



## FLOOD CONTROL & WETLAND PERMITS

### Introduction

This article discusses the approval of Clean Water Act (CWA) Section 404 (wetland) permits for flood control channels in the western US. The discussion is based on Zentner & Zentner's experience with wetlands and flood control projects over the past decade and our recently approved projects, one of which is described in an accompanying article. We also provide general comments on cost and time requirements for typical 404 permits and permit elements.

### Nationwide 404 Permits

Three types of permits are issued by the Corps: general permits which include the "nationwide" permits; regional permits, and individual permits. This article

will focus on nationwide and individual permits.

Nationwide permits (NWP) are issued by the Corps for specific, relatively minor actions, such as bridges or minor fills. The applicant often may only have to satisfy specific permit conditions prior to proceeding.

There are now 35 different NWPs (see sidebar on page 2). One of the most common is NWP 26, which authorizes fill in isolated wetlands and waterways above the headwaters line provided the discharge does not cause the loss of more than 10 acres of jurisdictional area.

All NWP 26 approvals require a Corps-approved delineation and

a water quality certification from the Regional Water Quality Control Board (RWQCB). In California, the RWQCBs require submission of a CEQA document, usually an EIR or Negative Declaration, with the application. A prospective permittee must also contact the US Fish and Wildlife Service (FWS) for a listed (or proposed) species review and the State Historic Preservation Office for a cultural resources review. Notification of the Corps through a "predischage notification" (PDN) is required if the discharge will result in the loss of more than one acre of jurisdictional area and a mitigation plan is also generally required for these fills (Figure 1).

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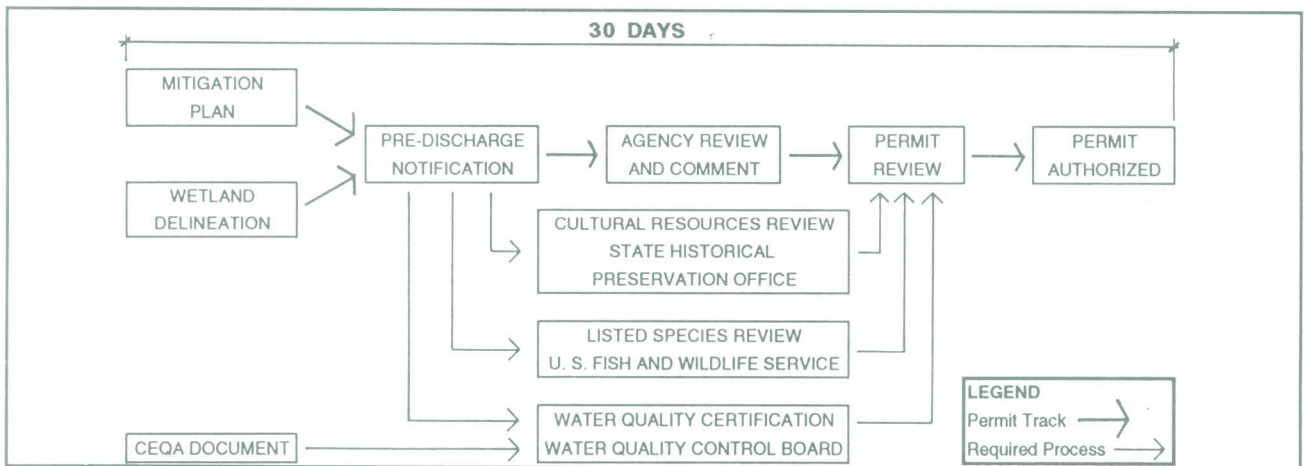


Figure 1

*Nationwide Permit 26 Approval Process (fills over an acre)*

## GREEN VALLEY CREEK 404 PERMIT APPROVAL

The recently approved Green Valley Creek project illustrates: (1) the focus of the 404 program on habitat preservation; (2) the

flexibility that the process can exhibit under certain conditions; and (3) the importance of appropriate planning with agency staff.

The City of Fairfield in Solano County, California, proposed to

*(continued on page 3)*



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NWP 26 and the other NWPs that require notification take 30 days from the receipt of the PDN for Corps approval or denial. In practice, preparation of a mitigation plan (especially for NWP 26 approvals) and agency negotiations may stretch permit approval to several months. Costs for NWP approvals will vary widely from a few hundred dollars for the simpler NWPs to many thousands for more complex approvals. Costs and time requirements for NWP approvals are still much less than those required for individual permits.

