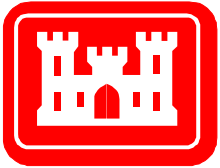


US Army Corps of Engineers Regulatory Program, Sacramento District:

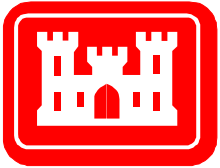
Permit Workshop – El Dorado County

July 8, 2010



Overview

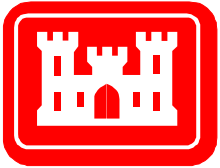
- Corps and Regulatory Program
- Primary Authorities
- When is a permit required?
- Waters of the U.S. / Jurisdiction
- Types of Permits
- Addressing Conditions (e.g., ESA)
- Tips for permit applications
- Roles and responsibilities – yours and ours



Introduction to the Corps

Several Missions:

- Navigation
- Flood Control
- Disaster Response
- Military Construction
- Research and Development
- **Regulatory**



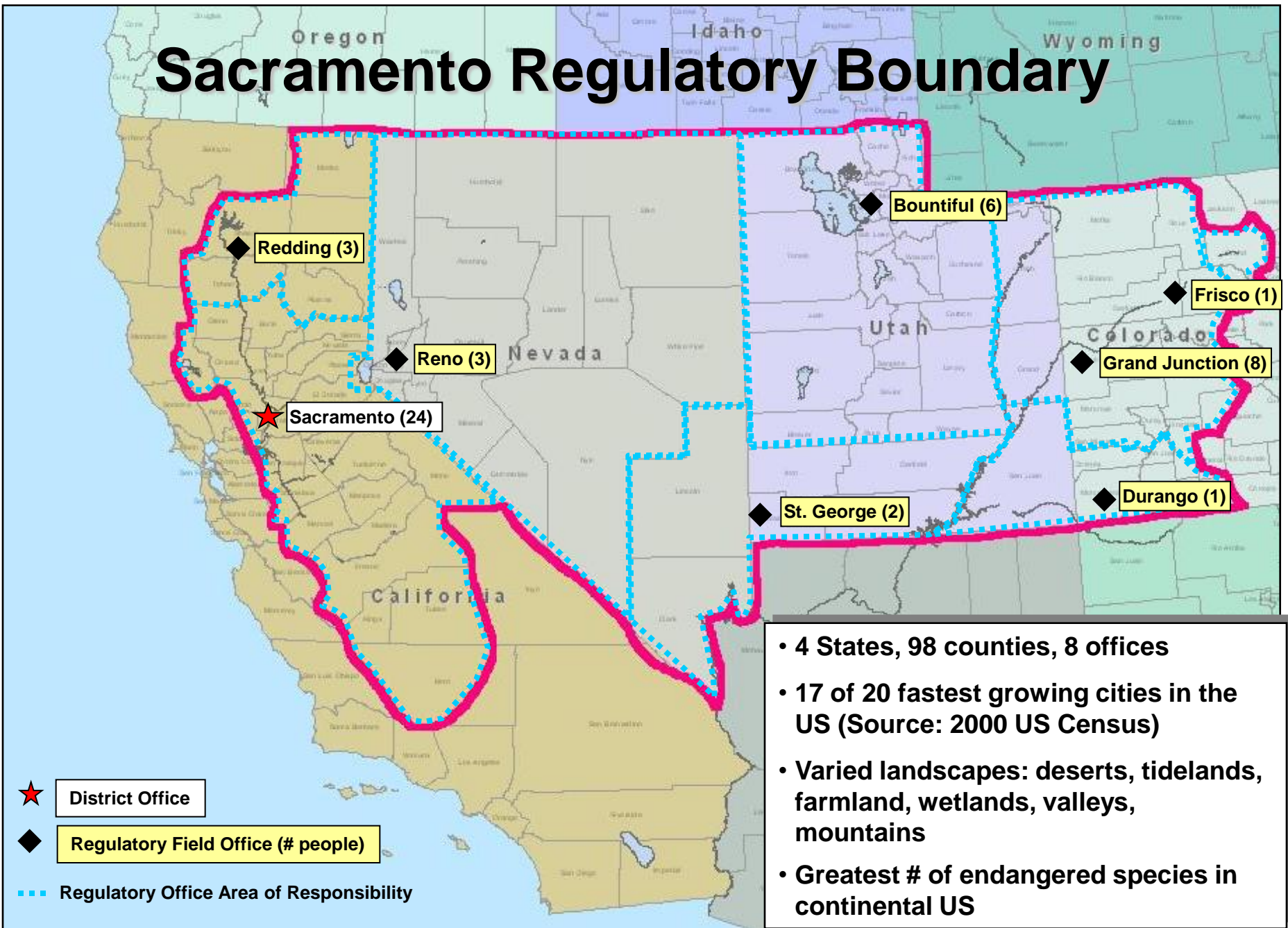
Corps Regulatory Mission

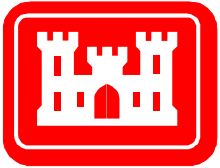
To protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions.



