Permit Coordination and Evaluation

Regulatory Project Managers

Corps Detroit District Regulatory Office

EGLE Grand Rapids District Office

August 28, 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 Meeting
(optional)

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Application

↓

Evaluation/Coordination

↓

Decision

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

ELGE Permit Process → EGLE Permit Decision

Corps Permit Process → Corps Permit Decision

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

Mi WATERS

Floodplain Elevations

Revisions/Transfers

Mitigation Reports

www.michigan.gov/miwaters

EGLE

Types of Corps Permits

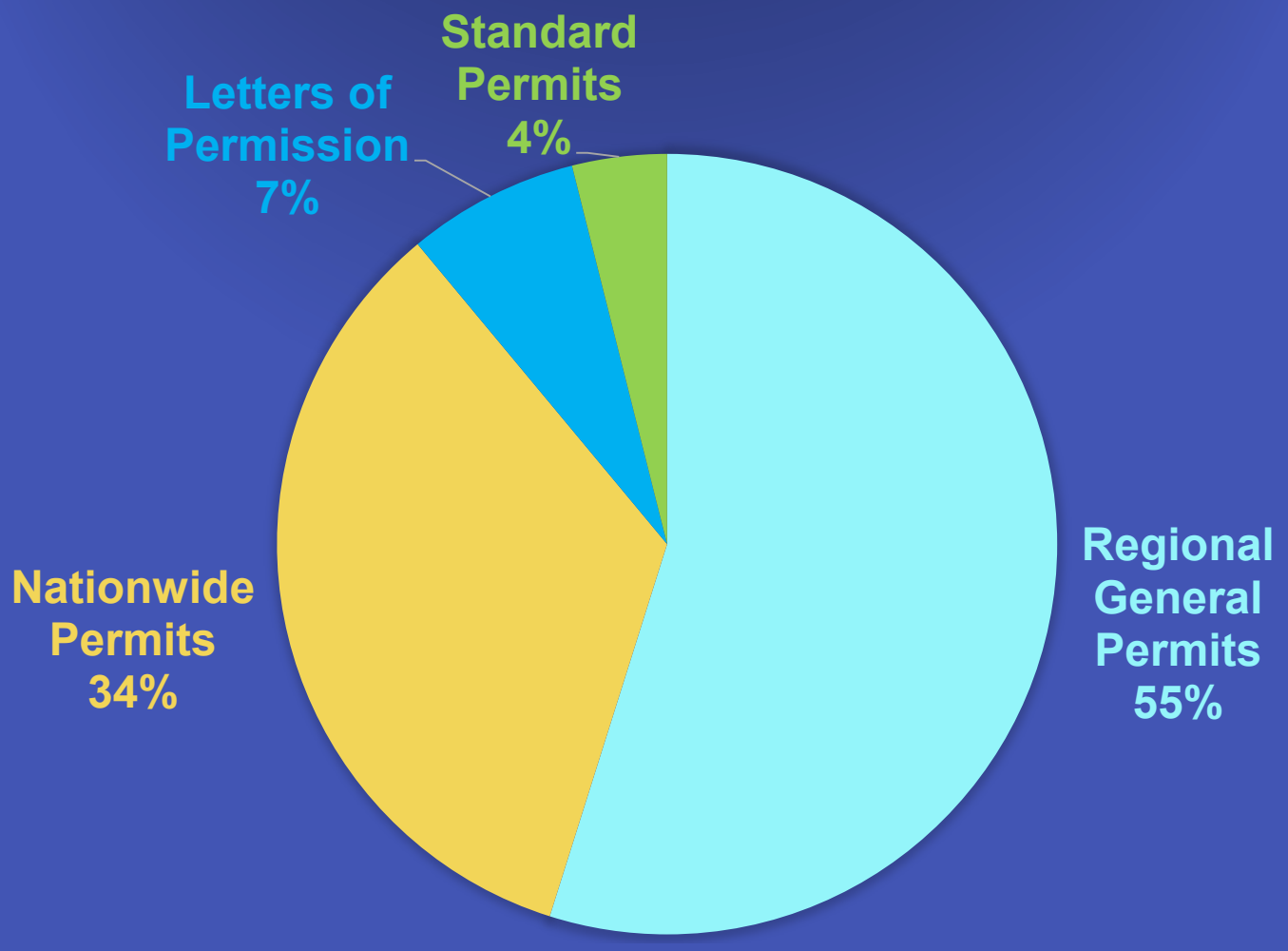
General Permits

- Nationwide
- Regional

Individual Permits

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

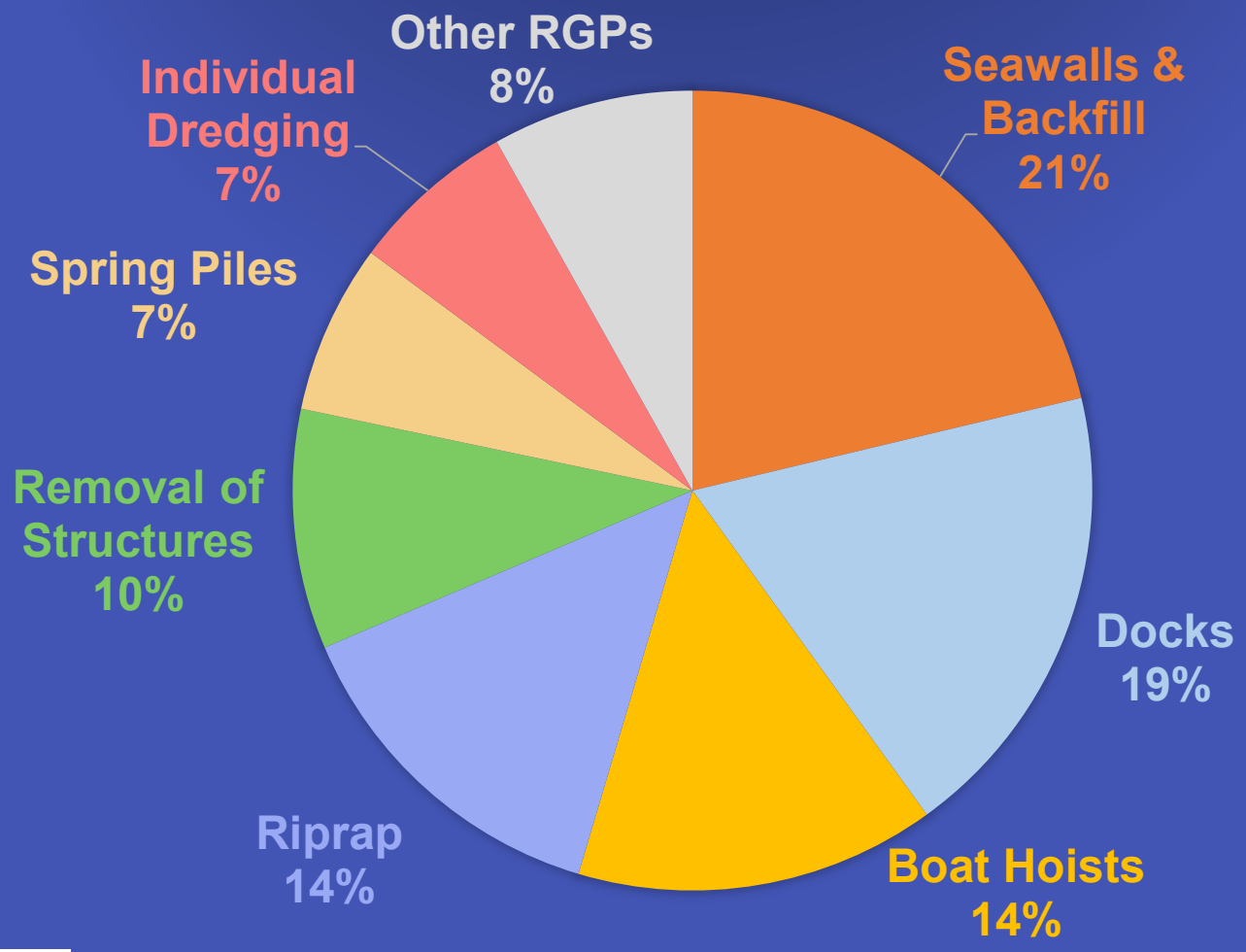
