

# KANSAS CITY DISTRICT REGULATORY BRANCH

Regulatory Program Overview

Prepared by Justin Hughes

12 September 2018

*“The views, opinions and findings contained in this report are those of the authors(s) and should not be construed as an official Department of the Army position, policy or decision, unless so designated by other official documentation.”*



**US Army Corps  
of Engineers**



# Outline

- 1.Regulatory Authorities
- 2.Jurisdiction
- 3.Permitting Mechanisms & Process
- 4.Mitigation
- 5.Questions



# Regulatory Authorities

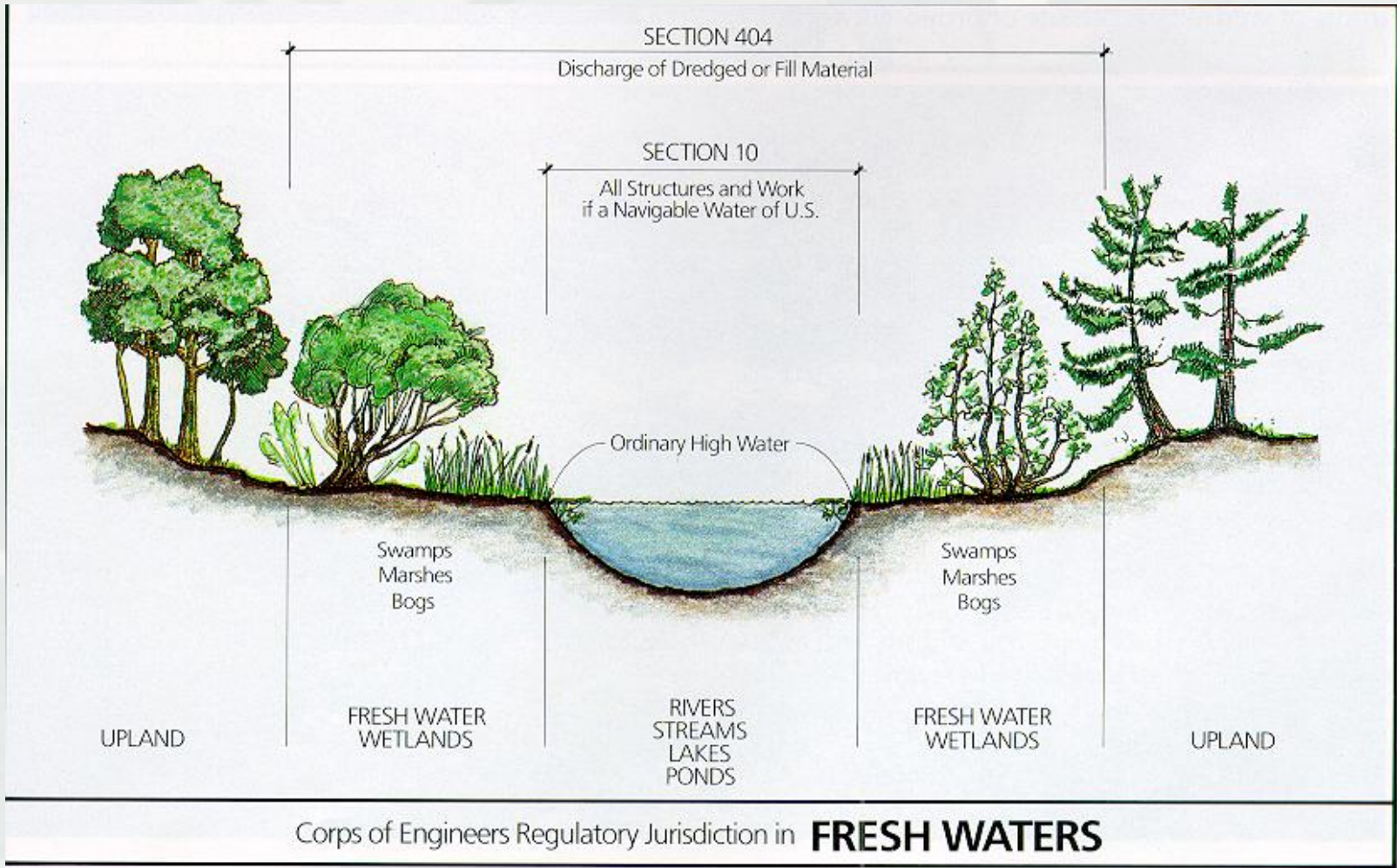
## ***Section 10 Rivers & Harbors Act of 1899***

- Requires authorization for all structures or work in, over or under navigable waters of the U.S.

