

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



March 7, 2002

Calvin Fong
U.S. Army Corps of Engineers
San Francisco District
333 Market Street
San Francisco, CA 94105-2197

Subject: Consistency Determination CD-003-02 (Nationwide Permit Program, Statewide).

Dear Mr. Fong:

On March 5, 2002, the California Coastal Commission objected to the above-referenced consistency determination. The Commission found that the Nationwide Permit (NWP) Program was **not** consistent to the maximum extent practicable with the California Coastal Management Program (CCMP). The reasons for the Commission's objection are discussed in detail in the Staff Report and Recommendation for the March 5, 2002, Commission meeting. In brief, the Commission's objection was based primarily on the inconsistency of the NWP program with the wetland protection policies of Section 30233 of the Coastal Act.

Sincerely,

A handwritten signature in cursive script that reads "LARRY SIMON".

Larry Simon
Coastal Program Analyst

cc: CCC District Offices
Corps of Engineers – Los Angeles District
Corps of Engineers – South Pacific Division
California Department of Water Resources
Governor's Washington, D.C., Office
OCRM

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



T 13c

STAFF REPORT AND RECOMMENDATION ON CONSISTENCY DETERMINATION

Consistency Determination No. CD-003-02
Staff: LJS-SF
File Date: 1/15/2002
60th Day: 3/16/2002
75th Day: 3/31/2002
Commission Meeting: 3/5/2002

FEDERAL AGENCY: Corps of Engineers

PROJECT

LOCATION: Statewide

PROJECT

DESCRIPTION: Issuance, reissuance, and modifications of 44 Nationwide Permits for discharge of dredge and fill material into waters of the United States.

SUBSTANTIVE FILE DOCUMENTS:

1. Notice of Issuance of Nationwide Permits, Federal Register, Vol. 67, No. 10, pp. 2020-2095, January 15, 2002.
2. Proposal to Issue, Reissue, and Modify Nationwide Permits, Federal Register Vol. 66, No. 154, pp. 42070-42100, August 9, 2001.

3. Consistency Certification No. CC-147-96 (Corps of Engineers, Issuance, Reissuance, and Modifications of 39 Nationwide Permits).
4. Consistency Certification No. CC-39-91 (Corps of Engineers, Authorization of 36 Nationwide Permits).
5. Consistency Certification No. CC-15-84 (Corps of Engineers, Amendment to previously approved Nationwide Permit program).
6. Consistency Certification No. CC-13-83 (Corps of Engineers, Authorization of Nationwide Permits).
7. Consistency Certification No. CC-40-95 (Corps of Engineers, Issuance of a Nationwide Permit for residential structures).

EXECUTIVE SUMMARY

The Corps of Engineers (Corps) proposes to issue, reissue, and modify 44 Nationwide Permits (NWP) authorizing discharges and construction in waters of the United States. All the issued, reissued, and modified NWP contained in the Corps' January 15, 2002, notice will become effective on March 18, 2002, and will expire on March 18, 2007. A NWP is a general approval of the activity identified in that permit. Although the "permittee" does not need any other permits from the Corps, in some cases, it must notify the Corps before it discharges fill into waters of the United States. The Commission's concurrence with this consistency determination would result in a general federal consistency concurrence for all authorized activities that would otherwise be subject to the Commission's federal consistency jurisdiction. Because they circumvent the Commission's jurisdiction, and due to their potential resource impacts and lack of consistency with Section 30233(a) of the Coastal Act, the Commission most recently found in 1997 that the existing NWP were inconsistent with the California Coastal Management Program (CCMP) and objected to CC-147-96 (Corps of Engineers). The effect of that objection required "permittees" for NWP to either receive a concurrence or waiver of a consistency certification from the Commission before their NWP became valid.

The proposed NWP in the subject consistency determination are inconsistent with Section 30233 of the Coastal Act. In most cases, the construction activities

authorized by these NWP's are not allowable uses pursuant to Section 30233. Additionally, the approval in advance of any development proposal does not allow the Commission to determine if the development is the least damaging feasible alternative. Finally, most of the proposed NWP's do not include a requirement for mitigation of any adverse wetland impacts. For those that require mitigation, the Commission will not have the ability to determine the adequacy of the mitigation.

An objection to the Corps' proposed NWP program will not eliminate Nationwide Permits in the California coastal zone. Instead, it will maintain an existing procedure used by the Commission which requires federal consistency review of the activity before a NWP can apply to a specific activity. Depending on the circumstances, the Commission can either waive consistency certification or require a consistency certification. Pursuant to the CCMP, a coastal development permit issued by the Commission functions as a consistency certification. In addition, Coastal Act Section 30719 states that activities consistent with a port master plan are consistent with the CCMP for Coastal Zone Management Act purposes. If an activity is within a certified LCP's appeal zone, on a case-by-case review the staff will waive the requirement for a consistency certification if the activity does not raise any statewide or regional issues. Finally, if an activity is within a certified LCP jurisdiction or outside the coastal zone, the staff has the discretion to waive a consistency certification if the activity does not have significant adverse effects on coastal resources.

STAFF SUMMARY AND RECOMMENDATION:

I. Project Description.

The Corps of Engineers proposes to issue, reissue and modify 44 NWP's (and associated General Conditions and Definitions). NWP's are general pre-approvals of discharge of fill or dredge material into waters of the United States for specified activities. The Corps created the NWP program to minimize regulatory requirements for discharging fill associated with projects that have minor effects. Unless otherwise specified, the Corps authorizes a permittee to discharge without notice to the Corps.

The following list identifies all the proposed NWP's:

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 Maintenance
8. Oil and Gas Structures
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. Oil Spill Cleanup
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Stream and Wetland Restoration Activities
28. Modifications of Existing Marinas
29. Single-Family Housing
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. Residential, Commercial, and Institutional Developments
40. Agricultural Activities

41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities

The following list identifies all the proposed General Conditions associated with the NWP program:

1. Navigation
2. Proper Maintenance
3. Soil Erosion and Sediment Controls
4. Aquatic Life Movements
5. Equipment
6. Regional and Case-by-Case Conditions
7. Wild and Scenic Rivers
8. Tribal Rights
9. Water Quality
10. Coastal Zone Management
11. Endangered Species
12. Historic Properties
13. Notification
14. Compliance Certification
15. Use of Multiple Nationwide Permits
16. Water Supply Intakes
17. Shellfish Beds
18. Suitable Material
19. Mitigation
20. Spawning Areas
21. Management of Water Flows
22. Adverse Effects from Impoundments
23. Waterfowl Breeding Areas
24. Removal of Temporary Fills
25. Designated Critical Resource Waters
26. Fills Within the 100-year Floodplain
27. Construction Period

The following list identifies all the proposed Definitions associated with the NWP program:

Best Management Practices	Perennial Stream
Compensatory Mitigation	Permanent Above-grade Fill
Creation	Preservation
Enhancement	Restoration
Ephemeral Stream	Riffle and Pool Complex
Farm Tract	Single and Complete Project
Flood Fringe	Stormwater Management
Facilities	Stormwater Management
Floodway	Stream Bed
Independent Utility	Stream Channelization
Intermittent Stream	Tidal Wetland
Loss of Waters of the U.S.	Vegetated Buffer
Non-Tidal Wetland	Vegetated Shallows
Open Water	Waterbody

Exhibit 1 (comprised of pages 2020 through 2095 of the January 15, 2002, Federal Register) contains a complete description of the aforementioned NWP's (see pages 2078-2089), General Conditions (see pages 2089-2094), and Definitions (see pages 2094-2095) included in the Corps' consistency determination, which the Commission incorporates into these findings by reference.