Corps Permit Types in Michigan



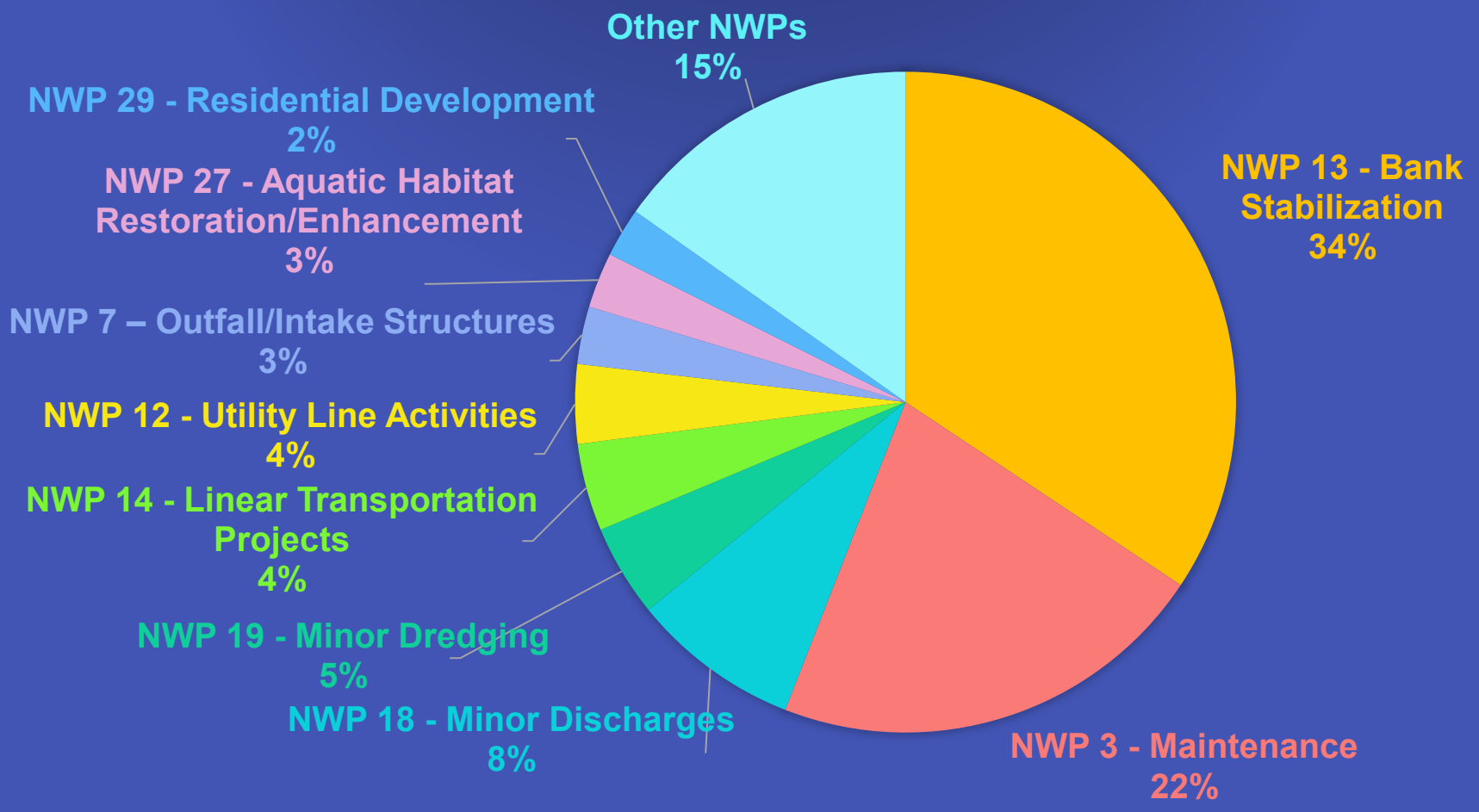
Corps General Permits

- 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

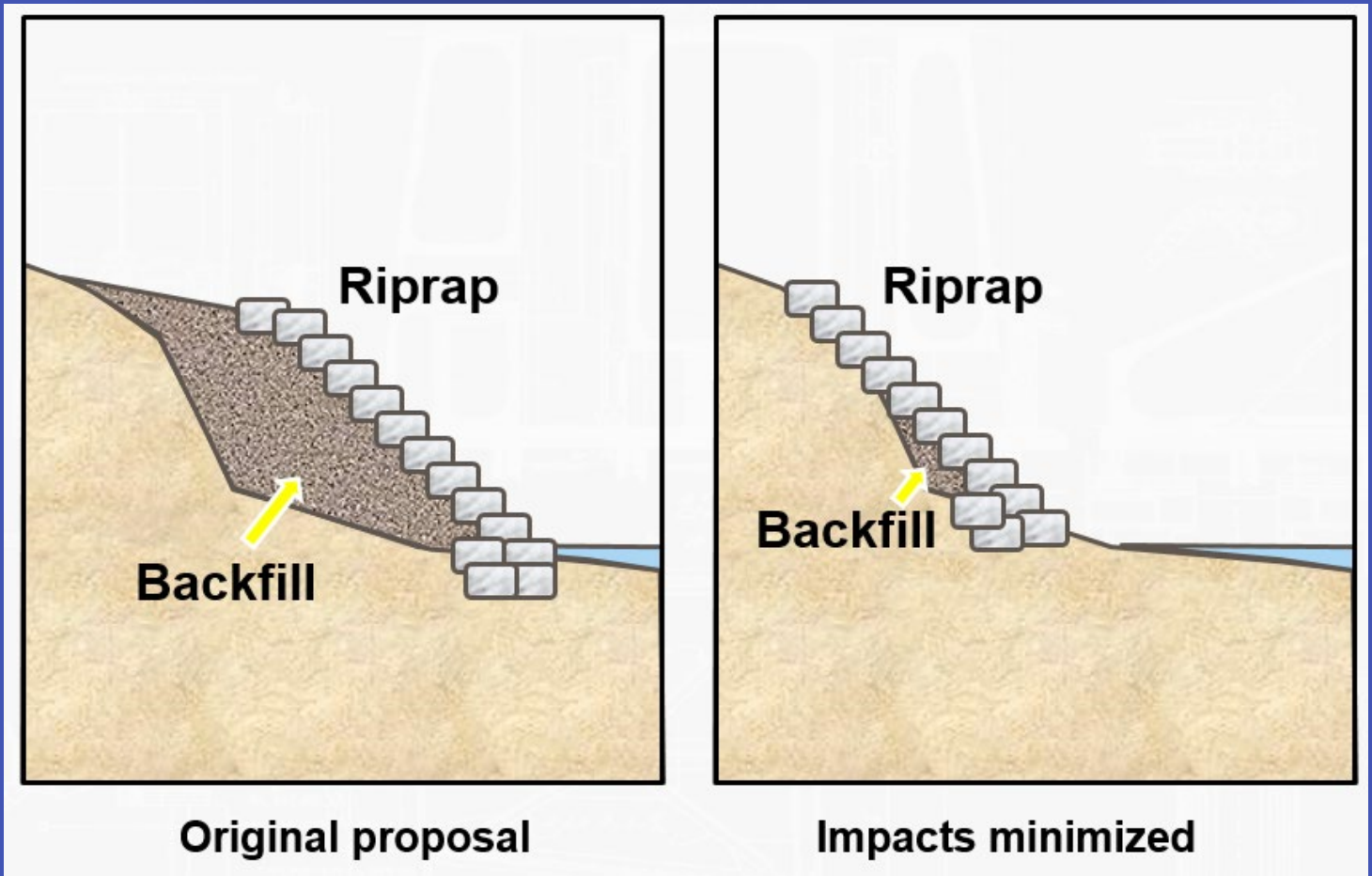
- Minimum amount of material needed for erosion protection
- No more than 500 feet of shoreline*
- No more than one cubic yard of fill per linear foot below OHWM*
- No fill in wetlands*
- Additional conditions apply

