

# Regulatory Program Clean Water Act Permitting Considerations

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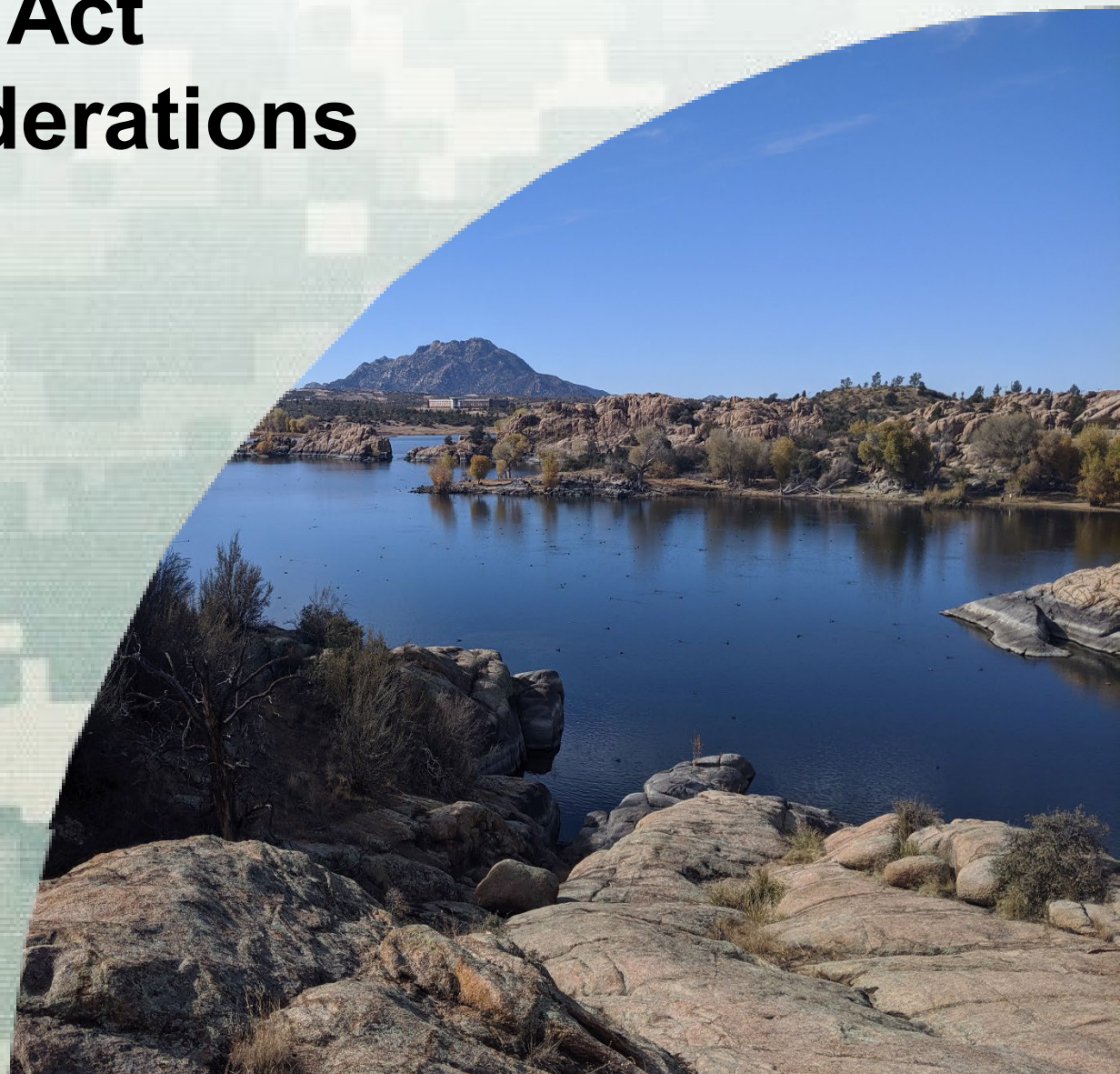
**September 29, 2022**



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**US Army Corps of Engineers**

