

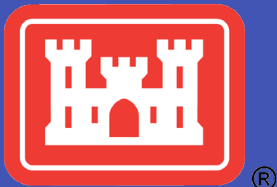
Permit Coordination and Evaluation

Regulatory Project Managers

Corps Detroit District Regulatory Office

EGLE Bay City District Office

October 17, 2019



US Army Corps of Engineers
BUILDING STRONG[®]

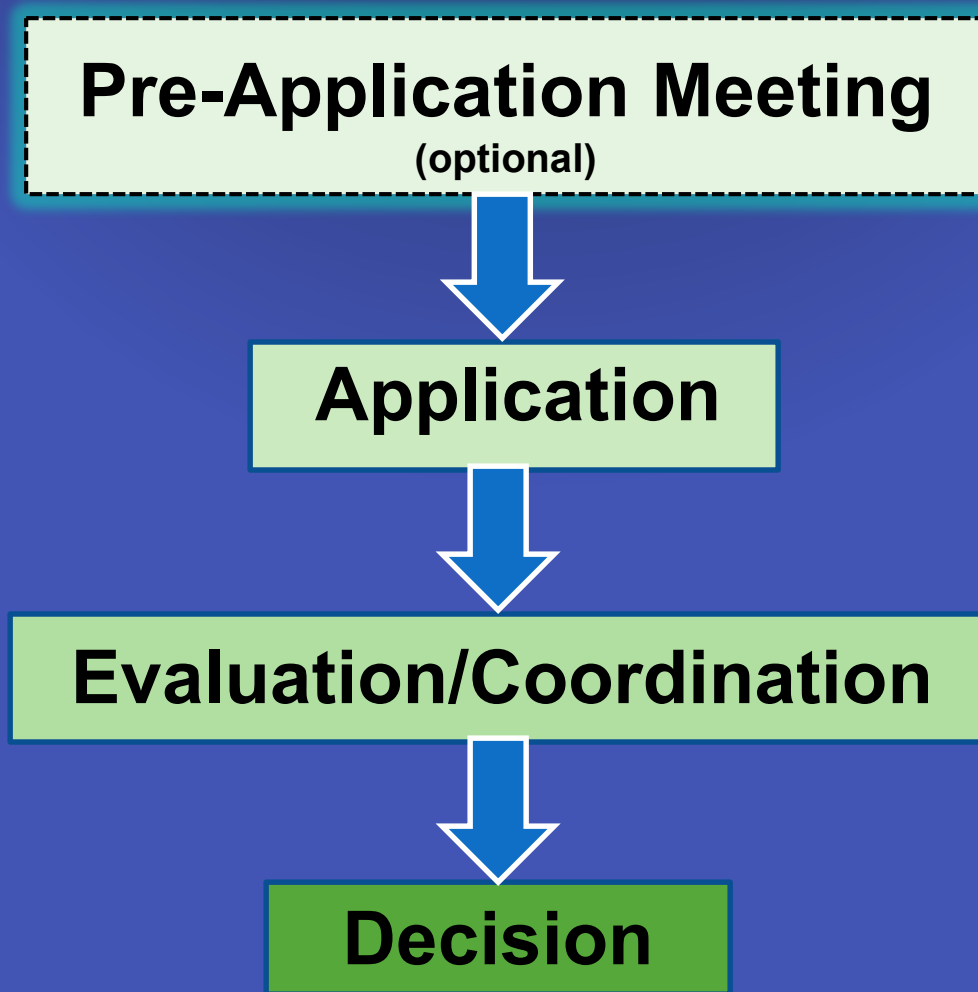


Michigan Department of
Environment, Great Lakes,
and Energy

Permit Coordination and Evaluation

- Permit evaluation process
- General permits
- Individual permits
- Coordination with agencies/tribes
- Threatened and endangered species
- Historic properties
- Time extensions
- Modifications
- Compliance & enforcement

Permit Evaluation Flow-Chart



Pre-Application Meetings

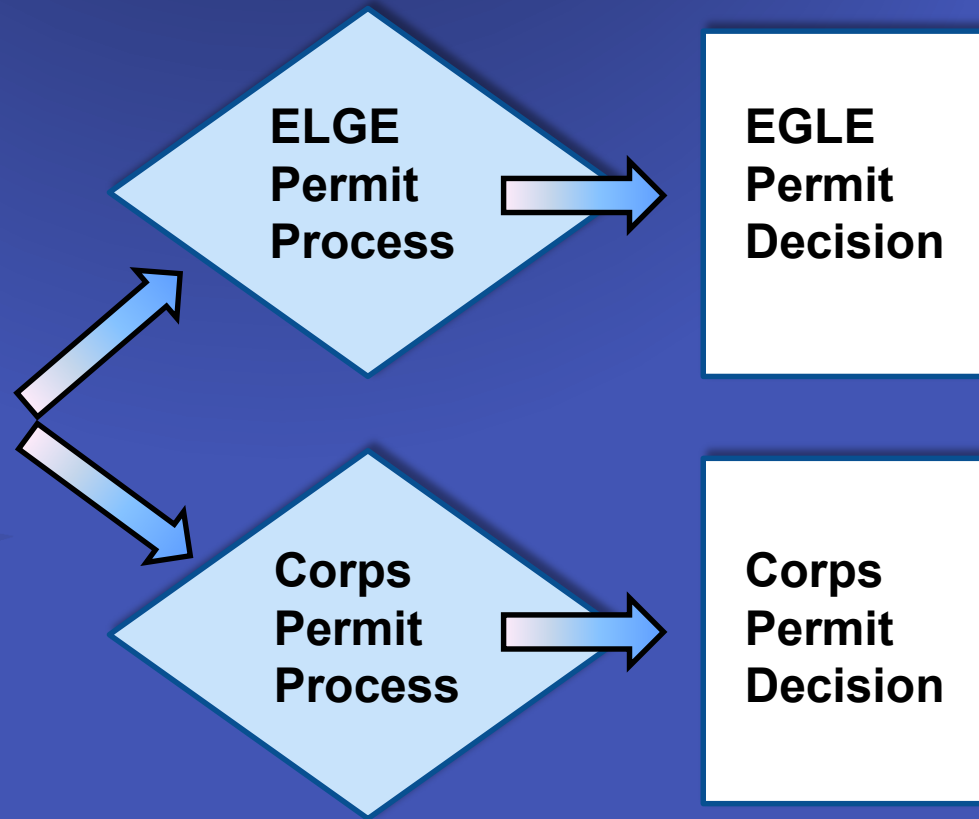
Streamline application process

- Program education
- Information requirements
- Factors weighing heavily in decision
- Impact reduction

Applying for a Permit



Michigan Joint
Permit Application



Separate, independent review
processes and decisions

Other Permit Requirements

- Most projects that require Corps permits also require state (EGLE) permits
 - Section 401 Water Quality Certification
 - Coastal Zone Management Consistency
- Check county/local requirements

Corps Permit Fees

- Application – no fee
- General Permits – no fee
- Letter of Permission – no fee
- Standard Permits
 - Government – no fee
 - Individual – \$10.00
 - Commercial – \$100.00
- Fees charged at time of permit issuance

Corps Permit Evaluation Approximate Timeframes

- From the time we receive a complete application
- May vary for complex projects
 - General permits – 89% < 60 calendar days
 - Individual permits – 74% < 120 calendar days

Types of EGLE Permits and fees

- General Permit \$50
- Minor Project \$100
- Individual Permit \$500
- Major Projects \$2000
- Separate fees for
 - Revisions and transfers
 - Marinas
 - Critical Dunes
 - High Risk Erosion
 - Hydraulic reviews
 - Dam Projects

Appendix C fees www.Michigan.gov/jointpermit or call your District office

MiWaters

Pre-Application Meeting
(optional)

