

## CALIFORNIA COASTAL COMMISSION

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PROPOSED FINDINGS  
ON CONSISTENCY CERTIFICATION

Consistency Certification No. **CC-40-95**

Staff: JRR-SF

File Date: 5/1/95

3 Months: 7/31/95

6 Months: 10/31/95

Date of Commission Action: 7/12/95

Commission Meeting: 11/16/95

FEDERAL AGENCY: **U.S. ARMY CORPS OF ENGINEERS**

DEVELOPMENT

LOCATION: Statewide

DEVELOPMENT

DESCRIPTION: Authorization of a Nationwide permit for the construction of Single-Family Dwellings that includes 1/2 acre or less of fill within non-tidal wetlands (Exhibit 1)

PREVAILING COMMISSIONERS:

Areias, Doughty, Doo, Giacomini, Glickfeld, Karas, Pavley, Rick, Staffel, Vargas, Williams

SUBSTANTIVE FILE DOCUMENTS:

1. Proposal to Issue a Nationwide Permit, Federal Register Vol. 60, No. 56, pp. 15440-15443, March 23, 1995.
2. Consistency Certification No. CC-39-91 (Corps of Engineers, Authorization of 40 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).

### **EXECUTIVE SUMMARY:**

The Corps of Engineers (Corps) proposes to authorize a Nationwide permit allowing the construction of single-family residences in non-tidal wetlands. The nationwide permit authorizes a maximum of 1/2 acre of wetland fill for each case.

A Nationwide Permit is a general approval of the activity identified in that permit. Although the "permittee" does not need any other permits from the Corps, it must still notify the Corps before it discharges fill into a wetland. 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 Nationwide permits to be inconsistent with the California Coastal Management Program (CCMP). The effect of that objection requires "permittees" for Nationwide permits to either receive a concurrence or waiver of a consistency certification from the Commission before the Nationwide permit is valid.

The proposed Nationwide permit is inconsistent with Section 30233 of the Coastal Act. The discharge of fill material into a wetland for the purpose of constructing a single-family house is not an allowable use 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 proposed Nationwide permit does not include mitigation.

### **STAFF SUMMARY AND RECOMMENDATION:**

#### **I. Project Description:**

The Corps of Engineers (Corps) is proposing to issue a Nationwide permit for the placement of fill into non-tidal wetlands for the construction or expansion of a single-family home and attendant features, such as a garage, driveway, storage shed, and/or septic field. The Corps has conditioned the Nationwide permit as follows:

1. the fill does not cause the loss of more than 1/2 acre of wetlands;
2. the permittee notifies the Corps prior to discharge of the fill;

3. the permittee takes necessary actions to minimize the on-site and off-site impacts of the discharge;
4. the discharge is part of a single and complete project and that for any subdivision created or subdivided after March 6, 1995, the discharges authorized under this Nationwide permit may not exceed an aggregate total loss of wetlands of 1/2 acre for the entire subdivision.

## **II. Federal Agency's Consistency Certification:**

The Corps has determined the permit to be 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 the Corps for the proposed permit, finding that the permit is not consistent with the California Coastal Management Program.

## **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, in most cases, the Coastal Act does not permit the placement of fill within a wetland for the purposes of constructing a house, **there are no alternative measures that could bring this permit into compliance with the CCMP.**

## **V. Findings and Declarations:**

The Commission finds and declares as follows:

### **A. Background.**

1. **History.** Nationwide permits are general pre-approvals of discharge of fill or dredge material into Waters of the United States for specified activities. The Corps created the Nationwide permit program in order to minimize regulatory requirements for discharging fill associated with projects that have minor effects. The Corps has already issued 40 Nationwide permits. Unless otherwise specified, the Corps authorizes a permittee to discharge without advance notice to the Corps.

The Commission evaluated the Corps Nationwide permit program on two different occasions. In its first review, in 1983 and 1984, the Commission concurred with most of the Nationwide permits. In its second review, in 1991, the Commission objected to the entire program. 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 Nationwide permits were inconsistent with the CCMP.