**Individual 404 Permits**

Generally, all fills not covered by regional or nationwide permits require an individual permit. Figure 2 provides a flowchart for a typical individual permit. In addition to the Corps application (a two-page form with accompanying graphics), the Corps requires a mitigation plan and an alternatives analysis. Mitigation plans can require from 4 to 8 weeks to prepare and generally cost \$4,000 to \$12,000. An alternatives analysis demonstrates that there are no practicable alternative locations or project designs that would reduce or eliminate the wetland fill. These may require four to six

weeks to prepare and typically cost \$3,000 to \$8,000.

After acceptance of the application, the Corps distributes a Public Notice (PN) to a wide list of potential respondents. At that time, the permittee submits an application to the RWQCB for a water quality certification or certification waiver. As with NWP 26, the RWQCB requires submission of a CEQA with the application. Where the Corps determines that a Federally listed species may be affected, they will also require that an opinion be issued by the FWS under Section 7 of the Endangered Species Act.

After the applicant has responded to all comments received from publication of the PN, the Corps determines whether approval is warranted in its decision document. The Corps also makes a final decision at this time whether it will require an EIS. If the Corps decides it will approve the permit, the FWS and the US Environmental Protection Agency (EPA) can "elevate" a permit decision by objecting to its issuance. In essence, this means that both agencies can bring a permit decision to the Division level of the Corps (in Portland for much of the West) or

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**Corps of Engineers  
Nationwide Permits**

Number	Description
NWP 1	Navigation Aids
NWP 2	Art. Canal Struct.
NWP 3	Maintenance
NWP 4	Game Harvesting
NWP 5•	Measuring Devices
NWP 6	Surveying
NWP 7+	Outfalls
NWP 9	Moorage Structures
NWP 10	Buoys
NWP 11	Temp. Rec. Works
NWP 12	Utility Lines
NWP 13•	Bank Stabilization
NWP 14•	Road Crossing
NWP 15	Bridges
NWP 16	Return Wtr. Flows
NWP 17+	Hydropwr. Projects
NWP 18•	Minor Fills
NWP 19	Minor Dredging
NWP 20	Oil Spill Cleanup
NWP 21+	Surface Mining
NWP 22	Vessel Removal
NWP 23	Categorical Excl.
NWP 25	Structural Fill
NWP 26•	Isolated Fills
NWP 27	Wetland Restoration
NWP 28	Existing Marinas
NWP 32	Enforcement
NWP 33+	Temporary Access
NWP 34	Cranberry Farming
NWP 35+	Basin Maintenance
NWP 36	Boat Ramps
NWP 37+	Emerg. Work
NWP 38+	Toxic Wst. Cleanup
NWP 39	Farming Fills
NWP 40	Farm Buildings

+ : Always requires notification  
• : May require notification

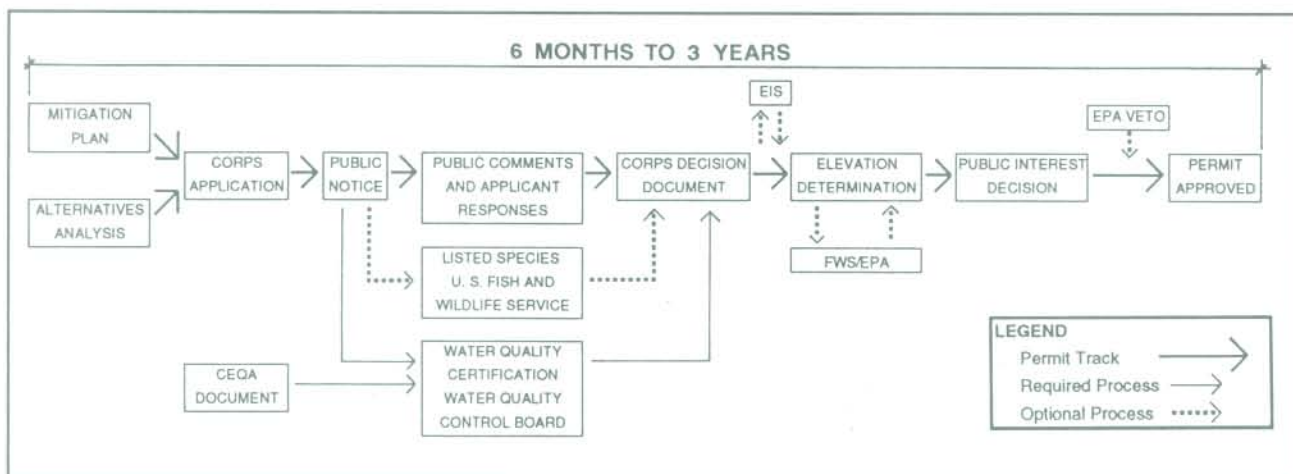


Figure 2

Individual Permit Approval Process



**(Flood Control continued)**

back to Washington D.C. for further review. The EPA also has the ability to veto a permit, although this veto has been exercised very rarely. Individual permits can require six months to three years to complete and cost many thousands of dollars.■

