US Army Corps of Engineers

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

REGIONAL CONDITIONS FOR NATIONWIDE PERMITS

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

DATE: May 4, 2001

San Francisco District issued a public notice on 21 July 1999 announcing the Federal Register notice of that date which contained the draft nationwide permits (NWPs) and general conditions. The District also requested comments on its proposed regional conditions for the NWPs.

On 9 March 2000, the Corps published a notice in the Federal Register announcing the final issuance and modification of NWPs. The notice detailed the five new NWPs and the six modified NWPs which replaced NWP 26.

On 18 April 2001, Brigadier General Peter T. Madsen, Commander, South Pacific Division, approved the regional conditions for San Francisco District. The regional conditions apply to NWPs 3 (Maintenance), 7 (Outfall Structures and Maintenance), 11 (Temporary Recreational Structures), 12 (Utility Line Activities), 13 (Bank Stabilization), 14 (Linear Transportation Crossings), 23 (Approved Categorical Exclusions), 27 (Stream and Wetland Restoration Activities), 35 (Maintenance Dredging of Existing Basins), 39 (Residential, Commercial, and Institutional Developments), 40 (Agricultural Activities), 41 (Reshaping Existing Drainage Ditches), 42 (Recreational Facilities), and 43 (Stormwater Management Facilities). San Francisco District has revoked Nationwide Permit 44 (Mining Activities). The regional conditions for NWPs 11, 13, 23, and 35 will expire on 11 February 2002 concurrently with these NWPs. The regional conditions for NWPs 3, 7, 12, 14, 27, 39, 40, 41, 42, 43, and 44 will expire concurrently with these NWPs on 7 June 2005. The final regional conditions are attached to this public notice and can also be found on our web site at: http://www.spn.usace.army.mil/regulatory.

San Francisco District has prepared supplemental decision documents to support the national decision documents for the NWPs. Copies of the supplemental decision documents are available upon written request and, where applicable, upon the payment of administrative fees.

Several regional conditions require the application of the "Training Manual to Evaluate Habitat Quality of Vernal Pool Ecosystem Sites In Santa Rosa Plain". Copies may be obtained by contacting Ms. Virginia Madlaing at 415-977-8436.

If additional information is required, please telephone Mr. Ed Wylie, South Section Chief, at (415)977-8464 for questions concerning work in Contra Costa, San Francisco, Alameda, Santa Clara, San Mateo, Santa Cruz, San Benito, Monterey, and San Luis Obispo Counties; or Ms. Jane Hicks, North Section Chief, at (415)977-8439 for questions concerning work in Marin, Napa, Solano, Sonoma, Mendocino, Trinity, Siskiyou, Del Norte, Humboldt, and Siskiyou Counties.

Attachment 1. April 18, 2001

SAN FRANCISCO DISTRICT
REGIONAL CONDITIONS FOR EXISTING, NEW, AND MODIFIED NATIONWIDE PERMITS

San Francisco District has adopted regional conditions for the following Nationwide Permits: 3 (Maintenance), 7 (Outfall Structures and Maintenance), 11 (Temporary Recreational Structures), 12 (Utility Line Activities), 13 (Bank Stabilization), 14 (Linear Transportation Crossings), 23 (Approved Categorical Exclusions), 27 (Stream and Wetland Restoration Activities), 35 (Maintenance Dredging of Existing Basins), 39 (Residential, Commercial, and Institutional Developments), 40 (Agricultural Activities), 41 (Reshaping Existing Drainage Ditches), 42 (Recreational Facilities), and 43 (Stormwater Management Facilities). San Francisco District has revoked Nationwide Permit 44 (Mining Activities).