2. **Procedures.** Even though the Commission objected to the program, the Corps issued the all of the Nationwide permits. However, for those activities inside or affecting the coastal zone, the Nationwide permits 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 Nationwide permits are valid for that activity. Since its last objection to the Nationwide permit program, the Commission has waived federal consistency on most of the activities subject to Nationwide permits. The Commission has only required consistency certifications for approximately five Nationwide permit projects since 1991.

The staffs of the Corps and the Commission have informally agreed upon procedures that allow most activities qualifying for a nationwide permit to proceed without any significant delays. Upon receipt of notice of a pre-discharge notice or other notice of a nationwide permit activity within a coastal area, the Corps sends the applicant a letter informing the applicant that the nationwide permit is not valid until the applicant receives either a federal consistency concurrence or waiver from the Commission (sample

enclosed in Exhibit 2). Upon receipt of a copy this letter (usually within two weeks), the Commission staff sends a "Jurisdiction Letter" (Exhibit 3) 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 the new Nationwide permit will have the same effect as the previous objection. The Nationwide permit will not be valid for any qualifying home until the Commission either concurs with a consistency certification or waives the requirement. The Commission believes that this Nationwide permit would not apply to very many activities in the coastal zone because most of the wetlands in the coastal zone are tidal wetlands.

**B. 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 proposed Nationwide permit allows the placement of fill into non-tidal wetlands for the purpose of constructing or expanding a single-family home. Since this Nationwide permit 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. None of these "uses" include the construction or expansion of single-family houses. In most cases, the Commission would find such an activity inconsistent with the Coastal Act. There are some instances where the Commission has found that under special circumstances the construction of homes is consistent with the allowable-use requirement of the Coastal Act. However, the Commission can only make that determination on an individual basis. Therefore, a general approval for fill associated with the construction or expansion of a house 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 the Nationwide permit is 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. Although the proposed Nationwide permit requires the permittee to take the necessary steps to minimize environmental effects, it does not incorporate the Coastal Act standard of the "least damaging feasible alternative." Additionally, approval of the Nationwide prevents the Commission from reviewing the individual activity for compliance with Section 30233's alternative requirement. Therefore, the Commission finds that the proposed Nationwide permit is inconsistent with alternative requirement of Section 30233(a).

Finally, the Section 30233(a) of the Coastal Act requires that the proposed activity includes feasible mitigation to reduce any environmental impacts. The proposed Nationwide permit does not provide for mitigation for impacts to the wetlands. In other words, the Nationwide permit authorizes the placement of wetland fill without replacing habitat values destroyed by the project. Therefore, the Commission finds that the proposed Nationwide permit does not provide for mitigation in manner consistent with Section 30233(a).

In conclusion, the proposed Nationwide permit is inconsistent with Section 30233(a) of the Coastal Act for the following reasons: (1) it would authorize an activity that is 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. Therefore, the Commission finds that the proposed development is inconsistent with the wetland fill policy of the CCMP.

**EXHIBIT NO. 1**

APPLICATION NO.

66-40-45

3 Pages

California Coastal Commission

Register / Vol. 60, No. 56 / Thursday, March 23, 1995 / Notices

Jim

**Corps of Engineers****Proposal to Issue a Nationwide Permit****AGENCY:** U.S. Army Corps of Engineers, DoD.**ACTION:** Notice.

**SUMMARY:** As a part of our effort to improve the regulatory program, the Army Corps of Engineers is proposing to issue a new nationwide general permit (NWP) under Section 404 of the Clean Water Act and Section 10 of the Rivers & Harbors Act for single-family residential development. The NWP will provide for effective protection of the aquatic environment while substantially reducing regulatory burdens on landowners.

In August 1993, the Clinton Administration announced a comprehensive package of improvements to the Federal wetlands program that identified measures to enhance the fairness, flexibility, and effectiveness of the wetlands program. A major focus of the Administration's Wetland Plan is intended to address the concerns of landowners by streamlining Section 10 and 404 permitting programs where possible while maintaining needed environmental protection.

