



US Army Corps  
of Engineers®

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SAN FRANCISCO DISTRICT

# PUBLIC NOTICE

FINAL REGIONAL CONDITIONS  
FOR NATIONWIDE PERMITS

NUMBER: 02-01(FINAL)    DATE: May 9, 2002

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

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On January 15, 2002, the U.S. Army Corps of Engineers reissued all the nationwide permits (NWP), which became effective on March 18, 2002. They were published in the *Federal Register* (67 FR 2020) on the same date. The full text of the NWPs can be obtained from the Corps at the above address, from the Corps' web site at: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/2002nwps.pdf> or from the Government Printing Office's web site at: [http://www.access.gpo.gov/su\\_docs/fedreg/a020115c.html](http://www.access.gpo.gov/su_docs/fedreg/a020115c.html).

On January 31, 2002, the Corps of Engineers, San Francisco District, proposed several regional conditions to the nationwide permits in order to properly assess and protect the aquatic resources in the San Francisco District, as well as to ensure activities authorized by the NWPs would have minimal impacts. After considering public comments, the regional conditions were finalized and approved by the Division Engineer of the South Pacific Division on April 22, 2002. The final regional conditions affecting NWP activities in the San Francisco District are attached (Attachment 1), and are effective as of the date of this public notice. Summary of our responses to public comments will be posted shortly at the District's web site: [www.spn.usace.army.mil/regulatory/nwp.html](http://www.spn.usace.army.mil/regulatory/nwp.html).

Project proponents requesting verification that their activity qualifies for nationwide permit should submit to the Corps at the above address, *only* one copy of the pre-construction notice (PCN), including drawings, unless more than 0.5 acres of wetlands would be impacted. If more than 0.5 acres of wetlands would be impacted, 6 copies of the PCN should be submitted so they can be distributed to the appropriate agencies for review.

## **Section 401 certifications and Coastal Zone Management Act consistency determinations for the nationwide permits:**

The U. S. Environmental Protection Agency (EPA), on March 15, 2002, denied Section 401 water quality certification for 12 NWPs on Tribal Lands within Region IX (which includes California). Individual Section 401 certifications will be required on Tribal Lands that are under the auspices of EPA, Region IX, for those activities that could otherwise qualify under those 12 NWPs.

The State Water Resource Control Board (SWRCB), on March 12, 2002, certified 17 NWPs subject to conditions and notification requirements, and denied Section 401 certification without prejudice for the remaining 26 NWPs. For the 26 NWPs that were denied certification, projects that could otherwise be authorized by them will be reviewed on an individual project-specific basis by the respective Regional Water Quality Control Boards.

The California Coastal Commission on March 7, 2002, determined the nationwide permits were not consistent to the maximum extent practicable with the California Coastal Management Program. 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. Applicants with projects that could otherwise qualify under a NWP must obtain a concurrence certification or waiver from the Commission.

The San Francisco Bay Conservation and Development Commission (BCDC) on October 3, 2001, concurred with the Corps' consistency determination for any activity that requires a permit from BCDC if the NWPs contain a condition that states the NWP shall not be effective until the Commission has issued a permit that authorizes the activity. For activities outside of the Commission's bay jurisdiction, project sponsors should obtain a determination from BCDC whether the proposed activities would have an effect on any land, water or structure within the San Francisco Bay segment of the California coastal zone.

For details concerning the above determinations by the EPA, SWRCB, Coastal Commission and BCDC, see: [www.spn.usace.army.mil/regulatory/nwp.html](http://www.spn.usace.army.mil/regulatory/nwp.html).

**SAN FRANCISCO DISTRICT  
CORPS OF ENGINEERS  
REGIONAL CONDITIONS FOR NATIONWIDE PERMITS**

A. Regional Conditions that apply to **all** NWP's in the San Francisco District:

1. Notification to the Corps (as per General Condition No. 13) is required for any activity permitted by NWP if it will take place in waters or wetlands of the U.S. that are within the San Francisco Bay diked baylands (undeveloped areas currently behind levees that are within the historic margin of the Bay. 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 notification will explain how avoidance and minimization of losses of waters or wetlands are taken into consideration to the maximum extent practicable (see General Condition 19(a)).
2. Notification to the Corps (as per General Condition No. 13), including a compensatory mitigation plan, is required for any activity permitted by NWP if it will take place in eelgrass beds.
3. Notification to the Corps (as per General Condition No.13) is required for any activity permitted by NWP in Essential Fish Habitat (EFH) designated by the Pacific Fishery Management Council (examples of designated EFH are, but not limited to: the Pacific Ocean, estuaries like Tomales, San Francisco and Humboldt Bays, and watersheds utilized by coho and chinook salmon). Notification under this regional condition is not required if another Federal agency completed consultation with the National Marine Fisheries Service on EFH, and the project is either authorized by a non-reporting NWP, or does not require notification by another regional condition.
4. Mitigation that is required by special condition to the permitted activity shall be completed before or concurrent with project construction. Where project mitigation involves the use of a mitigation bank or in-lieu fee, the required payment must be made before commencing construction of the permitted activity. If the permittee cannot comply with this condition, the permittee shall provide the Corps with sound reasons why this condition cannot be met, and shall propose reasonable alternatives to ensure the required mitigation will be fully met and completed in a timely manner.
5. For NWP's 39, 40, 42 and 43, the 300 linear foot limitation for intermittent streams **includes ephemeral** streams. Any request to waive the 300 linear foot limitation for intermittent (including ephemeral) streams must include an analysis of the impacts to the stream environment, measures taken to avoid and minimize losses (as per General Condition 13 (b)(12)), other measures to avoid and minimize filling but were found not to be practical, and a mitigation plan as to how the unavoidable losses will be offset.