3. MAINTENANCE

1. Any discharge, spillover or fallback of material resulting from the excavation into waters of the U.S. shall only be incidental.
2. To the extent practicable, excavation equipment shall work from an upland site (e.g., from the top of the bank or the road bed of the bridge or culverted road crossing) to minimize adding fill into waters of the U.S. If it is not practicable to work from an upland site, excavation equipment must minimize disturbance to the channel or stream bank and bottom (other than the removal of accumulated sediments or debris). As part of the notification to the Corps (General Condition No. 13), an explanation as to the need to place excavation equipment in waters of the U.S. is required, as well as a statement of any additional necessary fill (e.g., cofferdams, access road, fill below the OHW mark for a staging area, etc.).
3. Notification, including a compensatory mitigation plan, is required for all activities occurring in eelgrass beds. An individual permit will be required for activities that will affect greater than 0.1 acre of eelgrass beds.
4. Notification is required for all proposed structures in all areas designated as Essential Fish Habitat by the Pacific Fishery Management Council (i.e., all tidally influenced areas).

7. OUTFALL STRUCTURES AND MAINTENANCE

1. Any discharge, spillover or fallback of material resulting from the excavation into waters of the U.S. shall only be incidental.
2. To the extent practicable, excavation equipment shall work from an upland site (e.g., from the top of the bank or the road bed of the bridge or culverted road crossing) to minimize adding fill into waters of the U.S. If it is not practicable to work from an upland site, excavation equipment must minimize disturbance to the channel or stream bank and bottom (other than the actual removal of accumulated sediments or debris). As part of the notification to the Corps (General Condition No. 13), an explanation as to the need to place excavation equipment in waters of the U.S. is required, as well as a statement of any additional necessary fill (e.g., cofferdams, access road, fill below the OHW mark for a staging area, etc.).
3. Notification, including a compensatory mitigation plan, is required for all activities occurring in eelgrass beds. An individual permit will be required for activities that will affect greater than 0.1 acre of eelgrass beds.

11. TEMPORARY RECREATIONAL STRUCTURES

1. If removal of aquatic or wetlands vegetation, including riparian wetlands, is proposed, the Corps shall be notified in accordance with General Condition No. 13. The notification shall include the type of vegetation and extent (e.g., areal dimension or number of trees) of the proposed removal.
2. The temporary structure(s) must be removed within 6 months of its placement unless otherwise approved for a longer period not to exceed 1 year by the District Engineer under a separate authorization.
3. Notification is required for all proposed structures in all areas designated as Essential Fish Habitat by the Pacific Fishery Management Council (i.e., all tidally influenced areas).

12. UTILITY LINE ACTIVITIES

1. Notification is required for all access roads greater than 200 feet in length constructed in waters of the United States.
2. Trenches dug for placement or removal of utility lines shall be backfilled with native material taken from the trench.

3. Where trenches are dug in wetlands, the upper 12 inches of material must be stored separately from other material removed from the trench. This upper 12 inches of material shall be placed back into the trench as the last material added to restore the original contour.
4. Excess material removed from the trench shall be disposed of at an upland site away from any wetlands or other waters of the U.S. so as to prevent this material from being washed into aquatic areas.
5. For the Santa Rosa Plain (see Figure 1), notification is required to discharge into seasonal wetlands (including vernal pools) even for proposed losses of 1/10 acre or less. The notification shall include a complete Habitat Quality Evaluation performed according to the most recent version of the 'Training Manual to Evaluate Habitat Quality of Vernal Pool Ecosystem Sites in Santa Rosa Plain'.
6. Access roads shall be designed to be the minimum width necessary. Notification will be required for any road wider than 15 feet, as measured at the base of fill, proposed to be built in waters of the United States.
7. Notification, including a compensatory mitigation plan, is required for all activities occurring in eelgrass beds. An individual permit will be required for activities that will affect greater than 0.1 acre of eelgrass beds.
8. A PCN is required for all proposed projects in all areas designated as Essential Fish Habitat by the Pacific Fishery Management Council (i.e., all tidally influenced areas).