The public is invited to provide comments on this proposal and is being given the opportunity to request a public hearing on the proposed NWP. **DATES:** Comments must be received by May 8, 1995.

**ADDRESSES:** Comments should be submitted in writing to: Office of the Chief of Engineers, ATTN: CECW-OR, 20 Massachusetts Avenue NW, Washington, DC 20314-1000. Comments will be available for examination at the Office of the Chief of Engineers, Room 6225, Pulaski Building, 20 Massachusetts Avenue NW, Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Kube or Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 272-0817.

**SUPPLEMENTARY INFORMATION:****Background**

The White House Office on Environmental Policy announced the President's Wetlands Plan on August 24, 1993. The plan set forth a comprehensive package of improvements to the Federal wetlands protection programs. A major goal of the plan is to ensure that programs are fair, flexible, and effective. To achieve this

goal, the Corps regulatory program must continue to provide effective protection of wetlands while conveying to the public a clear understanding of regulatory requirements. In its implementation, the regulatory program must be administratively efficient, flexible yet predictable, and avoid unnecessary impacts to private property and the regulated public.

We are proposing this new NWP to support the objectives in the President's Wetlands Plan. The new NWP would authorize activities in wetlands related to the construction or expansion of a single-family home. This would allow, for example, a couple to build a retirement home on wetlands property they own without applying for an individual Section 404 permit. The NWP includes limits and conditions to minimize impacts on the aquatic environment.

There is a perception by many in the country that the regulatory process has become too burdensome on small landowners simply desiring to build a home. This nationwide general permit has been developed to reduce the regulatory burden on small landowners proposing to build or expand a single-family home while simultaneously maintaining environmental safeguards. It seeks to strike this balance by allowing a landowner to build or expand a home with minimal regulatory oversight while protecting the aquatic resource through specific limitations. If finalized, the new NWP will allow the Corps to focus better its resources on areas that have the potential for greater environmental impacts. Further, as the Corps realizes workload savings resulting from this NWP it should be able to improve service to other sectors of the regulated public (e.g., large developments).

**Proposed NWP for Single Family Housing**

In order to address the above concerns, the Corps proposes to issue the following NWP.

Discharges of dredged or fill material into non-tidal wetlands for the construction or expansion of a single-family home and attendant features, such as a garage, driveway, storage shed, and/or septic field, provided:

a. The discharge into waters of the United States does not cause the loss of more than 1/2 acre;

b. The permittee notifies the District Engineer in accordance with the "Notification" general condition (as modified for this NWP only);

c. The permittee has taken necessary actions to minimize the on-site and off-site impacts of the discharge. For

example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;

d. The discharge is part of a single and complete project and that for any subdivision created after March 6, 1995 the permittee notifies the District Engineer of any discharge which would cause the aggregate total loss of waters of the United States for the entire subdivision to exceed 1/2 acre; and

e. an individual may use this nationwide permit only once.

For the purposes of this nationwide permit, the acreage of loss of waters of the United States includes the filled area plus any other waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. (Sections 10 & 404)

The above NWP is being proposed under the authority of Section 404(e) of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 et seq.).

**Discussion**

We are requesting comments on the following specific issues:

**MAXIMUM ACREAGE:** General permits are designed to authorize categories of activities in waters of the United States that will have minimal individual and cumulative impacts. This NWP would allow discharges affecting up to 1/2 acre of non-tidal waters and wetlands for the construction or expansion of a single-family home and attendant features, such as the construction of a driveway, garage, and/or septic field. For purposes of this NWP, impacts include the filled area plus any wetlands adversely affected by flooding, excavation, or drainage. The actual loss of wetlands that would be authorized under the NWP would be limited to the minimum necessary for construction of the house and attendant features. (See discussion below on mitigation.) The NWP may not be used in combination with other general permits if the cumulative impacts from all activities are more than minimal.