Most of the NWP's and General Conditions are similar to the previously issued permits. However, the Corps of Engineers proposes to modify the following nine NWP's:

14. Linear Transportation Projects
21. Surface Coal Mining Activities
27. Wetland and Riparian Restoration and Creation Activities
31. Maintenance of Existing Flood Control Facilities
37. Emergency Watershed Protection and Rehabilitation
39. Residential, Commercial, and Institutional Developments
40. Agricultural Activities
42. Recreational Facilities
43. Stormwater Management Facilities

The Corps of Engineers also proposes to modify the following six General Conditions and add one new General Condition (#27):

- 4. Aquatic Life Movements
- 9. Water Quality
- 13. Notification
- 19. Mitigation
- 21. Management of Water Flows
- 26. Fills Within the 100-year Floodplain
- 27. Construction Period

Exhibit 1 also contains a discussion of the public comments received and the Corps' final decision on all the NWP's and General Conditions, including the above-referenced modifications, and is incorporated into these findings by reference. For ease of location, the discussion of the modified NWP's is found on pages 2029 through 2058 of the Federal Register excerpt provided; for the modified General Conditions, see pages 2060 through 2074.

Exhibit 2 is a four-page-long Corps of Engineers document published in the February 13, 2002, Federal Register which contains *corrections* to the final notice of issuance of Nationwide Permits which was published on January 15, 2002 and included in **Exhibit 1**.

II. Federal Agency's Consistency Determination.

The Corps of Engineers has determined the project to be consistent to the maximum extent practicable with the California Coastal Management Program.

III. Staff Recommendation.

The staff recommends that the Commission adopt the following motion:

Motion:

I move that the Commission concur with consistency determination CD-003-02 that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).

Staff Recommendation:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in an objection to the determination and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

Resolution To Object to Consistency Determination:

The Commission hereby **objects** to the consistency determination by Corps of Engineers on the grounds that the project described therein is not consistent to the maximum extent practicable with the enforceable policies of the CCMP.

IV. Applicable Legal Authorities. Section 307 of the Coastal Zone Management Act (CZMA) provides in part:

(c)(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.

V. Procedure if the Commission finds that the proposed activity is inconsistent with the CCMP.

Section 930.43(a) of the federal consistency regulations (15 CFR Section 930.43(a)) requires that, if the Commission's objection is based on a finding that the proposed activity is inconsistent with the CCMP, the Commission must identify measures, if they exist, that would bring the project into conformance with the CCMP. That section states:

(a) In the event the State agency objects to the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the objection and supporting information. The State agency response shall describe: (1) How the proposed activity will be inconsistent with specific enforceable policies of the management program; and (2) The specific enforceable policies (including citations).

(3) The State agency should also describe alternative measures (if they exist) which, if adopted by the Federal agency, would allow

the activity to proceed in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. Failure to describe alternatives does not affect the validity of the State agency's objection.

As described in the Wetland Fill section below, the proposed activity is inconsistent with the CCMP. Pursuant to the requirements of Section 930.43(a) of the federal regulations implementing the CZMA, the Commission is responsible for identifying measures, if they exist, that would allow the activity to be found consistent to the maximum extent practicable with the CCMP. Since most of the NWP's do not meet the allowable use test described in Section 30233 of the Coastal Act and none of the NWP's can be evaluated for consistency with the alternative and mitigation tests at a general level, *there are no alternative measures that could bring this permit into compliance with the CCMP.* However, as a practical matter, the Commission's approach to reviewing projects on a case-by-case approach represents an alternative that allows individual projects to proceed (see pages 13 and 14 for elaboration).

VI. Practicability. The federal consistency regulations implementing the CZMA include the following provision:

Section 930.32 Consistent to the maximum extent practicable.

(a)(1) The term "consistent to the maximum extent practicable" means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

Since the Corps has raised no issue of practicability, as so defined, the standard before the Commission is full consistency with the policies of the California Coastal Management Program (CCMP).

VII. Findings and Declarations:

The Commission finds and declares as follows:

A. Wetland Fill. Section 30233(a) of the Coastal Act provides, in part, that:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland, provided, however, that in no event shall the size of the wetland area used for such boating facility, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, be greater than 25 percent of the total wetland area to be restored.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) *Nature study, aquaculture, or similar resource-dependent activities.*

The Commission previously evaluated the Corps' NWP program on three occasions. In its first review, in 1983 and 1984 (CC-15-84 and CC-13-83), the Commission concurred with most of the NWPs.

In its second review, in 1991, the Commission objected to the entire program (CC-39-91). That objection was necessary because the Corps' consistency certification lacked the necessary information for the Commission to concur with the consistency certification and because several of the NWPs were inconsistent with the CCMP, specifically Section 30233. The Corps did not provide a final and complete description of the program, definitions for vague terms such as "minimal," "small," or "temporary," or analysis of cumulative impacts to the coastal zone. Without this information, the Commission could not assess the project's impact to coastal resources and uses, and, therefore objected to the Corps' consistency certification. In addition, the NWP program raised issues regarding fisheries, water quality, and oil and gas development. The activities authorized by these NWPs could result in significant individual and cumulative impacts to coastal resources. The NWP program did not contain any assurances that the "permittees" would conduct authorized activities in a manner consistent with the CCMP. Therefore, the Commission found that NWP program to be inconsistent with the CCMP.

In its third review, in 1996, the Commission again objected to the entire program (CC-147-96). The Commission found that the proposed NWPs were inconsistent with Section 30233 of the Coastal Act, in particular, the allowable use, least damaging feasible alternative, and mitigation policies of Section 30233(a).

The NWP program expires every five years. The current proposal is the reissuance of the previous NWPs and modifications to nine of the NWPs. *The Corps' consistency determination is a two page letter that is similar to the 1996 NWP submittal.* The consistency determination does not adequately address the issues previously raised by the Commission, most recently in CC-147-96. Therefore, the issues raised by the Commission in its previous analysis are still valid. The Commission incorporates the findings supporting its objection to the 1996 NWPs (CC-147-96) by reference (**Exhibit 3**).

The proposed NWP program allows the placement of fill into waters of the United States for any purpose described in an issued NWP. Since this program authorizes the placement of fill within wetlands, the Commission must determine if the permit is consistent with Section 30233(a) of the Coastal Act. That section restricts the placement of fill into wetlands to eight enumerated uses. The following NWPs are for activities that do not appear to be consistent with Section 30233: NWP 2 (Structures in Artificial Canals), NWP 3 (Maintenance), NWP 6 (Survey Activities), NWP 14 (Linear Transportation Projects), NWP 15 (U.S. Coast Guard Approved Bridges), NWP 19 (Minor Dredging), NWP 25 (Structural Discharges), NWP 29 (Single-Family Housing), NWP 31 (Maintenance of Existing Flood Control Projects), NWP 33 (Temporary Construction, Access and Dewatering), NWP 39 (Residential, Commercial, and Institutional Developments), NWP 40 (Agricultural Activities), NWP 41 (Reshaping Existing Drainage Ditches), NWP 42 (Recreational Facilities), NWP 43 (Stormwater Management Facilities), and NWP 44 (Mining Activities).

In most cases, the Commission would find such activities inconsistent with the Coastal Act. However, through an individual review, the Commission may find that under special circumstances some of the activities authorized by these NWPs are consistent with the allowable-use requirement of the Coastal Act. Nevertheless, the Commission can only make that determination on an individual basis. Thus, a general approval for fill associated with these activities in advance of a project proposal is inconsistent with the allowable-use requirement of Section 30233(a) of the Coastal Act. Therefore, the Commission finds that these NWPs are inconsistent with the allowable-use requirement of Section 30233.

Another requirement of Section 30233(a) allows the Commission to approve an activity if it is the least damaging feasible alternative and to determine if it includes feasible mitigation to reduce any environmental impacts. The proposed NWP program does not provide for analysis of alternatives or mitigation. The NWPs authorizes the "permittee" to place fill in the aquatic environment even if there is a less damaging alternative. Additionally, most of the NWPs do not require mitigation, and may result in a net loss of wetlands. With respect to the NWPs that allow for mitigation, there is no process for public, governmental, and scientific review of that mitigation to ensure that the project minimizes environmental effects. Additionally, the program would not allow for the Commission to determine if the mitigation is adequate to address the project's impacts or its consistency with the Coastal Act. Therefore, the Commission finds that the

proposed NWP program is inconsistent with the alternatives and mitigation requirements of Section 30233(a).