Goal: “No Net Loss of Wetlands”

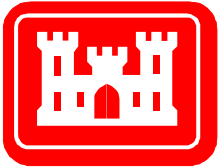
Sacramento Regulatory Boundary





Three Mission Elements

- **Permitting: Authorize activities in waters of the US**
- **Compliance: Ensure permit applicants follow permit terms and conditions**
- **Enforcement: Investigate unpermitted activities**



Authorities

- **Section 404 of the Clean Water Act**

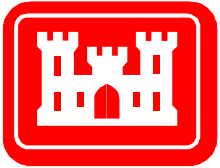
“Discharge of dredged or fill material into waters of the United States, including wetlands”

Goal is to “..protect and restore the chemical, physical and biological integrity of our nations waters”

- **Section 10 of the Rivers and Harbors Act of 1899**

“Work or structures in or affecting navigable waters”

- **Regulations: 33 CFR 320-332**
- **Authority passed from EPA to Corps**



Determining Need for Permit

1. Is activity regulated?

- If no, no permit needed
- Jurisdictional determination not necessary

2. Does activity take place in waters of the US?

- Wetland delineation/JD necessary
- If no, no permit needed

3. Is activity exempt (404 only)?

- If yes, no permit needed
- Jurisdictional determination not necessary

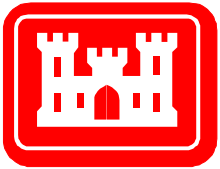


4. Does activity meet terms/conditions of a general permit?

- If no, process individual permit, or consider a Letter of Permission

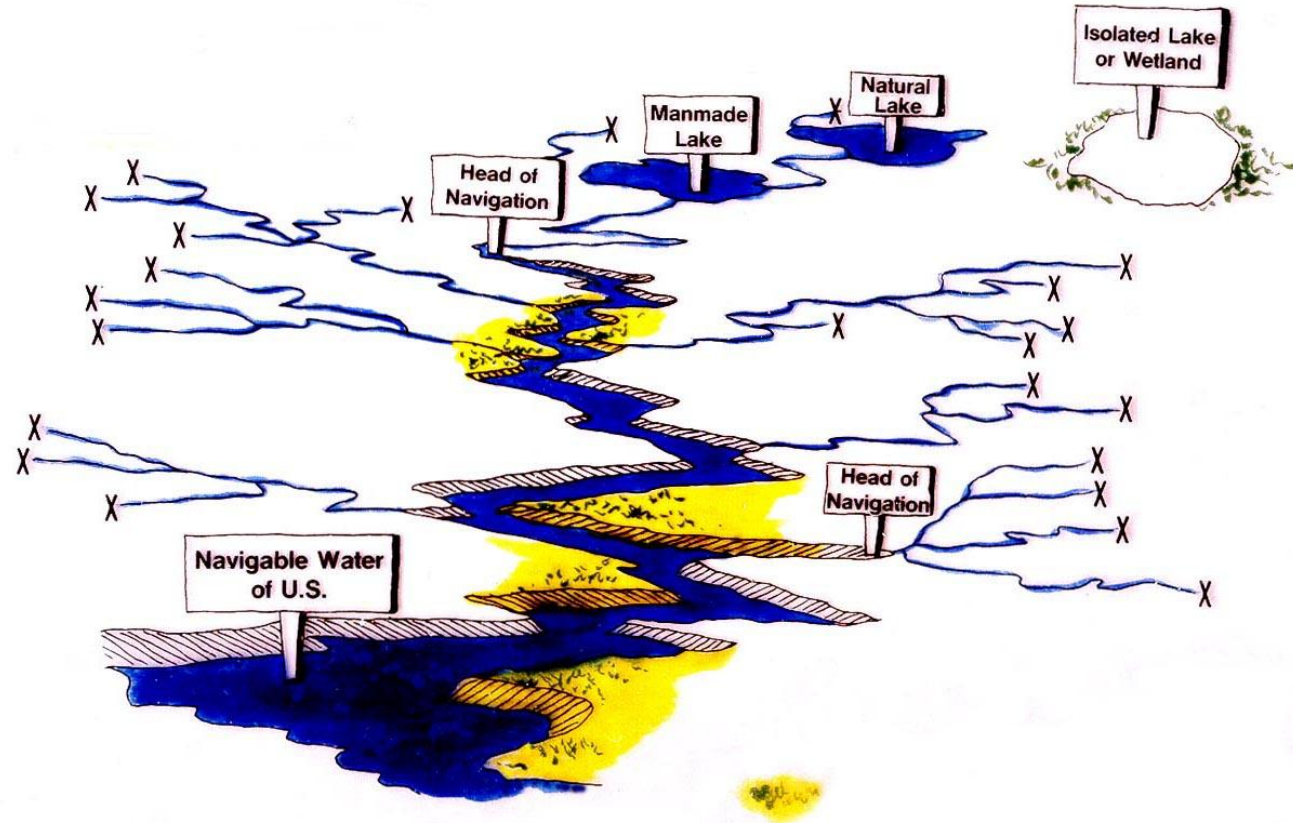
5. Can activity be processed as a Letter of Permission?