Applications



Complaints/Spills

Floodplain
Elevations

Revisions/Transfers

Mitigation Reports

www.michigan.gov/miwaters

Types of Corps Permits

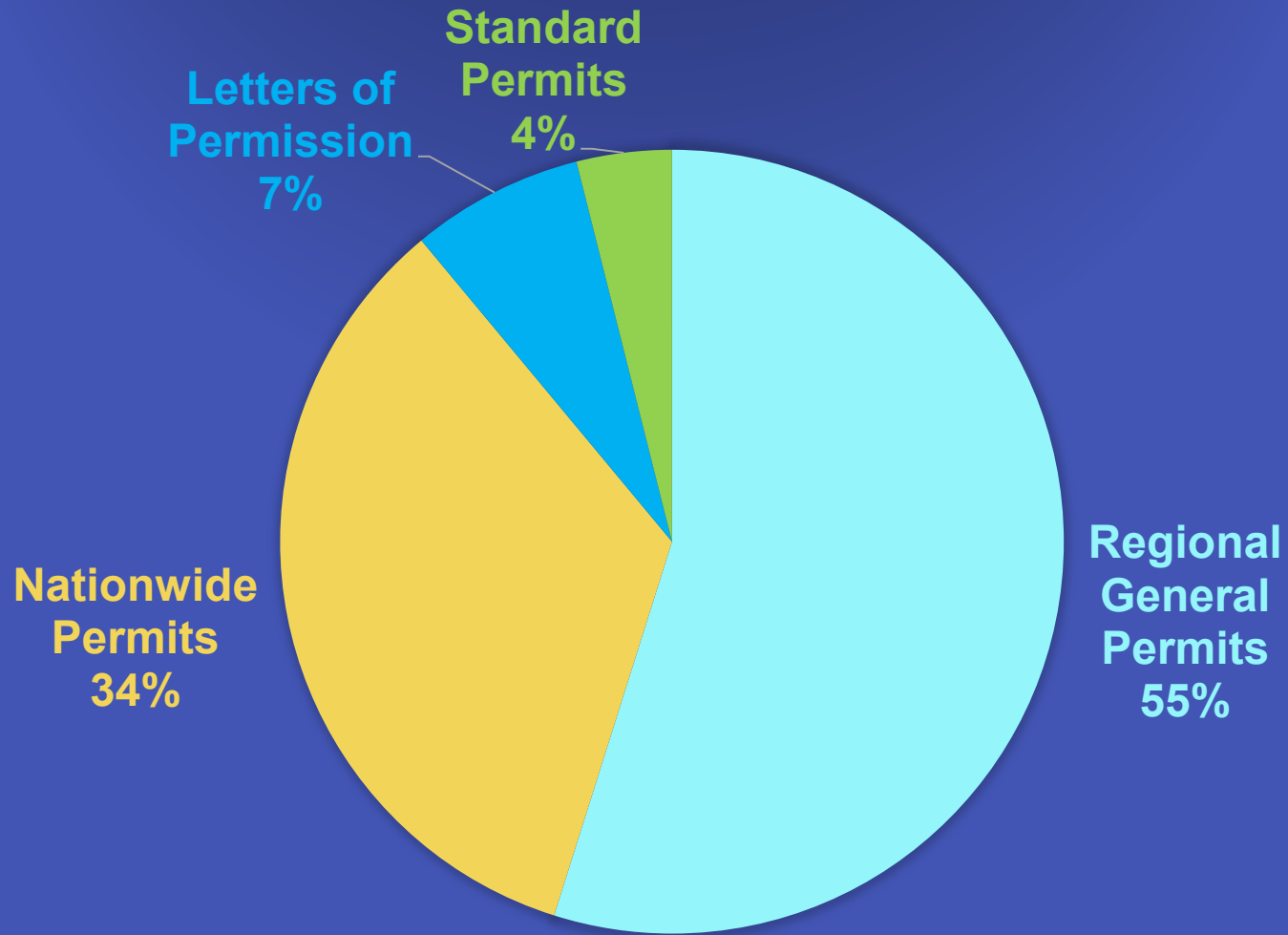
General Permits

- Nationwide
- Regional

Individual Permits

- Letter of Permission
- Standard Permit
 - Requires public notice
 - Requires EA