In conclusion, the proposed NWP program is inconsistent with Section 30233(a) of the Coastal Act for the following reasons: (1) it would authorize activities that are not normally allowable under Section 30233(a); (2) it does not require the permittee to construct the least damaging feasible alternative; and (3) it does not require mitigation for adverse impacts to wetland habitat. Additionally, the NWP program does not provide enough information to fully evaluate the project's consistency with the CCMP. Therefore, the Commission finds that the proposed development is inconsistent with the wetland fill policy of the CCMP.

B. Procedures. As stated above, the Commission objected to the 1996 NWP program. This objection initiated a process provided for in the NWP regulations (33 CFR 330.4(d)). Specifically, these regulations require "applicants" to coordinate with the state coastal management agency pursuant to the requirements of the Coastal Zone Management Act before the activity can make use of an NWP. However, for those activities inside or affecting the coastal zone, the NWPs are not valid until the Commission either concurs with a consistency certification or waives federal consistency. After the "permittee" completes the federal consistency process, the NWPs are valid for that activity. Since its last objection to the NWP program, the Commission has waived federal consistency on most of the activities subject to NWPs.

The staffs of the Corps and the Commission have informally agreed upon procedures that allow most activities qualifying for a NWP to continue without any significant delays. Upon receipt of notice of a pre-discharge notice or other notice of a NWP activity within a coastal area, the Corps sends the applicant a letter informing the applicant that the NWP is not valid until the applicant receives either a federal consistency concurrence or waiver from the Commission (**Exhibit 4**). Upon receipt of a copy this letter (usually within two weeks), the Commission staff sends a "Jurisdiction Letter" (**Exhibit 5**) to both the Corps and the applicant identifying the Commission federal consistency or permit jurisdiction or, if appropriate, waiving federal consistency. If the activity does not require coastal development permit or federal consistency review, the Commission's jurisdiction letter ends the Commission's involvement for that activity. If additional Commission review is necessary, it will complete the process within the appropriate statutory or regulatory requirements. A Commission objection to this consistency determination will have the same effect as the previous objection. The

NWP will not be valid for any qualifying activity until the Commission either concurs with a consistency certification or waives the requirement.

In conclusion, the proposed NWP program is inconsistent with section 102(b)(5) of the Coastal Act for the following reasons: (1) it would authorize activities that are not normally allowed under section 30253(a); (2) it does not require the permittee to conduct a best managing feasible alternative; and (3) it does not require the permittee to advise the public of the proposed activity. Additionally, the NWP program does not provide enough information to fully evaluate the project's consistency with the Coastal Act. Therefore, the Commission finds that the proposed development is inconsistent with the intent and policy of the Coastal Act.

B. Procedures. As stated above, the Commission objected to the NWP program. This objection initiated a process provided for in the NWP regulations (35 CFR 33.40(d)). Specifically, the regulations require "applicant" to coordinate with the state coastal management agency pursuant to the requirements of the Coastal Zone Management Act before the activity and make use of an NWS. However, the NWP program does not require the permittee to coordinate with the state coastal management agency or make use of an NWS. The NWP program also does not require the permittee to provide a consistency certification or waive federal consistency. After the "permittee" completes the federal consistency process, the NWP is valid for that activity. Since its last objection to the NWP program, the Commission has waived federal consistency on most of the activities subject to NWP.

The staffs of the Corps and the Commission have informally agreed upon procedures that allow permittees to qualify for a NWP to continue without any significant delay. Upon receipt of notice of a proposed discharge under or other notice of a NWP activity within a state, the Corps sends the applicant a letter informing the applicant that the NWP is not valid until the applicant receives either a federal consistency certification or waiver from the Commission (Exhibit 4). Upon receipt of a copy of this letter (usually within two weeks), the Commission staff sends a "jurisdiction letter" (Exhibit 5) to both the Corps and the applicant identifying the Commission's federal consistency or permit jurisdiction or, if appropriate, waiving federal consistency. If the activity does not require coastal development permit or federal consistency review, the Commission's jurisdiction letter ends the Commission's involvement in that activity. If additional Commission review is necessary, it will complete the process within the appropriate statutory or regulatory requirements. A Commission objection to this consistency determination will have the same effect as the previous objection. The



Federal Register

Tuesday,
January 15, 2002

Part II

Department of Defense

Department of the Army, Corps of
Engineers

Issuance of Nationwide Permits; Notice

EXHIBIT NO. 1
APPLICATION NO.

CD-003-02

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Issuance of Nationwide Permits; Notice

AGENCY: Army Corps of Engineers, DoD.
ACTION: Final notice.

SUMMARY: The Corps of Engineers is reissuing all the existing Nationwide Permits (NWP), General Conditions, and definitions with some modifications, and one new General Condition. These final NWPs will be effective on March 18, 2002. All NWPs except NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on February 11, 2002. Existing NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on March 18, 2002. In order to reduce the confusion regarding the expiration of the NWPs and the administrative burden of reissuing NWPs at different times, we are issuing all NWPs on the same date so that they expire on the same date. Thus, all issued, reissued and modified NWPs, and General Conditions contained within this notice will become effective on March 18, 2002 and expire on March 19, 2007.

DATES: All NWPs and general conditions will become effective on March 18, 2002. All NWPs have an expiration date of March 19, 2007.

ADDRESSES: HQUSACE, ATTN: CECW-OR, 441 "G" Street, NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, at (703) 428-7570, Mr. Rich White, at (202) 761-4599, or Mr. Kirk Stark, at (202) 761-4664 or access the U.S. Army Corps of Engineers Regulatory Home Page at: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>.

SUPPLEMENTARY INFORMATION:

Background

In the August 9, 2001 (66 FR 42070), **Federal Register** the Corps proposed to reissue all the existing Nationwide Permits (NWP), General Conditions, and definitions with some modifications, and one new General Condition. We proposed to modify NWPs 14, 21, 27, 31, 37, 39, 40, 42, and 43, General Conditions 4, 9, 13, 19, 21, 26, and add a new General Condition 27.

The proposal intended to simplify and clarify permits that have no more than minimal effect on the environment, add additional requirements that will enhance protection of the aquatic environment, increase flexibility for the Corps field staff to target resources

where most needed to protect the aquatic environment, reduce unnecessary burdens on the regulated public, and retain the key protections for the aquatic environment that were added last year (e.g. acreage limit of 1/2 acre of impact per project, the requirement for the Corps to be notified of any impacts over 1/10 acre, and important limits on impacts within mapped floodplains).

As a result of the comments received in response to the August 9, 2001, **Federal Register** notices and the public hearing on September 26, 2001, the Corps has made a number of changes to the proposed NWPs and General Conditions that are designed to further clarify the permits and strengthen environmental protection. These changes are discussed in the preamble.

In the December 13, 1996, issue of the **Federal Register**, the Corps announced its intention to replace NWP 26 with activity-specific NWPs before the expiration date of NWP 26. In the March 9, 2000, **Federal Register** notice (65 FR 12818-12899), the Corps published five new NWPs, modified six existing NWPs, modified six General Conditions, and added two new General Conditions to replace NWP 26. The five new NWPs (i.e., 39, 41, 42, 43, 44) and six modified NWPs (i.e., NWPs 3, 7, 12, 14, 27, and 40) would have expired five years from their effective date of June 7, 2000.

Today the Corps of Engineers is reissuing all the existing Nationwide Permits (NWP), General Conditions, and definitions with some modifications, and one new General Condition. These final NWPs will be effective on March 18, 2002. All NWPs except NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on February 11, 2002. Existing NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on March 18, 2002. In order to reduce the confusion regarding the expiration of the NWPs and the administrative burden of reissuing NWPs at different times, we are issuing all NWPs on the same date so that they expire on the same date. Thus, all issued, reissued and modified NWPs, and General Conditions contained within this notice will become effective on March 18, 2002 and expire on March 19, 2007.

Grandfather Provision for Expiring NWPs at 33 CFR 330.6

Activities authorized by the current NWPs issued on December 13, 1996, (except NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44), that have commenced or are under contract to commence by February 11, 2002, will have until February 11, 2003 to complete the activity. Activities authorized by NWPs

7, 12, 14, 27, 31, 40, 41, 42, 43, and 44, that were issued on March 9, 2000, that are commenced or under contract to commence by March 18, 2002, will have until March 18, 2003 to complete the activity.