## ***Section 404 Clean Water Act of 1972***

- Requires authorization for the discharge of dredged or fill material in waters of the U.S., including jurisdictional wetlands.





# Waters of the US

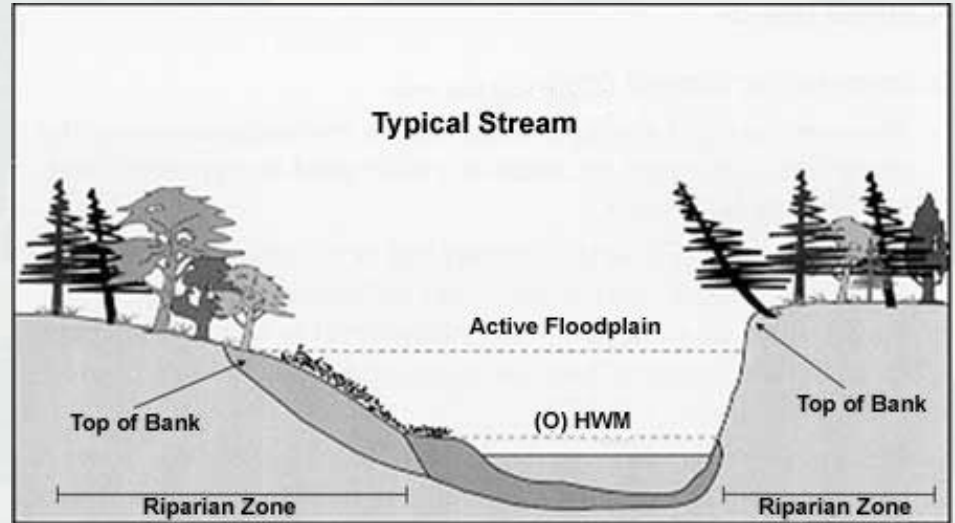
1. Waters currently used, used in past, or susceptible for use in interstate or foreign commerce, including waters subject to ebb and flow of the tide.
2. Interstate waters and wetlands.
3. Intrastate waters where destruction or degradation could affect interstate or foreign commerce.
  - Waters used for recreation or other purposes.
  - Waters with fish or shellfish sold in interstate or foreign commerce.
  - Waters used for industrial purposes.
4. Impoundments of waters of the U.S.
5. Tributaries to waters in categories 1 – 4.
6. Territorial seas (3 miles from shore).
7. Wetlands adjacent to waters of the U.S.





# Tributaries (streams)

Must have a bed and bank and ordinary high water mark (OHWM)



# 3 Types of Streams





# Wetlands

1987 Corps of Engineers Wetland Delineation Manual along with regional supplement

- Hydrophytic Vegetation
- Wetland Hydrology
- Hydric Soils





# Non-Jurisdictional Waters (Preamble Waters)

- Irrigated areas that would revert to dry land if irrigation ceased.
- Artificial lakes or ponds created in dry land such as farm and stock watering ponds.
- Artificial reflecting or swimming pools or other ornamental bodies of water created in dry land.



# Non-Jurisdictional Waters (Preamble Waters)

- Water-filled depressions created in dry land incidental to mining or construction activity until activity is abandoned and the resulting body of water meets definition of WOUS.



# Wastewater Treatment Systems

## 33 CFR 328.3(a)(8)

- Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the U.S.





# Sec 404(f) Exemptions

- CWA Exemptions.
  - ▶ Normal Farming, silviculture, and ranching. (i.e. Plowing).
  - ▶ Maintenance but not construction of drainage ditches.
  - ▶ Construction or Maintenance of Farm or Stock Ponds.
  - ▶ Construction of Temporary Sediment Basins.
  - ▶ Construction or Maintenance of Farm, Forest and Mining Roads.
  - ▶ Recapture Provision: A permit is required where the activity purpose is to convert an area of the Waters of the U.S. into a use to which it was not previously subject, and where the flow or circulation of Waters of the U.S. may be impaired or the reach reduced.