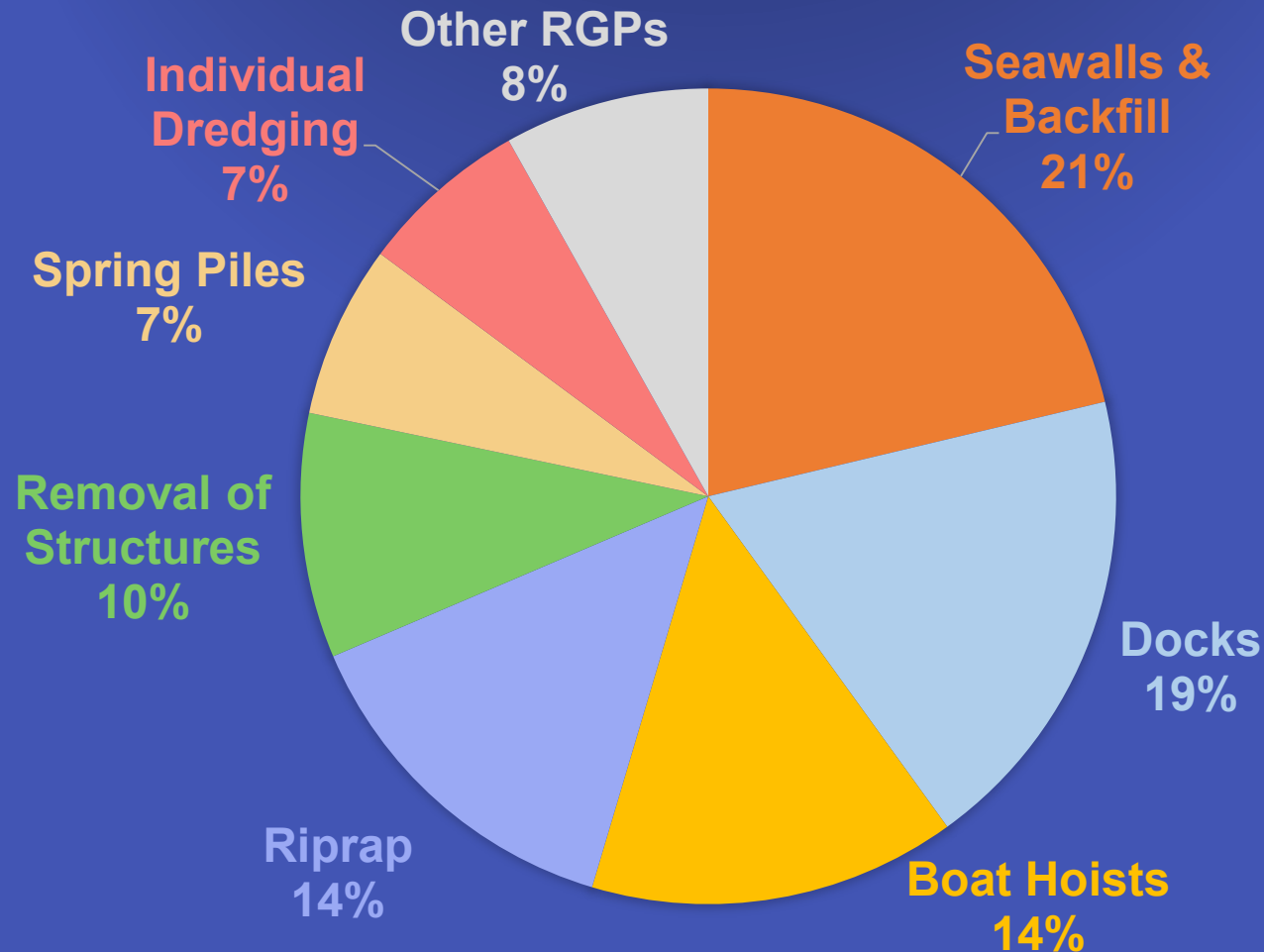
Corps Permit Types in Michigan



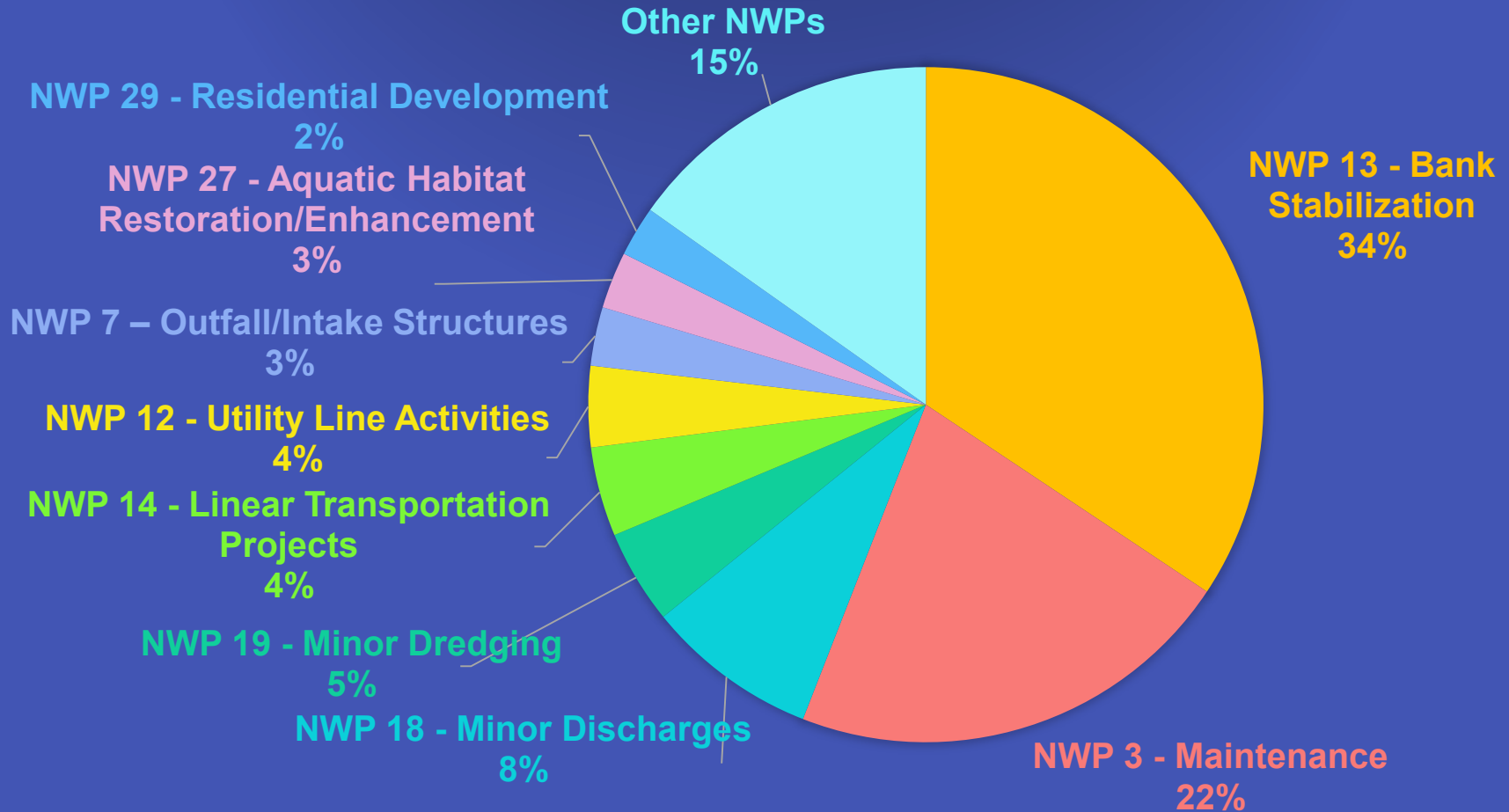
Corps General Permits

- Regional and Nationwide permits
- Corps verifies that work qualifies under terms and conditions of permits
- All require submission of a permit application

Corps Regional General Permits in Michigan



Corps Nationwide Permits in Michigan



Corps General Permits

10. Mooring Buoys. Non-commercial, single-boat, mooring buoys. (Authority: Section 10)

Detroit District NWP 10 Regional Conditions:

- a. The application must provide the latitude and longitude (or UTM coordinates) of the buoy and the distance of the buoy offshore.
- b. The buoy must be clearly marked with the Corps of Engineers' File Number in letters at least 3 inches high and of contrasting color to the background color of the buoy.
- c. The mooring buoy must be marked in accordance with all relevant U.S. Coast Guard requirements.

MDEQ Water Quality Certification/CZMA consistency for NWP 10: MDEQ granted certification based on the following conditions:

- a. The latitude and longitude of the buoy and a scaled site plan showing the distance of the buoy offshore must be provided.
 - b. The buoy must be clearly marked with the MDEQ and Corps of Engineers' File Numbers in letters and numbers at least one inch high and of contrasting color to the background color of the buoy.
 - c. The buoy must meet all relevant United States Coast Guard requirements.
- Tribal Lands Water Quality Certification for NWP 10: EPA granted certification based on all National and Regional conditions.

Project must meet all terms of the NWP or RGP...

...and all Detroit District Regional Conditions

If project meets terms for WQC/CZMA, Corps may issue before EGLE.

Project must also meet all general conditions.

Corps General Permits

RGP – Seawalls and Backfill

Some key criteria:

- Replacement seawalls must be ≤ 1 foot waterward of existing seawall.
- Set maximum waterward extent for new seawalls.
- New seawalls: EGLE must issue first.



Corps General Permits

RGP - Riprap

Some key criteria:

- No more than 300 feet of shoreline.
- No more than 5 feet waterward of OHWM.
- No placement in wetlands.
- Maximum 1V:1.5H slope.
 - ▶ EGLE must issue first if steeper than 1V:2H slope.



Nationwide Permit 13

Bank Stabilization

- Minimum amount of material needed for erosion protection
- No more than 500 feet of shoreline*
- No more than one cubic yard of fill per linear foot below OHWM*
- No fill in wetlands*
- Additional conditions apply

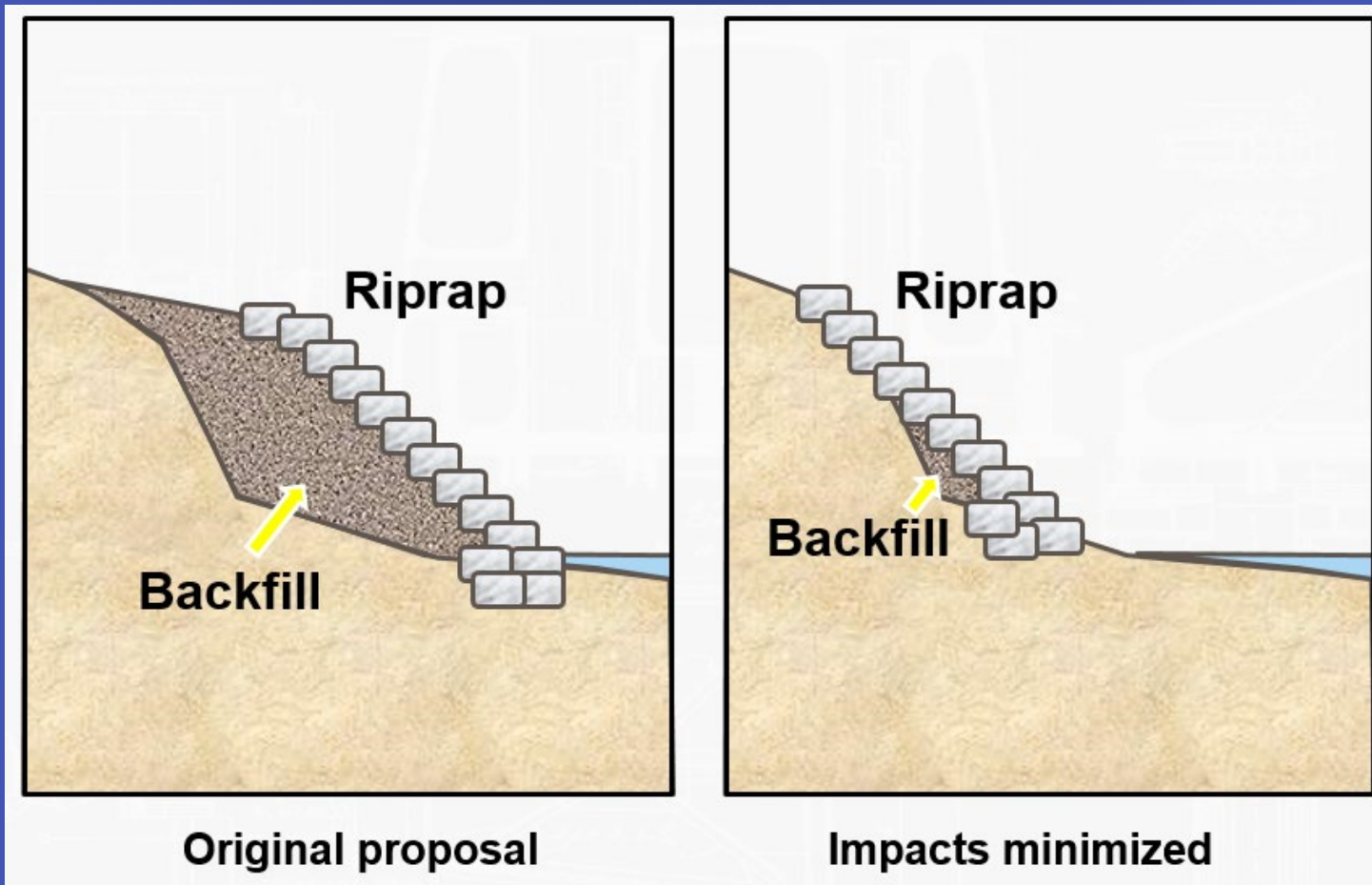
*These conditions may be waived by the Corps, after agency coordination (10-25 days).