Clean Water Act Section 401 Water Quality Certification (WQC) and Coastal Zone Management Act (CZMA) Consistency Agreement

In the August 9, 2001, **Federal Register** notice and concurrent with letters from Corps Districts to the appropriate state agencies, the Corps requested 401 certification and CZM consistency agreement. This began the Clean Water Act section 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency agreement processes. Today's **Federal Register** notice provides a 60-day period for the states to complete the Clean Water Act section 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency agreement processes. On August 9, 2001, we proposed to increase the normal 60-day period to complete the WQC and CZMA processes to 90 days. However, due to a majority of the NWPs expiring February 11, 2001, and schedule delays, we have had to keep the WQC and CZMA processes to 60 days. Also during this 60-day period, Corps divisions and districts will finalize their regional conditions for the new and modified NWPs.

Discussion of Public Comments

I. Overview

In response to the August 9, 2001, **Federal Register** notice, we received more than 2,100 comments. We reviewed and fully considered all comments received in response to that notice.

Many commenters expressed opposition to the proposed NWPs, but a few commenters indicated support for these NWPs. Most of the comments in opposition of the NWPs were two versions of identical post cards and a form letter that objected to proposed changes to general conditions 19 and 26, opposed the removal of linear limits for NWPs 21, 39, 40, 42, 43, and 44, and requested the withdrawal of NWP 21. Other commenters said that the NWPs were too difficult for the public to use, the NWPs exceeded the Corps jurisdiction, and the acreage and linear limits were too low for the NWPs to be useful. One commenter indicated that few changes proposed in the August 9, 2001, **Federal Register** notice will result in decreased workload for the Corps.

ADDRESSES). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Sea turtles

Threatened and endangered green turtle (*Chelonia mydas*)
Endangered hawksbill turtle (*Eretmochelys imbricata*)
Endangered Kemp's ridley turtle (*Lepidochelys kempii*)
Endangered leatherback turtle (*Dermochelys coriacea*)
Threatened loggerhead turtle (*Caretta caretta*)

Application 1361

The applicant is applying for a 5-year permit to trawl for turtles, as needed, at dredge and other construction/ destruction sites to remove the turtles to a safe location. The turtles will be captured, tagged, measured and released offshore away from the dredging activities. The applicant expects to capture and relocate 95 green, 11 hawksbill, 160 loggerhead, 14 Kemp's ridley and 4 leatherback turtles on the Atlantic coast and 105 green, 17 hawksbill, 160 loggerhead, 50 Kemp's ridley and 11 leatherback turtles on the Gulf coast.

Dated: February 7, 2002.

Jill Lewandowski,

Acting Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 02-3522 Filed 2-12-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Issuance of Nationwide Permits; Notice; Correction

AGENCY: Army Corps of Engineers, DoD.
ACTION: Final notice; correction.

SUMMARY: This document contains corrections to the final notice of issuance of Nationwide Permits (NWP) which was published in the Federal Register on Tuesday, January 15, 2002 (67 FR 2020-2095).

ADDRESSES: HQUSACE, ATTN: CECW-OR, 441 "G" Street, NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, at (703) 428-7570, Mr. Kirk Stark, at (202) 761-4664 or Ms. Leesa Beal at (202) 761-4599 or access the U.S. Army Corps of Engineers Regulatory Home Page at: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>.

SUPPLEMENTARY INFORMATION: In the SUMMARY section on page 2020, the third and fourth sentences are corrected to read: "All NWPs except NWPs 3, 7, 12, 14, 27, 39, 40, 41, 42, 43, and 44 expire on February 11, 2002. Existing NWPs 3, 7, 12, 14, 27, 39, 40, 41, 42, 43, and 44 expire on March 18, 2002." In the last sentence of the SUMMARY section, the expiration date is corrected as "March 18, 2007", instead of "March 19, 2007".

On page 2020, in second sentence of the DATES section, the expiration date is corrected as "March 18, 2007", instead of "March 19, 2007". Therefore, the NWPs published in the January 15, 2002, Federal Register will expire on March 18, 2007, five years from their effective date of March 18, 2002.

On page 2020, in the fifth paragraph of the Background section, the third and fourth sentences are corrected to read: "All NWPs except NWPs 3, 7, 12, 14, 27, 39, 40, 41, 42, 43, and 44 expire on February 11, 2002. Existing NWPs 3, 7, 12, 14, 27, 39, 40, 41, 42, 43, and 44 expire on March 18, 2002." The expiration date in the last sentence of this paragraph is corrected as "March 18, 2007", instead of "March 19, 2007".

On page 2020, the paragraph in the section entitled "Grandfather Provision for Expiring NWPs at 33 CFR 330.6" is corrected to read: "Activities authorized by the current NWPs issued on December 13, 1996, (except NWPs 3, 7, 12, 14, 27, 39, 40, 41, 42, 43, and 44), that have commenced or are under contract to commence by February 11, 2002, will have until February 11, 2003, to complete the activity. Activities authorized by NWPs 3, 7, 12, 14, 27, 39, 40, 41, 42, 43, and 44, that were issued on March 9, 2000, that are commenced or under contract to commence by March 18, 2002, will have until March 18, 2003, to complete the activity."

On page 2020, in the "Clean Water Act Section 401 Water Quality Certification (WQC) and Coastal Zone Management Act (CZMA) Consistency Agreement" section, the date in the fifth sentence is corrected as "February 11, 2002", instead of "February 11, 2001".

On page 2023, third column, last sentence, the number 29 is replaced with the number 19, because this sentence refers to General Condition 19.

On page 2024, first column, in the fourth sentence of the last paragraph the

phrase "less than" is replaced by "greater than" because the 30 day completeness review period for NWP pre-construction notifications is greater than the 15 day completeness review period for standard permit applications.

On page 2031, second column, second full paragraph, the number 31 is replaced with the number 3 because this paragraph refers to NWP 3.

On page 2044, second column, fourth complete paragraph, the title is corrected to read "Stream and Wetland Restoration Activities" because that is the title of NWP 27.

On page 2054, second column, the year cited in the third sentence of the second paragraph is the year 2000, not 1996.

On page 2058, third column, in the second sentence of the second complete paragraph the word "intermittent" is inserted before the phrase "stream bed" because the waiver for filling or excavating greater than 300 linear feet of stream beds can apply only to intermittent stream beds.

On page 2072, third column, last sentence, the number 19 is inserted after the term "General Condition" since this sentence refers to General Condition 19.

On page 2076, second column, the street address for the Walla Walla District Engineer is corrected to read "201 N. Third Avenue".

On page 2080, second column, third paragraph from the top of the column (in the "Notification" section of NWP 12), the word "or" at the end of paragraph (e) is deleted and the period at the end of the fourth paragraph (paragraph (f)) is replaced with "; or".

On page 2080, second column, paragraph (a) of NWP 13 is corrected to read: "No material is placed in excess of the minimum needed for erosion protection;" The change was not intended and we are correcting this paragraph by reinstating the original text as it appeared in the version of NWP 13 published in the December 13, 1996, Federal Register (61 FR 65915).

On page 2080, third column, the word "or" is inserted at the end of paragraph (a)(1) of NWP 14, Linear Transportation Projects. Paragraph (a) of NWP 14 is corrected to read: "a. This NWP is subject to the following acreage limits: (1) For linear transportation projects in non-tidal waters, provided the discharge does not cause the loss of greater than 1/2-acre of waters of the US; or (2) For linear transportation projects in tidal waters, provided the discharge does not cause the loss of greater than 1/3-acre of waters of the US."

On page 2085, second column, the last sentence of NWP 36 is corrected to read as follows: "Dredging to provide

EXHIBIT NO. 2
APPLICATION NO.
CD-003-02

access to the boat ramp may be authorized by another NWP, regional general permit, or individual permit pursuant to section 10 if located in navigable waters of the United States. * * *

The change was not intended and we are correcting this paragraph by reinstating the original text as it appeared in the version of NWP 36 published in the December 13, 1996, **Federal Register** (61 FR 65919).