We believe that 1/2 acre is sufficient for the vast majority of single-family homes. However, we are interested in receiving comments regarding the maximum acreage of impact to be allowed under this authorization. Should the maximum acreage be reduced to 1/4 or 1/8 acre or should the maximum acreage of impact be increased to 3/4 or 1 acre? The maximum acreage allowed under this NWP will be dependant on how the term "attendant features" is defined. We are interested in comments regarding a definition of



the term "attendant features". Should the authorization be limited to fill for foundations and building pads or should fill also be allowed for any attendant amenity as currently proposed, such as a yard, tennis courts, and/or swimming pool under this NWP?

**2. PRE-CONSTRUCTION NOTIFICATION:** Individuals proposing to use the NWP will have to first notify the Corps in accordance with procedures of General Condition #13, Notification, as modified below. We propose to streamline the pre-construction notification (PCN) procedure by not requiring the Corps to coordinate with the Federal resource agencies, nor requiring the applicant to submit advance notice to the Fish & Wildlife Service or the State Historic Preservation Officer. Specifically, the Notification condition would be modified for this NWP as follows:

13. Notification. (a) The prospective permittee must notify the District Engineer with a Pre-construction Notification (PCN) as early as possible and shall not begin the activity authorized by this NWP:

(1) Until notified by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified by the District or Division Engineer that an individual permit is required; or

(3) Unless 30 days have passed from the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) The notification must be in writing and include the following information:

(1) Name, address and telephone number of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s) or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity.

(c) The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(3) of this General Condition.

(d) In reviewing an activity under the notification procedure, the District

Engineer will determine whether the activity will result in more than minimal individual or cumulative adverse environmental effects or will be contrary to the public interest. The District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects are minimal, he will notify the permittee and include any agreed upon special conditions and/or mitigation. If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant that the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit.

(e) Wetlands Delineations: When necessary, wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the wetland. However, there may be some delay if the Corps does the delineation and the 30-day period will not start until the wetland delineation has been completed.

We are requesting comments on the PCN. Should the requirement for Corps and applicant coordination of project impacts with the resource agencies be retained? Is the PCN to the Corps needed in all cases? Should there be a size limit such as  $\frac{1}{10}$ ,  $\frac{1}{8}$ ,  $\frac{1}{4}$  acre where no PCN is required?

**3. MITIGATION:** No compensatory wetland mitigation is required under this authorization. However, the landowner must take reasonable on-site measures to minimize adverse impacts to aquatic resources. For example, the location of a home may need to be adjusted on-site to avoid flooding of adjacent property. Further, on-site minimization steps must be taken to minimize the loss of waters of the United States. For example, if a landowner currently owns 20 acres of land, 15 acres of which is non-wetland, we do not believe it is unreasonable to require the use of the non-wetland portion of the property where practicable.

We are requesting comments on our proposal to require no compensatory mitigation for this NWP. Should we require mitigation for all wetland losses as a result of this permit or should we require it if the fill exceeds a certain acreage, such as  $\frac{1}{4}$  acre? Alternatively, should compensatory mitigation only be

required for certain attendant features such as the fill necessary for a yard?

**4. SUBDIVISIONS:** In order to ensure that only minimal individual and cumulative impacts occur, this authorization is not intended to allow individual landowners to impact more than a total of  $\frac{1}{2}$  acre of waters of the United States. Discharges authorized by this NWP must be part of a single and complete project and individuals may use this NWP only once for all property owned now and in the future. For any real estate subdivision legally created or subdivided before March 6, 1995, the owner of each legally plated lot site may use this NWP. Should we allow individuals to use this nationwide permit more than once (e.g. twice, for a primary residence and a second home) or should its use by individuals not be limited.

For any real estate subdivision created or subdivided after March 6, 1995, discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of  $\frac{1}{2}$  acre for the entire subdivision. For purposes of this NWP, the term "real estate subdivision" shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial or other real estate subdivision, including all parcels and parts thereof.