13. BANK STABILIZATION

1. If removal of aquatic vascular plants greater than 1/10 acre is proposed, the Corps shall be notified in accordance with General Condition No. 13. The notification shall include the type of vegetation and extent (e.g., areal dimension or number of trees) of the proposed removal.
2. This NWP allows excavating a toe trench in waters of the U.S., as long as all excess material (other than incidental fallback of material from the excavation) is removed out of Corps jurisdiction and the aquatic impacts of the bank stabilization work are minimal.
3. For man-made banks, roads or levees damaged by storms or high flows, the one cubic yard per running foot limit for NWP 13 is counted only for that additional fill which encroaches (extends) into the pre-flood or pre-storm damaged condition of the waterway. It is not counted for the fill that would be placed just to reconstruct the original dimensions of the eroded, man-made shoreline.
4. For natural berms and banks, the one cubic yard per running foot limit applies to any added armoring.
5. To the maximum extent practicable, any new or additional bank stabilization must incorporate structures or modifications beneficial to fish and wildlife (e.g., soil bioengineering or biotechnical design, root wads, large woody debris, etc.). Where these structures or modifications are not used, the applicant shall demonstrate why they were not considered practicable.
6. Notification is required for all proposed structures in all areas designated as Essential Fish Habitat by the Pacific Fishery Management Council (i.e., all tidally influenced areas).
7. As part of the notification requirement for bank stabilization activities in excess of 500 feet in length, the project proponent shall address the effect of the bank stabilization on the stability of the opposite side of the streambank (if it is not part of the stabilization activity), and on adjacent property upstream and downstream of the activity.

14. LINEAR TRANSPORATION CROSSINGS

1. To the maximum extent practicable, any new or additional bank stabilization required for the crossing must incorporate structures or modifications beneficial to fish and wildlife (e.g., soil bioengineering or biotechnical design, root wads, large woody debris, etc.) The requirements of NWP General Condition 13 will apply to this regional condition.
2. For the Santa Rosa Plain (see Figure 1), notification is required to discharge into seasonal wetlands (including vernal pools) even for proposed losses of 1/10 acre or less. The notification shall include a complete Habitat Quality Evaluation performed according to the most recent version of the "Training Manual to Evaluate Habitat Quality of Vernal Pool Ecosystem Sites in Santa Rosa Plain." The requirements of NWP General Condition 13 will apply to this regional condition.
3. For the San Francisco Bay diked baylands (undeveloped areas currently behind levees that are within the historic margin of the Bay), notification is required to discharge into wetlands, even for proposed losses of 1/10 acre or less. Diked historic baylands are those areas on the Nichols and Wright map below the 5-foot contour line, National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map). The requirements of NWP General Condition 13 will apply to this regional condition.
4. A Pre-Construction Notification (PCN) is required for all proposed projects in all areas designated as

Essential Fish Habitat by the Pacific Fishery Management Council (i.e., all tidally influenced areas).