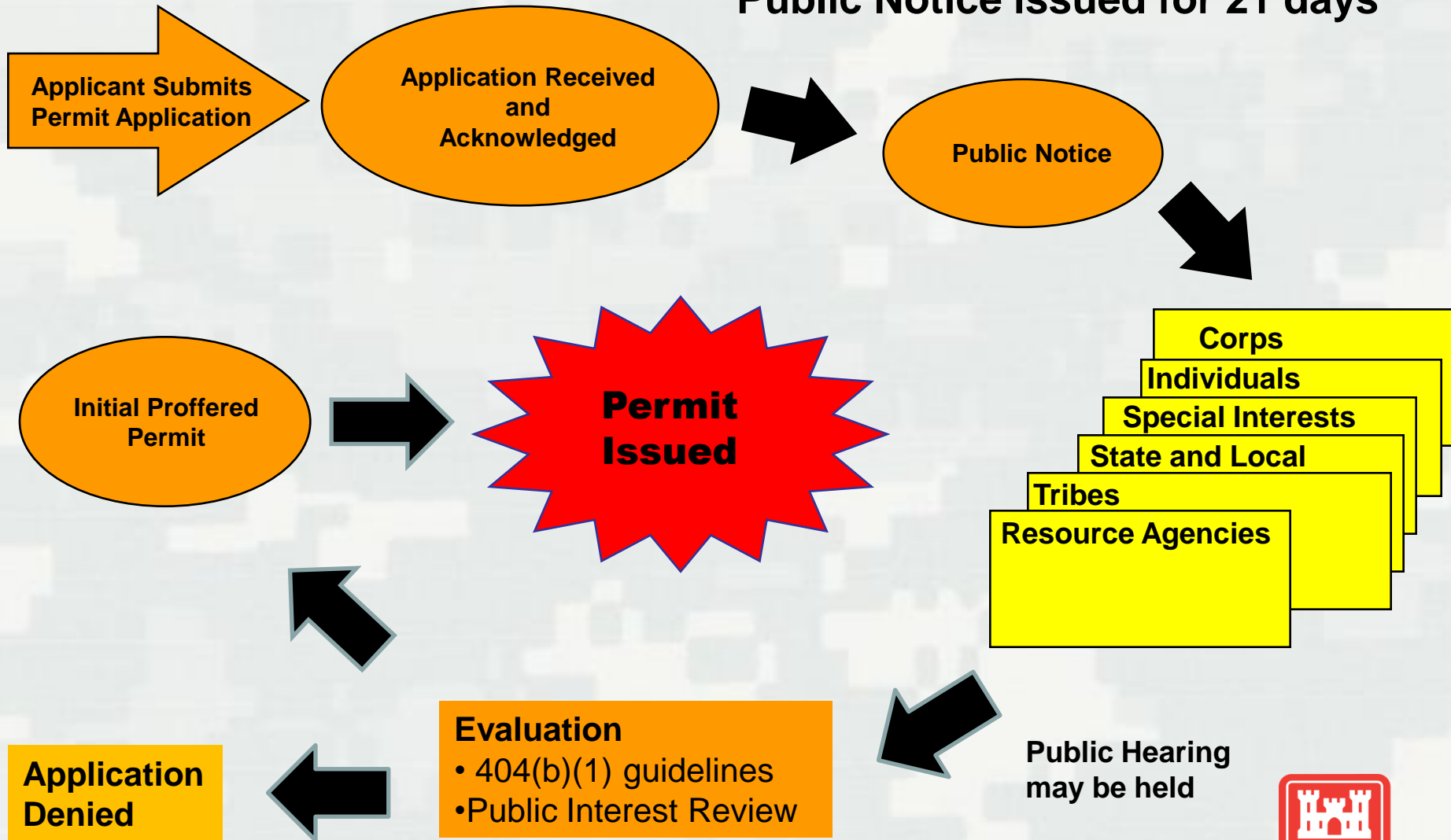
# Types of Permits

- General Permits
  - ▶ Nationwides (NWs)
  - ▶ Regional General Permits (RGPs)
  - ▶ Programmatic General Permits (PGPs)
- Standard Permits
  - ▶ Individual Permits (IPs)



# Permit Review Process

Pre-application meeting optional





# Other Laws and Regulations

- Corps Permits must comply with:
  - ▶ Endangered Species Act
  - ▶ National Historic Preservation Act
  - ▶ National Environmental Policy Act
  - ▶ Permits also subject to applicable State or Tribal (in Indian Country) Section 401 Water Quality Certification. Must get 401 WQC to proceed.



# Public Interest



- ◆ 22 Public Interest Factors. Balance.  
Is not contrary to public interest?

