

## Ecology

# Section 404 Nationwide Permits

Applicability  
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Nationwide Permits

## APPLICABILITY

Section 404 of the Clean Water Act (CWA) permitting requirements apply to all GDOT projects that impact Waters of the US (WOTUS). The Section 404 permit—stipulating Section 404 permitting requirements—must be acquired before construction activities can begin. Typically, Section 404 permits are required prior to Certification for Let. The USACE, authorized under CWA Section 404e, issues General Permits for projects that do not have potentially significant impacts. General Permits used for GDOT projects include Regional General Permits (RGPs) and Nationwide Permits (NWP).

*Regional Permits are the preferred Section 404 General Permit for GDOT projects. Consult with the GDOT Ecologist or Ecology Team Leader prior to applying for use of an NWP.*

## REGULATIONS, GUIDANCE AND POLICY

Section 404 of the CWA establishes a program to regulate the discharge of dredged or fill material into WOTUS. The administration of the Section 404 permit program is assigned to the US Army Corps of Engineers (USACE) with US Environmental Protection Agency (EPA) oversight. Proposed activities within WOTUS are regulated through a permit review process. The USACE Savannah District has jurisdiction over Section 404-regulated WOTUS within Georgia. GDOT requirements for Section 404 permitting are specific to the Savannah District.

The USACE Savannah District Regulatory Division administers the Section 404 permit program for GDOT projects under Section 214 of the Water Resources Development Act (33 USC 2352). Savannah District Regulatory Division has dedicated USACE Project Managers solely responsible for assisting with and reviewing permit applications for GDOT projects. Regulatory Division staff are also responsible for coordinating with other USACE District Offices when there is overlapping jurisdiction on GDOT projects, such as USACE-managed lakes in Georgia (Mobile District) and projects bordering other states.

Permit applications developed by Ecologists and submitted to USACE by GDOT must demonstrate that all practicable efforts have been made to avoid and minimize impacts to

WOTUS, that compensation (mitigation) be provided for all unavoidable impacts, and that the project would not result in significant degradation of water quality.

## NATIONWIDE PERMITS

Nationwide Permits are issued by the USACE every five years along with NWP General Conditions. In Georgia, NWP Regional Conditions, available on the USACE Savannah District website, are typically issued concurrently with NWP issuance. Regional Conditions are tailored to each District and may be more stringent than NWP General Conditions, but cannot preclude a permittee from complying with General Conditions.

NWPs commonly used on GDOT projects include NWP 3, 14, 23, 25, and 33. Table 1 lists each of these NWPs, the associated project type or National Environmental Policy Act (NEPA) document, and the acreage and linear foot impact thresholds.

Table 1 – Nationwide Permit Thresholds

Permit Type†	Document or Project Type	Area* Each Crossing	Area per HUC	Linear Feet (LF) Each Crossing	LF** per HUC
NWP 3	Maintenance	No Threshold	No Threshold	NA	NA
(a) Repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills (b) Discharges associated with removal of accumulated sediments and debris in the vicinity of existing structures (c) Temporary structures, fills, and work necessary to conduct maintenance activity					
NWP 14	Linear project	$\leq 0.5$ acre (non-tidal) $\leq 0.33$ acre (tidal)	$\leq 10$ acres (excludes acres of stream loss)	$\leq 300$ LF (perennial)	$\leq 1,500$ LF
NWP 23	Categorical Exclusion	No Threshold	$\leq 10$ acres (excludes acres of stream loss)	$\leq 300$ LF (perennial)	$\leq 1,500$ LF
NWP 25	Structural Discharge	No Threshold	No Threshold	NA	NA
NWP 33	Temporary Impacts	No Threshold	No Threshold	NA	NA

† NOAA Fisheries exemptions required if impacts include waters supporting anadromous fish \* Area of wetlands, open waters, and streams (perennial, intermittent, and jurisdictional ephemerals) \*\* LF of perennial, intermittent, and jurisdictional ephemerals streams

The Georgia Department of Natural Resources (GADNR) issued a conditional Water Quality Certification, pursuant to Section 401 of the Clean Water Act, and conditional concurrence with the federal consistency determination under the Coastal Zone Management Act for

reauthorization of the use of NWPs to authorize impacts to WOTUS in Georgia. The conditions include a requirement that GADNR be notified prior to beginning work on any and all NWP authorized projects.

### Pre-Construction Notification (PCN)

Notification requirements vary by NWP type and are listed under each applicable NWP. USACE Savannah District NWP Regional Conditions impose additional notification requirements. If notification is required, a PCN must be submitted to the USACE Savannah District requesting authorization for the use of the applicable NWP prior to commencement of work in WOTUS.

Under the NWP Program, a PCN is required for the following:

- > Use of all NWPs if the proposed activity will result in the loss of greater than 0.1 acre of wetlands;
- > All uses of NWPs 3(b);
- > Use of NWP 23 for certain Categorical Exclusion activities listed in USACE Regulatory Guidance Letter 05-07;
- > Use of NWP 33 if temporary impacts are proposed in navigable WOTUS (i.e., Section 10 Waters); and
- > Use of any NWP that also requires permission from USACE pursuant to 33 U.S.C. 408 (Section 408 Permit).

Under Savannah District Regional Conditions, a PCN is required for the following:

- > All uses of NWP 14;
- > Use of NWPs 3(a), 3(c), and 33 for impact to 0.1 acre or more of wetlands/open water and/or 100 LF or more of stream; and
- > All uses of NWPs within 2,000 feet of a National Wildlife Refuge, any National Park Service property, a National Estuarine Research Reserve, a Georgia State Park, or an approved mitigation bank.

