

U.S. Army Corps of Engineers Regulatory Program Overview

Development Impact Minimization Workshop

NCTCOG Office Arlington, TX
September 6, 2017

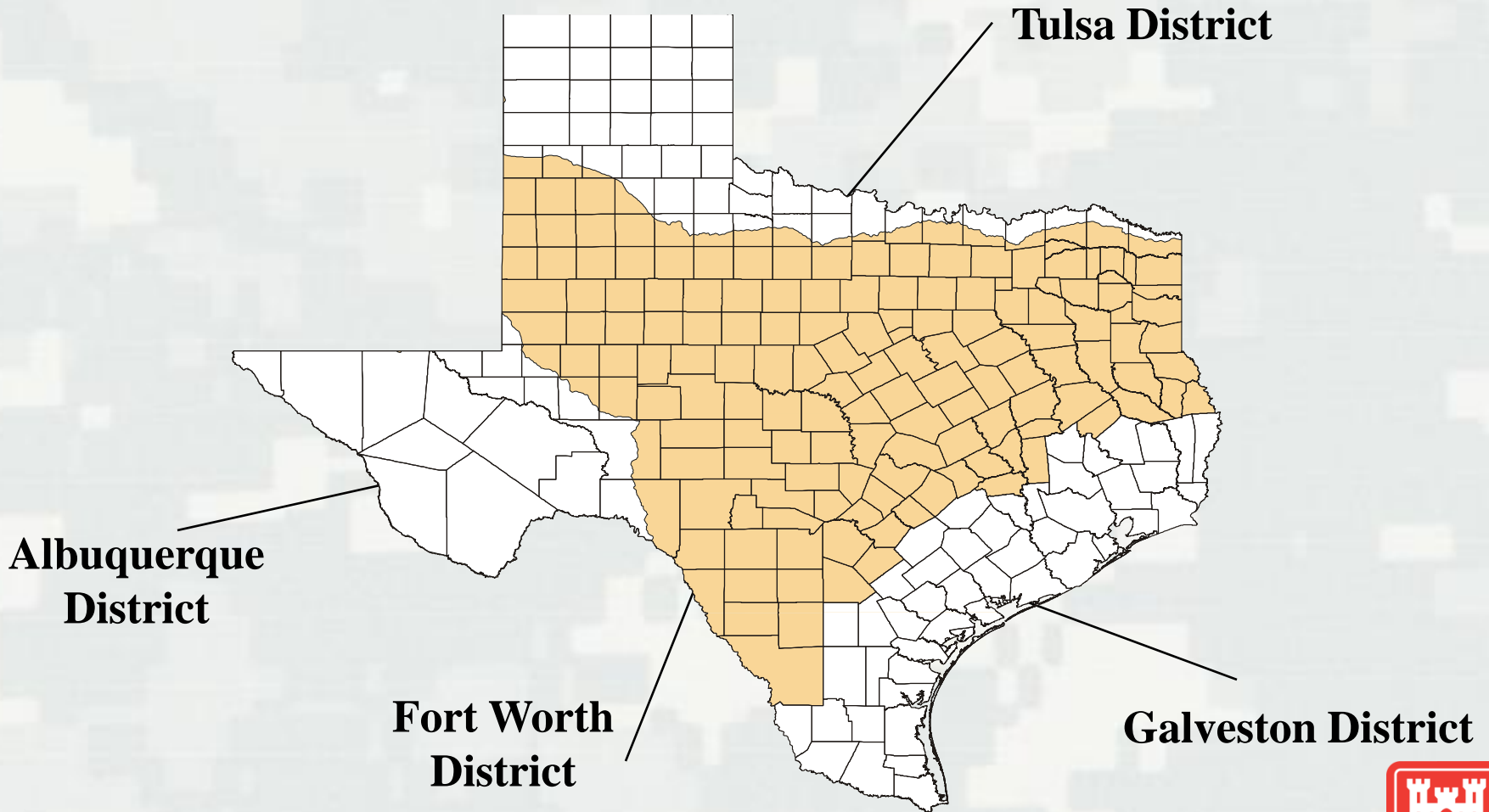
Barry Osborn
Regulatory Project Manager
Regulatory Division
Fort Worth District