*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

General Permits $50

Minor Projects $100

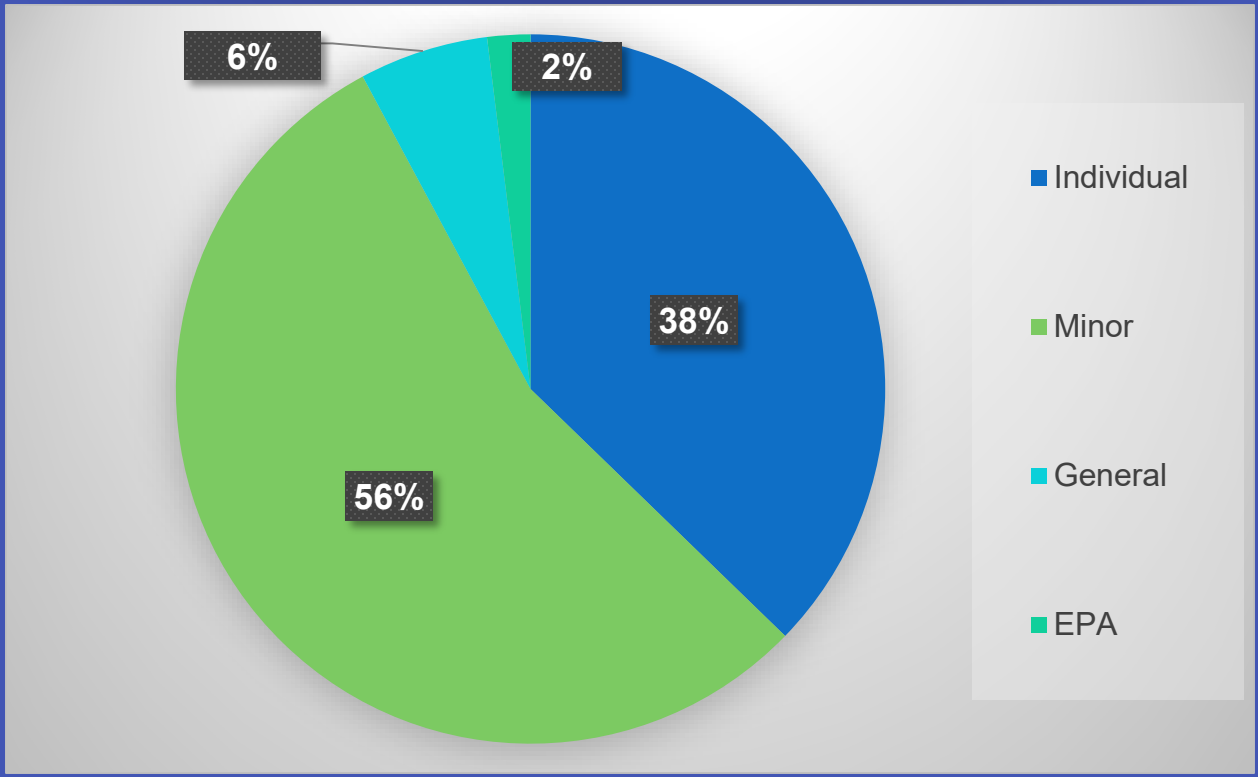
Public Notice Projects $500

Major Projects $2000

MP/GP Criteria are available at:
www.michigan.gov/jointpermit

EGLE Resource Permits

EGLE issued 4,778 Resource permits in 2018



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 statues listed. If not, the project still may be permittable, 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 yd^3 or more
- Seawalls, bulkheads 500 ft or more
- Subdivisions or condos
- Filling of 10,000 yd^3
- Filling of 1 acre of wetland
- Stream enclosures of 100 ft
- Stream relocations of 500 ft
- 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