**BUILDING STRONG®**



# Regulatory Mission

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



# Army Corps of Engineers Regulatory Authorities

Section 10  
Rivers and Harbors Act

Section 404  
Clean Water Act

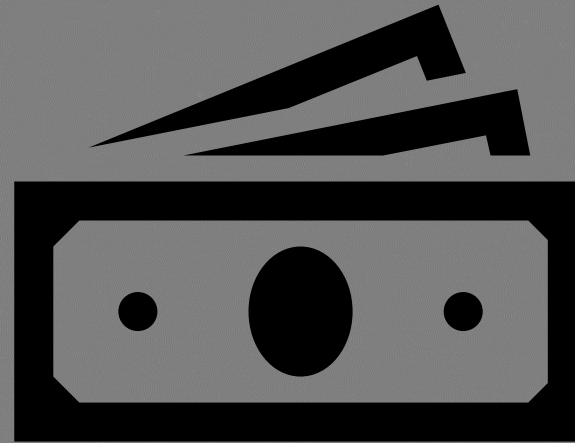
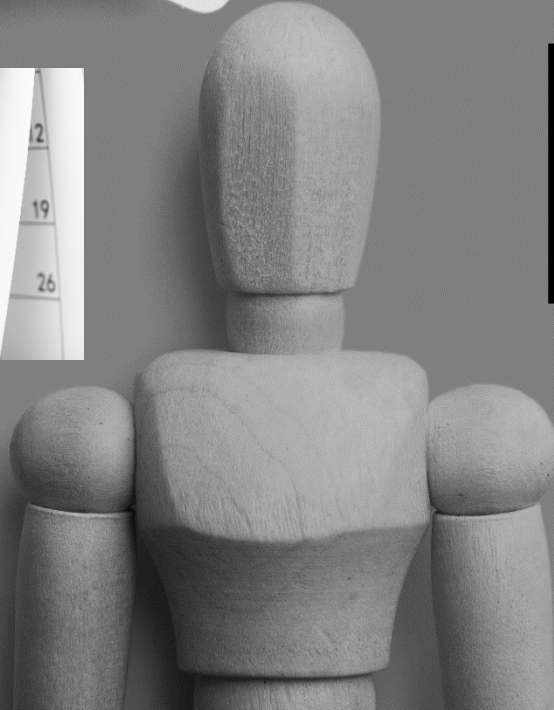
Section 103  
Marine Protection, Research,  
Sanctuaries Act of 1972



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*And Taking Care Of People!*



# Why is this important?



# Regulatory Process

It all starts with **TWO BIG QUESTIONS**:

Is there geographic authority (jurisdiction)?

Are there regulated activities?

If yes  
to **BOTH**

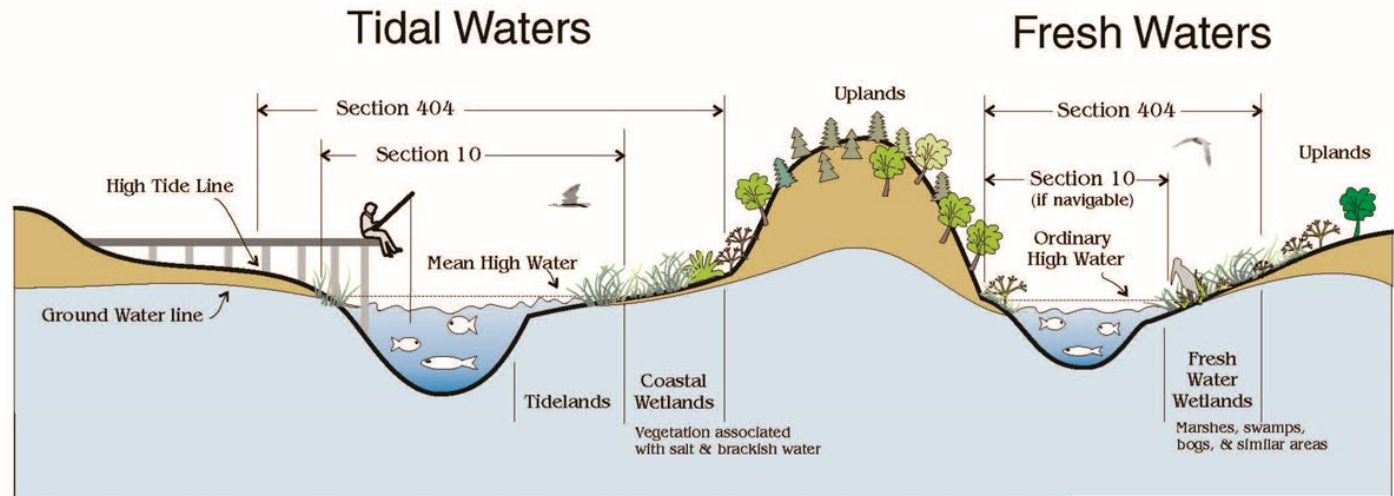
What is the scope of the project?

