

PROCESSING OF INDIVIDUAL PERMITS

William Ness
Senior Project Manager, California South Section
U.S. Army Corps of Engineers, Sacramento District

January 15, 2021
Regulatory Program Workshop



US Army Corps
of Engineers®



INDIVIDUAL PERMITS

DA authorization issued following:

- Case-by-case evaluation of proposed project
- Determination that the proposed discharge is not contrary to the public interest

- Activities that cannot be authorized under a General Permit
- May have more than minimal individual or cumulative environmental impacts

Includes:

- Standard Permit (SP)
- Letter of Permission (LOP)



STANDARD PERMIT

- Individual permit issued through public interest review procedures
 - Public Notice
 - Receipt of comments
 - Process described in 33 CFR 325
- Projects that don't qualify for NWP, RGP, or LOP process
- Typically for projects that have more than minimal impacts on the aquatic environment



STANDARD PERMIT - COMPLETE APPLICATION



33 CFR 325.1(d)

- Signed Application Form (ENG Form 4345)
(<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/>)
- Complete description of the proposed activity including necessary drawings, sketches, or plans sufficient for public notice
- Location
- Purpose and Need
- Scheduling of Activity



COMPLETE APPLICATION

- Names and Addresses of Adjoining Property Owners
- Locations and Dimensions of Adjacent Structures
- List of authorizations required by other federal, interstate, state, or local agencies for the work, including all approvals received or denials already made
- Compensatory Mitigation Plan
(<https://www.spd.usace.army.mil/Portals/13/docs/regulatory/mitigation/MitMon.pdf>)



COMPLETE APPLICATION

- All activities which the applicant plans to undertake which are reasonably related to the same project and for which a DA permit would be required should be included in the same permit application
- If the activity would involve dredging in navigable waters of the United States, the application must include a description of the type, composition and quantity of the material to be dredged, the method of dredging, and the site and plans for disposal of the dredged material



COMPLETE APPLICATION



- If the activity would include the discharge of dredged or fill material into the waters of the United States or the transportation of dredged material for the purpose of disposing of it in ocean waters the application must include the source of the material; the purpose of the discharge, a description of the type, composition and quantity of the material; the method of transportation and disposal of the material; and the location of the disposal site
- If the activity would include the construction of a filled area or pile or float-supported platform the project description must include the use of, and specific structures to be erected on, the fill or platform

