



SPECIAL PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

BUILDING STRONG®

REISSUANCE OF THE NATIONWIDE PERMITS AND ISSUANCE OF FINAL REGIONAL CONDITIONS FOR THE LOS ANGELES DISTRICT

March 22, 2017

On January 6, 2017, the U.S. Army Corps of Engineers (Corps) published the notice in the *Federal Register* announcing the reissuance of all 50 existing nationwide permits (NWP), general conditions, and definitions with some modifications. The Corps also issued two new NWPs, one new general condition, and five new definitions. The 2017 NWPs went into effect on **March 19, 2017**, and will expire on March 18, 2022.

The 2017 NWPs are available at: <http://www.spl.usace.army.mil/Missions/Regulatory/Permit-Process/> under *Nationwide Permit Information*. A summary table of the 2017 NWPs is also available.

After publication of this *Federal Register* notice, Corps districts were required to finalize their regional conditions for the new and reissued NWPs. Regional conditions will provide additional protection for the aquatic environment, and will help ensure that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions will help ensure protection of high value waters within the Los Angeles District. Our final regional conditions are attached to this notice.

The publication of this *Federal Register* notice also began the 60-day period for states, Indian Tribes, and the Environmental Protection Agency (EPA) to complete their water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency determination processes for the 2017 NWPs. The Los Angeles District has received WQC, subject to conditions, from the State of California, the State of Arizona and EPA (for tribal lands within EPA Region IX including the Los Angeles District). In addition, seven tribes within the Los Angeles District have been delegated WQC authority. The White Mountain Apache Tribe has issued WQC, subject to conditions. The Navajo Nation, Hopi Tribe, Bishop Paiute Tribe and Twenty-nine Palms Band of Mission Indians have denied WQC on their lands. The Los Angeles District is awaiting final WQC determinations from the Hualapai and Big Pine Paiute Tribes for their respective tribal lands. Where a state or tribe has denied WQC, the use of an NWP to authorize a discharge into waters of the United States is contingent upon obtaining individual water quality certification or a case-specific WQC waiver from that state or tribe.

All WQC certifications issued for the 2017 NWPs will be available at our website as they are received: <http://www.spl.usace.army.mil/Missions/Regulatory/Permit-Process/> under *Nationwide Permit Information*.

The State of California has also completed their Coastal Zone Management Act (CZMA) consistency determination process for the 2017 NWPs and denied CZMA consistency certification. Therefore the

use of an NWP to authorize an activity within, or outside, a state's coastal zone that will affect land or water uses or natural resources of that state's coastal zone, is contingent upon obtaining an individual CZMA consistency determination, or a case-specific presumption of CZMA concurrence.

The Corps' South Pacific Division has also updated the optional Pre-construction Notification Checklist to facilitate review of NWP applications. The updated checklist and instructions are available at: <http://www.spl.usace.army.mil/Missions/Regulatory/Permit-Process/> under *Permit Application Forms*.

For additional information please call Antal Szijj of my staff at (805) 585-2147 or via e-mail at antal.j.szijj@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.



Regulatory Program Goals:

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
WWW.SPL.USACE.ARMY.MIL/MISSIONS/REGULATORY

Index of Nationwide Permits, Conditions, District Engineer's Decision, Further Information, 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 or 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. 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
53. Removal of Low-Head Dams
54. Living Shorelines

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. Activities Affecting Structures or Works Built by the United States
32. Pre-Construction Notification

District Engineer's Decision

Further Information

Definitions

Best management practices (BMPs)
Compensatory mitigation
Currently serviceable
Direct effects
Discharge
Ecological reference
Enhancement
Ephemeral stream
Establishment (creation)
High Tide Line
Historic property
Independent utility
Indirect effects
Intermittent stream
Loss of waters of the United States
Navigable waters
Non-tidal wetland
Open water
Ordinary high water mark
Perennial stream
Practicable
Pre-construction notification
Preservation
Protected tribal resources
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
Tribal lands
Tribal rights
Vegetated shallows
Waterbody