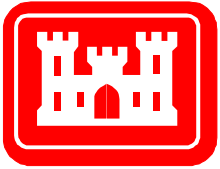
- If no, process standard individual permit



Waters of the United States

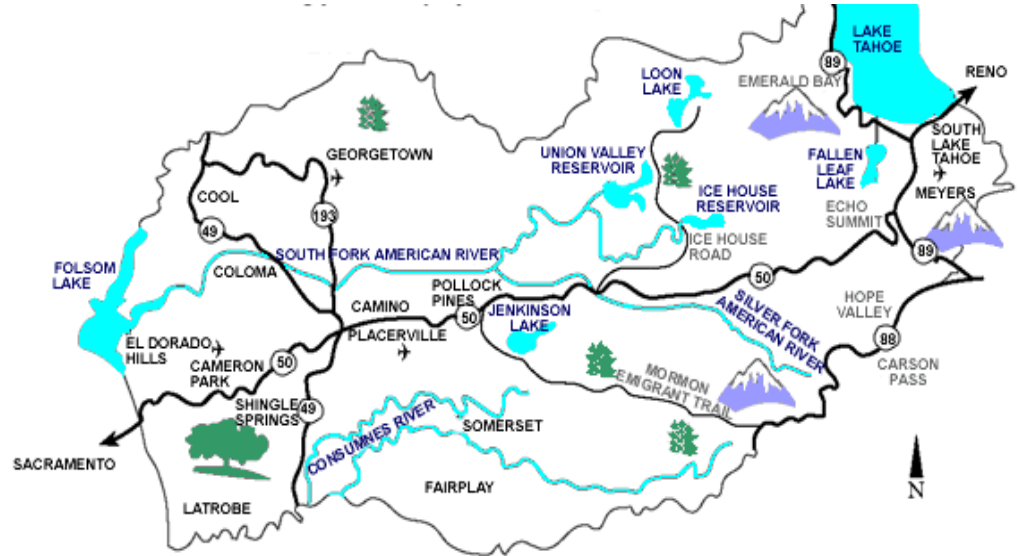
- Waters of the United States consist of
 - All navigable waters and their tributaries
 - All Interstate waters and their tributaries
 - All wetlands adjacent to those tributaries

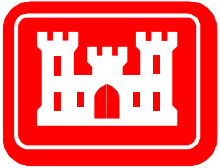




Section 10 Jurisdiction – Navigable Waters

- 1) Subject to Tidal Action
- 2) Used for transportation of Interstate or Foreign Commerce





Determining Jurisdiction

- **Jurisdiction Determination (JD) before taking an action**

1) Scientific

Determine extend of wetlands (wetland delineation)

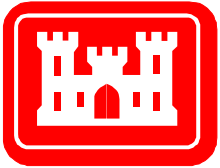
Determine waters of U.S. (ordinary high water mark)

2) Legal administrative

U.S. Circuit & Supreme court decisions (i.e. SWANCC and Rapanos vs. USACE)

Connectivity, Significant Nexus, Navigable waters, etc.