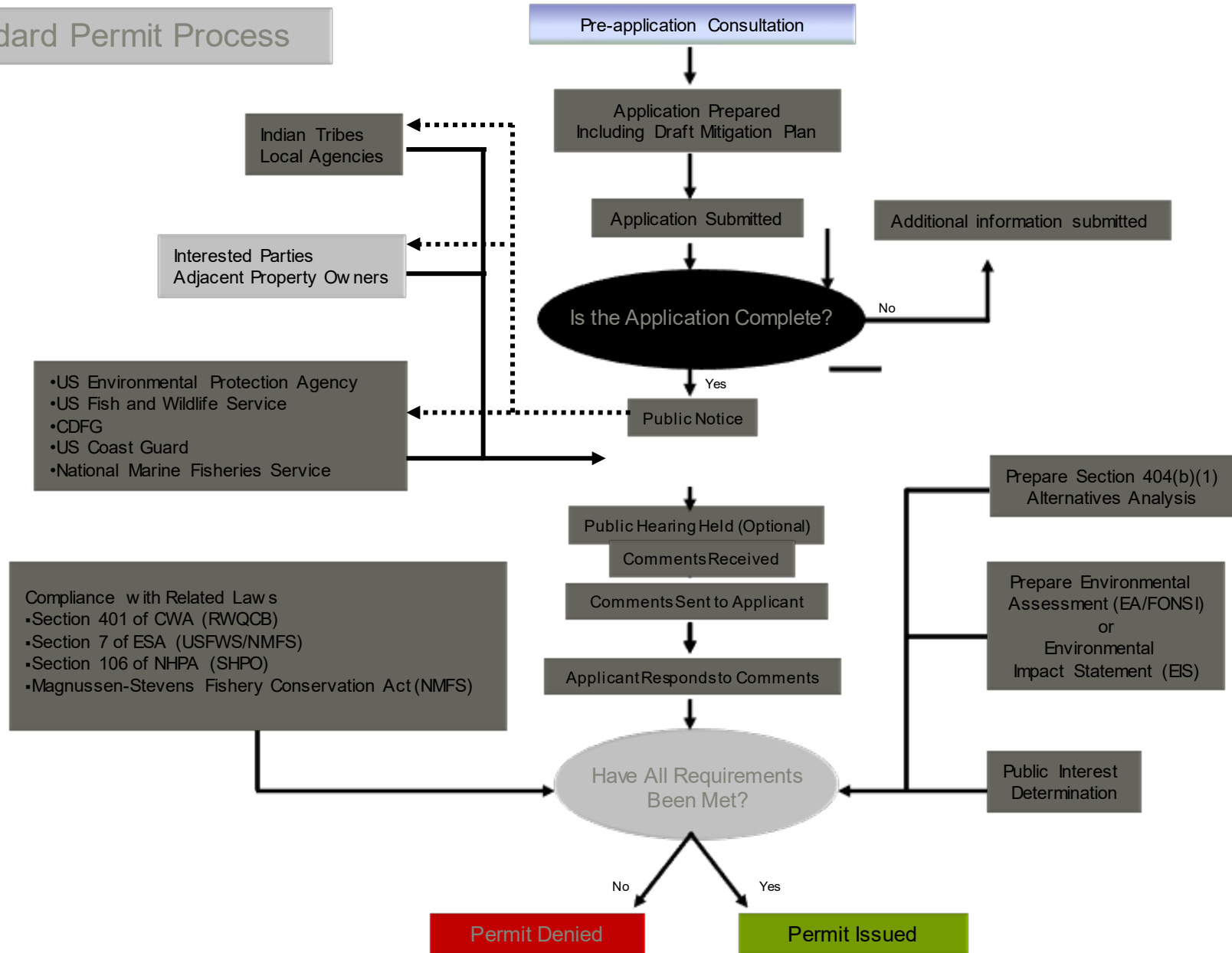


COMPLETE APPLICATION

- If the activity would involve the construction of an impoundment structure, the applicant may be required to demonstrate that the structure complies with established state dam safety criteria or that the structure has been designed by qualified persons and, in appropriate cases, independently reviewed (and modified as the review would indicate) by similarly qualified persons
- For activities involving discharges of dredged or fill material into waters of the United States, the application must include a statement describing how impacts to waters of the United States are to be avoided and minimized



Standard Permit Process





STANDARD PERMIT PROCESS

- Pre-application consultation with Corps (optional but recommended)
- Applicant submits complete/signed ENG 4345 and required information (33 CFR 325.1(d))
- Corps issues Public Notice, within 15 days of receiving complete application
 - Agencies, interested parties and adjacent property owners
 - Comment period of 15-30 days, may be extended
 - Received comments are provided to applicant
- Corps requests any additional information necessary to complete permit process



STANDARD PERMIT PROCESS

- Corps initiates tribal, NHPA, ESA or EFH consultations, as appropriate
- Corps evaluates projects for
 - Section 404(b)(1) Guidelines
 - Section 401 application completeness
 - Section 408 permission, if applicable
- Compensatory mitigation plan is finalized



STANDARD PERMIT PROCESS

- Corps prepares combined decision document and determines:
 - Compliance with NEPA (EA/EIS)
 - Compliance with Section 404(b)(1) Guidelines (if Section 404 permit required)
 - Public Interest Review
- May require EIS if significant effects on human environment
- Permit will be issued if project complies with the Section 404(b)(1) Guidelines and is not contrary to the public interest.
- Permit Decision – Issue, Issue with modifications (special conditions) or deny



