliance) and the Corps Regulatory area of potential effect (APE) for (Section 106 compliance). Please note that if the Corps does not designate another federal agency as the NEPA lead, the appropriate Corps District will initiate consultation for compliance with ESA, EFH and NHPA, as appropriate.