US Army Corps of Engineers
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Corps Regulatory Program District Boundaries in Texas



Regulatory Program Authorities

Section 10 Rivers and Harbors Act of 1899 -Construction and dredging



Section 404 Clean Water Act – 1977
Discharge of dredged and fill material



Section 103 Marine Protection, Research and Sanctuaries Act – 1972 (Ocean Dumping Act) Transport and discharge of Dredged material



Regulatory Program Purposes

- **Sections 10** of the Rivers and Harbors Act of **1899** - Protect Navigation
- **Section 404** of the Clean Water Act of **1977**
Restore and maintain the physical, chemical and biological integrity of the Nation's waters
- **Section 103** of the Marine Protection, Research and Sanctuaries Act of **1972** - Protect marine resources associated with ocean disposal of dredged material



Regulatory Program Goals

- Protect the Aquatic Environment
- Render Fair and Reasonable Decisions
- Provide for Efficient Decision Making



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Rivers and Harbors Act of 1899

- Section 10 (**work in or affecting**)
 - ▶ Regulate the obstruction or alteration of navigable waters
 - Constructing structures in, over, under navigable waters
 - Excavation/dredging
 - Depositing material
 - Any other work that **affects** the course, location, condition, or capacity of navigable waters
 - ▶ Also applies to the construction of artificial islands or installations on the outer continental shelf



Clean Water Act

- **Section 404** - The Corps regulates the **discharge of dredged or fill material** into navigable waters at specified disposal sites.
- **Fill material** – replaces water with dry land or raises the bottom elevation of a waterbody.



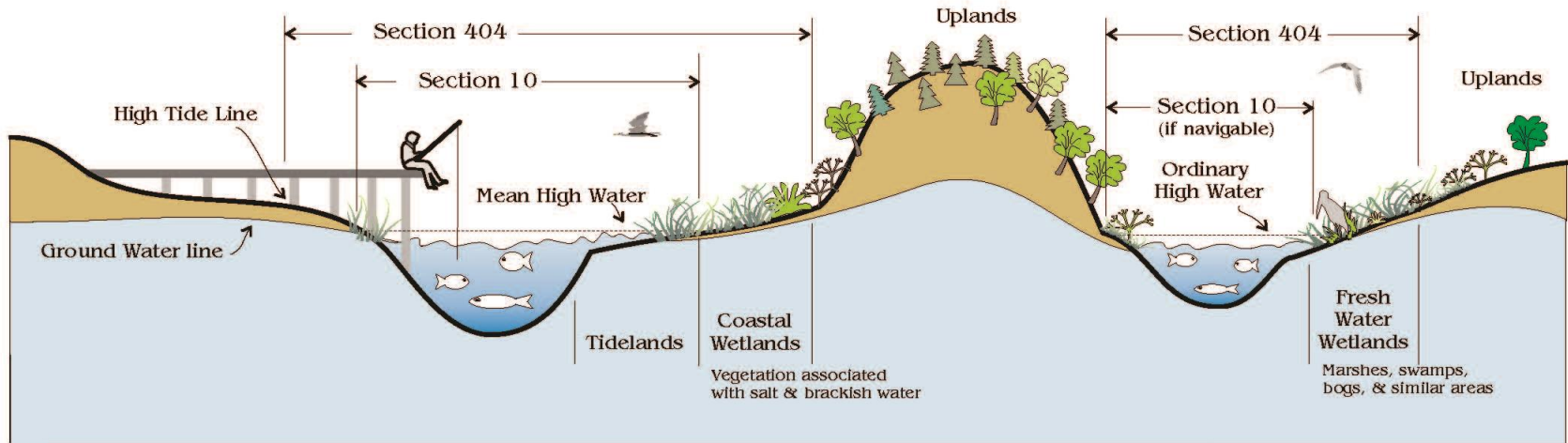
- **Dredged material** – any addition of dredged material into, including redeposit of dredged material **other than incidental fallback** within, waters of the United States.



CORPS OF ENGINEERS REGULATORY JURISDICTION

Tidal Waters

Fresh Waters



Typical examples
of regulated activities

Section 103 Ocean Discharge of Dredged Material

Ocean discharges of
dredged material

Section 404 Disposal of Dredged or Fill Material (all waters of the U.S.)

