

May 15, 2026

The Honorable Lee Forstgren
Acting Assistant Secretary of the Army for Civil Works
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

RE: Request for Input on Potential Future Changes to Nationwide Permits; docket number COE-2026-0001

Dear Mr. Forstgren:

The undersigned organizations are pleased to provide comments on the U.S. Army Corps of Engineers' (the Corps) request for input on potential future changes to Nationwide Permits (NWP) (docket number COE-2026-0001). We appreciate the Corps' decision to follow the process many of our organizations previously requested regarding the proposal to reissue and modify NWPs.¹ On January 8, 2026, the Corps reissued and modified 56 existing NWPs and created one new NWP.² After reauthorizing the NWPs, which became effective on March 15, 2026, the Corps is now soliciting recommendations before initiating a potential second rulemaking. This process provides an opportunity to consider targeted improvements raised in our prior letter and individual association letters but not fully evaluated in the recent rulemaking.

Now more than ever, NWPs play a critical role in the accelerated build-out of infrastructure, including electricity transmission and distribution, as well as the water systems needed to serve the growth of data centers and artificial intelligence. Though this presents a ripe opportunity to pursue measured improvements to the NWP program, it remains of utmost importance to preserve the program's long-term integrity and effectiveness.

There are significant opportunities for reform in the NWP program. For example, expanding NWP eligibility and improving program efficiency would align with the Administration's prioritization of permitting reform, including recent Presidential actions directing agencies to modernize environmental review processes, accelerate permitting timelines, and reduce unnecessary delays and inefficiencies in project approvals.³ The January 2026 rule did not modify certain program elements, including acreage and mitigation thresholds, often citing the need to ensure compliance with the statutory requirement that NWPs authorize only activities with minimal adverse environmental effects.⁴ However, the existing record indicates that these thresholds are not the primary mechanism ensuring minimal effects and, in many

¹ Industry Coalition Comment Letter on Proposal to Reissue and Modify Nationwide Permits, Docket No. COE-2025-0002 (July 18, 2025) (regarding *Reissuance and Modification of Nationwide Permits*, 91 Fed. Reg. 768 (Jan. 8, 2026)).

² 91 Fed. Reg. 768 (January 8, 2026).

³ See, e.g., The White House, *Updating Permitting Technology for the 21st Century* (Apr. 15, 2025) (directing agencies to modernize permitting systems and accelerate environmental reviews).

⁴ 91 Fed. Reg. 768 (Jan. 8, 2026).

cases, reflect policy judgments. There are other opportunities for improvement in these mechanisms as well.

Building smart, modern, and resilient infrastructure through innovation and responsible development is a top priority for the business community. NWP's play a critical role in supporting energy and mineral development, commercial and residential construction, and transportation projects by reducing delays, lowering costs, and supporting job creation. They also advance the Administration's goals of Executive Order 14154, "Unleashing American Energy,"⁵ the Executive Order on "Removing Regulatory Barriers to Affordable Home Construction,"⁶ and the Administration's America's AI Action Plan,⁷ all of which emphasize reducing unnecessary regulatory burdens, expediting permitting, and providing greater certainty. Without NWP's, many projects would require more costly and time-intensive individual permits under Section 404 of the Clean Water Act (CWA).

We therefore recommend that the Corps consider the following changes for potential inclusion in a revised program:

- **Increase acreage thresholds.** The Corps should increase the acreage limits that determine eligibility for coverage under many NWP's. Acreage alone is not a reliable indicator of environmental impact, and the NWP program already includes multiple safeguards including Pre-Construction Notification (PCN) requirements, discretionary authority, regional conditions, and activity-specific limits, to ensure compliance with CWA Section 404(e). Available data indicate that most NWP-authorized impacts are well below existing thresholds, reflecting the Corps' longstanding requirements to avoid and minimize impacts.⁸ As a result, modest increases in thresholds can be implemented while continuing to ensure that authorized activities result in no more than minimal adverse environmental effects.
- **Increase mitigation thresholds.** The Corps should raise the minimum impact thresholds that trigger compensatory mitigation. The Corps maintained existing mitigation triggers in the final rule, but these thresholds often require mitigation for very small impacts, increasing costs and delays without corresponding environmental benefits. Many NWP-authorized impacts are less than one-tenth of an acre, and mitigation ratios frequently exceed one-to-one. As a result, compensatory mitigation requirements for these small impacts can exceed what is necessary to achieve the longstanding federal policy goal of "no net loss" of wetlands and other aquatic resources.⁹ Increasing the wetland and stream

⁵ Executive Order 14154, "Unleashing American Energy" (Jan. 20, 2025).