March 6, 1995 is being proposed because that is the date this NWP was announced to the public. Should the March 6, 1995 date be changed to be consistent with the NWP #26 subdivision clause of October 5, 1984, or some other date? Also, are there other options, rather than the Subdivision provision, that would prevent developers from dividing and selling building sites, in the future, to circumvent the limits of this nationwide permit?

#### Nationwide Permit Conditions

This proposed NWP will be subject to the conditions that apply to all nationwide permits. These conditions are found at 33 CFR Part 330 Appendix A(C). As noted above, condition #13 has been modified for purposes of this NWP only.

#### Regional Conditions

Concurrent with this Federal Register notice, District Engineers are issuing local public notices. In addition to the NWP conditions being proposed by the Chief of Engineers, the Division and District Engineers may propose regional

conditions or propose revocation of NWP authorization for all or portions of this NWP. Regional conditions may also be required by state Section 401 water quality certification or for state coastal zone consistency. Comments on the Federal Register notice that address national concerns relating to the proposed NWP and its conditions should be sent to the U.S. Army Corps of Engineers, CECW-OR, 20 Massachusetts Avenue N.W., Washington, D.C. 20314-1000. Comments on regional issues and regional conditions should be sent to the appropriate District Engineer as indicated below.

**ALABAMA**

Mobile District Engineer, ATTN: CESAM-OP-S, P.O. Box 2288, Mobile, AL 36628-0001

**ALASKA**

Alaska District Engineer, ATTN: CENPA-CO-R, P.O. Box 898, Anchorage, AK 99508-0898

**ARIZONA**

Los Angeles District Engineer, ATTN: CESPL-CO-R, P.O. Box 2711, Los Angeles, CA 90053-2325

**ARKANSAS**

Little Rock District Engineer, ATTN: CESWL-CO-P, P.O. Box 867, Little Rock, AR 72203-0867

**CALIFORNIA**

Sacramento District Engineer, ATTN: CESPK-CO-O, 1325 J Street, Sacramento, CA 95814-4794

**COLORADO**

Albuquerque District Engineer, ATTN: CESWA-CO-R, P.O. Box 1580, Albuquerque, NM 87103-1580

**CONNECTICUT**

New England Division Engineer, ATTN: CENED-OD-R, 424 Trapelo Road, Waltham, MA 02254-9149

**DELAWARE**

Philadelphia District Engineer, ATTN: CENAP-OP-R, Wannamaker Building, 100 Penn Square East, Philadelphia, PA 19107-3390

**FLORIDA**

Jacksonville District Engineer, ATTN: CESAJ-RD, P.O. Box 4970, Jacksonville, FL 32232-0019

**GEORGIA**

Savannah District Engineer, ATTN: CESAS-OP-F, P.O. Box 889, Savannah, GA 31402-0889

**HAWAII**

Honolulu District Engineer, ATTN: CEPOD-CO-O, Building 230, Fort Shafter, Honolulu, HI 96858-5440

**IDAHO**

Walla Walla District Engineer, ATTN: CENPW-OP-RF, Building 602, City-County Airport, Walla Walla, WA 99362-9265

**ILLINOIS**

Rock Island District Engineer, ATTN: CENCN-OD-S, Clock Tower Building, P.O. Box 2004, Rock Island, IL 61201-2004

**INDIANA**

Louisville District Engineer, ATTN: CEORL-OR-F, P.O. Box 59, Louisville, KY 40201-0059

**IOWA**

Rock Island District Engineer, ATTN: CENCN-OD-S, Clock Tower Building, Rock Island, IL 61201-2004

**KANSAS**

Kansas City District Engineer, ATTN: CEMRK-OD-P, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106-2896

**KENTUCKY**

Louisville District Engineer, ATTN: CEORL-OR-F, P.O. Box 59, Louisville, KY 40201-0059

