

Regulatory Program Workshop

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US Army Corps of Engineers
BUILDING STRONG®



Standard Permit Review



- Regulatory Authority
- Permit Timelines
- Permit Evaluation Criteria
- Public Interest Review Factors
- 404(b)(1) Guidelines
- Mitigation Sequencing
- Agency Coordination
- Common Pitfalls



Standard Permit

- Individual Permits 325.5(b)
 - ▶ Standard Permits and Letters of Permission (LOPs)
 - SPK's Minor Impact LOP – March 1, 2010
 - ▶ Standard Permits - For projects with more than minimal impacts to aquatic resources
 - ▶ Requires public notice, public interest review, NEPA compliance (33 CFR 325, Appendix B), and a 404(b)(1) Alternatives Analysis
 - ▶ Permit may be valid up to 5 years. Authorize the work and the resulting use (325.6(a)).



Standard Permit Timeline

- Completeness Determination, 15 days.
- Public Notice issued, within 15 days of receipt of federally complete application.
- Public Notice comment period, 15-30 days.
- Permit decision within 120 days of Federally-complete application, or 30 days after consultation complete.

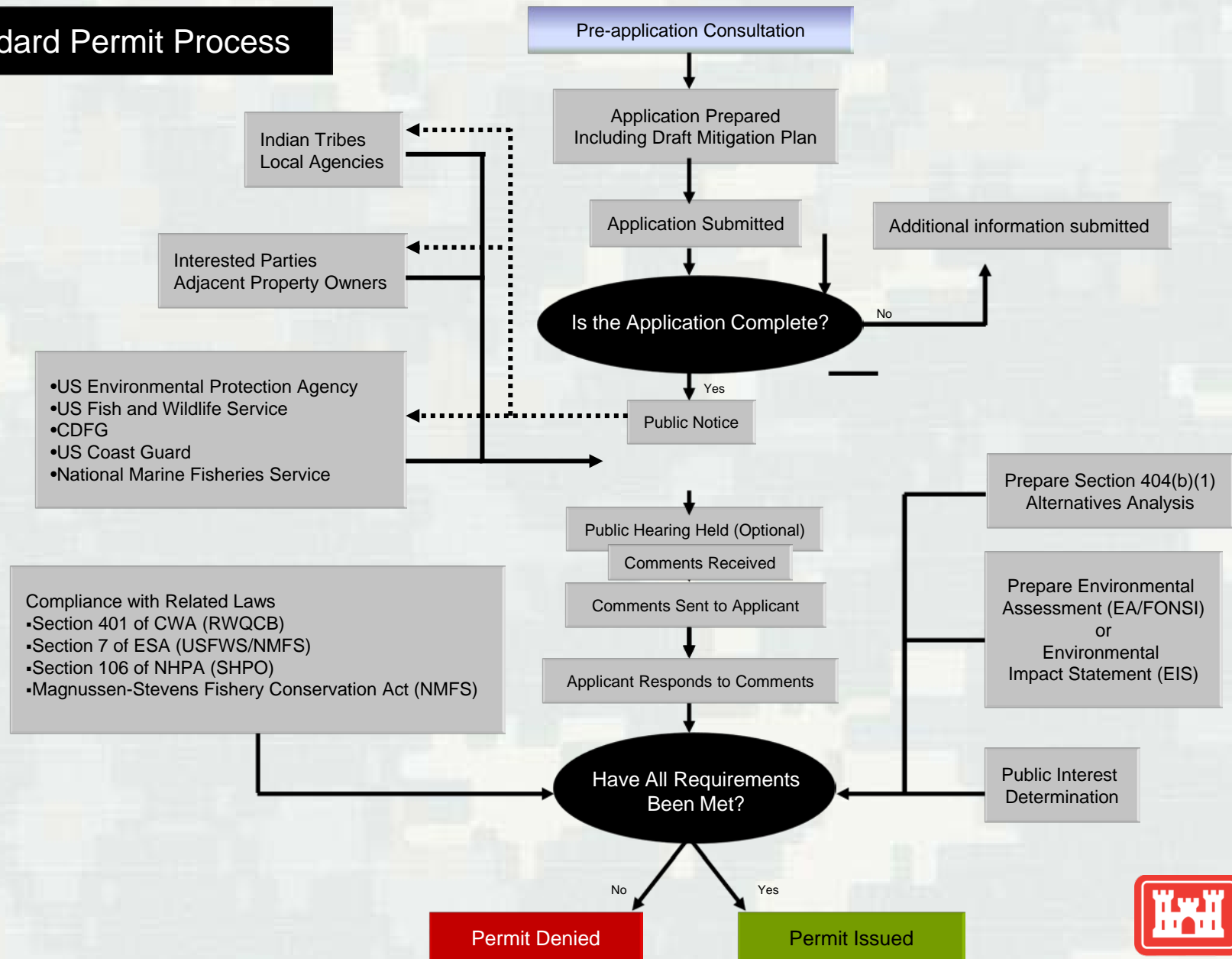


Standard Permit Process

- Pre-application consultation with Corps (optional but recommended)
 - Complete application submitted to Corps
 - Corps review starts
 - ▶ Publish public notice (usually 30 days)
 - ▶ Public hearing (optional)
 - ▶ Consultation with other agencies
 - Corps decision process
 - ▶ Review and respond to public notice comments
 - ▶ Resolve outstanding issues (applicant, agencies, public)
 - ▶ Prepare permit decision documentation, including public interest review, 404(b)(1) alternatives analysis, NEPA compliance (EA or EIS), compliance with related laws
- ➔ Issue or deny permit



Standard Permit Process



Letters of Permission

- Issued by a district for a specific activity through an abbreviated processing procedure
 - ▶ Requires coordination with resource agencies and a public interest determination
 - ▶ No public notice necessary
 - ▶ Categorically excluded under NEPA
- Procedure can be established by HQ or District
- LOP procedures in CA:
 - ▶ Section 10 RHA only activities (boat docks)
 - ▶ Section 404 CWA “Minor Impact” activities



Standard Permit Decision

To be permitted, Corps must find the activity:

- Is not contrary to the public interest
- Is the least environmentally damaging alternative (compliance with 404(b)(1)s)
- Complies with NEPA
- Complies with other related laws, including ESA and NHPA



Public Interest Evaluation Factors

- Conservation
- Economics
- Aesthetics
- Environmental Concerns
- Fish & Wildlife
- **Historic & Cultural Resources**
- Food Production
- Recreation
- Land Use
- Water Quality
- Water Supply
- Navigation
- **Rare/Endangered Species**
- Safety
- Energy Needs



Section 404(b)(1) Guidelines

- Projects MUST Comply
- Compliance Requires Showing
 - ▶ Least Environmentally Damaging Practicable Alternative
 - ▶ Compliance with Special Restrictions
 - ▶ Not contribute to Significant Degradation of Waters
 - ▶ Adoption of Appropriate and Practicable Mitigation



404(b)(1)s Cont'd

- **Corps determines the overall project purpose.**
- If a project is 1) not water dependent and 2) the project proposes to discharge dredged or fill material into a “special aquatic site” **applicants must rebut** the presumption that a less environmentally damaging practicable alternative (LEDPA) exists. 40 CFR 230.10(a)(3)
- Compensatory mitigation may not be used to allow avoidable impacts.
- Identify LEDPA then identify compensatory mitigation.



404(b)(1)s Cont'd

- Alternative Analysis 40 CFR 230.10(a)(2)
 - ▶ Does it meet the overall project purpose?
 - **Corps decides project purpose**
 - ▶ Is it practicable?
 - Is it available?
 - Is it capable of being done after taking into account:
 - ▷ Cost
 - Itemized implementation costs
 - ▷ Existing technology
 - ▷ Logistics
 - Inadequate access/traffic patterns on-site



404(b)(1)s Cont'd

- Tips for submittals
 - ▶ Coordinate early with Corps
 - ▶ On- and off-site alternatives – Developed in coordination with Corps
 - ▶ Detailed alternative specific site plans
 - ▶ Itemized implementation costs
 - ▶ Alternative-specific information
 - Acres of impacts, avoidance, total WOUS
 - Number of housing units
 - Square footage of commercial space
 - Logistic or technological constraints



Mitigation Sequencing

- ✓ Avoid
- ✓ Minimize
- ✓ then
- Compensate
 - ▷ Compensatory mitigation only for unavoidable impacts



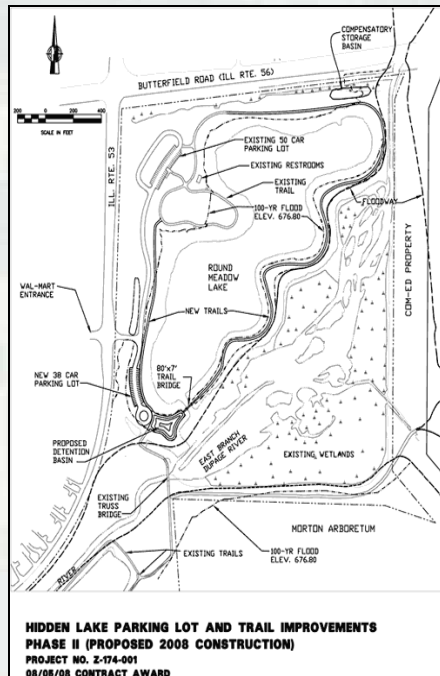
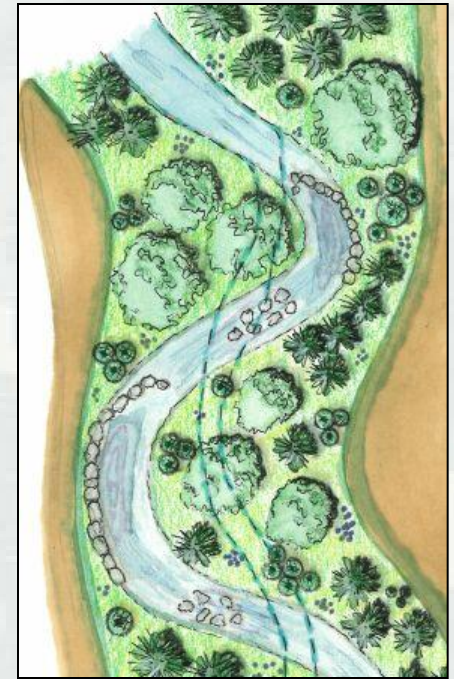
Mitigation