LETTER OF PERMISSION

- Individual permit issued through abbreviated processing procedure
 - Typically used for activities that are minimal impact but do not meet GP or NWP conditions
 - Does not require publishing of an individual public notice
 - Categorically excluded from NEPA (33 CFR 325, Appendix B(6))
 - Still requires public interest evaluation and, if a 404 permit is required, compliance with the 404(b)(1) guidelines



LETTER OF PERMISSION

- Section 10 of RHA: proposed work would be minor, no significant individual/cumulative impacts, and should encounter not appreciable opposition
- Section 404 of the CWA after:
 - DE, through consultation develops a list of categories of activities proposed for authorization under LOP process
 - DE issues PN advertising proposed list and procedures, requesting comments and offering opportunity for public hearing.
 - 401 WQC has been issued/waived, and CZM consistency concurrence obtained or presumed on generic or individual basis



EXISTING SECTION 404 LETTERS OF PERMISSION



- LOP Process for California
- LOP Process for Nevada
- LOP Process for Utah
- LOP Process for the South Sacramento HCP

<https://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Letters-of-Permission/>



LETTER OF PERMISSION PROCEDURE FOR CA

- Sacramento District released Section 404 LOP procedures for CA:
([https://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/LOP-procedures9-16-2013FINAL\(rev\).pdf](https://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/LOP-procedures9-16-2013FINAL(rev).pdf)) – March 1, 2010 (revised September 16, 2013)
 - Loss of waters of the U.S. does not exceed 1 acre or 500 linear feet of streambed or bank
 - Loss of waters of the U.S. is compensated for at a minimum ratio of 2:1 for PRM or through in-lieu fee program and/or a minimum ratio of 1:1 at a Corps-approved mitigation bank
 - Must meet all applicable General Conditions



COMPLETE APPLICATION

- Applicant must have pre-application meeting with the Corps (<https://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/ref/pre-app-CA-04-01-2015.pdf?ver=2019-08-15-180448-480>)
- Application must include all information required for a standard permit application (33 CFR 325.1). Must also include the following:
 - Cover letter
 - Complete ENG Form 4345
 - Approved/preliminary JD (now can include AR verification)
 - Location map (other imagery)
 - Complete description
 - Area of WOUS directly/indirectly affected;
 - volume of fill material
 - Avoidance and minimization
 - Description of secondary/indirect and cumulative effects
 - Schedule
 - Documentation of pre-application meeting
 - Information on alternatives
 - Compensatory mitigation plan
 - Copies of state/local applications/approvals
 - Biological Assessment
 - Cultural Resources Report



LETTER OF PERMISSION PROCEDURE

- Corps reviews application in 15 days and
 - Notifies applicant if incomplete
 - Notifies applicant if project cannot be authorized by LOP
 - Notifies applicant if complete and project appears to meet LOP criteria, and begins agency coordination
- Agencies provide comments within 15 calendar days of receipt of notice
- Corps reviews comments, and if otherwise complete (ESA, EFH, NHPA, 401), makes determination whether LOP authorization is warranted within 30 days after comment period



LETTER OF PERMISSION PROCEDURE

- If activity meets criteria for authorization and would have overall minimal effects, LOP will be issued
- If at any time during the process the Corps determines the activity may not be authorized by a LOP, the Corps will immediately notify the applicant, terminate the LOP process, and proceed to an alternate permitting process
- Section 401 certification or waiver must be provided before any final LOP decision is made
- LOP will not be issued until all necessary certifications, consultations and/or authorizations have been completed or issued



LETTER OF PERMISSION

- LOP will be issued in letter form and will identify the permittee, authorized work, location of the work, statutory authority, any limitation on the work, construction time limit and a requirement for a report of completed work (33 CFR 325.5(b)(2)).
- A copy of the LOP general conditions will be attached and incorporated by reference into the LOP.



QUESTIONS?

21

21