What type of permit is needed?

# Geographic Jurisdiction



## CORPS OF ENGINEERS REGULATORY JURISDICTION



- |   |   |  |   |
|---|---|--|---|
| <p>Typical examples of regulated activities</p> | <p><b>Section 103</b><br/>Ocean Discharge of Dredged Material</p> <p>Ocean discharges of dredged material</p> | <p><b>Section 404</b><br/>Disposal of Dredged or Fill Material (all waters of the U.S.)</p> <p>All filling activities, utility lines, outfall structures, road crossings, beach nourishment, riprap, jetties, some excavation activities, etc.</p> | <p><b>Section 10</b><br/>All Structures and Work (navigable waters)</p> <p>Dredging, marinas, piers, wharves, floats, intake / outtake pipes, pilings, bulkheads, ramps, fills, overhead transmission lines, etc.</p> |
|---|---|--|---|

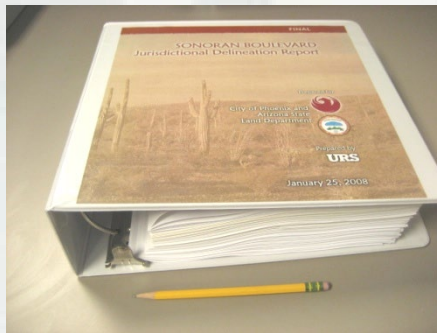
**Ordinary High Water Mark (OHWM)**  
Physical and biological indicators of flow  
Wetland boundary



# Two Types of Jurisdictional Delineations

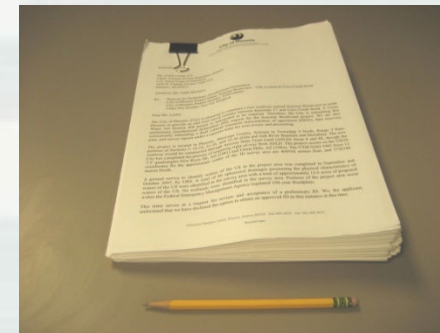
## Approved JD

- Binding
- Definitive regarding non-jurisdictional areas
- Significant Nexus Analysis
- Requires EPA approval
- Lengthy, time-consuming process



## Preliminary JD

- Non-Binding
- Assume all likely areas are jurisdictional
- No Significant Nexus Analysis
- Does not require EPA approval
- Allows projects to move forward



# What is Section 404?



- Section 404 of the Clean Water Act (1972, as amended)
- Required for the discharge of dredged or fill material into waters of the U.S.
- Common projects are construction, maintenance, and repair activities in the waters of the U.S.

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## IMPORTANT POINTS:

1. **Not all waters are waters of the U.S.**  
The Corps has the authority to make a jurisdictional determination, but the applicant is not required to seek a JD (per RGL 16-01).
2. **The State may have a definition of waters that is different from the Corps definition. Both apply!**

**CALL THE CORPS!**





# Regulated Activities

**Any activity that results in ground-disturbing activities (i.e., dredging or filling) within waters of the U.S.**

- Fills (e.g., for construction of buildings, parking lots, etc.)
- Roads (culverts)
- Rip-Rap
- Grading (moving material from one area to another within the waterway)
- Stockpiles
- Utility Lines
- Mechanized removal of vegetation