All filling activities, utility lines, outfall structures,
road crossings, beach nourishment, riprap,
jetties, some excavation activities, etc.

Section 10 All Structures and Work (navigable waters)

Dredging, marinas, piers, wharves,
floats, intake / outtake pipes,
pilings, bulkheads, ramps, fills,
overhead transmission lines, etc.

Waters of the United States

Two Primary Elements

- Exhibits specific physical features
 - Presence of **ordinary high water mark** in open non-tidal waters
 - Line on shore or bank established by water fluctuations
 - Examples: shelving, soil changes, destruction of terrestrial vegetation, presence of litter and debris, other appropriate means considering surrounding area
 - High tide line in open tidal waters
 - Presence of **wetlands** determined by **hydrology, soils, and vegetation**
- Meets definition of “waters of the United States” in 33 CFR 328.3(a)



Obvious

Ephemeral



Perennial ↗

Intermittent →



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Not so obvious



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Excluded



Wetlands

Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (33 CFR 328.3 (b)). Defined by **hydrology, soils, and vegetation** – may need consultant to ID.



Regulated Activities - Section 404

- The **discharge of dredged or fill material** into waters of US is “**trigger**” that requires some form of authorization under Section 404 from USACE



Discharge of Dredged Material

- **Material excavated or dredged** from waters of U.S. and **redeposited** into waters of the U.S.- 33 CFR 323.2(d) (includes sediment releases from dams)
- Runoff or overflow from a contained land or water disposal area
- Redeposit of dredged material **other than incidental fallback**. Examples: mechanized landclearing, channelization, sidecasting, temporary stockpiling, redistribution of channel/lake sediments.
- **The method may determine if a permit is required.**



Discharge of Dredged Material

- Discharge of dredged material does **not** include:
 - ▶ Discharges associated with onshore (**upland**) **processing** of dredged material extracted for commercial use
 - ▶ Activities involving only **cutting or removing vegetation** so that root systems are not disturbed
 - ▶ **Incidental fallback** of dredged material
- Section 404 authorization is not required for **incidental addition** of dredged material that **would not** have the effect of destroying or degrading an area of waters of the US



Discharge of Fill Material

- Detailed definition at **33 CFR 323.2(e)**
- Material placed into waters of U.S. where material has **effect** of:
 - ▶ **replacing water with dry land; or**
 - ▶ **changing bottom elevation of any portion of a water**
- Examples: rock, sand, soil, road construction debris, wood chips, overburden from mining or other excavation activities, materials used to create any structure or infrastructure in waters of the U. S.



Stuck big yellow machines are not a discharge of fill material...however



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Exemptions

- Certain discharges for specific activities are **exempt** from Section 404 permitting
 - ▶ **Routine maintenance activities**
 - ▶ **Does not include** any **modification** to character, scope, or size of the original fill design
 - ▶ **Includes emergency reconstruction** of recently damaged parts, of currently serviceable structures
 - Must occur w/in a reasonable period of time after damage occurs in order to qualify for the exemption (**typically 2 years**)



Exemptions

- Normal farming, silvicultural & ranching activities
 - ▶ Farm, ranch, or forestry **roads**
 - ▶ Includes construction or maintenance of on-channel farm or **stock ponds**
 - Farm ponds must be appropriately sized for number of cattle.
 - “Frac” ponds are not exempt



Big Tip: Careful Project Planning...

- By **avoiding** impacts to waters such as boring, no Section 404 permit is required (may need a Section 10)
- By **minimizing** the impacts to waters, the work may be authorized by a nationwide permit and may not require a pre-construction notification (pcn)
- **Pre-application consultations encouraged**



Types of Permits

General Permits

Nationwide Permits (NWP)

Regional Permits (RGP)

Programmatic (PGP)

Individual Permits

Letters of Permission (LOP)

Standard Individual Permits (SIP)



