

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Issuance of Nationwide Permit for Single-Family Housing

AGENCY: 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 hereby issuing a new nationwide general permit (NWP) under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act for single-family residential housing activities. As announced by the President on July 12, 1995, 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 Wetlands Plan is intended to address the concerns of landowners by streamlining the Section 10 and Section 404 permitting programs, where possible, while maintaining needed environmental protection.

EFFECTIVE DATE: September 25, 1995.**ADDRESS:** Information can be obtained by writing to: The Chief of Engineers, U.S. Army Corps of Engineers, ATTN: CECW-OR, Washington, C 20314-1000.**FOR FURTHER INFORMATION, CONTACT:** Ms. Kelly Enright or Mr. Sam Collinson at (202) 761-0199.

SUPPLEMENTARY INFORMATION: On August 24, 1993, the White House Office on Environmental Policy announced the President's Wetlands Plan (Plan). The 40-point 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 issuing this new NWP to support the objectives in the President's Wetlands Plan. The new NWP will

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 NWP 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. This NWP 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. The new NWP will allow the Corps to focus better its resources on areas that have the potential for greater environmental impacts. Furthermore, as the Corps realizes workload savings resulting from this NWP, service to other sectors of the regulated public (e.g., large developments), should be improved.

On March 23, 1995, the Corps published its proposed single-family housing NWP in the **Federal Register**. We received approximately 450 comments responding to the proposed NWP. In response to these comments, we made a few revisions to the NWP as discussed below. Issuance of this NWP should result in continued protection of the aquatic environment, reduced regulatory burden on the small landowner and an overall decrease in workload. Any workload savings will be devoted to more efficient individual permit evaluations and increased enforcement and compliance activities.

This nationwide permit for single-family housing activities issued today becomes effective on September 25, 1995. During this 60-day period, the States must make their final determination on issuance of State Section 401 water quality certification or, where appropriate, whether they agree with our CZM consistency determination. The NWP will remain in effect for 5 years from the effective date unless sooner revoked, modified, or reissued.

Discussion of Public Comments and Changes

We requested comments on the following specific issues:

1. Maximum Acreage

This topic received a large number of comments; specifically, commenters suggested increasing, decreasing, or retaining the proposed acreage figure. Several commenters supported the 0.5 acre limit. They stated that such an acreage figure was appropriate, reasonable and sufficient for a single-family residence with attendant features.

Several commenters were in favor of an increased acreage threshold. Some stated that the acreage figure should be increased to 10 acres to remain consistent with that of the NWP 26. One commenter suggested a 5-acre limit to correspond with the Department of the Interior's proposal to lessen Endangered Species Act restrictions on individuals owning 5 acres or less. The majority of those who encouraged a higher acreage amount, recommended a 1-acre threshold. One of these commenters equated this figure to the 1-acre threshold of the NWP 26 below which the Corps does not require notification. One commenter expressed concern over the proportionality of impacts versus the overall size of the parcel of land to be impacted. This commenter recommended increasing the maximum acreage threshold so that a more proportional impact to wetlands could be allowed. For example, if a landowner owns a 10-acre parcel, he should be authorized to fill 5 acres of wetlands and one who owns a 1-acre parcel should be allowed to fill 0.5 acre of wetlands. The commenter did not offer a specific ratio or threshold. Another commenter recommended that wetlands of lower value should have a higher acreage threshold while higher quality wetlands should be allowed more minor impacts. Again, this commenter did not offer specific thresholds.

The majority of the comments on the acreage limit were in favor of a lesser acreage. Many commenters maintained that the acreage proposed was excessive and a lesser acreage would encourage prospective permittees to avoid and minimize impacts. Several commenters compared the acreage threshold to that allowed in their respective states for single-family housing activities. Those states had a lower acreage threshold. Many commenters suggested that the NWP should only apply to individuals who had some usable uplands on their property. By using some uplands the property owner would need less fill in wetlands to have a homesite, and therefore a lower acreage limit could be established. These commenters indicated that the NWP should not apply to those who own only wetlands