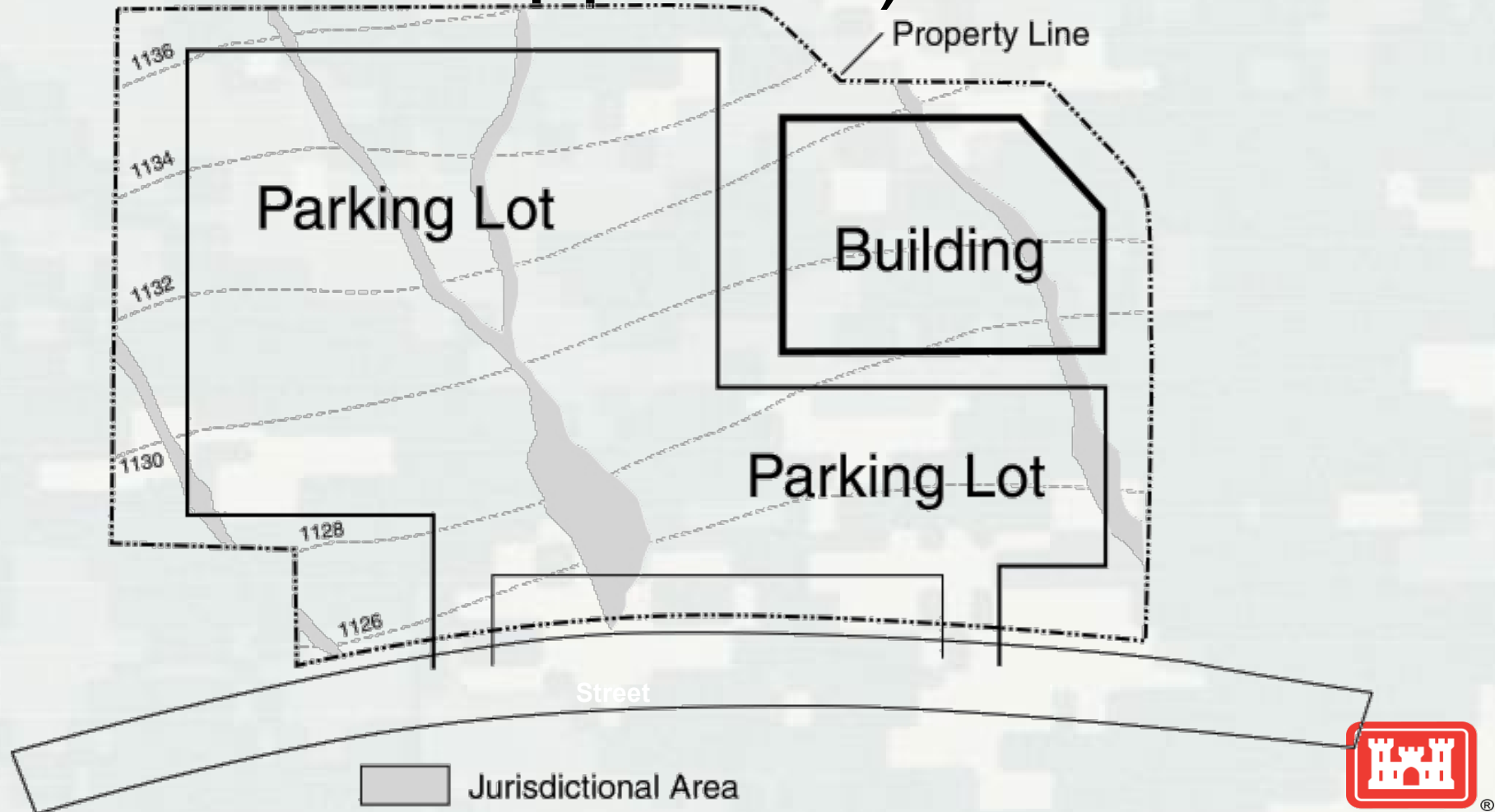


# Scope of Project

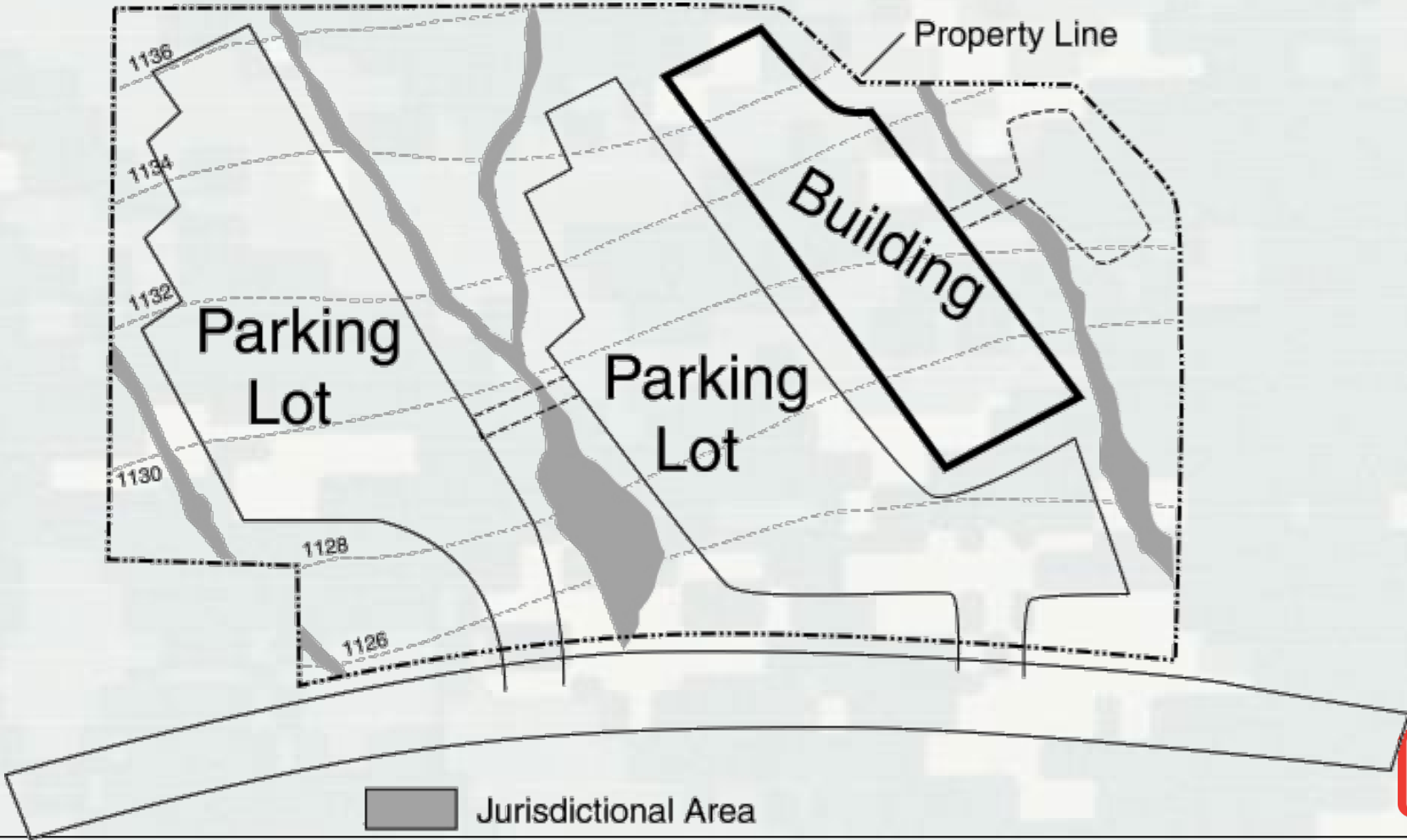
- Location information
  - Include vicinity map, coordinates, directions to site
  
- Clearly define project area boundary
  - Include impacts to waters with broader project impacts
  - If there are exclusionary areas, be sure these are designated
  