Nationwide Permits

- **52 Nationwide Permits** - Activity Specific
- Focus on improving environmental protection while providing timely (usually < 45-days) simplified authorizations for work in aquatic environments and maximum user-friendliness
- Gave more protection to ephemeral streams, modified general conditions and clarified definitions NWP's
- Are **valid for 5 years** from date of issuance (**expire 3-18-2022**)
- There is a **300-linear-foot limit** for loss of stream beds (includes ephemeral streams) some NWP's
 - ▶ 300-foot-limit **can be waived** if the loss of stream bed would have minimal individual and cumulative adverse effect on the aquatic environment)
- **Corps preconstruction notification (PCN) required in many cases**
 - ▶ Potential to impact **cultural resources**
 - ▶ Potential to impact **threatened or endangered species**
 - ▶ Presence of **wetlands**
- **Resource agency coordination required in some cases**



Nationwide Permits

- **52 NWPs**, each with a scope of work of certain activities along with general conditions (ESA, cultural and historic resources, etc.)
- If your project meets the scope and conditions and does not exceed the **pre-construction (pcn)** threshold, you may complete the project without a written Corps authorization



Regularly Used Nationwide Permits

NWP 3: Maintenance

NWP 12: Utility Line Activities (pipelines, power lines)

NWP 13: Bank Stabilization (bulkheads, riprap)

NWP 14: Linear Transportation Projects (culverts, some road crossings)

NWP 18: Minor Discharges (fill material, 25 CY max)

NWP 29: Residential Developments

NWP 31: Maintenance of Existing Flood Control Facilities

NWP 33: Temporary Construction, Access, and Dewatering

NWP 39: Commercial and Institutional Developments

NWP 42: Recreational Facilities

NWP 43: Stormwater Management Facilities

- *Each project is unique, not all qualify for a NWP/RGP. When in doubt, ASK.*



NWP 13 - Examples



NWP 14 - Examples



NWP 29/39 - Examples



NWP Templates to Expedite Permitting

U.S. Army Corps of Engineers (USACE) Fort Worth District



Nationwide Permit (NWP) Pre-Construction Notification (PCN) Form

This form integrates requirements of the Nationwide Permit Program within the Fort Worth District, including General and Regional Conditions. Please consult instructions included at the end prior to completing this form.

Contents

- **Description of NWP 12**
- **Part I:** NWP Conditions and Requirements Checklist
 - General Conditions Checklist
 - NWP 12-Specific Requirements Checklist
 - Regional Conditions Checklist
- **Part II:** Project Information Form
- **Part III:** Project Impacts and Mitigation Form
- **Part IV:** Attachments Form
- **Instructions**

DESCRIPTION OF NWP 12 – UTILITY LINE ACTIVITIES

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States (U.S.), provided the activity does not result in the loss of greater than 1/2-acre of waters of the U.S.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the U.S., provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefied, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the U.S., such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the U.S. for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the U.S. (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the U.S., provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2 acre of waters of the U.S. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the U.S. to construct, maintain, or expand substation facilities.



12. Soil Erosion and Sediment Controls:

- a. Will the project use appropriate soil erosion and sediment controls and maintain them in effective operating condition throughout construction? Yes No
- b. Will all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, be permanently stabilized at the earliest practicable date?
 Yes No
- c. Be aware that if work will be conducted within waters of the U.S., Applicants are encouraged to perform that work during periods of low-flow or no-flow.

If you answered no to question a. or b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

13. Removal of Temporary Fills:

- a. Will temporary fills be removed in their entirety and the affected areas returned to pre-construction elevations? Yes No N/A
- b. Will the affected areas be revegetated, as appropriate? Yes No N/A

If you answered no to question a. or b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

14. Proper Maintenance:

- a. Will any authorized structure or fill be properly maintained, including maintenance to ensure public safety? Yes No

If you answered no to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

15. Wild and Scenic River:

There are no Wild and Scenic Rivers within the geographic boundaries of the Fort Worth District. Therefore, this GC does not apply.