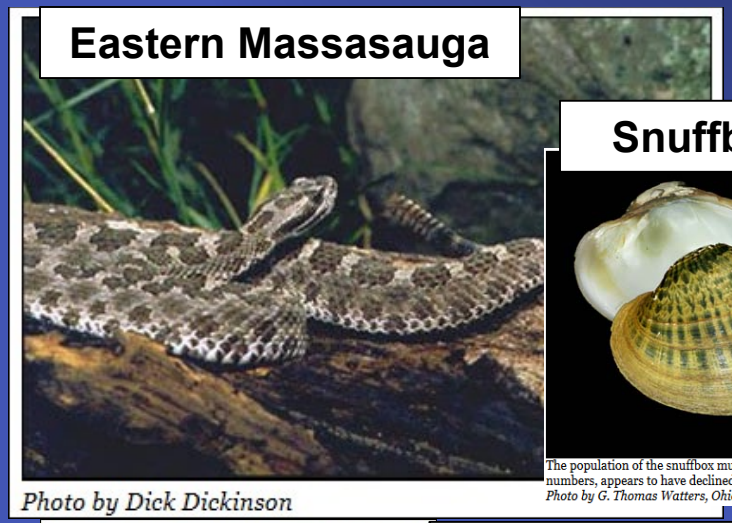
Standard Permits

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

Public Interest Factors

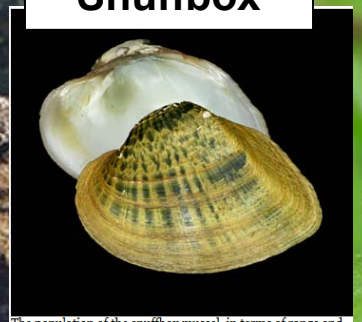
- Water Quality
- Shoreline Erosion/Accretion
- Floodplain Issues
- Navigation Concerns
- Aquatic Organisms
- Wildlife
- Conservation and Overall Ecology
- Visual aesthetics
- Wetlands
- Noise
- Historic Values
- Land Use
- Economics
- Property Ownership
- Others

Federally Threatened/Endangered Species and Critical Habitat in Kent, Ottawa and Muskegon Counties



Eastern Massasauga

Photo by Dick Dickinson

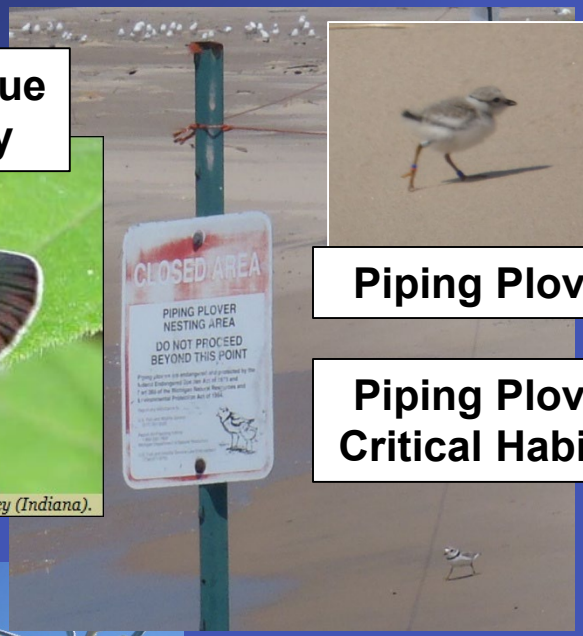


Snuffbox

The population of the snuffbox mussel, in terms of range and numbers, appears to have declined by at least 90 percent.
Photo by G. Thomas Watters, Ohio State University

Karner Blue Butterfly

Paul Labus; The Nature Conservancy (Indiana).



Piping Plover

Piping Plover Critical Habitat

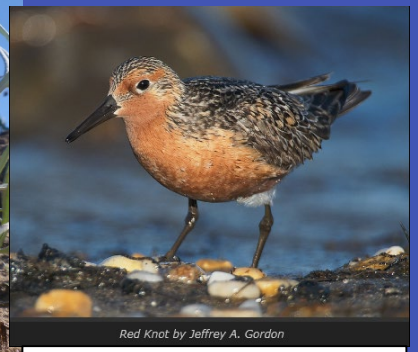
Indiana Bat

In the background, Indiana bats are drinking from water that has condensed on the cave wall.
Photo by USFWS; Andrew King