2016/07/28

Shore protection projects



Shore Protection Impact Reduction Example



EGLE permitting tiers



EGLE General Permit Example

Y. Soil Borings

Category applies to: *Part 301, Inland Lakes and Streams*
 Part 303, Wetlands Protection
 Part 325, Great Lakes Submerged Lands

Soil sample borings that meet all of the following:

- The outside diameter of the bore hole does not exceed 8 inches.
- Drilling is carried out either from a bridge or other existing structure, or from a barge anchored on a temporary basis, and is completed within a 48-hour period for each bore hole.
- After completion of drilling, the auger hole is backfilled, as appropriate, and any material remaining on the auger is disposed of in an upland location.
- Written authorization is obtained from any riparian property owners prior to drilling, other than soil borings carried out by or for a public agency within a public right-of-way or under appropriate authority.

The proposed project has to meet all of the criteria and only apply to the statutes listed. If not, the project still may be permissible, just not as a GP.

EGLE Minor Permit Example

4. Boat Ramp

Category applies to: Part 301, Inland Lakes and Streams
 Part 303, Wetlands Protection
 Part 325, Great Lakes Submerged Lands

Boat ramp activities that are either:

1. Construction of a noncommercial boat ramp that meets all of the following:

- This MP is limited to one boat ramp serving one single family residential property.
- The placement of fill material does not exceed 25 cubic yards of rock, crushed stone, or gravel placed into forms, or precast concrete planks or slabs.
- The boat ramp does not exceed 12 feet in width.
- Dredging for construction of the boat ramp must meet a dredging MP or GP category. The ramp shall be placed in the center of the property or at least 20 feet from any property lines, unless it is not feasible based on site conditions.
- This category is not allowed within a wetland.
- Public boat launches should be utilized as an alternative when available.

2. Improvement of an existing public boat ramp that meets all of the following:

- The property is owned by a local, state, or federal agency.
- All construction is limited to the existing footprint or 20 feet wide, whichever is more.
- The placement of fill material does not exceed 50 cubic yards of rock, crushed stone, or gravel placed into forms, or precast concrete planks or slabs.
- Dredging shall be limited to the minimum necessary for construction of the boat ramp .
- This category is not allowed within wetland.

3. Maintenance of a boat ramp that meets all of the following:

- The maintenance is in-place and in-kind with no design or materials modification.
- The placement of fill material does not exceed 25 cubic yards of rock, crushed stone, or gravel placed into forms, or precast concrete planks or slabs.
- Dredging for construction of the boat ramp must meet a dredging MP or GP category.
- This category is not allowed within a wetland.

The proposed project has to meet all of the criteria and only apply to the statues listed. If not, the project still may be permittable, just not as a MP.

EGLE Individual Permits

- Most other projects that do not meet a GP or MP category
- Public Notice – 20 days
- Public Hearing, if requested

EGLE Major Projects

Projects with a significant amount of impact proposed

Dredging of 10,000 yd³ or more

Filling of 1 acre of wetland

Seawalls, bulkheads 500 ft or more

Stream enclosures of 100 ft

Subdivisions or condos

Stream relocations of 500 ft

Filling of 10,000 yd³

New dredging in area of
contamination

Corps Individual Permits

- Letters of Permission
 - ▶ Structures and work only
- Standard Permits
 - ▶ More intensive review process



Letters of Permission

- Structures and work only; no fill
- 15 day coordination period
- Often requires EGLE permit before Corps issuance

Standard Permits

- Public notice, typically 20 days
- Environmental assessment or EIS
 - ▶ Public interest review
 - ▶ 404(b)(1) Guidelines review
 - ▶ Alternatives analysis

Public Interest Factors

- Water Quality
- Shoreline
Erosion/Accretion
- Floodplain Issues
- Navigation Concerns
- Aquatic Organisms
- Wildlife
- Conservation and Overall Ecology
- Visual aesthetics
- Wetlands
- Noise
- Historic Values
- Land Use
- Economics
- Property Ownership
- Others

Federally Threatened/Endangered Species Saginaw Bay Area

Eastern Massasauga



Photo by Dick Dickinson

Northern Riffleshell



Eastern Prairie Fringed Orchid

Photo by USFWS

Piping Plover



Northern Long-eared Bat



Photo by New York Department of Environmental Conservation; Al Hicks

Indiana Bat



In the background, Indiana bats are drinking from water that has condensed on the cave wall.