16. Tribal Rights:

- a. Will the project or its operation impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights? Yes No N/A

If you answered yes to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

17. Endangered Species (see also Box 8 in Part III):

- a. Is the project likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or will the project destroy or adversely modify the critical habitat of such species? Yes No
- b. Might the project affect any listed species or designated critical habitat? Yes No



Part II: Project Information

Box 1 Project Name:		Applicant Name	
Applicant Title		Applicant Company, Agency, etc.	
Mailing Address		Applicant's internal tracking number <i>(if any)</i>	
Work Phone <small>with area code</small>	Home Phone <small>with area code</small>	Fax #	E-mail Address
Relationship of applicant to property: <input type="checkbox"/> Owner <input type="checkbox"/> Purchaser <input type="checkbox"/> Lessee <input type="checkbox"/> Other:			
Application is hereby made for verification that subject regulated activities associated with subject project qualify for authorization under a USACE nationwide permit or permits as described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the agency to which this application is made the right to enter the above-described location to inspect the proposed, in-progress, or completed work. I agree to start work <u>only</u> after all necessary permits have been received.			
Signature of applicant			Date <small>(mm/dd/yyyy)</small>

Box 2 Authorized Agent/Operator Name and Signature: <i>(If an agent is acting for the applicant during the permit process)</i>			
Agent/Operator Title		Agent/Operator Company, Agency, etc.	
Mailing Address			
E-mail Address			
Work Phone <small>with area code</small>	Home Phone <small>with area code</small>	Fax #	Cell Phone #
I hereby authorize the above-named agent to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application. I understand that I am bound by the actions of my agent, and I understand that if a federal or state permit is issued, I, or my agent, must sign the permit.			
Signature of applicant			Date <small>(mm/dd/yyyy)</small>
I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate.			
Signature of authorized agent			Date <small>(mm/dd/yyyy)</small>

Box 3 Name of property owner, if other than applicant:	
<input type="checkbox"/> Multiple Current Owners <i>(If multiple current property owners, check here and include a list as an attachment)</i>	
Owner Title	Owner Company, Agency, etc.
Mailing Address	



Jurisdictional Delineation

- Regulatory Guidance Letter - **RGL16-01**

- Request for jurisdictional Determination (JD)
 - ▶ **No JD** – Permitting based on project submittal jurisdictional delineation and review
 - ▶ **Preliminary JD** – All aquatic resources are presumed jurisdictional; a PJD is not appealable
 - ▶ **Approved JD** – May require coordination with EPA and Headquarters; can be appealed; valid for 5 years



Regional General Permits

- **RGP-8 Boat Ramps and Minor Facilities**-scope includes boat ramp construction and minor activities including boat docks, boathouses, boat stalls, piers, fish attractors
- **RGP-11 Exploration and Production Wells** -construction of drilling and production pads, reserve and mud pits, access roads, coffer dams and staging areas.
- **RGP-12 Modification and/or Alteration of Corps of Engineers Projects and Associated Regulated Activities** – Modification to federally authorized projects, for example federally authorized levees and Corps managed lakes, that require Section 408 of the Rivers and Harbors Act of 1899 permission.



Letters of Permission

- For minor work that has no significant individual or cumulative environmental impact and no appreciable opposition
- Abbreviated evaluation procedure
 - ▶ **Coordination** with federal and state fish and wildlife agencies
 - ▶ Public interest evaluation, but **no public notice**
- LOP procedures may not have expiration dates
- Two Section 404 LOP procedures currently in place in Texas (both statewide):

LOP-1: Activities at Certain Reservoirs & Federal & State Sponsored Projects

LOP-2: Excavation Activities



Standard Individual Permits

- When an activity cannot be authorized by general permit or LOP, a standard individual permit is required
- Must submit application form (Eng Form 4345) or IP template form with information about the proposed activity