Northern Long-eared Bat

Photo by New York Department of Environmental Conservation; Al Hicks

Pitcher's Thistle



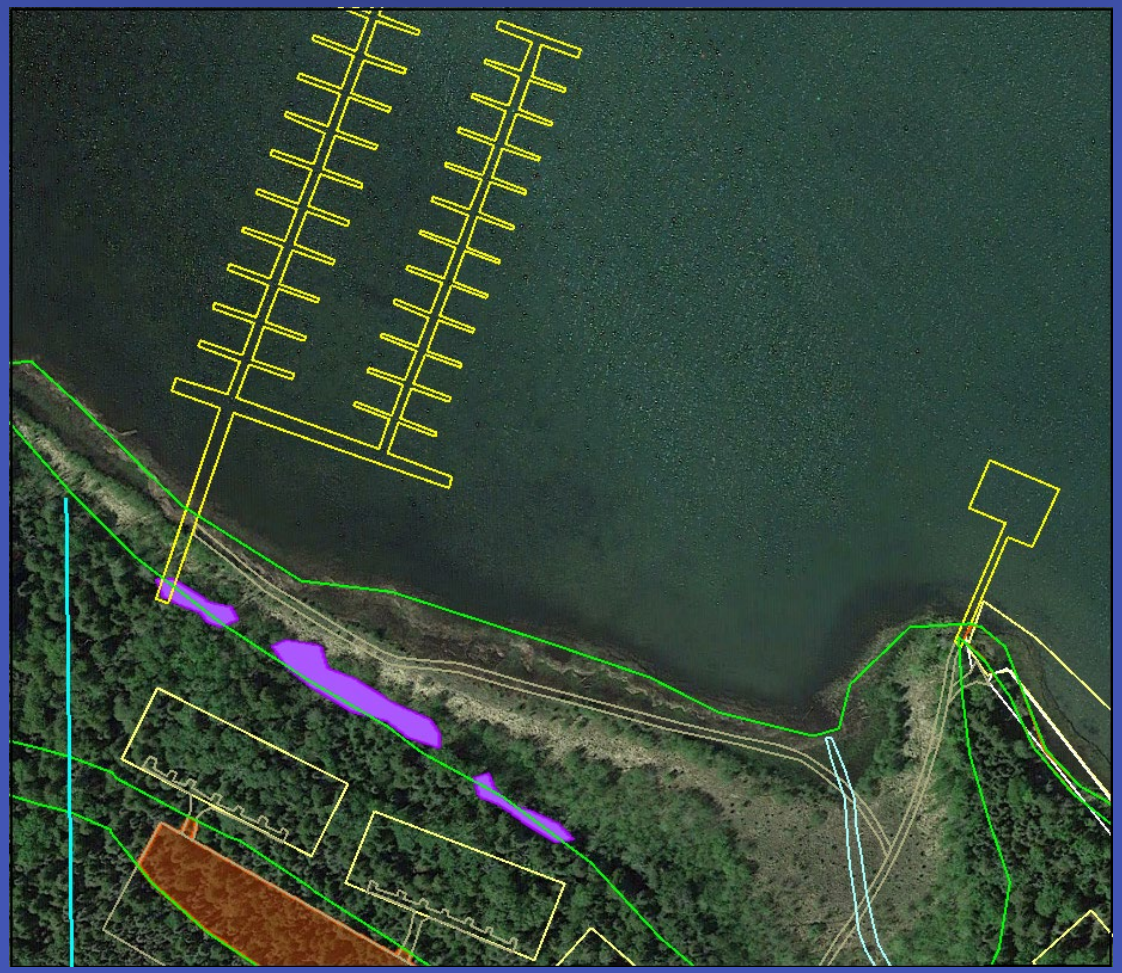
Red Knot by Jeffrey A. Gordon

Rufa Red Knot

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

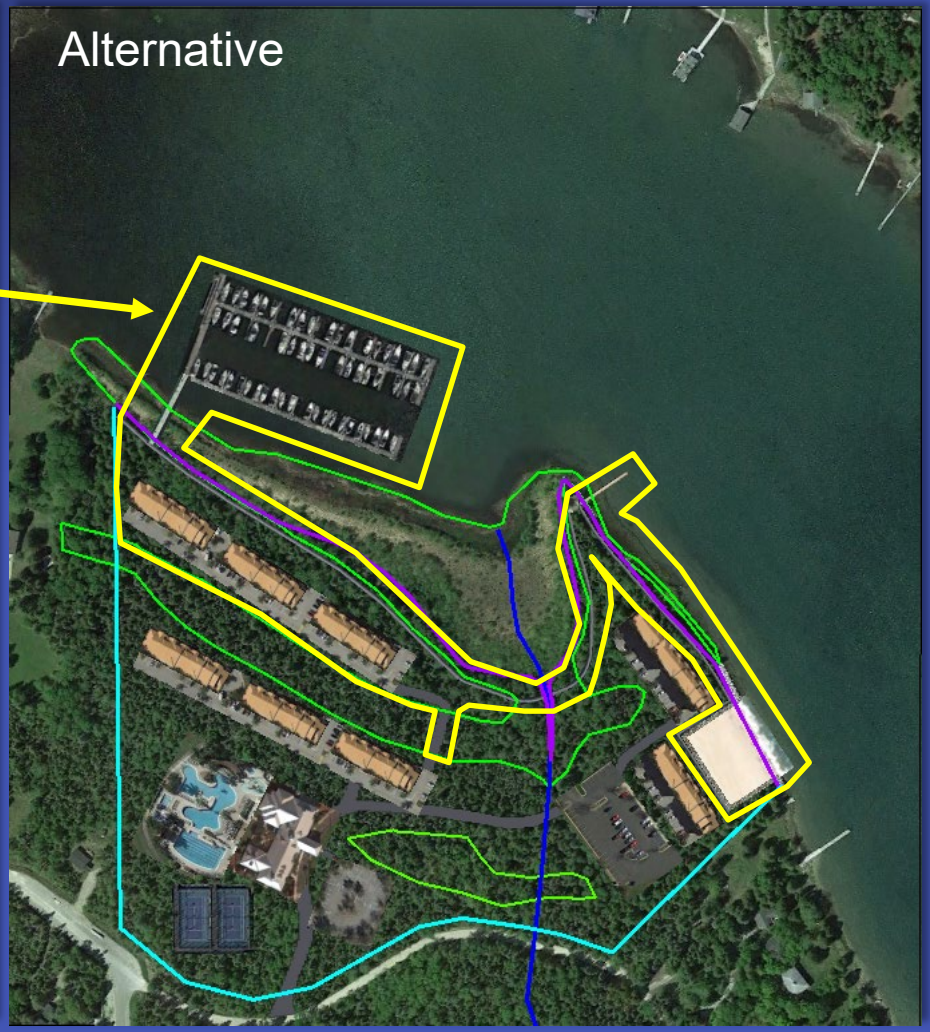
Corps Historic Properties Review

- 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 permittable.
- Mitigation sequence:
  - Avoidance
  - Minimization
  - Compensatory mitigation