**LOUISIANA**

New Orleans District Engineer, ATTN: CELMN-OD-S, P.O. Box 80267, New Orleans, LA 70180-0267

**MAINE**

New England Division Engineer, ATTN: CENED-OD-R, 424 Trapelo Road, Waltham, MA 02254-9149

**MARYLAND**

Baltimore District Engineer, ATTN: CENAB-OP-R, P.O. Box 1715, Baltimore, MD 21203-1715

**MASSACHUSETTS**

New England Division Engineer, ATTN: CENED-OD-R, 424 Trapelo Road, Waltham, MA 02254-9149

**MICHIGAN**

Detroit District Engineer, ATTN: CENCE-CO-L, P.O. Box 1027, Detroit, MI 48231-1027

**MINNESOTA**

St. Paul District Engineer, ATTN: CENCN-CO-R, 190 Fifth Street, East, St. Paul, MN 55101-1638

**MISSISSIPPI**

Vicksburg District Engineer, ATTN: CELMV-CO-O, P.O. Box 80, Vicksburg, MS 39180-0080

**MISSOURI**

Kansas City District Engineer, ATTN: CEMRK-OD-P, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106-2896

**MONTANA**

Omaha District Engineer, ATTN: CEMRO-OP-R, P.O. Box 5, Omaha, NE 68101-0005

**NEBRASKA**

Omaha District Engineer, ATTN: CEMRO-OP-R, 215 North 17th Street, Omaha, NE 68101-4978

**NEVADA**

Sacramento District Engineer, ATTN: CESPK-CO-O, 1325 J Street, Sacramento, CA 95814-2922

**NEW HAMPSHIRE**

New England Division Engineer,

ATTN: CENED-OD-R, 424 Trapelo Road, Waltham, MA 02254-9149

**NEW JERSEY**

Philadelphia District Engineer, ATTN: CENAP-OP-R, Wannamaker Building, 100 Penn Square East, Philadelphia, PA 19106-2991

**NEW MEXICO**

Albuquerque District Engineer, ATTN: CESWA-CO-R, P.O. Box 1580, Albuquerque, NM 87103-1580

**NEW YORK**

New York District Engineer, ATTN: CENAN-OP-R, Jacob K. Javits Federal Building, New York, NY 10278-0090

**NORTH CAROLINA**

Wilmington District Engineer, ATTN: CESAW-CO-E, P.O. Box 1890, Wilmington, NC 28402-1890

**NORTH DAKOTA**

Omaha District Engineer, ATTN: CEMRO-OP-R, 215 North 17th Street, Omaha, NE 68102-4978

**OHIO**

Huntington District Engineer, ATTN: CEORH-OR-F, 502 8th Street, Huntington, WV 25701-2070

**OKLAHOMA**

Tulsa District Engineer, ATTN: CESWT-OD-RF, 1645 South 101 East Avenue, Tulsa, OK 74128-4629

**OREGON**

Portland District Engineer, ATTN: CENPP-PL-R, P.O. Box 2946, Portland, OR 97208-2946

**PENNSYLVANIA**

Baltimore District Engineer, ATTN: CENAB-OP-R, P.O. Box 1715, Baltimore, MD 21203-1715

**RHODE ISLAND**

New England Division Engineer, ATTN: CENED-OD-R, 424 Trapelo Road, Waltham, MA 02254-9149

**SOUTH CAROLINA**

Charleston District Engineer, ATTN: CESAC-CO-P, P.O. Box 919, Charleston, SC 29402-0919

**SOUTH DAKOTA**

Omaha District Engineer, ATTN: CEMRO-OP-R, 215 North 17th Street, Omaha, NE 68102-4978

**TENNESSEE**

Nashville District Engineer, ATTN: CEORN-OR-F, P.O. Box 1070, Nashville, TN 37202-1070

**TEXAS**

Ft. Worth District Engineer, ATTN: CESWF-OD-O, P.O. Box 17300, Ft. Worth, TX 76102-0300