Photo by USFWS; Andrew King

Pitcher's Thistle



Rufa Red Knot



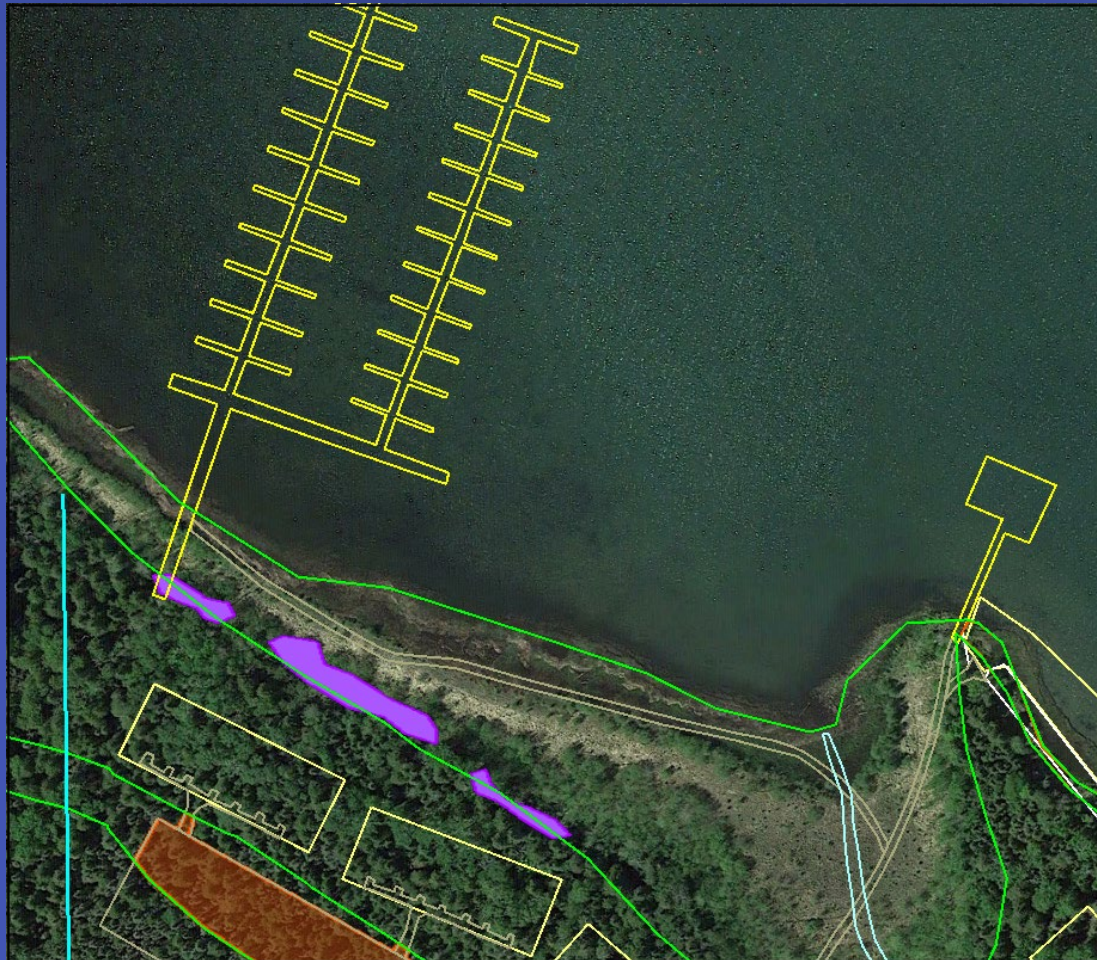
Red Knot by Jeffrey A. Gordon

Federally Threatened/Endangered Species, Critical Habitat

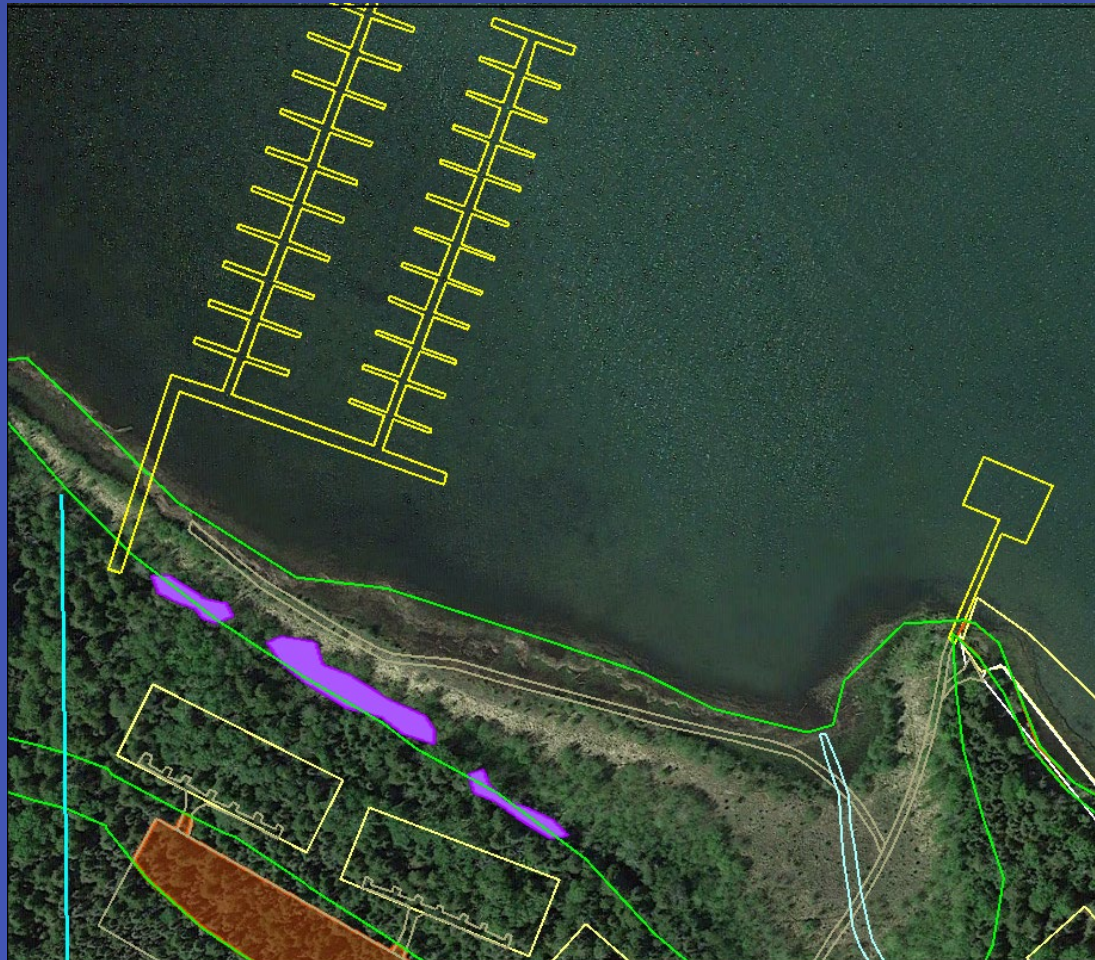
- Are federally listed species or critical habitat present?
 - ▶ Survey may be required
- If present, will the proposed work affect them, and how?



Dwarf Lake Iris Survey



Avoidance possible?



Federally Threatened/Endangered Species, Critical Habitat

- Corps consultation with FWS
- Project modifications or special conditions may be required



Corps Historic Properties Review

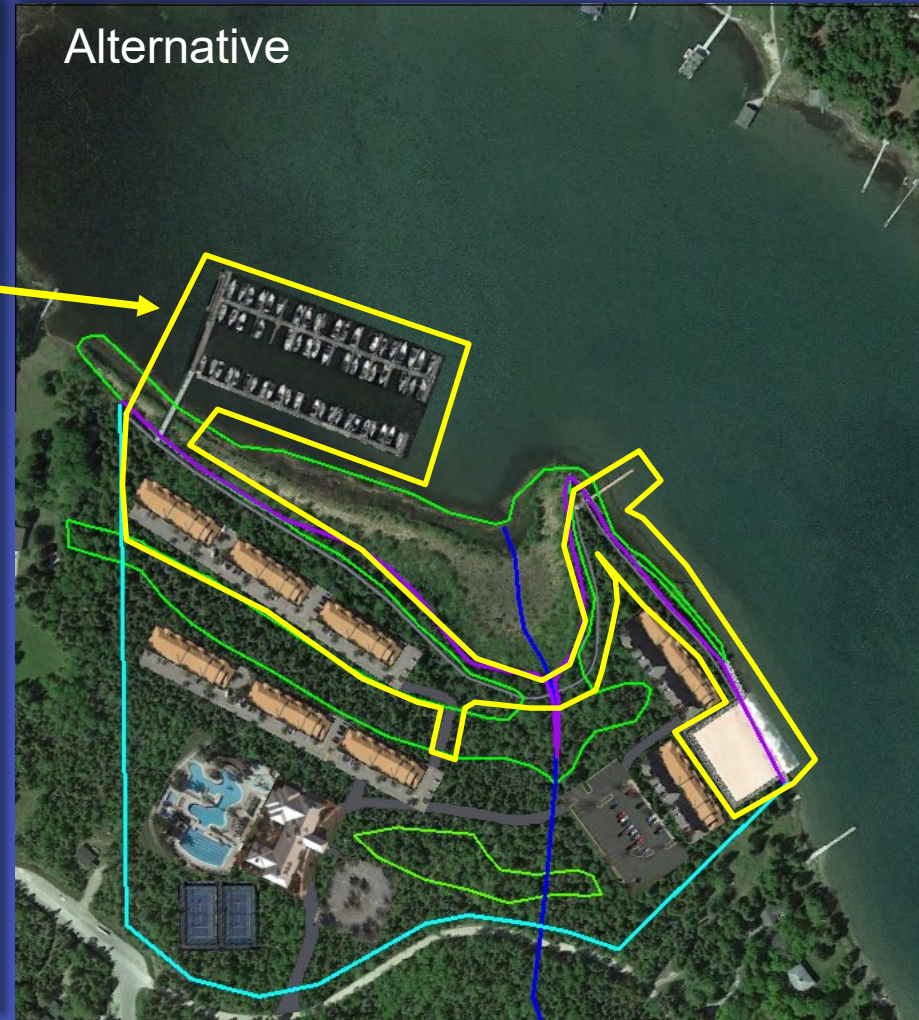
- Identify historic properties
- Evaluate historic significance
- Determine effects
- Consultation
 - ▶ State Historic Preservation Officer (SHPO)
 - ▶ Tribal Historic Preservation Officer (THPO)
 - ▶ Consulting parties (public)
- Resolution of adverse impacts