On page 2086, in the second full paragraph of the second column, "paragraph (e)" in the second sentence is replaced with "paragraph (f)" and "paragraph (i)" in the third sentence is replaced with "paragraph (j)" to accurately cite the previous paragraphs of NWP 39. The last two sentences of the paragraph before the subdivision paragraph were incorrectly divided into two sentences from the original single sentence and identified as being related to General Condition 15. This change was not intended and we are correcting this paragraph by reinstating the original last sentence as it exists in the March 9, 2000, text of NWP 39 (65 FR 12890).

On page 2086, middle column, the parenthetical statement at the end of the **Note** at the end of NWP 39 is corrected to read "* * *" (except for ephemeral waters, which do not require PCNs under paragraph (c)(2), above; however, activities that result in the loss of greater than $\frac{1}{10}$ acre of ephemeral waters would require PCNs under paragraph (c)(1), above)." The addition to the **Note** was intended to clarify that under paragraph (c)(2) only the loss of ephemeral open waters were not included in the requirement for a pre-construction notification (PCN). However, under paragraph (c)(1) all ephemeral waters of the United States are included in the measurement for the $\frac{1}{10}$ acre PCN requirement. The correction is needed because the statement in the parentheses could be incorrectly interpreted to apply to paragraph (c)(1) and possibly to all PCNs, not just those affected by paragraph (c)(2).

For clarity, we are providing the text of NWP 39 in its entirety, with the corrections described above:

39. Residential, Commercial, and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads,

parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this NWP.

Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The activities listed above are authorized, provided the activities meet all of the following criteria:

a. The discharge does not cause the loss of greater than $\frac{1}{2}$ -acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(1) The discharge causes the loss of greater than $\frac{1}{10}$ -acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters; or

(2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (see **Note**, below); or

(3) The discharge causes the loss of greater than 300 linear feet of intermittent stream bed. In such case, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

e. The discharge is part of a single and complete project;

f. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable. The notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the US were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the US. (See General Condition 19.) The notification must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the US. If an applicant asserts that the adverse effects of the project are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration;

g. When this NWP is used in conjunction with any other NWP, any combined total permanent loss of waters of the US exceeding $\frac{1}{10}$ -acre requires that the permittee notify the District Engineer in accordance with General Condition 13;

h. Any work authorized by this NWP must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream (see General Conditions 9 and 21);

i. For discharges causing the loss of $\frac{1}{10}$ -acre or less of waters of the US, the permittee must submit a report, within 30 days of completion of the work, to the District Engineer that contains the following information: (1) The name, address, and telephone number of the permittee; (2) The location of the work; (3) A description of the work; (4) The type and acreage of the loss of waters of the US (e.g., $\frac{1}{2}$ -acre of emergent wetlands); and (5) The type and acreage of any compensatory mitigation used to offset the loss of waters of the US (e.g., $\frac{1}{2}$ -acre of emergent wetlands created on-site);

j. If there are any open waters or streams within the project area, the permittee will establish and maintain, to the maximum extent practicable, wetland or upland vegetated buffers next to those open waters or streams consistent with General Condition 19. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site.

Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. The

compensatory mitigation proposal that is required in paragraph (f) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in paragraph (j) of this NWP will be determined on a case-by-case basis by the District Engineer for addressing water quality concerns. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the United States to increase production or construct farm buildings, NWP 39 cannot be used by the developer to authorize additional activities in waters of the United States on the project site in excess of the acreage limit for NWP 39 (*i.e.*, the combined acreage loss authorized under NWPs 39 and 40 cannot exceed ½ acre).

Subdivisions: For residential subdivisions, the aggregate total loss of waters of US authorized by NWP 39 can not exceed ½-acre. This includes any loss of waters associated with development of individual subdivision lots. (Sections 10 and 404)

Note: Areas where wetland vegetation is not present should be determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the US based on this criterion would require a PCN although water is infrequently present in the stream channel (except for ephemeral waters, which do not require PCNs under paragraph (c)(2), above; however, activities that result in the loss of greater than ½ acre of ephemeral waters would require PCNs under paragraph (c)(1), above).

On page 2088, in the sixth sentence of the first paragraph in the first column, the phrase "an adequate water quality management plan" is replaced with the phrase "adequate water quality management measures" to reflect the modified language in General Condition 9. This sentence is corrected to read "The facility must have adequate water quality management measures in accordance with General Condition 9, such as a stormwater management facility, to ensure that the recreational facility results in no substantial adverse effects to water quality."

On page 2089, first column, the second sentence of paragraph (c) of NWP 44 is corrected to read "Normally, the water quality management measures required by General Condition 9 should address these impacts;". In addition, the second sentence of paragraph (i) of NWP 44 is corrected to read "Further the District Engineer may require water quality management measures to ensure the authorized work results in minimal

adverse effects to water quality;" These corrections are necessary to reflect the modified language in General Condition 9.

On page 2089, third column, the text of General Condition 6 is corrected to read: "The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination." The change to General Condition 6 that was published in the January 15, 2002, **Federal Register** was not intended and we are correcting this sentence by reinstating the original text as it existed in the March 9, 2000, NWPs.

On page 2090, first column, the word "Section" in the parenthetical at the end of General Condition 10 is replaced with "33 CFR" so that the parenthetical reads "(see 33 CFR 330.4(d))".

On page 2090, at the top of the second column, the second Internet URL is replaced with "* * * http://www.nmfs.noaa.gov/prot_res/overview/es.html * * *" because the Internet address for the National Marine Fisheries Service home page for endangered species has been changed.

On page 2090, third column, in paragraph (b)(4) of General Condition 13, NWP 40 should be added to the list of NWPs that require submission of delineations of special aquatic sites with pre-construction notifications. Therefore, paragraph (b)(4) of General Condition 13 is corrected to read "For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (*e.g.*, submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));"

On page 2090, third column, in paragraph (b)(6) of General Condition 13, the word "Projects" replaces the word "Crossings", because the title of NWP 14 is "Linear Transportation Projects".

On page 2090, third column, in paragraph (b)(8) of General Condition 13, the word "Activities" is inserted after the word "Restoration" because the title of NWP 27 is "Stream and Wetland Restoration Activities".

On page 2091, first column, in paragraph (b)(10) of General Condition 13, the word "Projects" is replaced with the word "Facilities" because the title of NWP 31 is "Maintenance of Existing Flood Control Facilities".

On page 2094, third column, we are correcting the definition of "Loss of Waters of the US" by deleting the last sentence and inserting the following sentence after the fourth sentence of this definition: "Impacts to ephemeral streams are not included in the linear foot measurement of loss of stream bed for the purpose of determining compliance with the linear foot limits of NWPs 39, 40, 42, and 43."

Due to the number of corrections made to the definition of "Loss of Waters of the US", we are providing the text of this definition in its entirety, with the corrections described above:

Loss of Waters of the US: Waters of the US that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the US is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Impacts to ephemeral streams are not included in the linear foot measurement of loss of stream bed for the purpose of determining compliance with the linear foot limits of NWPs 39, 40, 42, and 43. Waters of the US temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the US.

In the January 15, 2002, **Federal Register**, it was stated that the definition was being revised (to clarify that ephemeral waters and streams are not included in the acreage or linear thresholds for NWPs) to comport with language in the preamble of the March 9, 2000 **Federal Register** notice. However, the language in the preamble of the March 9, 2000 **Federal Register** notice (65 FR 12881, third column) does not support this revision. Rather, the referenced preamble states, "During our review of the comments received in response to the July 21, 1999, **Federal Register** notice, we found an error in the proposed definition of the term, "loss of waters of the United States." In the fourth sentence of the draft definition, we stated that the loss of stream bed

includes the linear feet of perennial or intermittent stream bed that is filled or excavated. This statement is inaccurate because ephemeral stream bed that is filled or excavated can also be considered a loss of waters of the United States. However, the 300 linear foot limit for stream beds filled or excavated does not apply to ephemeral streams. We have modified this sentence to define the loss of stream bed as the linear feet of stream bed that is filled or excavated." Thus, the modification of this definition was intended to clarify that activities that involve filling or excavating ephemeral streams are not included in the linear foot limits for filling or excavating stream beds in NWP's 39, 40, 42, and 43. However, it was not intended to exempt ephemeral waters or streams from calculations of impacted acreages to determine PCN or maximum acreage requirements in accordance with NWP's 39, 40, 42, and 43.

