

 US Army Corps of Engineers 

Operations and Regulatory Community of Practice

## US Army Corps of Engineers Regulatory Program

Kimberly McLaughlin  
Program Manager  
Headquarters

*Building Strong!*

1

---

---

---


---

---

---


---

---

 US Army Corps of Engineers 

### Regulatory Mission:

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



*Building Strong!*

2

---

---

---

---

---

---

---

---

 US Army Corps of Engineers 

### Regulatory Program Quick Facts

- Over \$220 billion of economic development is affected by 1,200+ Corps regulators
- ~70,000 written authorizations affecting waters of the U.S., including wetlands
  - 75% on private property
  - 25% on government, tribal, NGO lands
- Large-complex-controversial to small-simple-routine projects
- ~70,000 jurisdictional determinations
- About 2,500 enforcement cases
- About 60 appeals cases (permit denials, jurisdictional determinations)

*Building Strong!*

3

---

---

---

---

---

---

---

---

**US Army Corps of Engineers**

### Civil Works Boundaries

*Building Strong!*

4

---

---

---

---

---

---

---

---

**US Army Corps of Engineers**

### Regulatory Districts

*Building Strong!*

5

---

---

---

---

---

---

---

---

**US Army Corps of Engineers**

### Primary Governing Laws

- Rivers and Harbors Act, Section 10 [33 U.S.C. 403]
- Clean Water Act, Section 404 [33 U.S.C. 1344]

*Building Strong!*

6

---

---

---



---

---

---

---

---

 US Army Corps of Engineers 

## Waters of the United States

- Navigable waters
  - For example: oceans, bays, and inlets
- Tributaries to navigable waters
  - For example: rivers and creeks, seasonal and intermittent streams
  - Lakes and ponds
- Wetlands adjacent to the waters listed above
- Interstate bodies of water or wetlands
  - Crossing state lines or Indian reservation lines
- Other special aquatic sites: mudflats, vegetated shallows, riffle and pool complexes, coral reefs

*Building Strong!* 7

---

---

---



---

---

---

---

---

 US Army Corps of Engineers 

### Activities regulated under Section 10 of the Rivers and Harbors Act include:

• buoys	• piers
• floats	• piling
• marinas	• boatlifts
• bulkheads	• boat ramps
• breakwaters	• marine railways
• dredging	• disposal of dredged material
• fill	

*Building Strong!* 8

---

---

---



---

---

---

---

---

 US Army Corps of Engineers 

### Section 404 of the Clean Water Act

- To restore and maintain the chemical, physical and biological integrity of the waters of the U.S.
- Permit are required for discharges of *dredged or fill material* in any water of the U.S.

*Building Strong!* 9

---

---

---


---


---

---

---

---






**US Army Corps of Engineers**

---

**Activities regulated as a  
“discharge of dredged or fill material”**

- placement of fill (rock or dirt)
- mechanized land clearing
- grading
- excavation (with associated discharge)
- piling (in certain cases)



*Building Strong!* 10

---

---

---


---


---

---

---

---





**US Army Corps of Engineers**

---

**Related Laws and Policies**

- Section 401 of the Clean Water Act
- Coastal Zone Management Act
- Endangered Species Act
- Section 106 of the National Historic Preservation Act
- National Environmental Policy Act
- Fish and Wildlife Coordination Act
- Magnuson-Stevens Fishery Conservation Management Act
- Indian treaties

*Building Strong!* 11

---

---

---

---

---

---

---

---





**US Army Corps of Engineers**

---

**Mitigation**

- Regulatory program requires compensatory mitigation for unavoidable impacts to aquatic resources.
- Mitigation comes in many forms: preservation, restoration, enhancement, creation.
- Mitigation requirements are legally enforceable permit conditions

*Building Strong!* 12

---

---

---

---

---

---

---

---

 **US Army Corps of Engineers** 

### Corps Standard Permit Process

- Application submitted requesting authorization to impact waters/wetlands and describing proposed activity
- Corps determines jurisdiction and its scope (RHA Sec 10 and/or CWA Sec 404)
- Issue a Public Notice
- Collect comments from public & resource agencies and consider requests for public hearings
- Demonstrate compliance with the 404(b)1 Guidelines (avoidance, minimization, and mitigation for unavoidable impacts)
- Consider effects on endangered species, essential fish habitat & historic properties, etc.
- Consider secondary and cumulative impacts
- Compensatory mitigation plan developed to offset unavoidable impacts to aquatic resources
- Finalize NEPA and permit decision documents

*Building Strong!* 13

---

---

---



---

---

---

---

---

 **US Army Corps of Engineers** 

### 404(b)(1) Guidelines

- "...no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences."
- An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant, which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered.

*Building Strong!* 14

---

---

---



---

---

---

---

---

 **US Army Corps of Engineers** 

### Key Decision Making Criteria

- Corps considers comments and uses the information gathered in the permit evaluation process to make a transparent, fully-informed decision as to whether or not a project can be authorized
  - Must not be contrary to the public interest
  - Must be the Least Environmentally Damaging Practicable Alternative (LEDPA)

*Building Strong!* 15

---

---

---



---

---

---

---

---

 US Army Corps of Engineers 

## Working Cooperatively with NRC

- In 2008, developed an MOU with NRC to facilitate concurrent environmental reviews and to reduce duplication
- MOU generally guides the process but is flexible
- Corps is committed to working cooperatively with the NRC toward the development and adoption of a single environmental document
- Recognizes that the Corps has statutory obligations that also have to be fulfilled

*Building Strong!* 16

---

---

---



---

---

---

---

---

 US Army Corps of Engineers 

## Questions?

*Building Strong!* 17

---

---

---

---

---

---

---

---