- Describe all proposed activities
  - Single and complete project

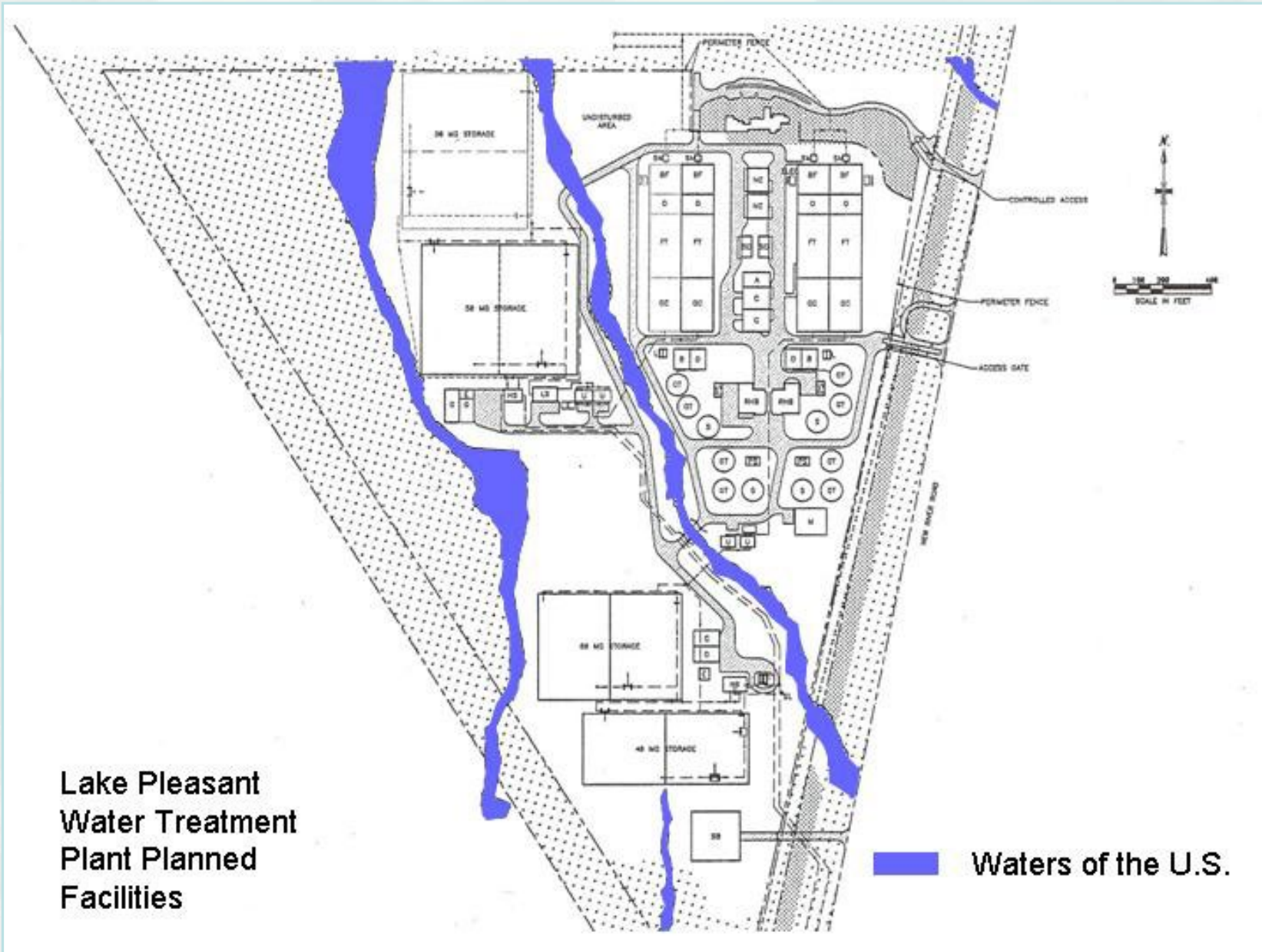


# Design/Planning (Conventional Approach)