Corps 404(b)(1) Guidelines Review

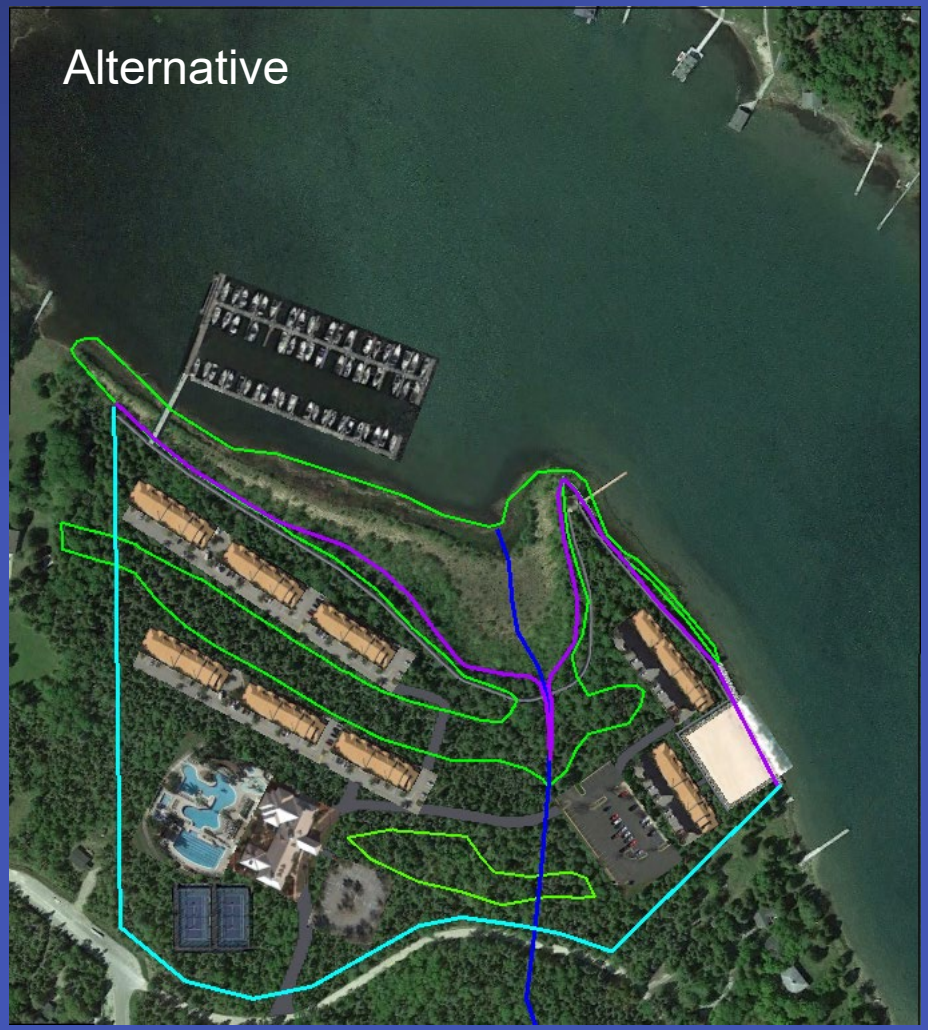
- **Practicable**: Available and capable of being done after taking into consideration:
  - Cost
  - Existing technology
  - Logistics