**UTAH**

Sacramento District Engineer, ATTN: CESPK-CO-O, 1325 J Street, CA 95814-4794

**VERMONT**

New England Division Engineer, ATTN: CENED-OD-R, 424 Trapelo

Road, Waltham, MA 02254-9149  
VIRGINIA

Norfolk District Engineer, ATTN:  
CENAO-OP-P, 803 Front Street,  
Norfolk, VA 23510-1096

WASHINGTON

Seattle District Engineer, ATTN:  
CENPS-OP-RG, P.O. Box 3755,  
Seattle, WA 98124-2255

WEST VIRGINIA

Huntington District Engineer, ATTN:  
CEORH-OR-F, 502 8th Street,  
Huntington, WV 25701-2070

WISCONSIN

St. Paul District Engineer, ATTN:  
CENCS-CO-R, 190 Fifth Street,  
East, St. Paul, MN 55101-1638

WYOMING

Omaha District Engineer, ATTN:  
CEMRO-OP-R, 215 North 17th  
Street, NE 68102-4978

DISTRICT OF COLUMBIA

Baltimore District Engineer, ATTN:  
CENAB-OP-R, P.O. Box 1715,  
Baltimore, MD 21203-1715

PACIFIC TERRITORIES

Honolulu District Engineer, ATTN:  
CEPOD-CO-O, Building 230, Fort  
Shafter, Honolulu, HI 96858-5440

PUERTO RICO AND VIRGIN ISLANDS

Jacksonville District Engineer, ATTN:  
CESAJ-RD, P.O. Box 4970,  
Jacksonville, FL 32232-0019

State Certification of Nationwide  
Permits

*Section 401 of the Clean Water Act:*  
This Federal Register notice of this  
NWP serves as the Corps application to  
the states or EPA, where appropriate, for  
401 water quality certification of the  
activities authorized by this NWP. The  
states and EPA, where appropriate, are  
requested to issue, deny, or waive  
certification pursuant to 33 CFR 330.4(c)  
for this NWP.

*Section 307 of the Coastal Zone  
Management Act:* This Federal Register  
notice serves as the Corps determination  
that the activities authorized by this  
NWP are consistent with States' coastal  
zone management programs, where  
applicable. This determination is  
contingent upon the addition of State  
CZM conditions and/or regional  
conditions or the issuance by the state  
of an individual consistency  
concurrence, where necessary. The  
states are requested to agree or disagree  
with this consistency determination

pursuant to 33 CFR 330.4(d) for this  
NWP.

Environmental Documentation

We have made a preliminary  
determination that this action does not  
constitute a major Federal action  
significantly affecting the quality of the  
human environment. Preliminary  
environmental documentation has been  
prepared for the proposed nationwide  
permit. This documentation includes a  
preliminary environmental assessment  
and a preliminary Section 404(b)(1)  
Guidelines compliance review. Copies  
of these documents are available for  
inspection at the office of the Chief of  
Engineers and at each Corps District  
office. Based on these documents the  
Corps has provisionally determined that  
the proposed NWP complies with the  
requirements for issuance under general  
permit authority.

Dated: March 15, 1995.

Stanley G. Geneva,

Major General, USA, Director of Civil Works.  
[FR Doc. 95-7206 Filed 3-21-95; 9:25 am]

BILLING CODE 3710-02-M

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Modification no. 1 to scientific research permit no. 838 (P535).

**SUMMARY:** Notice is hereby given that a request for modification of scientific research permit no. 838 submitted by Stephen J. Insley and Peter Marler, Animal Communication Laboratory, University of California, Davis, CA 95616-8761, has been granted.

**ADDRESSES:** The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713-2289);

Director, Alaska Region, NMFS, Federal Annex, P.O. Box 21666, Juneau, AK 99802 (907/586-7221).