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT (33 CFR 326)		OMB APPROVAL NO. 0710-0003 Expires December 31, 2004	
<p>The Public burden for the collection of information is estimated to average 10 hours per response, although the majority of applications should require 5 hours or less. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to: Department of Defense, Washington Headquarters Service, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Project Room (0710-0007), Washington, DC 20503. Requirements include the review that notwithstanding any other provision of law no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to either of these addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.</p>			
<p>PRIVACY ACT STATEMENT Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research and Sanctuaries Act, Section 105, 33 USC 1415; National Pollution Discharge Elimination Act, Section 402, 33 USC 1362. Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other Federal, state, and local government agencies. Submission of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated for one or more items to be issued. One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.</p>			
ITEMS TO BE FILLED BY THE CORPS			
1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETED
ITEMS BELOW TO BE FILLED BY APPLICANT			
5. APPLICANT'S NAME		6. AUTHORIZED AGENT'S NAME AND TITLE (see agent in not required)	
6. APPLICANT'S ADDRESS		9. AGENT'S ADDRESS	
7. APPLICANT'S PHONE NO. OR WARSAC CODE		10. AGENT'S PHONE NO. OR WARSAC CODE	
a. Residence		a. Residence	
b. Business		b. Business	
STATEMENT OF AUTHORIZATION			
I hereby authorize _____		to act in my behalf as my agent in the processing of this application upon request, supplemental information in support of the permit application.	
APPLICANT'S SIGNATURE _____		DATE _____	
NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY			
12. PROJECT NAME OR TITLE (see instructions)			
13. NAME OF WATERBODY, IF KNOWN (see instructions)		14. PROJECT STREET ADDRESS (see instructions)	
15. LOCATION OF PROJECT			
COUNTY _____		STATE _____	
16. OTHER LOCATION DESCRIPTIONS, IF KNOWN, (see instructions)			
17. DIRECTIONS TO THE SITE			

ENG FORM 4345, 12-97

EDITION OF FEB 84 IS OBSOLETE

(Preprint)

U.S. Army Corps of Engineers (USACE) Fort Worth District



Application for Department of the Army Individual Permit

This form integrates the information in ENG Form 4345 with the items required by the Fort Worth District for Section 10 and Section 404 permits. Please consult instructions included at the end prior to completing this form.

- Contents**
- **Description of an Individual Permit**
 - Part I: Project Information
 - Part II: Alternatives/Analysis
 - Part III: Project Impacts and Mitigation
 - Part IV: Attachments
 - **Instructions**

DESCRIPTION OF AN INDIVIDUAL PERMIT

Authorities: 33 USC 401, Section 10 of the Rivers and Harbors Act of 1899; 1413, Section 404 of the Clean Water Act. **Principal Purpose:** These laws require permits authorizing activities in, or affecting, navigable waters of the U.S.; the discharge of dredged or fill material into waters of the U.S.; and the transportation of dredged material for the purpose of dumping it into ocean waters. **Routine Uses:** Information provided on this form will be used in evaluating the application for a permit. **Disclosure:** Disclosure of requested information is voluntary. If information is not provided, however, the permit application cannot be processed nor can a permit be issued.

Activities that do not qualify for authorization under the General Permit program may qualify for authorization by Individual Permit (IP). Authorization under IP may be obtained only through application with the USACE. These permits are issued for activities that have more than minimal adverse impacts to waters of the U.S., and evaluation of each permit application involves more thorough review of the potential environmental and socioeconomic effects of the proposed activity.

An application for a Department of the Army IP under Section 404 or Section 10 will be determined to be complete when the USACE receives sufficient information to issue a public notice (see 33 CFR 325.1(d) and 325.3(a) for details and supporting information). The applicant should address all activities that the applicant plans to undertake that are reasonably related to the same project and for which a Department of the Army permit would be required. An alternatives analysis and a mitigation plan are not required for a complete application to prepare a public notice but are very helpful.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

