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construction notification process; and 4) notification to non-federal applicants on need for historic
properties consultation.

First, the Corps is proposing to remove the 300-linear-foot limit for losses of stream bed and use instead
a 1/2-acre limit and pre-construction notification (PCN) requirements.
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 This change would apply to
NWPs 21, 29, 39, 40, 42, 43, 43, 44, 50, 51, and 52. The Corps requests comment on switching to the
1/2 -acre limit combined with reliance on the PCN process and changes to the mitigation general
condition (see below) to continue to ensure the program results in no more than minimal individual and
cumulative adverse environmental effects. The Corps also requests comment on situations where linear
feet would more accurately represent stream bed loss. If stream bed loss should continue to be
calculated in linear feet, the Corps requests legal, regulatory, policy or scientific bases for doing so. The
Corps also requests comment on an alternative hybrid approach that would continue to quantify losses
of stream bed in linear feet if the authorized activities would only result in the loss of stream bed.

Second, the Corps is proposing to modify the General Condition for Mitigation (GC 23) to add a 1/10-
acre threshold for requiring compensatory mitigation for losses of stream beds that require pre-construction notification (unless an activity-specific waiver is issued). The Corps justifies this change to
strengthen mitigation requirements for the NWPs affected by the change from 300-linear-foot limit to
the proposed ½-acre limit. The Corps asserts that the 1/10-acre threshold has been effective for
mitigating wetland losses. The Corps is proposing other changes to this general condition, such as
ĐŚĂŶŐŝŶŐ ƉĂƌĂŐƌĂƉŚ ;ĞͿ ƚŽ ƌĞĂĚ ͞ŽŶůǇ ŶĂƚŝǀĞ ƐƉĞĐŝĞƐ ƐŚŽƵůĚ ďĞ ƉůĂŶƚĞĚ͟ ŝŶƐƚĞĂĚ ŽĨ ͞ƌĞƐƚŽƌed riparian
ĂƌĞĂƐ ƐŚŽƵůĚ ĐŽŶƐŝƐƚ ŽĨ ŶĂƚŝǀĞ ƐƉĞĐŝĞƐ͟ ĂƐ ŝƐ ĐƵƌƌĞŶƚůǇ ƌĞƋƵŝƌĞĚ͘ The Corps asserts that this would allow
for the normal plant community development process to occur, which will likely include some non-native species.

Third, the Corps is proposing to modify the pre-construction notification process. Some of the changes
are highlighted below.
x The proposal would enable work under NWPs 21, 49, and 50 proceed if the district engineer
does not respond to the PCN within 45 daysͶconsistent with other NWPs that require PCNs.
x The proposal also modifies the different requirements of a complete PCN. One of the changes
would clarify that the PCN must identify non-PCN NWPs that are used to authorize any part of
the proposed project or related activity, including separate and distant crossings of waters and
wetlands for linear projects. The district engineer will use this information to evaluate
cumulative impacts of the linear project.
x Another proposed change would ƌĞƉůĂĐĞ ͞perennial͕ ŝŶƚĞƌŵŝƚƚĞŶƚ͕ ĂŶĚ ĞƉŚĞŵĞƌĂů ƐƚƌĞĂŵƐ͟ ǁŝƚŚ
͞ƐƚƌĞĂŵƐ͟ ĂŶĚ ƌĞƋƵŝƌĞ Ă delineation of those streams in the PCN. This delineation of streams
would be used to calculate the area of stream bed that would be filled or excavated and would
contribute to the total loss of stream bed count (plus the losses of any other non-tidal waters
and wetlands). The Corps would rely on the proposed 1/2 -acre limit for NWPs 21, 29, 39, 40,
42, 43, 44, 50, 51, and 52 (as discussed above).

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 The Corps presents its rationale for this change: 1) the number of tools available (such as the PCN process,

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Fourth, the proposal would require the Corps to notify a non-federal applicant if National Historic
Preservation Act consultation (under Section 106) is necessary within 45 days of the determination of a
complete application.

Changes to Selected NWPs

In this section, AGC highlights some proposed changes to a selection of NWPs that the construction
industry uses, based on prior feedback from AGC members. Note: This is not a comprehensive list of all
the changes to the NWPs. Furthermore, some NWPs that contractors use, such as NWP 33 ʹ Temporary
Construction, Access and Dewatering, may have no proposed changes to the text. Please refer to the

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Proposed New NWPs

The Corps is proposing to add five new NWPs. The first two, A and B, relate to mariculture activities.
The following two, C and D, reflect changes to NWP 12 to split that permit into three separate permits.
NWP 12 would authorize oil or natural gas pipeline activities. NWP ͞C