**SUPPLEMENTARY INFORMATION:** On January 20, 1995, notice was published in the *Federal Register* (60 FR 4148) that a modification of permit no. 838, issued May 17, 1993 (58 FR 29810), had been requested by the above-named individuals. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.) and the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit no. 838 authorizes scientific research on up to 210 northern fur seals (*Callorhinus ursinus*). Of these, up to 100 fur seals (50 females/50 pups) may be bleached marked and tagged with plastic All-Flex tags or metal monel tags and up to 110 fur seals may be inadvertently harassed over a 2-year period. The permit was modified to extend the period of validity to December 31, 1996, and increase the number of animals that may be inadvertently harassed to 150 over a 4-year period.

Dated: March 23, 1995.

Ann D. TerBush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95-7680 Filed 3-28-95; 8:45 am]

BILLING CODE 3610-22-F

## COMMISSION OF FINE ARTS

### Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 20 April 1995 at 10 am in the Commission's offices in the Pension Building, Suite 312, Treasury Square, 441 F Street, N.W.,

Washington, D.C. 20001 to discuss various projects affecting the appearance of Washington, D.C., including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 21 March 1995.

Charles H. Atherton,

Secretary.

[FR Doc. 95-7643 Filed 3-28-95; 8:45 am]

BILLING CODE 6330-01-M

## DEPARTMENT OF DEFENSE

### Corps of Engineers

#### Proposal To Issue a Nationwide Permit

**AGENCY:** Corps of Engineers, DoD.

**ACTION:** Correction.

**SUMMARY:** This document contains a correction to a proposal to issue a new nationwide permit which was published in the *Federal Register* on Thursday, March 23, 1995, (60 FR 15439-15443). On page 15440, in the third column, paragraph d. should be replaced with the following language:

d. The discharge is part of a single and complete project and that for any subdivision created or subdivided after March 6, 1995, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of 1/2 acre for the entire subdivision.

Dated: March 23, 1995.

Michael L. Davis,

Chief, Regulatory Branch, Operations, Construction and Readiness Division, Directorate of Civil Work.

[FR Doc. 95-7649 Filed 3-28-95; 8:45 am]

BILLING CODE 3710-02-M

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Acting Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** An expedited review has been requested in accordance with the Act,

since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 31, 1995.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202-4651.

#### FOR FURTHER INFORMATION CONTACT:

Patrick J. Sherrill, (202) 708-9915.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1990 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons 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 Acting Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 23, 1995.

Kent Hannaman,

Acting Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review Expedited



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

REPLY TO  
ATTENTION OF:

SEP 29 1995

RECEIVED  
OCT 06 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. 2   |
| APPLICATION NO.<br>CC-40-95   |
| Findings  |
|  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

**CALIFORNIA COASTAL COMMISSION**

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

**Jurisdiction Letter**Date: 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. 3****APPLICATION NO.**

CC-40-95

Findings

☐ 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



## Coastal Commission Area Offices:

Coastal Commission  
North Coast Area Office  
45 Fremont St., Ste. 2000  
San Francisco, CA 94105  
Tel. No. (415) 904-5280

Coastal Commission  
South Central Coast Area  
89 S. California St., Ste. 200  
San Buenaventura, CA 93001  
Tel. No. (805) 641-0142

Coastal Commission  
San Diego Coast Area Office  
3111 Camino Del Rio North, Ste. 200  
San Diego, CA 92108-1725  
Tel. No. (619) 521-8036

Coastal Commission  
Ports Coordinator  
45 Fremont St., Ste. 2000  
San Francisco, CA 94105  
Tel. No. (415) 904-5280

Coastal Commission  
Central Coast Area Office  
725 Front St., Suite 300  
Santa Cruz, CA 95060-4508  
Tel. No. (408) 427-4863

Coastal Commission  
South Coast Area Office  
P.O. Box 1450  
245 West Broadway, Ste 380  
Long Beach, CA 90802-4416  
Tel. No. (310) 590-5071

Coastal Commission  
Energy and Ocean Resources Unit  
45 Fremont St., Ste. 2000  
San Francisco, CA 94105  
Tel. No. (415) 904-5240