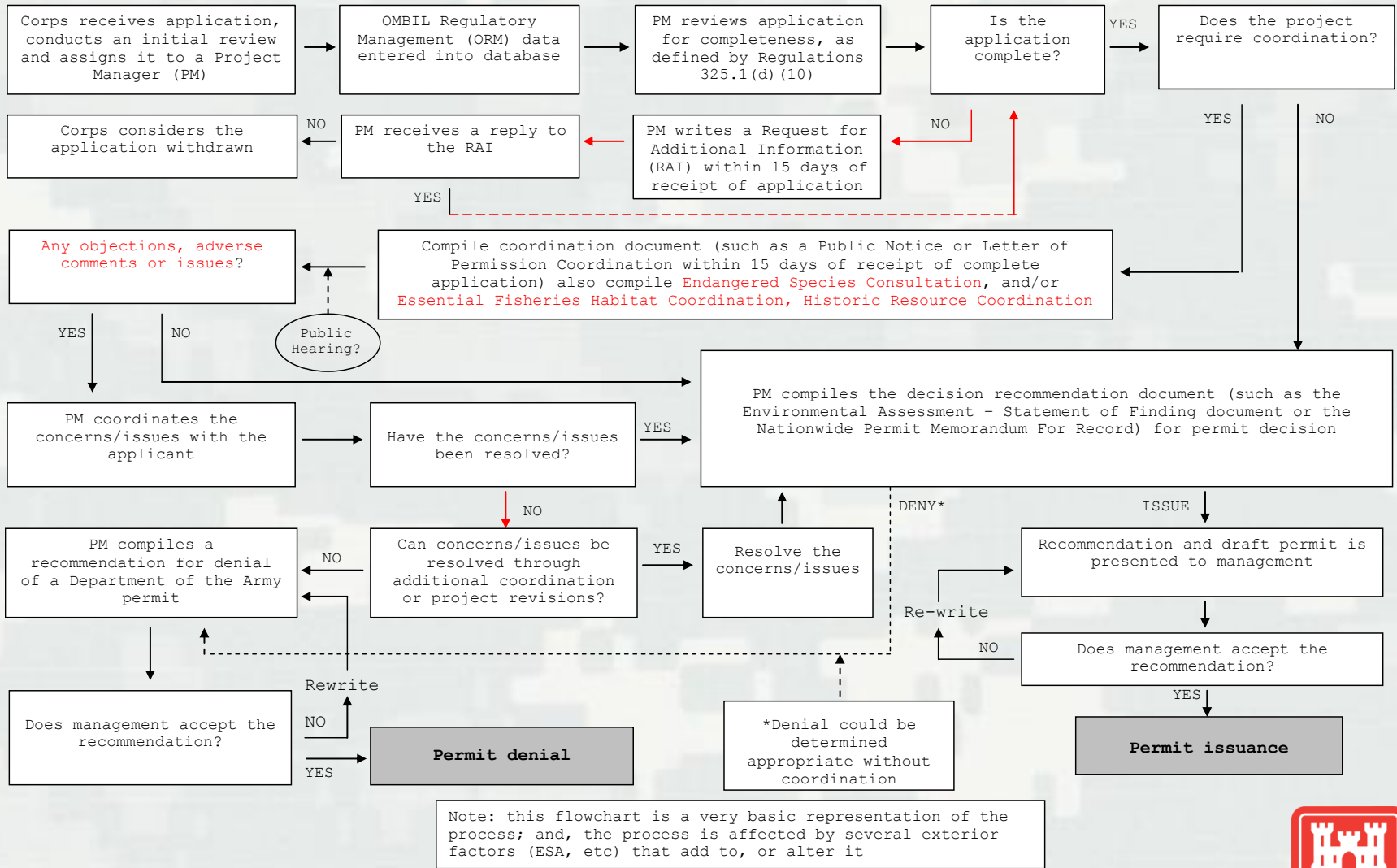
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SWF Recommended Application Form - Simple IP



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Regulatory Individual Permit Process Flow Chart



Principles in 2008 Mitigation Final Rule

33 CFR Part 332

- Mitigation sequencing
 - ▶ **avoid, minimize, compensate**
- Preference hierarchy for compensatory mitigation and three types
 - ▶ Mitigation bank credits
 - ▶ In-lieu fee (ILF) program credits
 - ▶ Permittee-responsible mitigation under a watershed approach
 - On-site and/or in-kind
 - Off-site and/or out-of-kind



Tips for Streamlining Permitting Process

- **More = Better?** Not necessarily
- Provide detail commensurate with the complexity of the case and generally **show your work**
- Use straightforward, clearly-reproducible drawings with **complete legends**
- **Check submittals for accuracy**
 - ▶ Consistency among sections, including figures and **math**
- Seek advice of a good environmental consultant, when appropriate



Corps Regulatory Program Information

- *National Regulatory Program Home Page:*
<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx>
- *Fort Worth District Regulatory Home Page:*
<http://www.swf.usace.army.mil/Missions/Regulatory.aspx>
- Fort Worth District Regulatory Number (817) 886-1731
- If this presentation assisted you, please help us improve our services by completing the survey on the following website:
http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey



Questions?



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