Corps Historic Properties Review

- National Register of Historic Places
 - ▶ Listed or eligible for listing
 - ▶ Corps determines eligibility
 - ▶ Districts, sites, buildings, structures, objects
 - Shipwrecks
 - Archaeological or cultural resources
 - ▷ Archaeological surveys may be required for projects involving ground disturbance



Corps Historic Properties Review Permit Area



Corps Historic Properties Review Resolution of Adverse Effects

- Minimization/Mitigation may include:
 - Limiting the magnitude of the undertaking
 - Modifying the project
 - Rehabilitation or repairing a structure
 - Documentation
 - Relocation
 - Data recovery

Corps 404(b)(1) Guidelines Review

- Projects involving discharges of dredged or fill material
- Only the **least environmentally damaging practicable alternative** is permissible.
- Mitigation sequence:
 - ▶ Avoidance
 - ▶ Minimization
 - ▶ Compensatory mitigation

Corps 404(b)(1) Guidelines Review

- **Practicable:** Available and capable of being done after taking into consideration:
 - Cost
 - Existing technology
 - Logisticsin light of overall project purposes

Corps 404(b)(1) Guidelines Review Project Purpose

- Key factor in 404(b)(1) Guidelines analysis
- Basic project purpose
 - ▶ Water dependency
- Overall project purpose
 - ▶ Alternatives analysis