23. APPROVED CATEGORICAL EXCLUSIONS

1. Use of this NWP requires notification to the Corps. The Pre-Construction Notification (PCN) shall include the following:
   a. A copy of the Federal Categorical Exclusion (Cat/Ex) document signed by the appropriate federal agency. If the Cat/Ex is signed by a state or local agency representative instead of by a federal agency representative, then copies of all documentation authorizing alternative agency signature shall be on file at the San Francisco District Regulatory Branch.
   b. Only activities specifically described in the Cat/Ex project description will be covered by the NWP 23 authorization. If other activities not described in the Cat/Ex project description will be performed (e.g., dewatering, slope protection, etc.), these activities must receive separate NWP authorizations, if applicable.
   c. The lead Federal agency (Cat/Ex signatory) shall perform all formal and/or informal consultation required pursuant to Section 7 of the Endangered Species Act (ESA), as amended. All documentation resulting from such consultation shall be provided along with the PCN.
   d. If the project would not result in impacts to federally-listed species, then the federal lead agency (Cat/Ex signatory) shall provide written documentation of no effect along with the PCN.
   e. Written description of Corps authority (e.g., Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act.)
   f. List of conditions described in the Cat/Ex and/or attachments outlining measures that must be taken prior to, during or after project construction to minimize impacts to the aquatic environment, if any.
   g. A copy of the jurisdictional delineation performed by a qualified biologist showing the project limits and the location (delineated boundaries) of Corps jurisdiction within the overall project limits.
   h. A map(s) showing the locations of potential permanent and temporary project impacts to areas within Corps jurisdiction.
   i. A clear and concise description of all project impacts including, but not necessarily limited to,
      a) quantification and description of permanent project impacts to areas within Corps jurisdiction,
      b) quantification and description of temporary impacts to areas within Corps jurisdiction, and
      c) linear extent of Corps jurisdiction affected by the project.
   j. A general description of activities covered by the Cat/Ex that do not require Corps authorization but are connected or related to the activities in Corps jurisdiction.
   k. A complete description of any proposed mitigation and/or restoration including, but not necessarily limited to, locations of any proposed planting, short- and long-term maintenance, proposed monitoring, success criteria and contingency plans.
   l. Written justification of how the project complies with the Nationwide Permit Program including less than minimal impact to the aquatic environment and compliance with the General Conditions.
   m. For Federal Highway Administration (FHWA) Cat/Ex projects, the PCN should describe how activities described in the Cat/Ex meet the description of Cat/Ex project published in the August 28,1987 Federal Register part 771.117 (a)(b)(c) and (d) (Volume 52, No. 167) or any updated version published in the Federal Register.
2. Notification is required for all proposed structures in all areas designated as Essential Fish Habitat by the Pacific Fishery Management Council (i.e., all tidally influenced areas).

27. STREAM AND WETLAND RESTORATION ACTIVITIES

1. A Pre-Construction Notification (PCN) is required for all proposed structures in all areas designated as Essential Fish Habitat by the Pacific Fishery Management Council (i.e., all tidally influenced areas).

35. MAINTENANCE DREDGING OF EXISTING BASINS:

1. Use of this NWP will require notification to the Corps in accordance with General Condition No. 13. The notification must include the location of the proposed upland disposal site, and evidence to demonstrate that no portion of the disposal site is a waters of the U.S., including wetlands.
2. The U.S. Coast Guard will be notified by the permittee at least 10 days before dredging commences if the activity occurs in navigable waters of the U.S. (Section 10 waters).
3. A Pre-Construction Notification (PCN) is required for all proposed structures in all areas designated as Essential Fish Habitat by the Pacific Fishery Management Council (i.e., all tidally influenced areas).

39. RESIDENTIAL, COMMERCIAL, AND INSTITUTIONAL DEVELOPMENTS

1. For the Santa Rosa Plain (see Figure 1), notification is required to discharge into seasonal wetlands (including vernal pools) even for proposed losses of 1/10 acre or less. The notification shall include a complete Habitat Quality Evaluation performed according to the most recent version of the "Training Manual to Evaluate Habitat Quality of Vernal Pool Ecosystem Sites in Santa Rosa Plain." The requirements of NWP General Condition 13 will apply to this regional condition.
2. For the San Francisco Bay diked baylands (undeveloped areas currently behind levees that are within the historic margin of the Bay), notification is required to discharge into wetlands, even for proposed losses of 1/10 acre or less. Diked historic baylands are those areas on the Nichols and Wright map below the 5-foot contour line National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map). The requirements of NWP General Condition 13 will apply to this regional condition.
3. Notification is required for the loss of any open waters, including **ephemeral**, perennial, or intermittent streams, below the ordinary high water mark. The requirements of NWP General Condition 13 will apply to this regional condition.