- Mitigation is required for impacts to waters of the US (33 CFR Part 332 – Mitigation Rule)
- Corps defines mitigation as avoidance, minimization and compensation
 - ▶ Avoidance – avoiding the impact
 - ▶ Minimization – minimizing impact through BMPs and other measures (fencing, signage, CEs)
 - ▶ Compensation – replacing unavoidable impacts by through restoration or creation
- Goal is No Net Loss of Wetlands



Mitigation Hierarchy

- Mitigation Banks
- In-Lieu Fees
- Permittee-responsible mitigation under a watershed approach
- On-site and/or in-kind permittee-responsible
- Off-site and/or out-of-kind permittee responsible



What is Mitigation?

- The compensation of resources lost as a result of a permitted activity
 - ▶ Establishment
 - ▶ Restoration
 - ▶ Enhancement
 - ▶ Preservation
- Focus on functional replacement on a watershed level



Compliance with Other Related Laws

- National Environmental Policy Act
- Section 7 of the Endangered Species Act
- Magnusson-Stevens Fishery Conservation Act
- Section 106 of the National Historic Preservation Act
- Section 401 of the Clean Water Act



ESA - Section 7 and Magnuson-Stevens Act Compliance

- Interagency Cooperation:
 - ▶ Each Federal agency shall ensure that any (discretionary) action it intends to authorize, fund, or carry out is not likely to jeopardize threatened or endangered species or result in the destruction or adverse modification of designated critical habitat.
- No Effect
- May Affect, Not Likely to Adversely Affect
- May Affect, Likely to Adversely Affect
- Don't forget about effects to EFH



William N. Roston



Section 106 Consultation

- Waters of the U.S. and Uplands directly affected where:
 - ▶ Work would not occur BUT FOR permit; and
 - ▶ Work INTEGRALLY RELATED to the regulated activity; and
 - ▶ Work DIRECTLY ASSOCIATED with regulated activity
- Limit of Corps' responsibility to investigate and identify historic properties
- Don't forget Tribal Consultation. Corps may conduct additional consultation if necessary.
- Use SPK's Section 106 Consultation Guidelines



Agency Coordination

- Decisions are made in coordination with
 - ▶ Public input
 - ▶ Other federal agencies (USEPA, BLM, BOR, USFWS)
 - ▶ State agencies
 - ▶ County
 - ▶ Tribes
 - ▶ Environmental groups
 - ▶ Other interested parties



Common Pitfalls



- Permits are for defined projects.
- Corps permits and decisions do not *need* to accommodate local laws and policies.
- Insufficient information to begin permit process.
- Must have complete and/or updated project description.
- Changes to project plans may require a new permit.
- Project maps don't clearly show project and impacts relative to WOUS.
- Understand that Consultation may take considerable time, and are not in Corps control.
- Mitigation Plan must be approved before issuance of an SP.



Common Pitfalls

- Mitigation:
 - ▶ SPD Mitigation Ratio Setting Checklist
 - ▶ BMP's \neq Compensation
- Project Description:
 - ▶ 5 W's + How
 - ▶ Describe work
- Impact Maps:
 - ▶ Mirror delineation maps
 - ▶ Direct/Indirect, Permanent/Temporary
- Delineation Maps:
 - ▶ No JD calls
 - ▶ SPK Minimum Standards/SPD Mapping Standards



Common Pitfalls

- Avoidance & Minimization:
 - ▶ Project design + alternatives
 - ▶ Work windows
- ESA:
 - ▶ BO must include 404/10 permit action
 - ▶ Scope of Analysis
- Bridge Work:
 - ▶ USCG, General Bridge Act
 - ▶ Navigation Study



Questions?



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<http://www.spk.usace.army.mil/Missions/Regulatory.aspx>

<http://www.spk.usace.army.mil/Missions/Regulatory/Permitting/NationwidePermits.aspx>