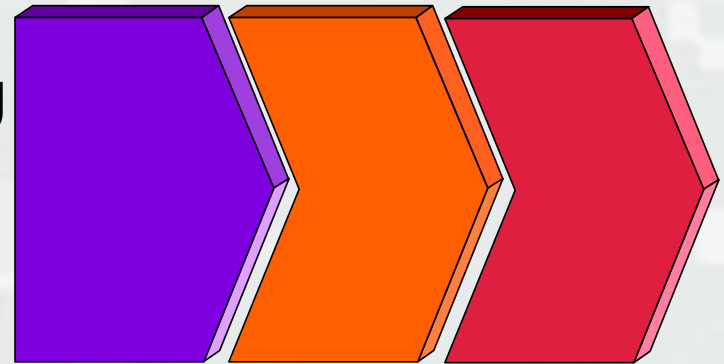
Conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife, flood hazards, floodplains, land use, navigation, shore erosion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership



# 404(b)(1) Guidelines

◆ 404(b)(1) Guidelines. Presume a non-wetland alternative is available. Must be the least environmentally damaging practicable alternative (LEDPA)

- ◆ Mitigation Sequencing
  - Avoidance
  - Minimization
  - Compensation



◆ Mitigation to support goal of “no overall net loss of values and functions”





# Mitigation Rule

- Preference hierarchy for mitigation options:
  1. Mitigation bank
  2. In-lieu fee program.
  3. Permittee-responsible watershed approach
  4. On-site and/or in-kind permittee-responsible
  5. Off-site and/or out-of-kind permittee-responsible



# Permittee Responsible Issues



# Mitigation Concepts

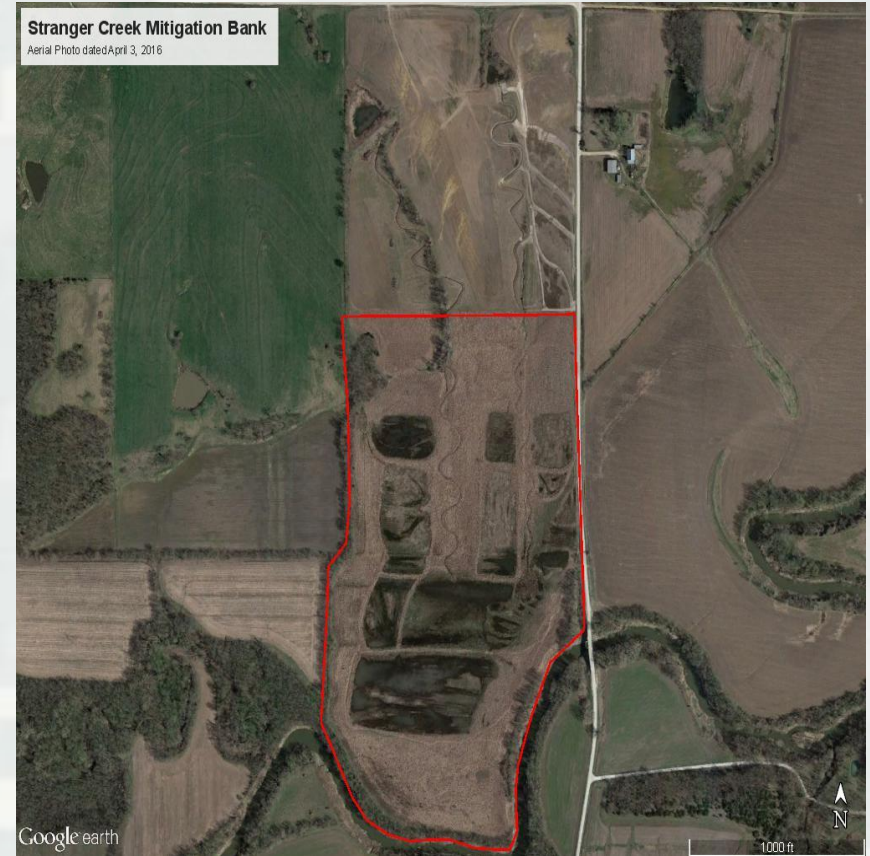


- Real estate protection
- Watershed approach
- Functional assessment methods
- Timing





# Mitigation Bank Site Development





# Stream Mitigation





# Wetland Mitigation Activities



# Summary

- Two Main Regulatory Authorities
- Jurisdictional vs Non-jurisdictional Areas
- Types of Permits and Standard Permit Process
- Compensatory Mitigation



# Questions?

## Regulatory Program Webpage

<http://www.nwk.usace.army.mil/Missions/RegulatoryBranch.aspx>

## Regulatory Program Outreach Materials

See our video guide at:

<http://137.161.203.100/regulatory/module/Main.html>