**(Green Valley continued)**

reconstruct and restore approximately one mile of Green Valley Creek to provide additional flood capacity. While portions of the Creek were in relatively good shape and heavily wooded, other portions were degraded and in need of restoration. Aside from a permit to create a new flood channel, the City also needed immediate approval of two bridges to serve nearby developments. Additionally, the City had to limit the amount of land dedicated to public open space uses (such as creek restoration and flood channel) because the project was funded by an assessment district and the debt had to be distributed over a specific area of developable land to make the project feasible. Zentner & Zentner was retained by the City to process the wetland permits. Our first step was to complete a jurisdictional delineation and receive approval of that de-

lineation from the Corps. We concurrently completed a sensitive species analysis to ensure that no listed or candidate species occurred on-site. Then, by working with the City to clarify the bridge designs, we were able to qualify the two bridges for NWP 15 approvals from the Corps. This allowed immediate construction of the bridges and demonstrates the flexibility that the 404 process is designed to achieve.

Getting bridge construction underway allowed the City to address what was clearly the most complex issue: how to meet the Federal and State agency goals of preserving certain habitats and providing appropriate mitigation while retaining needed development lands and creating a flood solution. In conjunction with MacKay & Soms (engineers) and Philip Williams & Associates (hydrologists), we evaluated alternative channel designs in a consensus-building process with these agencies.

A multi-terrace channel alternative was finally chosen as it allowed the City to preserve the relatively well-wooded portions of the Creek while reconstructing the Creek channel completely in

the more degraded portions. The terraces also provided sufficient mitigation lands without jeopardizing the proposed developable land required (Figure 3). The RWQCB issued its water quality certification shortly after the final plan was adopted by the City and the Corps individual 404 permit followed.■

**Wetland Classes Offered**

Zentner & Zentner is offering free classes in wetland delineation and regulation to professional groups of 15 or more. Please call Kellie Berry at (916) 442-5620 or Susan Collopy at (510) 947-6888 for further information.

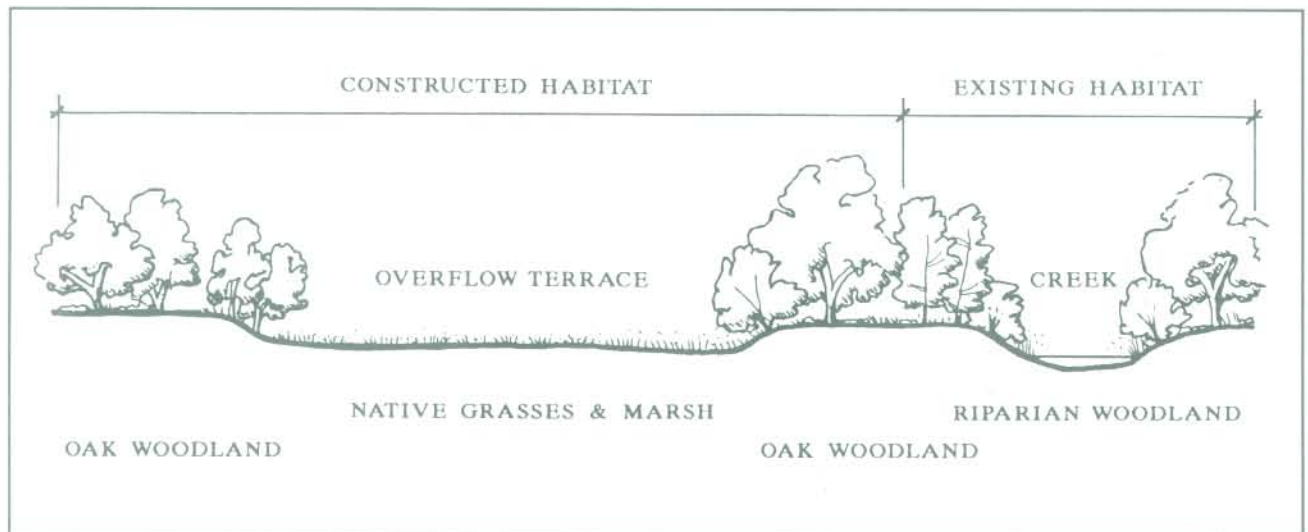


Figure 3

*Green Valley Creek Cross-section, City of Fairfield*