In the August 9, 2001, **Federal Register** notice (66 FR 42099) we proposed to modify the definition of "Loss of Waters of the US" by adding the sentence "* * * The loss of stream bed includes the linear feet of perennial stream or intermittent stream that is filled or excavated * * *". The proposed change was in response to a commitment to clearly state in the text of the NWP's (which includes the definitions) that the 300 linear foot limit in NWP's 39, 40, 42, and 43 for filling and excavating stream beds would only apply to intermittent and perennial streams, not to ephemeral streams.

In the January 15, 2002, **Federal Register** notice (67 FR 2074-2075) we erroneously stated that both the acreage and linear limits of the NWP's do not apply to ephemeral waters. This was never intended to be adopted as policy for the NWP's or the Corps regulatory program. A previously stated, in the first column of page 2075 of the January 15, 2002, **Federal Register** notice, we refer to page 12881 of the March 9, 2000, **Federal Register** notice, which only discusses the 300 linear foot limit, not the acreage limits of the NWP's. Our intent is to continue to apply acreage limits of NWP's to activities that result in the permanent loss of ephemeral waters, but the linear foot limits of the NWP's (i.e., NWP's 39, 40, 42, and 43) for filling or excavating stream beds would not apply to activities that involve filling or excavating ephemeral streams. The last sentence of the definition of "Loss of Waters of the US" as published in the January 15, 2002, **Federal Register** notice does not comport with remainder of this NWP package.

Therefore, we are correcting this definition as described above.

We believe that correcting the text of NWP 39 and the definition of "Loss of Waters of the US" through the publication of this correction notice is appropriate. Nevertheless, in order to give all interested parties further opportunity to comment on this matter, we intend to publish a **Federal Register** notice to solicit public comments on those two corrections. If we determine that any other matter relating to the final NWP's requires correction or clarification, but that matter was not adequately dealt with in this correction notice, we will address that additional matter in the forthcoming **Federal Register** notice, as well. We expect to publish that **Federal Register** notice within a few weeks.

Dated: February 7, 2002.

Lawrence A. Lang,

*Assistant Chief, Operations Division,
Directorate of Civil Works.*

[FR Doc. 02-3555 Filed 2-12-02; 8:45 am]

BILLING CODE 3710-92-P

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:

Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:00 a.m. to 4:00 p.m., February 5, 2002.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:30 a.m. Meeting—Board of Regents

- (1) Approval of Minutes—November 14, 2001
- (2) Faculty Matters
- (3) Department Reports
- (4) Financial Report
- (5) Report—President, USUHS
- (6) Report—Dean, School of Medicine
- (7) Report—Dean, Graduate School of Nursing
- (8) Comments—Chairman, Board of Regents
- (9) New Business

CONTACT PERSON FOR MORE INFORMATION:

Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295-3116.

Dated: February 8, 2002.

Linda Bynum,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. 02-3683 Filed 2-11-02; 3:32 pm]

BILLING CODE 5001-08-M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 15, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 VOICE AND TDD (415) 904-5200



F 7c

STAFF REPORT AND RECOMMENDATION

ON CONSISTENCY CERTIFICATION

Consistency Certification No.	CC-147-96
Staff:	JRR-SF
File Date:	12/20/96
3 Months:	3/20/97
6 Months:	6/20/97
Commission Meeting:	2/7/97

APPLICANT: **CORPS OF ENGINEERS**

DEVELOPMENT
LOCATION: Statewide.

DEVELOPMENT
DESCRIPTION: Issuance, reissuance, and modifications of 39 Nationwide Permits for discharge of dredge and fill material into waters of the United States. (Exhibit 1)

SUBSTANTIVE FILE DOCUMENTS:

1. Proposal to Issue, Reissue, and Modify Nationwide Permits. Federal Register Vol. 61, No. 241, pp. 65874-65922, December 13, 1996.
2. Consistency Certification No. CC-39-91 (Corps of Engineers, Authorization of 36 Nationwide Permits).
3. Consistency Certification No. CC-15-84 (Corps of Engineers, Amendment to previously approved Nationwide Permit program).
4. Consistency Certification No. CC-13-83 (Corps of Engineers, Authorization of Nationwide Permits).

EXHIBIT NO. 3
APPLICATION NO.

CD-003-02

5. Consistency Certification No. CC-40-95 (Corps of Engineers, Issuance of a Nationwide Permit for residential structures).

EXECUTIVE SUMMARY:

The Corps of Engineers (Corps) proposes to issue, reissue, and modify 39 Nationwide Permits (NWP) authorizing discharges and construction in waters of the United States. A NWP is a general approval of the activity identified in that permit. Although the "permittee" does not need any other permits from the Corps, in some cases, it must notify the Corps before it discharges fill into waters of the United States. The Commission's concurrence with this consistency certification would result in a general federal consistency concurrence for all authorized activities that would otherwise be subject to the Commission's federal consistency jurisdiction. Because they circumvent the Commission's jurisdiction, potential resource impacts, and the lack of consistency with Section 30233(a) of the Coastal Act, the Commission has found the existing NWP to be inconsistent with the California Coastal Management Program (CCMP), see CC-39-91. The effect of that objection requires "permittees" for NWP to either receive a concurrence or waiver of a consistency certification from the Commission before the NWP is valid.

The proposed NWP are inconsistent with Section 30233 of the Coastal Act. In most cases, the construction activities authorized by these NWP are not allowable uses pursuant to Section 30233(a)(1-8). Additionally, the approval in advance of any development proposal does not allow the Commission to determine if the development is the least damaging feasible alternative. Finally, the most of the proposed NWP do not include a requirement for mitigation of any adverse wetland impacts. For those that require mitigation, the Commission will not have the ability to determine the adequacy of the mitigation.

An objection to the Corps proposed NWP does not eliminate those permits in the California coastal zone. Rather it initiates a procedure requiring federal consistency review by the Commission before an NWP can authorize an activity. Depending on the circumstances, the Commission can either waive a consistency certification or require submittal and review of a consistency certification. The Commission staff automatically waives consistency certifications if the activity requires the Commission to issue a coastal development permit or if the activity is within one of the four ports with certified port master plans. If an activity is within a certified LCP's appeal zone, the staff, as a matter of policy, normally waives the requirement for a consistency certification. Finally, if an activity is within a certified LCP jurisdiction or outside the coastal zone, the staff has the discretion to waive a consistency certification if the activity does not have significant adverse effects on coastal resources.



STAFF SUMMARY AND RECOMMENDATION:

I. Project Description:

The Corps of Engineers proposes to issue, reissuance and modify 39 NWP's. NWP's are general pre-approvals of discharge of fill or dredge material into waters of the United States for specified activities. The Corps created the NWP program to minimize regulatory requirements for discharging fill associated with projects that have minor effects. Unless otherwise specified, the Corps authorizes a permittee to discharge without notice to the Corps.