- **Complex, can be time-consuming – Call us with any questions and *start early***



Definition: Wetlands and OHWM

- **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 Section 328.3(b)*)
- **3-parameter test**
 - Wetland vegetation
 - Hydrology
 - Wetland soils

- **Ordinary High Water Mark (OHWM)**

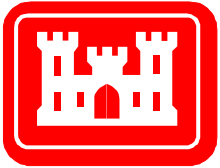
“lines on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or the appropriated means that consider the characteristics of the surrounding areas.”



Types of Wetlands

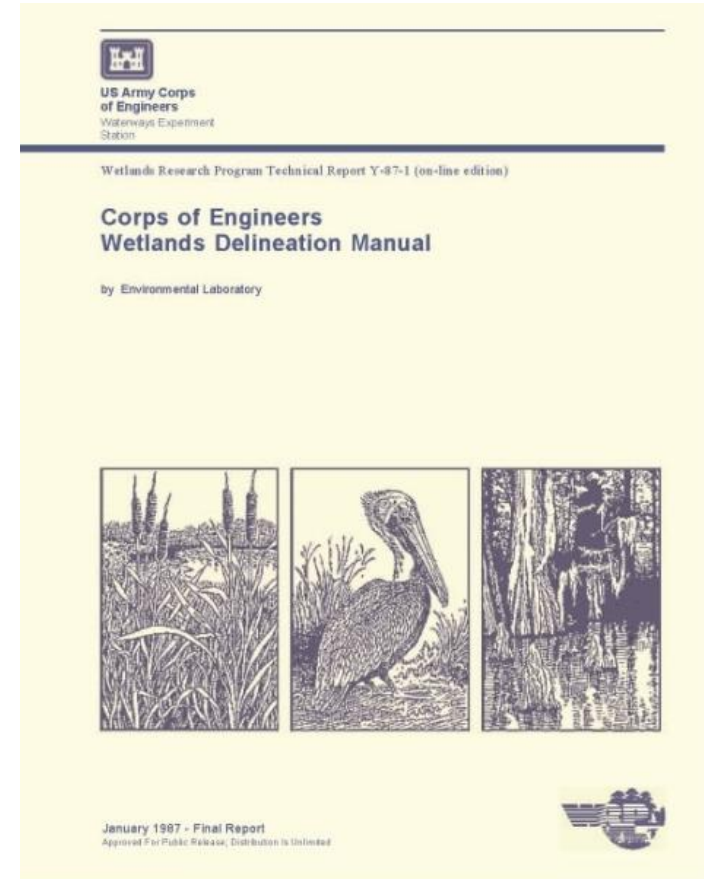
- Types of wetlands include seasonal wetlands, wet meadows, seeps, prairie potholes, and vernal pools.

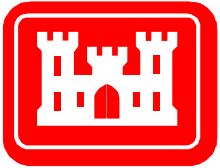




Wetland Delineation

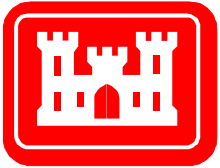
- Sacramento District Guidance:
 - 1987 Manual with the 2006 Arid West Supplement
 - Often performed by Consultants
 - Corps verifies in writing
 - RGL-08-02 or Preliminary JD's or an approved JD





JD Verification: RGL-08-02/Preliminary JD, and Approved JD

- Preliminary shows “may be” jurisdictional
- Preliminary CANNOT be used to:
 - Determine there are NO wetlands/waters on site OR
 - Determine there are no jurisdictional waters/wetlands OR
 - Determine only portion of wetlands/waters are jurisdictional
- Approved JD required to state there are or are not jurisdictional resources
- *Preliminary JD can be very useful tool – streamlining tip*



Determining Need for Permit

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- Jurisdictional determination not necessary

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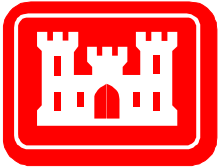


4. Does activity meet terms/conditions of a general permit?

- If no, process individual permit, or consider a Letter of Permission

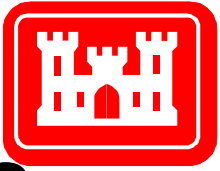
5. Can activity be processed as a Letter of Permission?