⁶ Executive Order No. 14394, Removing Regulatory Barriers to Affordable Home Construction (Mar. 13, 2026).

⁷ The White House, America's AI Action Plan (July 2025).

⁸ U.S. Army Corps of Engineers, Institute for Water Resources, *The Mitigation Rule Retrospective: A Review of the 2008 Regulations Governing Compensatory Mitigation for Losses of Aquatic Resources* (2015), at 10–11 (noting that most permitted impacts fall below thresholds due to avoidance and minimization requirements).

⁹ Federal wetlands policy has long been guided by the goal of "no net loss" of wetlands, under which unavoidable impacts are offset through restoration, creation, or enhancement of aquatic resources. See, e.g., Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines (1990); National Wetlands

compensatory mitigation thresholds in General Condition 23, particularly in proportion to any increase in acreage thresholds, would reduce delays associated with obtaining mitigation credits while maintaining environmental protection. Failure to do so may discourage otherwise eligible low-impact projects due to mitigation costs and availability constraints.

- **Establish stand-alone NWPs for appropriate activities.** The Corps should establish stand-alone NWPs for categories of activities that are currently authorized under broader permits but share consistent design characteristics and impact profiles. Sectors such as data center development, single-family residential construction, and other common, low-impact activities can be more effectively addressed through activity-specific terms and conditions. Establishing stand-alone NWPs would improve clarity and predictability, allow for more tailored permit requirements, and reduce the need for case-by-case review, while ensuring compliance with the statutory requirement that authorized activities result in no more than minimal adverse environmental effects. In addition, activity-specific NWPs would enable the Corps to receive more focused and relevant information from affected sectors in future rulemakings, improving the administrative record and supporting more targeted and efficient program updates over time.
- **Allow greater flexibility to combine NWPs and individual permits.** The Corps should revise its regulations and policy to more broadly authorize the use of NWPs alongside individual permits for discrete components of the same project. Under current practice, if any portion of a project exceeds NWP thresholds, the entire project is often required to obtain an individual permit. Although 33 C.F.R. § 330.6(d) nominally allows combining permit types, it does so only where NWP-eligible components have independent utility, a standard that is difficult to meet for linear infrastructure projects. This limitation creates unnecessary inefficiencies, delays, and litigation risk without corresponding environmental benefits. Allowing more flexible use of NWPs alongside individual permits would improve permitting efficiency, reduce administrative burden, and provide greater clarity and predictability for applicants while maintaining compliance with the statutory requirement that authorized activities result in no more than minimal adverse environmental effects.
- **Accelerate timelines.** If the Corps fails to meet PCN timelines, project applicants should receive expedited permit processing to avoid unnecessary delays. These timelines include those in General Condition 18 for notifying permittees within 45 days if their project may affect listed species or habitat, followed by 60 days for informal consultation and 135 days for formal consultation. Greater transparency, clearer expectations for timely review, and improved interagency coordination would help ensure that the efficiencies intended by the NWP program are realized in practice.

NWPs are essential for meeting the nation's housing, energy, and infrastructure needs. Economic growth driven by artificial intelligence, data centers, advanced manufacturing, and continued demand for housing and domestic resource development will require significant

Mitigation Action Plan (2002). This policy seeks to balance permitted impacts with compensatory mitigation so that overall wetland acreage and functions are maintained or increased.

increases in energy, water, and infrastructure development. These needs can be met more efficiently through a well-functioning and streamlined NWP program.

Our organizations appreciate the opportunity to provide this feedback and look forward to continued engagement.

Sincerely,

American Cement Association
American Exploration & Mining Association
American Farm Bureau Federation
American Gas Association
American Road & Transportation Builders Association
Associated Builders and Contractors
Associated General Contractors of America
National Association of Home Builders
National Association of Realtors
National Federation of Independent Business
National Mining Association
National Stone, Sand & Gravel Association
The Fertilizer Institute
U.S. Chamber of Commerce