The following list identifies all the proposed NWP's:

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
8. Oil and Gas Structures
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Discharges
13. Bank Stabilization
14. Road Crossings
15. Coast Guard Approved Bridges
16. Return Water from Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. State Administered Section 404 Programs
25. Structural Discharges
26. Headwaters and Isolated Waters Discharges
27. Wetland and Riparian Restoration and Creation Activities
28. Modifications of Existing Marinas
29. Single-Family Housing
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Projects
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. Reserved
40. Farm Buildings

Exhibit 1 contains a complete description of each NWP, which the Commission incorporates into these findings by reference. Most of the NWPs are similar to the previously issued permits. However, the Corps proposes to issue two new NWPs: NWP 30 for moist soil management for wildlife and NWP 31 for maintenance of existing flood control facilities. Additionally, the Corps proposes several modifications to the existing NWPs. The most notable modification is those changes to NWP 26. NWP 26 allows for placement of fill into headwaters of streams and rivers and into isolated wetlands. This NWP has been subject to considerable controversy over the years. The Corps proposes to reduce the threshold for the amount of habitat loss triggering a pre-construction notice (PCN, formerly known as "pre-discharge notice") from 1 acre to 0.3 acres. Additionally, the Corps has reduced the maximum amount of habitat loss from this NWP from 10 acres per activity to 3 acres per activity. The Corps also increased the amount of time that it has to respond to a PCN from 30 days to 45 days. Finally, NWP 26 will expire in two years and will not be re-issued in its current form. Refer to Exhibit 2 for a full description of the modifications to NWP 26.

The Corps proposes modifications to several other NWPs including NWPs 4, 5, 6, 8, 12, 14, 16, 18, 19, 21, 25, 26, 27, 29, 32, 33, 34, 35, 39, and 40. These modifications range from changes in the type of activities covered by the NWP to clarifications of the existing language. Exhibit 2 contains a full description of these modifications, and is incorporated by reference.

II. Applicant's Consistency Certification:

Corps of Engineers certifies that the proposed project is consistent with the California Coastal Management Program.

III. Staff Recommendation:

The staff recommends that the Commission adopt the following resolution:

A. Objection.

The Commission hereby **objects** to the consistency certification made by Corps of Engineers for the proposed project, finding that the project is not consistent with the California Coastal Management.

IV. Procedure if the Commission finds that the proposed activity is inconsistent with the CCMP:

Section 930.64(b) of the federal consistency regulations (15 CFR Section 930.64(b)) requires that, if the Commission's objection is based on a finding that the proposed activity is inconsistent with the CCMP, the Commission must identify measures, if they exist, that would bring the project into conformance with the CCMP. That section states that:

State agency objections must describe (1) how the proposed activity will be inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the management program.

As described in the Wetland Fill Section below, the proposed permit is inconsistent with the CCMP. Pursuant to the requirements of Section 930.64(b) of the federal regulations implementing the CZMA, the Commission is responsible for identifying measures, if they exist, that would bring the project into compliance with the CCMP. Since, most of the NWP's do not meet the allowable use test described in Section 30233 of the Coastal Act and none of the NWP's can be evaluated for consistency with the alternative and mitigation tests at a general level, **there are no alternative measures that could bring this permit into compliance with the CCMP.** Moreover, as a practical matter, the Commission's approach to reviewing projects on a case-by-case approach represents an alternative that allows individual projects to proceed.

V. Right of Appeal:

Pursuant to the requirements of 15 CFR Section 930.64(e) of the regulations implementing the CZMA, the applicant has a right to appeal this objection to the Secretary of Commerce on the grounds described in 15 CFR Part 930 Subpart H.

VI. Findings and Declarations:

The Commission finds and declares as follows:

A. Wetland Fill. Section 30233(a) of the Coastal Act provides, in part, that:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) *In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland, provided, however, that in no event shall the size of the wetland area used for such boating facility, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, be greater than 25 percent of the total wetland area to be restored.*
- (4) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (5) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) *Restoration purposes.*
- (8) *Nature study, aquaculture, or similar resource-dependent activities.*

The Commission previously evaluated the Corps' NWP program on two occasions. In its first review, in 1983 and 1984 (CC-15-84 and CC-13-83), the Commission concurred with most of the NWPs. In its second review, in 1991, the Commission objected to the entire program (CC-39-91). That objection was necessary because the Corps consistency certification lacked the necessary information for the Commission to concur with the consistency certification and because several of the NWPs were inconsistent with the CCMP. Not only was that program inconsistent with requirements of Section 30233, there was not enough information to analyze that program for consistency with the wetland policies of the CCMP. The Corps did not provide a final and complete description of the program, definitions for vague terms such as "minimal," "small," or "temporary," or analysis of cumulative impacts to the coastal zone. Without this information, the Commission could not assess the project's impact on the coastal

zone, and, therefore objected to the Corps' consistency certification. In addition, the NWP program raised issues regarding fisheries, water quality, and oil and gas development. The activities authorized by these NWPs could result in significant individual and cumulative impacts to coastal resources. The NWP program did not contain any assurances that the "permittees" would conduct authorized activities in a manner consistent with the CCMP. Therefore, the Commission found that NWP program to be inconsistent with the CCMP.

The NWP program expires every five years. The current proposal is the reissuance of the previous NWPs with some modifications and two new permits. The Corps' consistency certification is a one page letter that is similar to the 1991 NWP submittal. The consistency certification does not address any of the issues previously raised by the Commission. Therefore, the issues raised by the Commission in its previous analysis are still valid. The Commission incorporates the findings (Exhibit 3) supporting its objection to the 1991 NWPs (CC-39-91) by reference.

The proposed NWP program allows the placement of fill into waters of the United States for any purpose described in an issued NWP. Since this program authorizes the placement of fill within wetlands, the Commission must determine if the permit is consistent with Section 30233(a) of the Coastal Act. That section restricts the placement of fill into wetlands to eight enumerated uses. The following NWPs are for activities that do not appear to be consistent with Section 30233: NWP 2 (Structures in Artificial Canals), NWP 3 (Maintenance), NWP 6 (Survey Activities), NWP 14 (Road Crossings), NWP 15 (U.S. Coast Guard Approved Bridges), NWP 19 (Minor Dredging), NWP 25 (Structural Discharges), NWP 26 (Headwaters and Isolated Waters Discharges), NWP 29 (Single-Family Housing), NWP 31 (Maintenance of Existing Flood Control Projects), NWP 33 (Temporary Construction, Access and Dewatering), NWP 40 (Farm Buildings). In most cases, the Commission would find such activities inconsistent with the Coastal Act. However, through an individual review, the Commission may find that under special circumstances some of the activities authorized by these NWPs are consistent with the allowable-use requirement of the Coastal Act. Nevertheless, the Commission can only make that determination on an individual basis. Thus, a general approval for fill associated with these activities in advance of a project proposal is inconsistent with the allowable-use requirement of Section 30233(a) of the Coastal Act. Therefore, the Commission finds that these NWPs are inconsistent with the allowable-use requirement of Section 30233.

Another requirement of Section 30233(a) allows the Commission to approve an activity if it is the least damaging feasible alternative and to determine if it includes feasible mitigation to reduce any environmental impacts. The proposed NWP program does not provide for analysis of alternatives or mitigation. The NWPs authorizes the "permittee" to place fill in the aquatic environment even if there is a less damaging alternative. Additionally, most of the NWPs do not require mitigation, and may result in a net loss of wetlands. With respect to the NWPs that allow for mitigation, there is no process for public, governmental, and scientific review of that mitigation to ensure that the project minimizes environmental effects. Additionally, the program would not allow for the Commission to determine if the mitigation is adequate to address the project's impacts or its consistency with the Coastal Act. Therefore, the

Commission finds that the proposed NWP program is inconsistent with the alternatives and mitigation requirements of Section 30233(a).

In conclusion, the proposed NWP program is inconsistent with Section 30233(a) of the Coastal Act for the following reasons: (1) it would authorize activities that are not normally allowable under Section 30233(a); (2) it does not require the permittee to construct the least damaging feasible alternative; and (3) it does not require mitigation for adverse impacts to wetland habitat. Additionally, the NWP program does not provide enough information to fully evaluate the project's consistency with the CCMP. Therefore, the Commission finds that the proposed development is inconsistent with the wetland fill policy of the CCMP.

B. Procedures. As stated above, the Commission objected to the 1991 NWP program. This objection initiated a process provided for in the NWP regulations (33 CFR 330.4(d)). Specifically, these regulations require "applicants" to coordinate with the state coastal management agency pursuant to the requirements of the Coastal Zone Management Act before the activity can make use of an NWP. However, for those activities inside or affecting the coastal zone, the NWPs are not valid until the Commission either concurs with a consistency certification or waives federal consistency. After the "permittee" completes the federal consistency process, the NWPs are valid for that activity. Since its last objection to the NWP program, the Commission has waived federal consistency on most of the activities subject to NWPs. The Commission has only required consistency certifications for approximately five NWP projects since 1991.