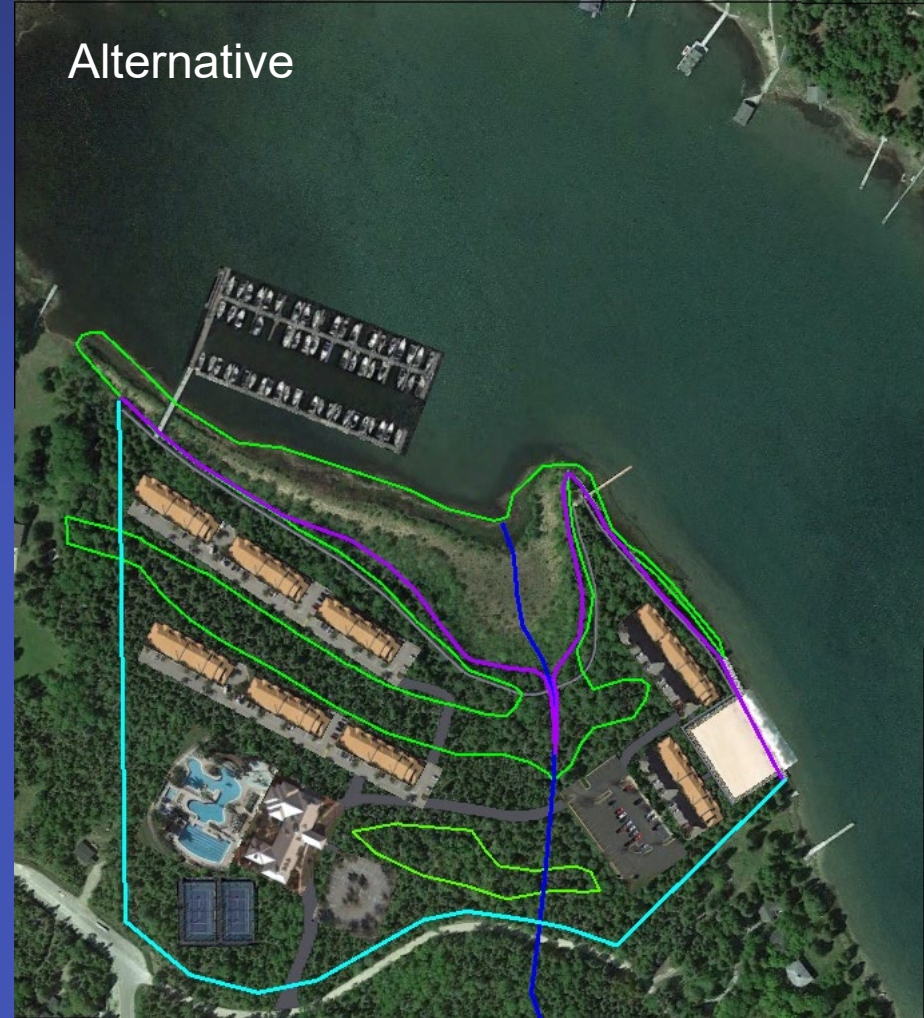


Alternatives analysis

Original proposal

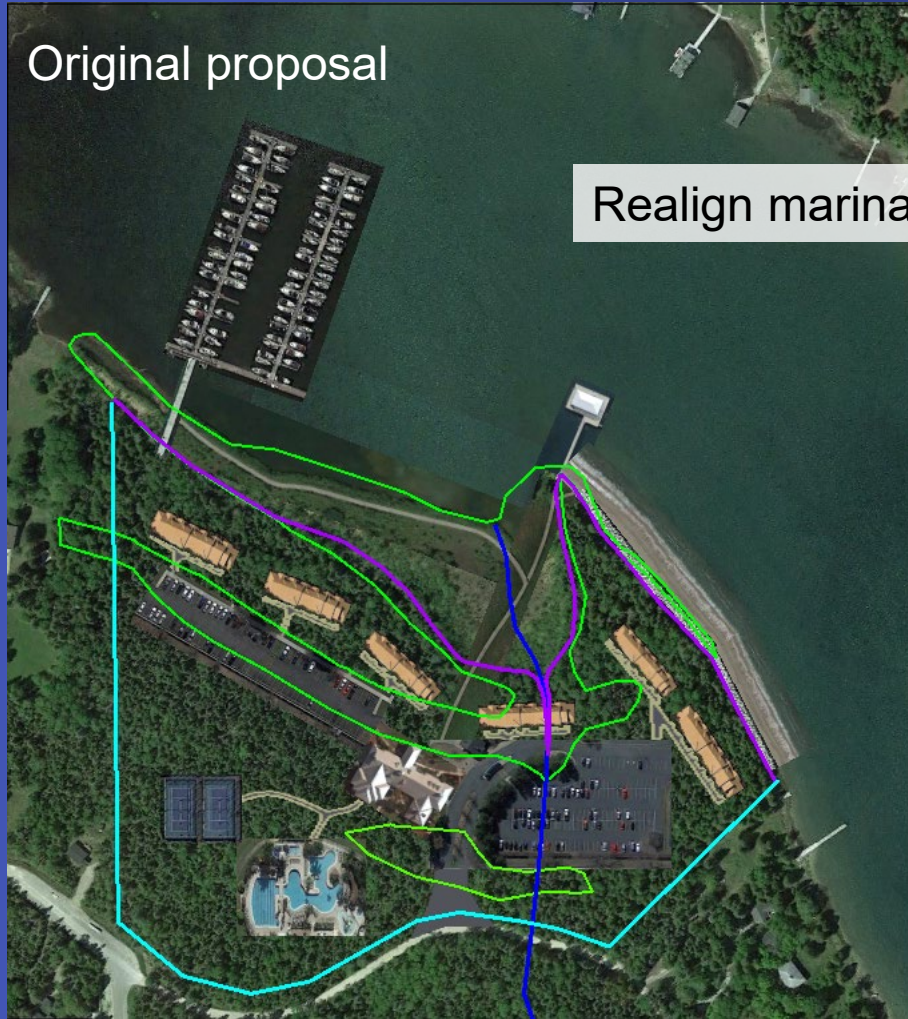


Alternative



Alternatives analysis

Original proposal



Alternative



Alternatives analysis

Original proposal

Locate condos, driveways and parking in uplands



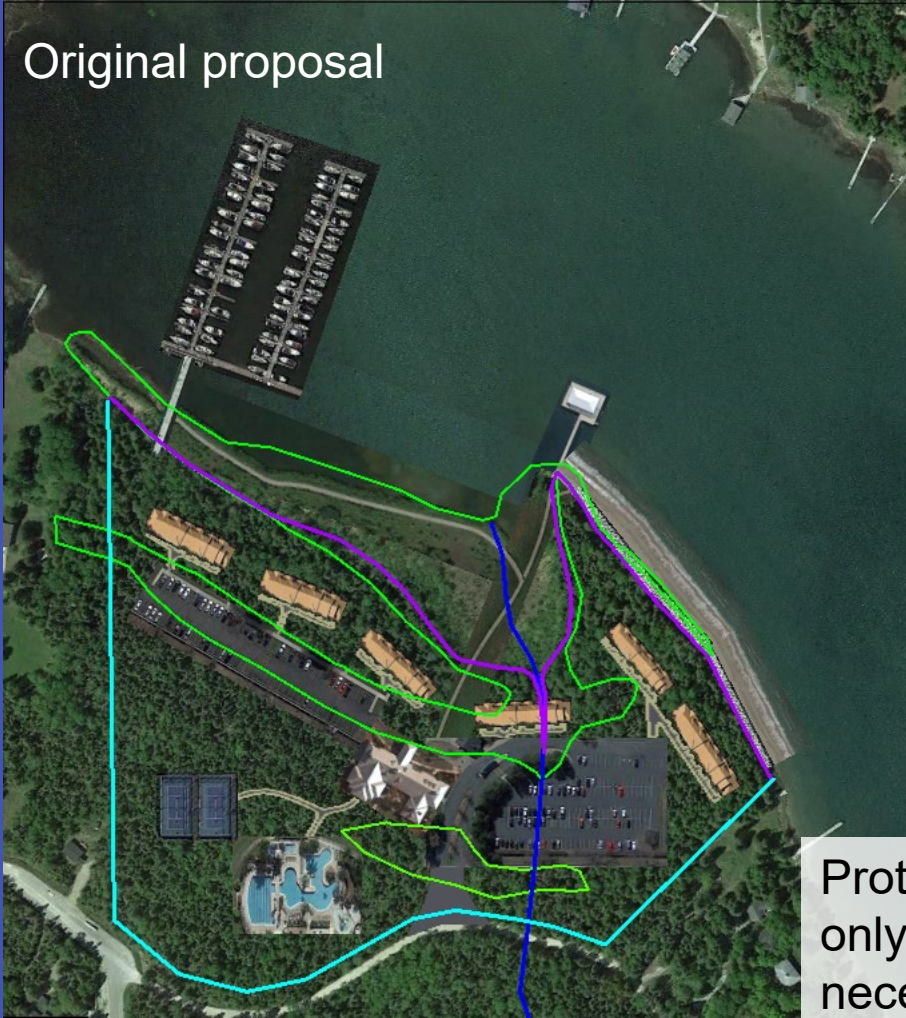
Alternative

Open-pile boardwalk crosses wetland and stream



Alternatives analysis

Original proposal



Alternative



Excavate upland area for recreational beach

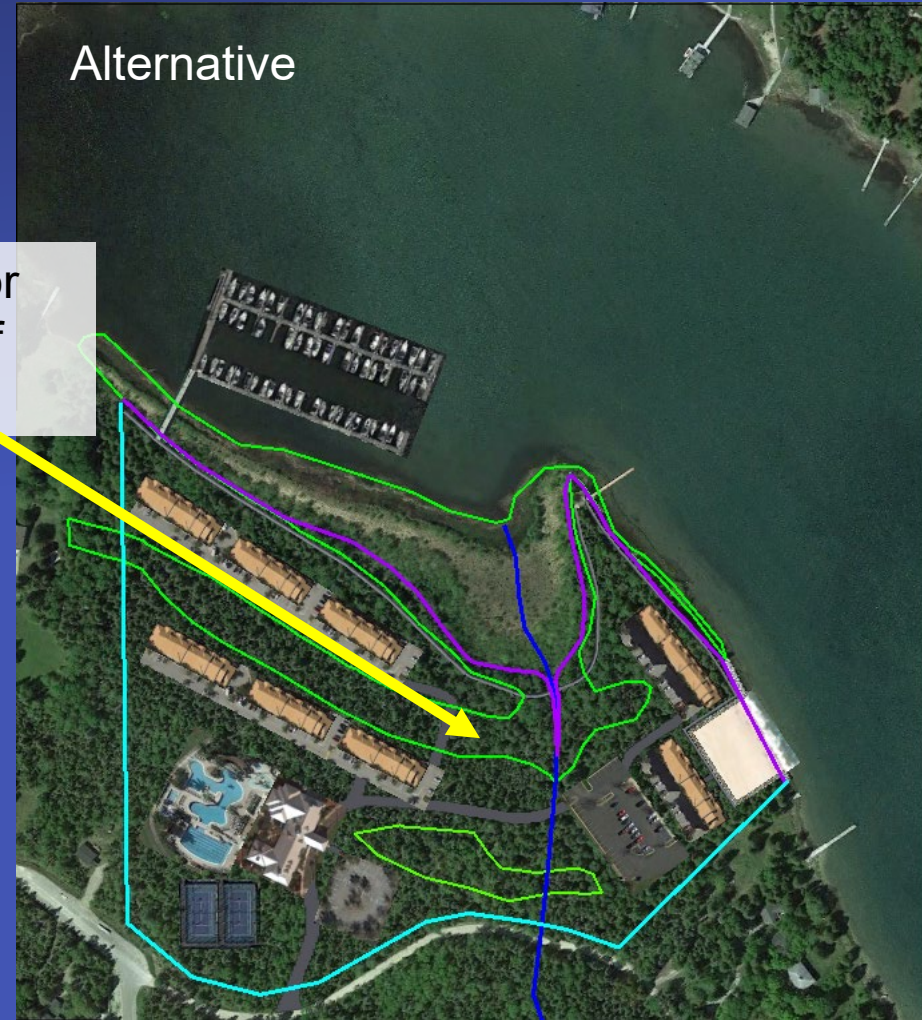
Protect shoreline only where necessary

Alternatives analysis

Original proposal

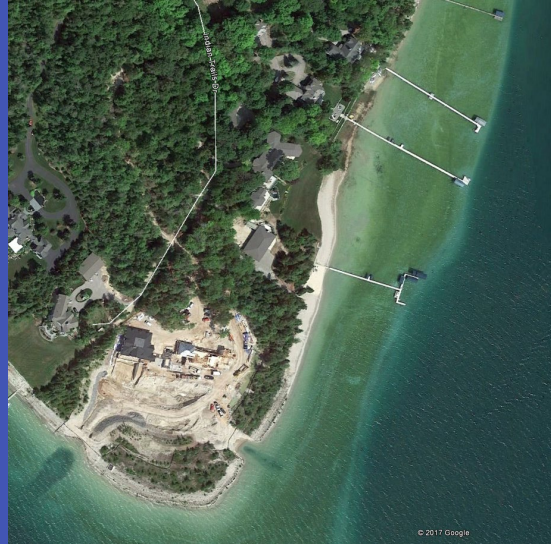


Alternative



Cumulative Impacts

- Aggregate effects of individual projects
- Past, present, and reasonably foreseeable future projects



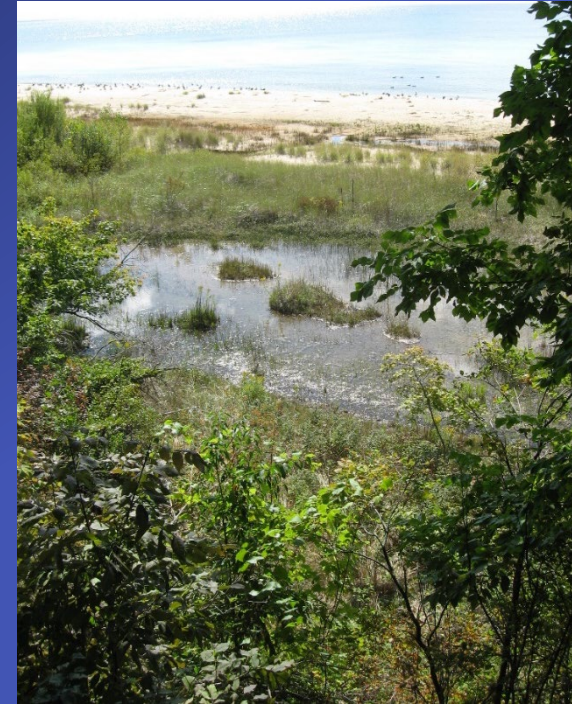
Permit Evaluation Decision

- Issued as proposed
- Issued with modifications and/or special conditions
- Denied

EGLE review process

- GP, MP, Individual and Major projects are all reviewed based on the applicable statutes.
- Each statute has slight different review criteria.