40. AGRICULTURAL ACTIVITIES

1. All mitigation plans submitted pursuant to Terms and Conditions "b.", "c.", and "d." are subject to Corps review and approval.
2. This NWP does not authorize fills or discharges into the channel of a perennial or intermittent watercourse that could impede high flows. This limitation does not include narrow, intermittent or ephemeral watercourses that flow only when there is an irregular, extraordinary flood event.
3. For the Santa Rosa Plain (see Figure 1), notification is required to discharge into seasonal wetlands (including vernal pools) even for proposed losses of 1/10 acre or less. The notification shall include a complete Habitat Quality Evaluation performed according to the most recent version of the "Training Manual to Evaluate Habitat Quality of Vernal Pool Ecosystem Sites in Santa Rosa Plain." The requirements of NWP General Condition 13 will apply to this regional condition.
4. For the San Francisco Bay diked baylands (undeveloped areas that are currently behind levees within the historic margin of the Bay), notification is required to discharge into wetlands, even for proposed losses of 1/10 acre or less. Diked historic baylands are those areas on the Nichols and Wright map below the 5-foot contour line, National Geodetic Vertical Datum (NGVD) (Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map). The requirements of NWP General Condition 13 will apply to this regional condition.

41. RESHAPING EXISTING DRAINAGE DITCHES

1. Compensatory mitigation may be required if the Corps determines there will be a detrimental impact to aquatic habitat.
2. Notification to the Corps is required if the applicant proposes to regrade, discharge, install channel lining, or redeposit fill material. The requirements of NWP General Condition 13 will apply to this regional condition.
3. For the Santa Rosa Plain, notification is required to discharge into seasonal wetlands (including vernal pools) even for proposed losses of 1/10 acre, 500 linear feet, or less. The notification shall include a complete Habitat Quality Evaluation performed according to the most recent version of the "Training Manual to Evaluate Habitat Quality of Vernal Pool Ecosystem Sites in Santa Rosa Plain." The requirements of NWP General Condition 13 will apply to this regional condition.
4. For the San Francisco Bay diked baylands (undeveloped areas currently behind levees that are within the historic margin of the Bay), notification is required to discharge into wetlands, even for proposed losses of 1/10 acre or less. Diked historic baylands are those areas on the Nichols and Wright map below the 5-foot contour line, National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map). The requirements of NWP General Condition 13 will apply to this regional condition.
5. The notification shall include an explanation of the project's benefit to water quality.

42. RECREATIONAL FACILITIES

1. Golf courses and ski areas are not authorized by this nationwide permit.
2. If buildings are proposed to be built in waters of the United States, including wetlands, the applicant must demonstrate that there is no on-site practicable alternative that is less environmentally damaging as defined by the Section 404(b)(1) guidelines.
3. For the Santa Rosa Plain (see Figure 1), notification is required to discharge into seasonal wetlands (including vernal pools) even for proposed losses of 1/10 acre or less. The notification shall include a complete Habitat Quality Evaluation performed according to the most recent version of the "Training Manual to Evaluate Habitat Quality of Vernal Pool Ecosystem Sites in Santa Rosa Plain." The requirements of NWP General Condition 13 will apply to this regional condition.
4. For the San Francisco Bay diked baylands (undeveloped areas currently behind levees that are within the historic margin of the Bay), notification is required to discharge into wetlands, even for proposed losses of 1/10 acre or less. Diked historic baylands are those areas on the Nichols and Wright map, below the 5-foot contour line National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map). The requirements of NWP General Condition 13 will apply to this regional condition.

43. STORMWATER MANAGEMENT FACILITIES

1. For the Santa Rosa Plain (see Figure 1), notification is required to discharge into seasonal wetlands (including vernal pools) even for proposed losses of 1/10 acre or less. The notification shall include a complete Habitat Quality Evaluation performed according to the most recent version of the "Training Manual to Evaluate Habitat Quality of Vernal Pool Ecosystem Sites in Santa Rosa Plain." The requirements of NWP General Condition 13 will apply to this regional condition.
2. For the San Francisco Bay diked baylands (undeveloped areas currently behind levees that are within the historic margin of the Bay), notification is required to discharge into wetlands, even for proposed losses of 1/10 acre or less. Diked historic baylands are those areas on the Nichols and Wright map below the 5-foot contour line National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map). The requirements of NWP General Condition 13 will apply to this regional condition.

