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NEW NATIONWIDE PERMITS PUBLISHED

***Washington Post:* “White House relaxes rules on protection of wetlands.”**

***The Wall Street Journal:* “Wetlands rules were eased by Bush, and developers no longer have to restore or create an acre of wetlands for every one they fill or drain.”**

***U.S. Army Corps Press Release:* “U.S. Army Corps of Engineers reissues Nationwide Permits, strengthens commitment to wetlands protection, no net loss.”**

What Actually Happened?

No significant changes for the development industry in Northern Virginia were published.

On the 1/2 acre impact maximum threshold for Nationwide Permits (NWP) -- is it still in place for residential and commercial development?

Washington Post: “Similarly, the Clinton administration had slashed the maximum damage allowed by general permits for three acres of wetlands to a half-acre; the Bush administration is maintaining the lower limit for residential developments, but not for commercial development.”

U.S. Army Corps of Engineers: “The reissued NWPs maintain the protective acreage thresholds established in 2000, which reduced permissible acreage impacts under a nationwide permit from 3 acres to .5 acre, to help ensure minimal impacts to the aquatic environment.”

What’s the Real Truth?

One-half acre is still the maximum impact allowed for development activities – commercial or residential. Nothing changed in this respect, the *Post* is simply incorrect.

14088-M Sullyfield Circle, Chantilly, Virginia 20151

Phone 703.631.5800 Fax 703.631.5804

Web Page <http://www.wetlandstudies.com> E-mail contactus@wetlandstudies.com

Other Issues With Misinformation:

Mitigation is still required. The Corps clearly stated what has been a standard practice – the Program must achieve a 1:1 functional replacement of wetlands. Individual projects can use uplands buffers or preservation of threatened wetlands as compensatory mitigation in lieu of wetlands restoration or creation on a case by case basis. Nothing really changed. Creation or restoration of wetlands on most projects impacting more than 1/10 acre will still be required, with the mitigation for larger impacts offsetting the uncompensated impacts of projects with less than 1/10 of an acre impact.

300 l.f. Stream Length Restriction – only applies to perennial streams. On a case by case basis the COE can allow NWP's to impact more than 300 l.f. of intermittent and ephemeral streams. The COE had this flexibility in its Preamble to the current NWP's. Despite the press reports – all the COE did was clarify its existing discretion by placing it more prominently in the NWP's.

What's Going On?

Every five years the NWP program expires. The current program expires on February 11, 2002. To complicate matters, some NWP's were on a different schedule. So, all Nationwides except 7, 12, 14, 27, 31, 40, 41, 42, 43 and 44 will expire on February 11, 2002. The rest of the existing NWP's expire on March 18, 2002. The new NWP's will become effective on March 18, 2002. During this gap, applications will be accepted and projects evaluated, but no permits issued for NWP's that expired. This confusion will end soon – all NWP's will become effective on March 18, 2002 and expire on March 19, 2007.

While numerous changes in the NWP program were made, it is our opinion – despite all the rhetoric on both sides of the issue – no significant change will be felt by the development industry in Northern Virginia.

For those who want to learn more about the NWP changes, enclosed are:

- USACE's News Release;
- Questions and Answers
- Comparison Chart of 2001 proposal vs. 2002 publication

For the diehards:

Access the full text in the January 15, 2001 Federal Register at:
http://www.access.gpo.gov/su_docs/aces/aces140.html

Select: (1) Browse; (2) 2002; and (3) January 15. Scroll down to “Engineers Corps.” The entire document is approximately 85 pages long and will take awhile to download. It’s available in both text and pdf formats, the pdf format is recommended.

You can also attend NAIOP’s February 12, 2002 Seminar on this subject, (flyer enclosed.)

CHESAPEAKE BAY PRESERVATION ACT CHANGES

For those of you that missed the announcement that on December 10, 2001, the Chesapeake Bay Local Assistance Board (CBLAB) adopted new regulations, effective January 10, 2002.

Localities have a year to modify local ordinances to reflect these changes – some of which are optional. Stay attentive to every locality’s regulatory process where you work. Changes expected include:

- New definitions of the Resource Protection Area (RPA) that use either a new map of perennial streams prepared by the locality or new requirements and criteria to field identify perennial streams instead of using tributary streams depicted on USGS Quad maps, as a core RPA component. This will likely cause many streams, not currently part of an RPA, to become RPA components – with a 100-foot buffer on each side of the stream and contiguous wetlands. (For those unfamiliar with RPAs, you cannot build in these areas except for a few exempt uses without obtaining an exception.) The result will be uncertainty during this transition period, and more expensive studies will be required during the feasibility period prior to site acquisition.
- Public hearings for all RPA exceptions.

If you are in the land development process during this transition period, protect yourself by increasing your chances of being vested before regulatory changes occur by getting RPA plans, site plans, subdivision plans, etc. approved and support the industry by participating in public hearings when they occur.

For Further Information

Call or Email Wetland Studies and Solutions, Inc. at:

Mike Rolband at mrolband@wetlandstudies.com /703-631-5800, Ext. 103, or
Mark Headly at mheadly@wetlandstudies.com /703-631-5800, Ext. 115.

Or call your WSSI Project Engineer, Scientist or GIS Specialist.

WSSI has provided wetlands consulting on 60,000+ acres comprising over 1,100 sites in Northern Virginia, D.C. and Maryland and has created over 600 acres of wetlands in three wetlands banks and 45 stream and wetlands mitigation projects in this area since its inception in 1991. Its team of over thirty engineers, scientists, technicians, GIS/survey specialists and administrative staff take a holistic approach to environmental issues associated with real estate development and public works projects, integrating the practical constraints of economics and land plan requirements with the need to satisfy local, state, and federal regulatory requirements. For more information about WSSI, contact (703) 631-5800 or visit our web site at www.wetlandstudies.com