Los Angeles District Final Regional Conditions for the 2017 NWP

1. For all activities in waters of the U.S. that are suitable habitat for federally listed fish species, including designated critical habitat for such species, the permittee shall design all new or substantially reconstructed linear transportation crossings (e.g. roads, highways, railways, trails, bridges, culverts) to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed, unless determined to be impracticable by the Corps.
2. Nationwide Permits (NWP) 3, 7, 12-15, 17-19, 21, 23, 25, 29, 35, 36, or 39-46, 48-54 cannot be used to authorize structures, work, and/or the discharge of dredged or fill material that would result in the "loss" of wetlands, mudflats, vegetated shallows or riffle and pool complexes 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 regions in California are 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 Los Angeles District shall be notified in accordance with General Condition 32 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/Missions/Regulatory/PermitProcess.aspx>. In addition, unless specifically waived by the Los Angeles District, 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 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 shall follow the Updated Map and Drawing Standards for the South Pacific Division Regulatory Program (Feb 2016), or most recent update

(available at 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 project site, and all waters proposed to be avoided on and immediately adjacent to the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing required in subpart b of this regional condition.
 - d. Delineation of aquatic resources in accordance with the current Los Angeles District's Minimum Standards for Acceptance of Aquatic Resources Delineation Reports (available at: <http://www.spl.usace.army.mil/Missions/Regulatory/Jurisdictional-Determination/>).
4. Submission of a PCN pursuant to General Condition 32 and Regional Condition 3 shall be required for specific regulated activities in the following locations:
- a. All perennial waterbodies and special aquatic sites throughout the Los Angeles District as well as intermittent waters within the State of Arizona for any regulated activity that would result in a loss of waters of the United States. The definition of "loss of waters of the United States" for this regional condition is the same as the definition used for the Nationwide Permit Program.
 - b. All 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. EFH Assessment Guidance and other supporting information can be found at: http://www.westcoast.fisheries.noaa.gov/habitat/fish_habitat/efh_consultations_go.html.
 - 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.
 - e. The Murrieta and Temecula Creek watersheds in Riverside County, California for any regulated activity that would result in a loss of waters of the U.S. The definition of "loss of waters of the United States" for this regional condition is the same as the definition used for the Nationwide Permit Program.

- f. All waterbodies designated by the Arizona Department of Environmental Quality as Outstanding Arizona Waters (OAWs), within 1600 meters (or 1 mile) upstream and/or 800 meters (1/2 mile) downstream of a designated OAW, and on tributaries to OAWs within 1600 meters of the OAW (see <http://www.azdeq.gov/index.html>).
 - g. All waterbodies designated by the Arizona Department of Environmental Quality as 303(d)-impaired surface waters, within 1600 meters (or 1 mile) upstream and/or 800 meters (1/2 mile) downstream of a designated impaired surface water, and on tributaries to impaired waters within 1600 meters of the impaired water (see <http://www.azdeq.gov/index.html>).
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 NWP 5, 6, and 27 with the submission of a PCN in accordance with General Condition 32 and Regional Condition 3.
6. Within the Murrieta Creek and Temecula Creek watersheds in Riverside County the use of NWP 29, 39, 42 and 43, and NWP 14 combined with any of those NWPs shall be restricted. The loss of waters of the U.S. cannot exceed 0.25 acre. The definition of “loss of waters of the United States” for this regional condition is the same as the definition used for the Nationwide Permit Program.
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 26 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 applicable linear foot limitations for NWPs 13, 21, 29, 39, 40 and 42, 43, 44, 51, 52, and 54, must include the following:

- a. A narrative description of the affected aquatic resource. 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) or Mean High Water Line; 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 32 and Regional Condition 3;
 - c. Measures taken to avoid and minimize losses, including other methods of constructing the proposed project; and
 - d. A compensatory mitigation plan describing how the unavoidable losses are proposed to be compensated, in accordance with 33 CFR Part 332.
10. The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification 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, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.