B. Regional Conditions that apply to specific nationwide permits:

**3. MAINTENANCE**

1. To the extent practicable, excavation equipment shall work from an upland site (e.g., from the top of the bank, 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, or if working from the upland site would cause more environmental damage than working in the stream channel, the excavation equipment can be located within the stream channel but it must minimize disturbance to the channel (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(ii). MAINTENANCE**

1. If the activity is proposed in a special aquatic site, the notification shall include an explanation of why the special aquatic site cannot be avoided, and measures to be taken to minimize impacts to the special aquatic site.

### **7. OUTFALL STRUCTURES AND MAINTENANCE.**

1. To the extent practicable, excavation equipment shall work from an upland site (e.g., from the top of the bank, 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, or if working from the upland site would cause more environmental damage than working in the stream channel, the excavation equipment can be located within the stream channel but it must minimize disturbance to the channel (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 an explanation of any additional necessary fill (e.g., cofferdams, access road, fill below the OHW mark for a staging area, etc.).

### **11. TEMPORARY RECREATIONAL STRUCTURES**

1. Notification to the Corps is required (as per General Condition No. 13) if any temporary structures are proposed in wetlands or vegetated shallow water areas (e.g. in eelgrass beds). The notification shall include the type of habitat and areal extent affected by the structures.
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.

### **12. UTILITY LINE ACTIVITIES**

1. The upper 12 inches of the trench dug for placement or removal of utility lines shall be backfilled with native material taken from the trench. 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.
2. 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.
3. For the Santa Rosa Plain (see Figure 1), notification are 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.'

### **12(ii). UTILITY LINE SUBSTATIONS**

1. Nationwide Permit 12(ii) is revoked because utility line substations generally do not requiring being sited in waters or wetlands.

### **12(iv). ACCESS ROADS**

1. Notification is required for all access roads greater than 200 feet in length constructed in waters of the United States.
2. 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 toe of the proposed road to be built in waters of the United States.
3. The following Best Management Practices (BMPs) shall be followed to the maximum extent practicable to assure that flow and circulation patterns of waters are not impaired and adverse effects on the aquatic environment will be kept to a minimum:
  - a. Stream channelization is not authorized.
  - b. The road fill shall be designed to minimize changes to the hydraulic flow characteristics of the stream and degradation of water quality (see General Conditions 9 and 21).
  - c. The road shall be properly stabilized and maintained during and following construction to prevent erosion.
  - d. Construction of the road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself.
  - e. Vegetative disturbance in the waters of the U.S. shall be kept to a minimum.
  - f. Borrow material shall be taken from upland sources whenever feasible.

- g. All temporary fills shall be removed in their entirety and the area restored to its original elevation within 6 months of project completion.

### **13. BANK STABILIZATION**

1. Where the removal of wetland vegetation (including riparian wetland trees, shrubs and other plants) or submerged, rooted, aquatic plants over a cumulative area 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 permit allows excavating a toe trench in waters of the U.S., and, if necessary, to use the material for backfill behind the stabilizing structure. Excess material is to be disposed of in a manner that will have only minimal impacts to the aquatic environment.
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) beyond the pre-flood or pre-storm shoreline 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. 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 TRANSPORTATION PROJECTS**

1. This permit does not authorize construction of new airport runways and taxiways.
2. 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.
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.

### **23. APPROVED CATEGORICAL EXCLUSIONS**

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) or its designated non-Federal representative 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) or its designated non-Federal representative 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 qualified specialists 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. 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.

### **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 water 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).

### **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. Notification to the Corps 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.

### **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. The notification shall include an explanation of the project’s benefit to water quality.

#### **42. RECREATIONAL FACILITIES**

1. This permit does not authorize golf courses or ski areas.
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. Notification to the Corps 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.

#### **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.

#### **44. MINING ACTIVITIES**

Nationwide Permit 44 is revoked.

### **C. Amendments to General Conditions**

1. General Condition No. 13(b)(3), Content of Notification: Drawings are always required. The drawings can be schematic but should contain, at minimum, an appropriate title block, legends and scales (if practical), amount (in cubic yards) and size (in acreage or fraction thereof) of fill or activity in Corps jurisdiction, including both permanent and temporary fills/structures. If a waterbody is involved, the ordinary high water mark, estimated highest tide line or mean high water mark should be shown (in feet), if possible, based on NGVD or other appropriate referenced elevation. The drawings should clearly depict the project location, and include plan and cross-section views.
2. General Condition No. 19(f), Mitigation (in reference to vegetated buffers): If the permittee requests the District Engineer to waive or reduce the requirement to provide wetland compensatory mitigation by providing vegetated buffers, the permittee shall provide documentation as to how the vegetated buffers are better for the aquatic environment than more wetland compensatory mitigation.