44. MINING ACTIVITIES

Nationwide Permit 44 is revoked in San Francisco District.
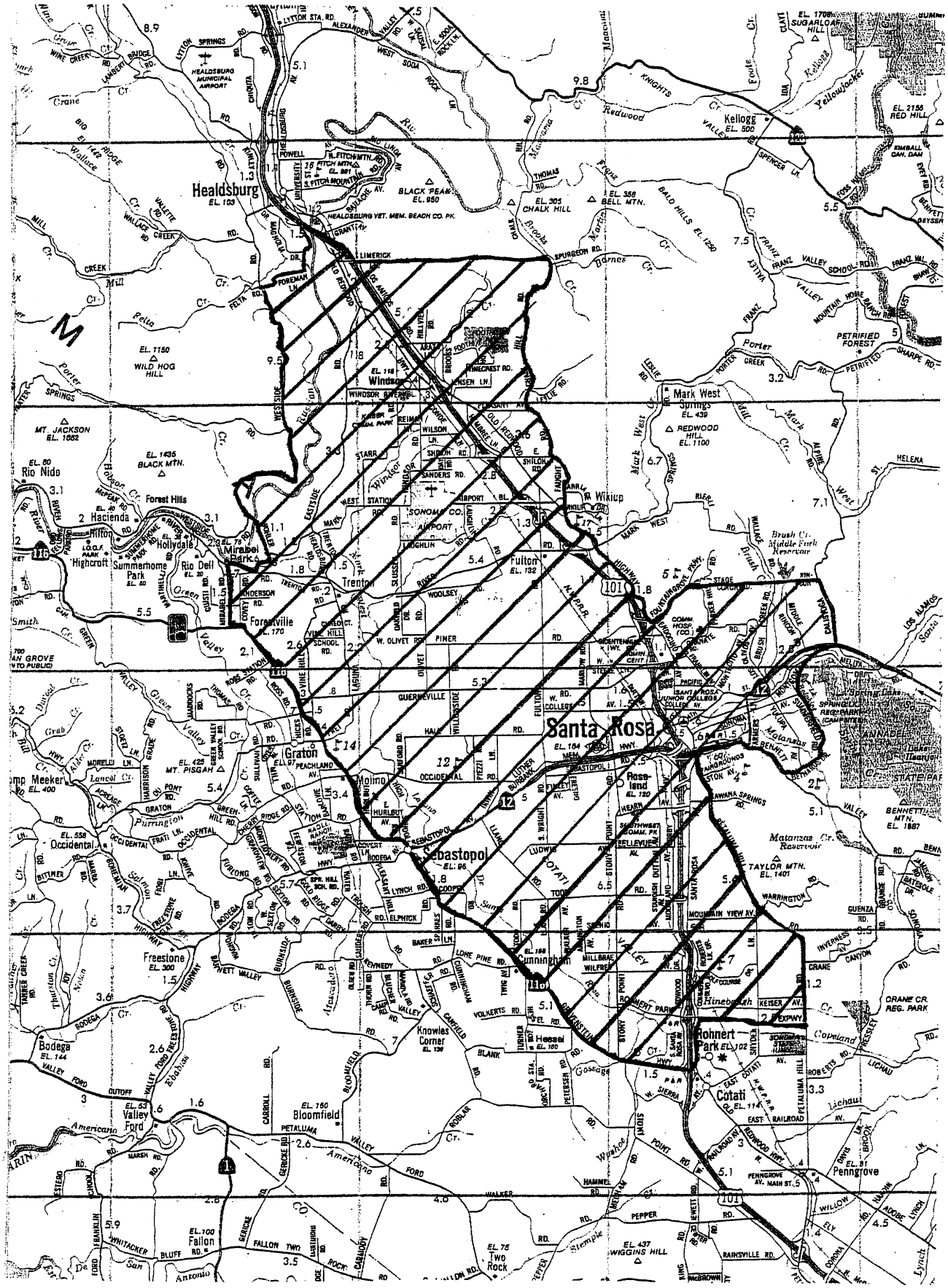
Figure 1. Map of the Santa Rosa Plain, Sonoma County, California.