The staffs of the Corps and the Commission have informally agreed upon procedures that allow most activities qualifying for a NWP to continue without any significant delays. Upon receipt of notice of a pre-discharge notice or other notice of a NWP activity within a coastal area, the Corps sends the applicant a letter informing the applicant that the NWP is not valid until the applicant receives either a federal consistency concurrence or waiver from the Commission (sample enclosed in Exhibit 4). Upon receipt of a copy this letter (usually within two weeks), the Commission staff sends a "Jurisdiction Letter" (Exhibit 5) to both the Corps and the applicant identifying the Commission federal consistency or permit jurisdiction or, if appropriate, waiving federal consistency. If the activity does not require coastal development permit or federal consistency review, the Commission's jurisdiction letter ends the Commission involvement for that activity. If additional Commission review is necessary, it will complete the process within the appropriate statutory or regulatory requirements. A Commission objection to this consistency certification will have the same effect as the previous objection. The NWP will not be valid for any qualifying activity until the Commission either concurs with a consistency certification or waives the requirement.



DEPARTMENT OF THE ARMY
 SAN FRANCISCO DISTRICT, CORPS OF ENGINEERS
 211 MAIN STREET
 SAN FRANCISCO, CALIFORNIA 94105-1905

RECEIVED
 OCT 0 6 1995

REPLY TO
 ATTENTION OF

SEP 29 1995

CALIFORNIA
 COASTAL COMMISSION

Regulatory Branch

SUBJECT: File Number 21840N78

Mr. Richard Stein
 Environmental Analyst
 County of Humboldt
 1106 Second Street
 Eureka, California 95501-0579

Dear Mr. Stein:

This is in reference to your submittal of September 18, 1995, concerning Department of the Army authorization to place a total of approximately 1,408 cubic yards (CY) of rock slope protection; 2,456 CY of other fills including rockfill, earthfill and synthetic fabric; remove and replace two 18-inch by 24-inch road culverts; and perform 1,254 CY of excavation between Mile Posts 0.30 and 3.40 for a total of approximately 1,475 lineal feet along Price Creek Road and Price Creek, located approximately five miles southeast of the City of Ferndale, in Humboldt County, California.

Based on a review of the information you submitted and a site visit by Corps staff dated September 20, 1995, your project is authorized under 33 CFR 330 Appendix A, Department of the Army Nationwide Permit 23, pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

This authorization will become effective when Section 401 water quality certification or a waiver of certification has been obtained from the North Coast Regional Water Quality Control Board and a coastal zone consistency concurrence from the California Coastal Commission (if the project is in their jurisdiction). A copy of the certification(s) for the project should be submitted to the Corps to verify compliance.

This authorization will remain valid until January 22, 1997, at which time all nationwide permits are scheduled to be modified, reissued, or revoked. If you commence or are under contract to commence work before the date the nationwide permit is modified or revoked, you will have twelve months from the date of the modification or revocation to complete the project under the present conditions of this nationwide permit.

EXHIBIT NO. 4
APPLICATION NO.
CD-003-02
California Coastal Commission



Special Conditions:

1. You shall provide the Corps with a map showing the exact location of the disposal site or sites where excavated or "unsuitable" material is being disposed of. The Corps shall be notified at least ten days before start of work so that the Corps may inspect the proposed disposal sites to insure no wetlands are impacted.

The project must be in compliance with the General Conditions cited in Enclosure 1 and all Special Conditions that may be specified above for the nationwide permit to remain valid. Non-compliance with any condition could cancel the nationwide permit authorization for your project, thereby requiring you to obtain an individual permit from the Corps. The nationwide permit authorization does not obviate the need to obtain other State or local approvals required by law.

You may refer all questions to David A. Ammerman of our Regulatory Branch, Eureka Field Office at 707-443-0855. All correspondence should be addressed to the District Engineer, Attention: Regulatory Branch, 211 Main Street, San Francisco, California 94105-1905 (please furnish a copy to the Eureka Field Office, P.O. Box 4863, Eureka, California 95502) referencing file number 21840N78.

Sincerely,

Original signed by
CALVIN C. FONG

Calvin C. Fong
Chief, Regulatory Branch

Enclosures

Copies Furnished (w/drawing):

- US F&WS, Sacramento, CA
- US EPA, San Francisco, CA
- US NMFS, Santa Rosa, CA
- CA F&G, Redding, CA
- CA CC, San Francisco, CA
- CA RWQCB, Santa Rosa, CA

EXHIBIT NO. 4
APPLICATION NO.
150-218-02

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 VOICE AND TDD (415) 904-5200

Jurisdiction LetterDate: October 26, 1995

Project: _____

Coastal Commission file no. (if applicable): _____

U.S. Army Corps of Engineers Notice No. (if applicable): _____

If a nationwide permit, NWP number _____

The Coastal Commission staff has received your request to identify Commission jurisdiction for the purposes of processing an individual, nationwide, general or regional permit from the Army Corps of Engineers (Corps). Pursuant to the federal Coastal Zone Management Act (CZMA), the Corps cannot issue a permit for an activity, either in or out of the coastal zone, that affects land and water uses or natural resources of the coastal zone until the applicant has complied with the requirements of Section 307(c)(3)(A) of the CZMA. (16 USC Section 1456[c][3][A].) The applicant can meet these requirements by receiving a Commission concurrence with either (1) a consistency certification prepared by the applicant or (2) a showing that the activity does not affect the coastal zone. Alternatively, the applicant can satisfy these requirements by the issuance of a Commission approved coastal development permit. Since the Commission cannot delegate federal consistency authority to local governments, a coastal development permit issued by a local agency does not replace the requirement for a consistency certification. However, if an activity is within the Ports of San Diego, Long Beach, Los Angeles, or Port Hueneme and is identified in the Commission certified Port Master Plan, then no consistency certification is necessary.

The Coastal Commission staff has reviewed the information submitted for the above-referenced project, and has concluded that it:

Is not within the coastal zone and does not affect the coastal zone. Therefore no further Coastal Commission review is necessary,

EXHIBIT NO. 5

APPLICATION NO.

CD-003-02

Is a non-federal activity within the coastal zone and is in an area where the Commission has not delegated permit authority to the appropriate local agency. Therefore, it needs a coastal development permit from the Commission. Contact our San Diego Coast Area Office (see addresses on the following page) for details and permit application form. (Note: Receipt of a Coastal Commission-issued coastal development permit satisfies federal consistency requirements.)

Is a federally permitted activity within or affecting the coastal zone and does not otherwise need a coastal development permit from the Commission. Therefore, this project needs a consistency certification. Contact **Jim Raives at (415) 904-5292** for information on the federal consistency process. (Note: Receipt of a local government-issued coastal development permit, as opposed to a Coastal Commission-issued coastal development permit, does not satisfy federal consistency requirements.)

Is within or affects the coastal zone and is a federal agency activity. Therefore it needs a consistency determination (or, at a minimum, a negative determination). Contact **Jim Raives at (415) 904-5292** for information on the federal consistency process.

Is within the port of San Diego, Long Beach, Los Angeles, or Port Hueneme and is consistent with a certified Port Master Plan. Therefore, no further Coastal Commission review is necessary.

Is within one of the above ports but is not consistent with a certified Port Master Plan. Therefore, a Port Master Plan amendment is necessary.

We have insufficient information on the project location or details to determine jurisdiction. Please provide the following information:

The Coastal Commission declines to assert federal consistency jurisdiction, due to the fact that: (1) this project has or will receive a locally issued coastal development permit and is located within an area where such permits are appealable to the Coastal Commission; and (2) the proposed project does not significantly affect coastal resources or raise coastal issues of greater than local concern.

Signed,

JAMES R. RAIVES
Federal Consistency Coordinator

cc: San Diego Coast Area Office
Corps of Engineers, Los Angeles District

EXHIBIT NO. 5
APPLICATION NO.
DATE