- If no, process standard permit



Permitting

- **Department of the Army required for any:**
 - Discharge of dredged or fill material (404)
 - Work or structures in or affecting navigable waters (10)
- **Some Exemptions (404 only)**
 - Some agricultural activities
 - Repair/maintenance of structures
 - Each defined with limits
 - May not impair flow/reduce extent of waters



Permit Types

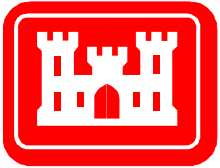
General Permits

- **Nationwide**
 - <0.5 acre of impact and meet certain criteria

Individual Permits

- **Letters of Permission**
 - 0.5 – 1 acre of impact
No Public Notice
- **Standard Permit**
 - >1 acre of impact
 - Public Notice



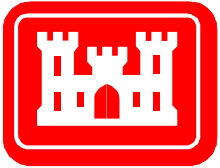


All Related Activities

- “Single and complete” – defined in 33 CFR 330.2(i)
 - “means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers”

1) All activities that are reasonably related to the same project

2) Avoid “piecemealing” of projects – different phases should be considered to be one project

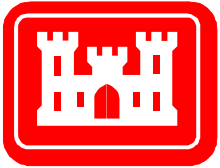


General Permit Types: Nationwide Permits

- **NWP Program [33 CFR 330, 1991]**
 - Policy and procedures used to issue, modify, suspend, or revoke NWPs
 - Conditions, limitations, and restrictions
 - Corps retains discretionary authority

-NWPs

- Issued by Corps HQ every five years (*March 2007*)
- Appendix to 33 CFR 330
- Cover 404 CWA and 10 RHA activities
- Terms, general conditions, definitions
- Certain activities require pre-construction notification
- Regional conditions added by districts



Nationwide Permits (NWP)

- **50** NWP's
- Most require Corps verification prior to use
- Accelerated timeline
 - Except **ESA**, **NHPA**



Federal Register

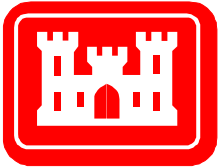
Tuesday,
January 15, 2002

Part II

**Department of
Defense**

Department of the Army, Corps of
Engineers

Issuance of Nationwide Permits; Notice



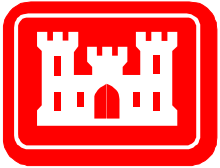
Individual Permit Types

Letters of Permission

- Typically for non-controversial, low impact projects (less 0.5 acres).
- Issued for activities meeting LOP criteria and conditions.
- Result: LOP issued or different NWP, GP and Standard Permit.

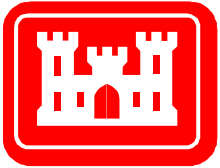
Standard Permits

- Issued for a specific activity following normal procedures [33 CFR 325], including public notice, receipt/review of comments and public interest review
- Result: Permit issued or denied for specific activity



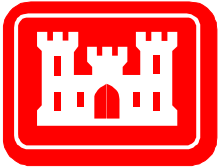
Standard Permits

- For activities that do not fall under 404 exemption and Nationwide Permits,
- Highlights of process
 - Pre-application meeting
 - Permit application submitted (determine complete)
 - Issue Public Notice Comments reviewed/addressed – applicant and District
 - Issue resolution
 - Permit decision



Typical Permit Application Process

1. Pre-application meeting available
2. Complete Application
 - Application form
 - *Comprehensive report/supplement describing the project and how it would comply with all permit conditions – General AND Regional
 - Wetland delineation (does not need to be verified yet)
 - A complete Pre-Construction Notification (for NWPs)
 - Contents of a complete Standard Permit application – see CFR Part 325 (on CD)



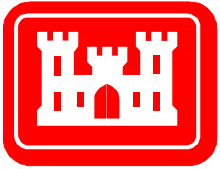
Typical Permit Application Process



3. Public Notice / Agency Notice (Standard Permit)
4. Corps evaluates projects for:
 - Compliance with Regulations, including Mitigation
 - **Section 7(a)(2) of the Endangered Species Act (ESA)**
Consultation U.S. Fish and Wildlife Services and NOAA National Marine Fisheries Service

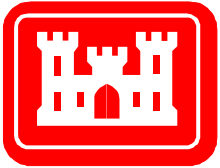
If the fish is there at some part of its life history - it's **Essential Fish Habitat!** Salmon and Steelhead spawning habitat Cosumnes River, last unobstructed river in California.