# Design/Planning (Modified Approach)

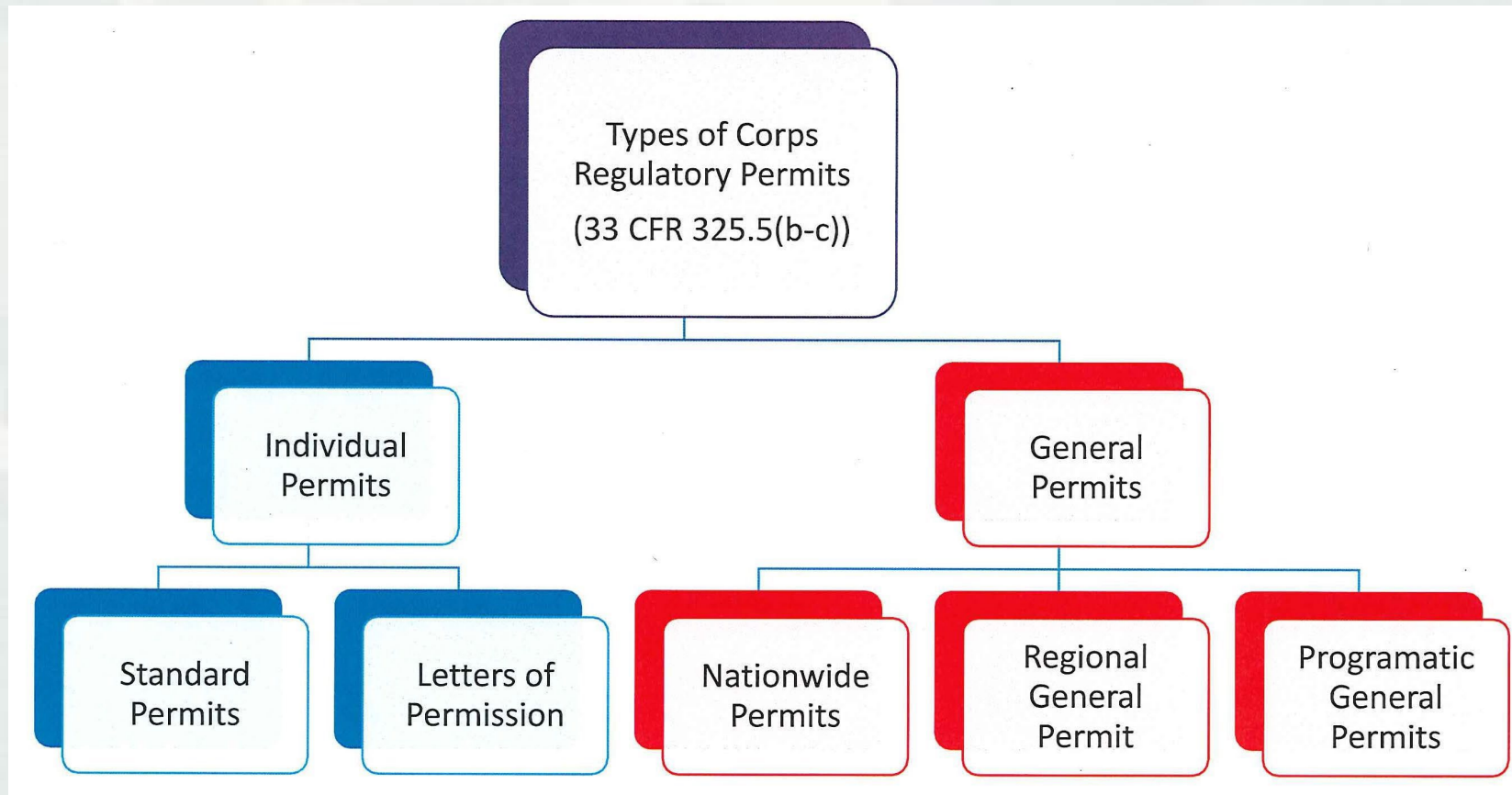




Lake Pleasant  
Water Treatment  
Plant Planned  
Facilities

Waters of the U.S.