If project conditions allow for use of an NWP that does not require USACE notification (i.e., PCN), the Ecologist must submit the GADNR Notification Form (from Appendix A of the 2017 Savannah District NWP Regional Conditions) to EPD as well as CRD (if the projects occur in the 11 coastal counties of Brantley, Bryan, Camden, Charlton, Chatham, Effingham, Glynn, Liberty, Long, McIntosh, or Wayne).

The Ecologist should review all PCN requirements included in NWP General Condition 32 and Savannah District Regional Condition C prior to preparing a PCN for a GDOT project.

Refer to the PCN Checklist for GDOT Projects for information required to be submitted to the USACE:

Pre-Construction Notification Checklist,  
US Army Corps of Engineers

## General Conditions

General Conditions apply to all NWP, unless otherwise specified. The Ecologist should review all NWP General Conditions prior to applying for use of any NWP for a GDOT project. However, special attention should be paid to the following requirements, as they may require coordination with the PM, Environmental Analyst, and/or Design.

- > Spawning Areas (General Condition 3) – Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized. GADNR should be consulted to assist with identification of important spawning areas.
- > Shellfish Beds (General Condition 5) – No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to shellfish harvesting, or is a shellfish seeding or habitat restoration activity.
- > Single and Complete Project (General Condition 15) – The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

The NWPs define “single and complete project” as that portion of the total linear project proposed by one owner/developer that includes all crossings of a single WOTUS (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project. Crossing thresholds listed in Table 1 apply to each single and complete project.

- > Endangered Species (General Condition 18) – No activity is authorized which “may affect” a listed species or critical habitat unless Endangered Species Act Section 7 consultation has been completed.
- > Historic Properties (General Condition 20) – If the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

- > **Mitigation (General Condition 23)** – Compensatory mitigation is required for all wetland losses that exceed 0.1 acre and require a PCN.

The NWP's define "loss of WOTUS" as WOTUS that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. WOTUS temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of WOTUS.

- > **Activities Affecting Civil Works Projects (General Condition 31)** – USACE authorization pursuant to 33 USC 408 (Section 408) must be issued prior to 404 permit authorization. The USACE South Atlantic Division and GDOT entered into a Memorandum of Understanding (MOU) for coordinating the review and approval of Real Estate Outgrants. A copy of this MOU and a detailed GDOT process chart based on the provisions of the MOU are available on the GDOT ROADS website. The PM must obtain Section 408 authorization; however, the Ecologist coordinates with the PM if a project requiring an RGP will alter a USACE civil works project.

### Regional Conditions

The Ecologist should review all Savannah District NWP Regional Conditions for compliance prior to use of any NWP for a GDOT project. However, special attention should be paid to the following requirements, as they may require coordination with the PM, Environmental Analyst, and/or Design.

- > **Perennial Stream Culverts (Regional Condition C.4)** – For projects involving construction of a new culvert or replacement of an existing culvert on a perennial stream, all information listed under Regional Condition C.4 must be provided, including diagrams of the longitudinal profile and cross sections (existing and as-built) of the perennial stream in the vicinity of the proposed culvert. This information is not required for the extension of existing culverts on perennial streams.

The GDOT Chief Engineer issued a memorandum to various GDOT offices in September 2013 pertaining to the diagrams required for culverts on perennial streams. This memorandum, titled GDOT USACE 404 Permit Regional Conditions (GDOT Data Collection and Design Diagrams), outlines GDOT procedures for complying with USACE culvert requirements in perennial streams and includes links to more detailed guidance. Refer to this document for information regarding GDOT interoffice coordination, field location, survey data collection and processing, and diagram development:

GDOT USACE 404 Permit Regional Conditions (GDOT Data  
Collection and Design Diagrams,  
Georgia Department of Transportation

- > Evaluation of Dredged Material (Regional Condition C.7) – A PCN for use of NWP 3(b) must include a “Tier I” evaluation, in accordance with the Inland Testing Manual available on the EPA Section 404 of the Clean Water Act website.
- > Mitigation Banks (Regional Condition D.3) – NWPs cannot be used to authorize projects that would impact compensatory mitigation sites or an approved compensatory mitigation bank. An Individual Section 404 permit application is required for these projects. GDOT projects may require right-of-way (ROW) or easement on property that serves as a compensatory mitigation site or bank. These properties are typically protected by a restrictive covenant and/or conservation easement that should be identified by the GDOT ROW office prior to ROW acquisition.
- > Anadromous Fish (Regional Condition D.5) – Use of NWP 14, 23, and 33 is prohibited for any project in WOTUS that support anadromous fish, or in those waters that previously supported such fish and where restoration of fish migrations and populations is possible. The established limits for these waters are listed in Appendix C of the Regional Conditions and include adjacent and tributary waters located within 1,000 feet of these identified waters.
- > Culvert Restrictions for Perennial Streams (Regional Condition E) – For projects involving construction of a new culvert or replacement of an existing culvert on a perennial stream, culvert design must comply with all applicable restrictions under Regional Condition E. Culvert restrictions are not required for the extension of existing culverts on perennial streams.
- > Mitigation (Regional Condition H) – A compensatory mitigation plan is required for projects that result in an adverse impact to 0.1 acre or more of wetlands and/or 100 LF or more of non- tidal stream. For a total linear project, if the sum of impacts from all individual single and complete projects meets or exceeds 0.1 acre of wetland and/or 100 LF of stream, mitigation is required for all impacts that would result from construction of the total linear project.

The preferred form of compensatory mitigation is the purchase of stream and/or wetland credits from a USACE approved commercial mitigation bank. All impacts to wetlands must be calculated and reported in acres. Stream impacts must be calculated separately and reported in both LF and acres.

## *Guidebook Revision History*

Revision Description	Relevant Sections	Revision Date
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Updated Acronyms, Hyperlinks	All	12/09/2020
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