EGLE Public Trust



Perpetual duty of state to secure to its people the prevention of pollution, impairment, or destruction of its natural resources, and rights of navigation, fishing, hunting, and use of its lands and waters for other public purposes.

EGLE Riparian rights



Riparian rights

- Access to navigable waters
- Dockage to boatable waters, known as wharfage
- Use of water for general purposes, such as bathing or domestic use
- Title to natural accretions

EGLE Part 301 - 30106

- The department shall not issue a permit if the project...
 - ▶ will adversely affect the public trust or riparian rights
 - ▶ will unlawfully impair the waters or other natural resources of the state
- The department will consider the possible effects on the inland lake or stream and its uses...including uses for recreation, fish and wildlife, aesthetics, local government, agriculture, commerce, and industry.



EGLE Part 301 - 30106a

Marina review criteria

- ▶ Riparian interest area
- ▶ Navigation
- ▶ Slip lengths
- ▶ Ingress and egress for maneuverability



EGLE Part 303 - 30311

Wetland review criteria

- A permit for an activity listed in Section 30304 shall not be approved unless...
 - ▶ The project is in the public interest
 - ▶ Permit is necessary to realize the benefits
 - ▶ Activity is lawful
 - ▶ No unacceptable disruption to aquatic resources
 - ▶ The project is wetland dependent
 - ▶ A feasible and prudent alternative does not exist.



EGLE Part 323 - 32305

High Risk Erosion review criteria

- ▶ Readily movable need to meet the calculated 30yr setback.
- ▶ Non-readily movable need to meet the calculated 60yr setback.



EGLE Part 31 - 323.1313

Floodplain review criteria

- ▶ Harmful interference for projects in floodway
- ▶ No habitation of the floodway
- ▶ Proper elevations above the floodplain
- ▶ Cut/fills for projects over 300 cubic yards
 - Goal: no loss of floodplain storage



Corps Time Extensions

- No changes to project
- A explanation of delay and proposed timeline for the completion is provided
- Submit request at least one month before permit expires

Corps Permit Modifications

- Don't wait until the last minute
- Change in project purpose may require permit modification or new evaluation

Permit Details

- Be sure all necessary permits are obtained prior to the start of work.
 - ▶ Ensure that all proposed work in jurisdictional areas is covered.
- Provide all parties involved with the project a copy of the permit.
 - ▶ All persons involved are responsible parties charged with permit compliance.

Compliance and Enforcement

Inspections on authorized projects are conducted on a regular basis



Compliance and Enforcement

Permit non-compliance

- Work is not in accordance with a permit
- Resolutions
 - Restoration of work that exceeds permit
 - Permit modification
 - Suspend/revoke permit -- civil or criminal action


Compliance and Enforcement

Reporting Potential Unauthorized Activities

Complainants are anonymous

Information about the activity

- Nature of the activity?
- Location?
- Contractor/person involved?
- Is the activity on-going?
- When did the activity start?



Report of Potential Unauthorized Activity

To Report a suspected violation of Corps Regulatory requirements, this form can be filled out online and then printed. The printed form and supporting documents should be mailed, faxed, and/or emailed to:

Please complete this form as accurately as possible. You may attach extra pages if needed.

Date of Report: _____
Suspected Violator: _____
Address: _____ City: _____
State: _____ Zip Code: _____ Phone Number: _____
Contractor (if known): _____
Who else has information on this project? _____
Detailed Description of Activity: _____

Date(s) Activity Observed: _____ Is the activity ongoing? _____
When is work being performed? _____
Type of Equipment Used: (e.g., backhoe, bulldozer, etc.) _____
Location of alleged violation: (Attach map & indicate approximate site location)
Address: _____
City: _____ County: _____
Waterway: _____ Watershed Name: _____
Latitude _____ Longitude _____
Any additional information: _____

Send to: U.S. Army Corps of Engineers
Detroit District, Regulatory Branch
P.O. Box 1027
Detroit, Michigan 48231-1027
Phone: (313) 226-6812
Fax: (313) 226-6763
E-Mail: RegVio@usace.army.mil

Compliance and Enforcement

Investigate reports of unauthorized activities

- Does the activity require a permit?
- Has a permit been issued?
- Does the activity comply with the permit?



Compliance and Enforcement

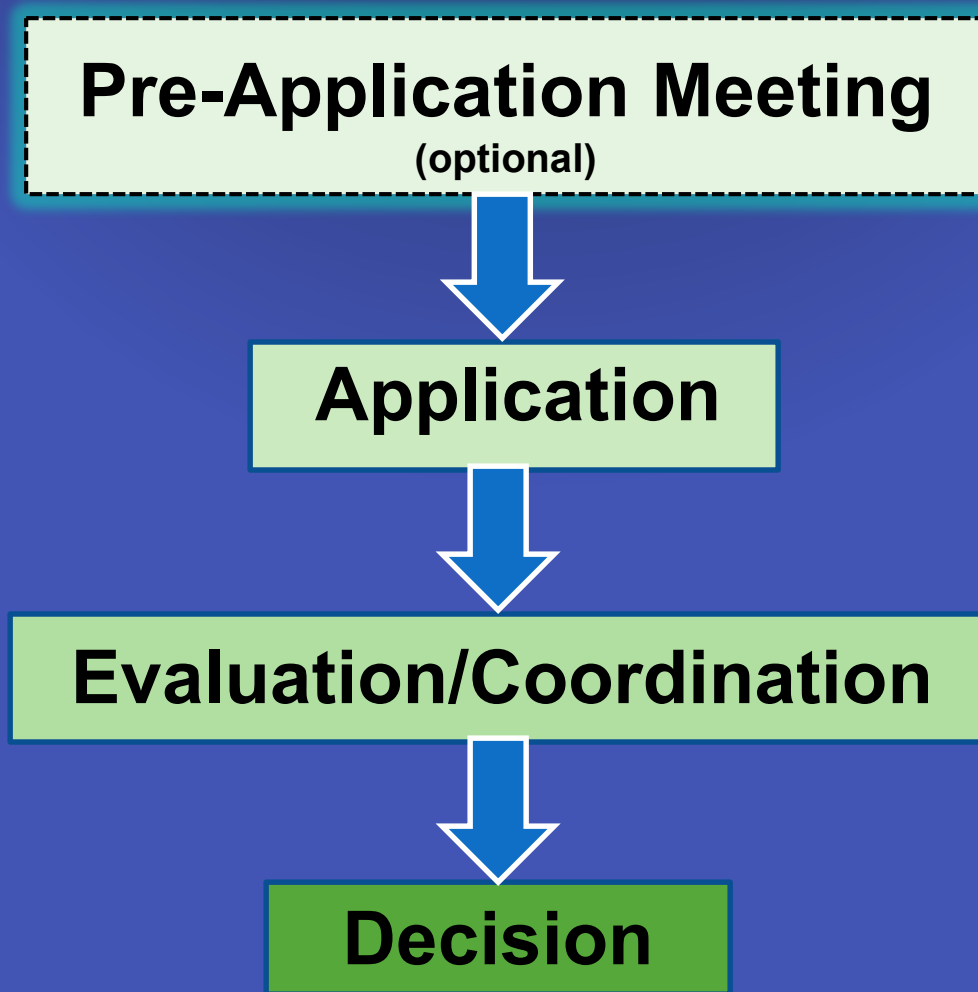
Unauthorized Activity

- Resolutions
 - Voluntary restoration -- partial or full
 - After-the-fact permit -- partial or full
 - Civil litigation -- can have consent decree
 - Criminal litigation -- flagrant knowing violator

Corps ATF Permits

- After-the-fact permits may be issued in some cases.
 - ▶ If not, order to restore may be required.
- Coordination with EGLE
 - ▶ In many instances, the Corps cannot issue an ATF without prior authorization from EGLE.

Permit Evaluation Flow-Chart



Questions?