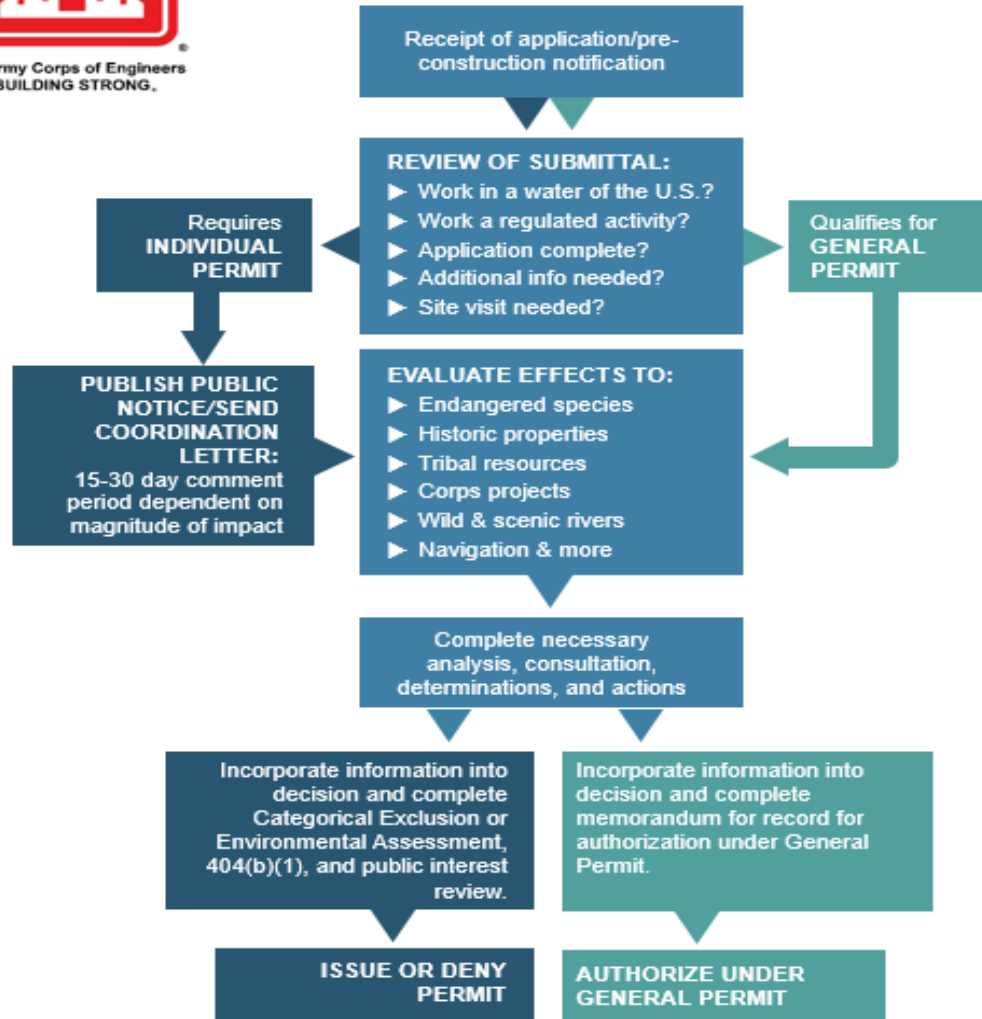


# PERMIT EVALUATION





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Decision timeframe goals: 90% of General Permits within 60 days of completeness  
70% of Individual Permits within 120 days of completeness

# PERMIT REVIEW PROCESS



# Compensatory Mitigation

- Comply with the Mitigation Rule (33 CFR Parts 325 and 332, 40 CFR Part 230)
  - Consists of three factors: avoidance, minimization and compensation. For unavoidable impacts, compensatory mitigation is required to replace the loss of wetland, stream, and/or other aquatic resource functions.
- Mitigation Banks
- In-Lieu Fee Programs
- Permittee Responsible Mitigation

Link to Mitigation Information:

<https://www.spl.usace.army.mil/Missions/Regulatory/Mitigation.aspx>





# Sequential Approach



- Avoid



- Minimize



- Mitigate



- Factor in BOTH time and money for impacts!



# COST ANALYSIS

- What is the scope of my project?
- What resources do I have, and what do I need?

Environmental – Biologist, Archaeologist, Specialized Staff (in-house versus consultant)

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- Consultants – factor in time/money for both planning and execution, depending on the scope of the project.

## Examples:

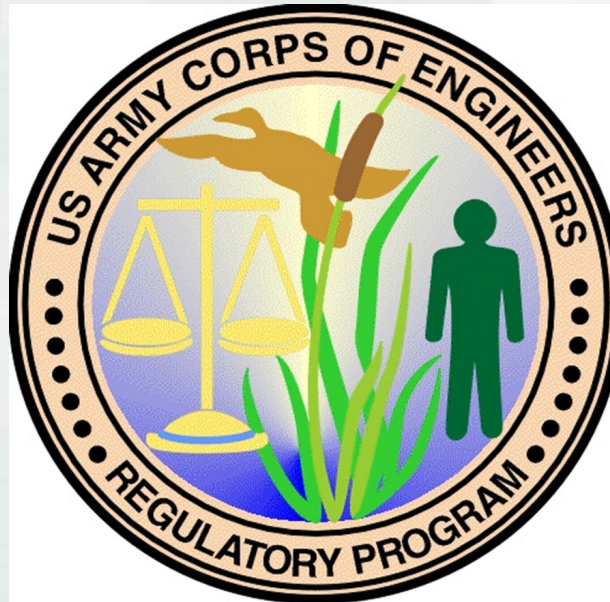
Nationwide Permit with Jurisdictional Determination and simple biology/archaeology for a project <100 acres ballparks at \$12-15K, increases to approximately \$50K for larger projects. Allow 2-6 months for planning and field time plus an additional 2-3 months for report preparation/submission prior to Corps review.

Individual Permit with Environmental Assessment: 12 months for prep/submission at approximately \$150K plus 120 days for Corps review.

Complex Permit with Environmental Impact Statement: 6 months pre-application time, 6 months data preparation, 2-4 years of consultation at \$1-1.5M.



# QUESTIONS?



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