- **Section 106 of National Historic Preservation Act (NHPA)**
Consultation with State Historic Preservation Office SHPO
Be aware of differences between CEQA and NEPA treatment
Use Sacramento District 106 Guidelines for NHPA
- **Alternatives Analysis or Section 404(b)1**
 - Avoid, minimize and mitigate
 - Least Environmentally Damaging Practicable Alternative (LEDPA)



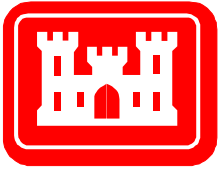
5. Compensatory Mitigation

- Only after avoidance and minimization, we will move to mitigation.
- On-site and Off-site mitigation
- Purchase credits from a mitigation bank – commercial (coverage or service area limit or limited)
- NWP “in lieu fee” payment to National Fish and Wildlife Fund program – not-for-profit (approx. 0.5 acre impact = estimate \$112,500)
- April 2008 Final Mitigation Rule – preference for mitigation banks and within the watershed; flexibility to applicants and regulators
- Minimum 1:1 ratio for wetland losses, sometimes for riparian (depends on quality and project impacts)



6. Corps Permit “Scope of Analysis”

- May DIFFER from “Project Area” as defined in other application (e.g., CEQA)
- Corps has sole discretion to designate
- How much of the project is under federal control (waters, ESA, NHPA)?
- Important consideration for linear projects – do not assume that Corps will include the whole project within its permit area



Permit Application Process

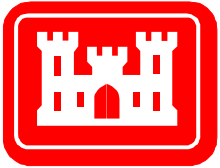
7. Decision Document

- Public interest evaluation
- Interagency consultation

8. Permit Decision

9. Compliance (Post-construction)

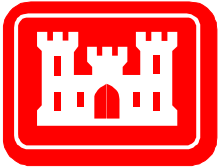




NWP

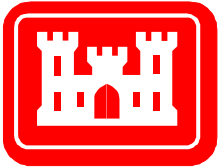
Timeline Highlights

- Timeline starts with ***complete*** PCN
- DE - 30 days to review for completeness
- 45 days – if have not heard, can proceed ***at own risk*** (45 days does not eliminate need for ESA/106 compliance)
- ESA consultation – after initiated by Corps, generally 135 days (90 days consultation; 45 days to develop BO)
- SHPO – after initiated by Corps, generally 30 days
- 401 water quality certification
- Mitigation commitments
- Take-home: Start early – with ESA species, expect at least 1 month (completeness) + 3 months (ESA)...



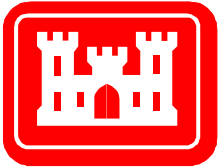
Standard Permit Timeline Highlights

- Timeline starts with **complete** permit application
- 15 days to review for completeness and request additional information
- 15 days to publish public notice once application is complete
- Public notice comment period – typically 30 days
- ESA
- SHPO
- 401 Water Quality Cert
- 404(b)(1) Analysis
- Mitigation – **Final Mitigation Plan** must be approved before permit issuance
- Corps decision within 60 days of a complete application, notwithstanding information needs or procedures outside of the timing control of the Corps (e.g., ESA consultation) – CFR 325.2(d)(3)



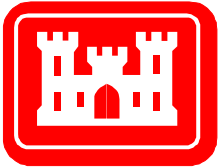
Compliance with Other Laws

- **Endangered Species Act**
 - Cannot jeopardize species, critical habitat
- **Section 401 of Clean Water Act**
 - Water quality certification must be issued by State
- **Section 106 of National Historic Preservation Act**
 - Assess impact/mitigate effect on historic properties, listed or eligible



Summary of Tips

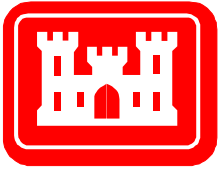
- Jurisdiction Determination – start early
- Remember PJD process as a good tool for certain project sites
- Collaborate and ensure that biologists/regulatory specialists are plugged in early and for key analyses/decisions/LEDPA – avoid “surprises!”
- Get Section 7 and Section 106 in pipeline early
- Request pre-application meetings for bigger, complex projects
- **Call us with any questions**



Corps – Local Agency Coordination

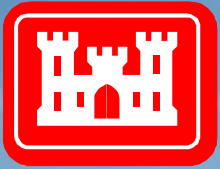
WRDA Program – Cal Trans Projects

**Cities and Counties – Very Important,
very often the first point of contact!**



Thank You





US Army Corps
of Engineers
Sacramento District

Contact Information

<http://www.spk.usace.army.mil//organizations/cespk-co/regulatory/index.html>

Sacramento District Regulatory Office:

Main: 916-557-5250

Peck Ha: 916 557-6617

Peck.ha@usace.army.mil

Josh Emery: 916 557-7191

Joshua.Emery@usace.army.mil