  in light of overall project purposes

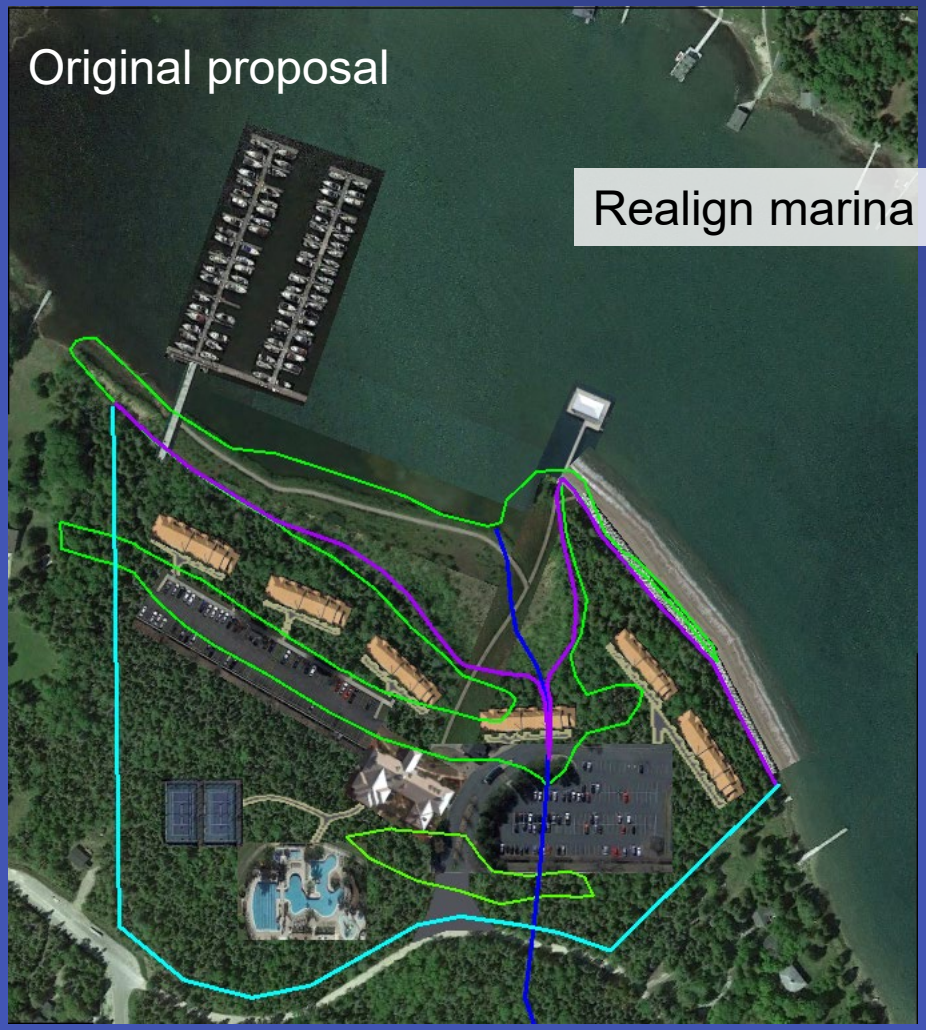
Corps 404(b)(1) Guidelines Review
Project Purpose

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

Alternatives analysis

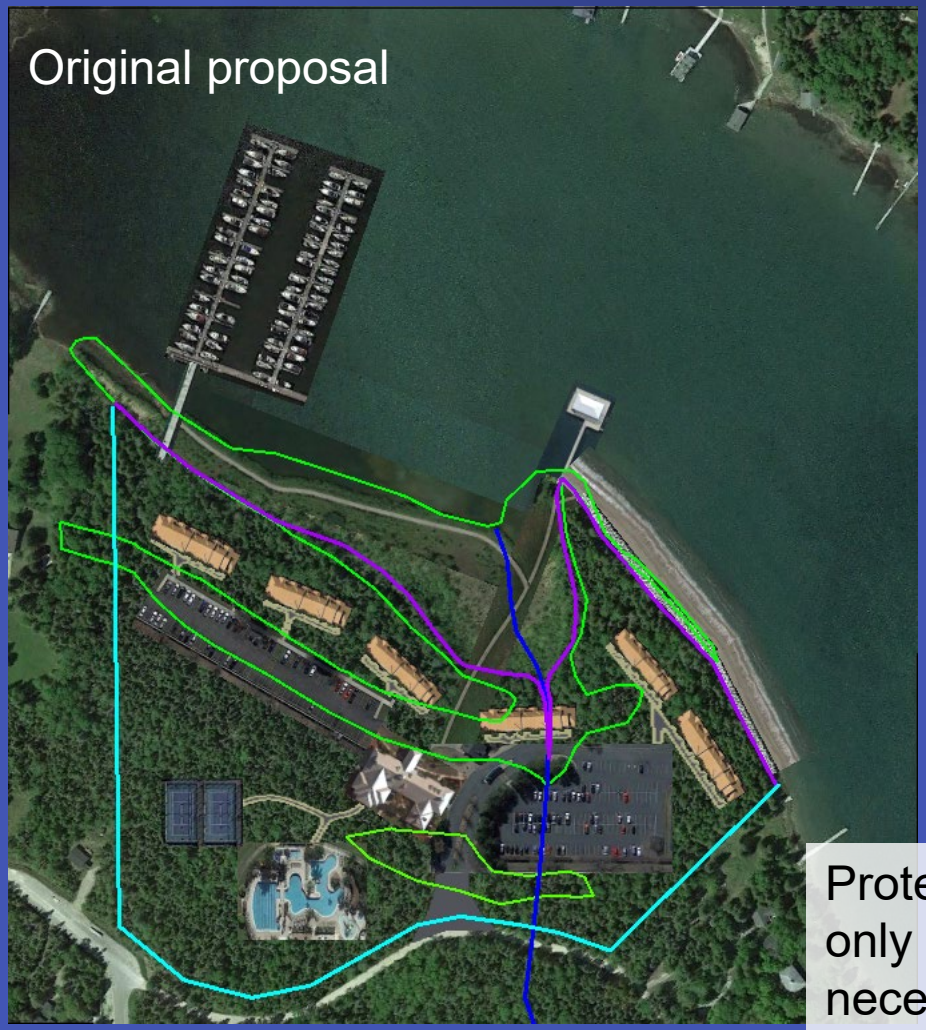


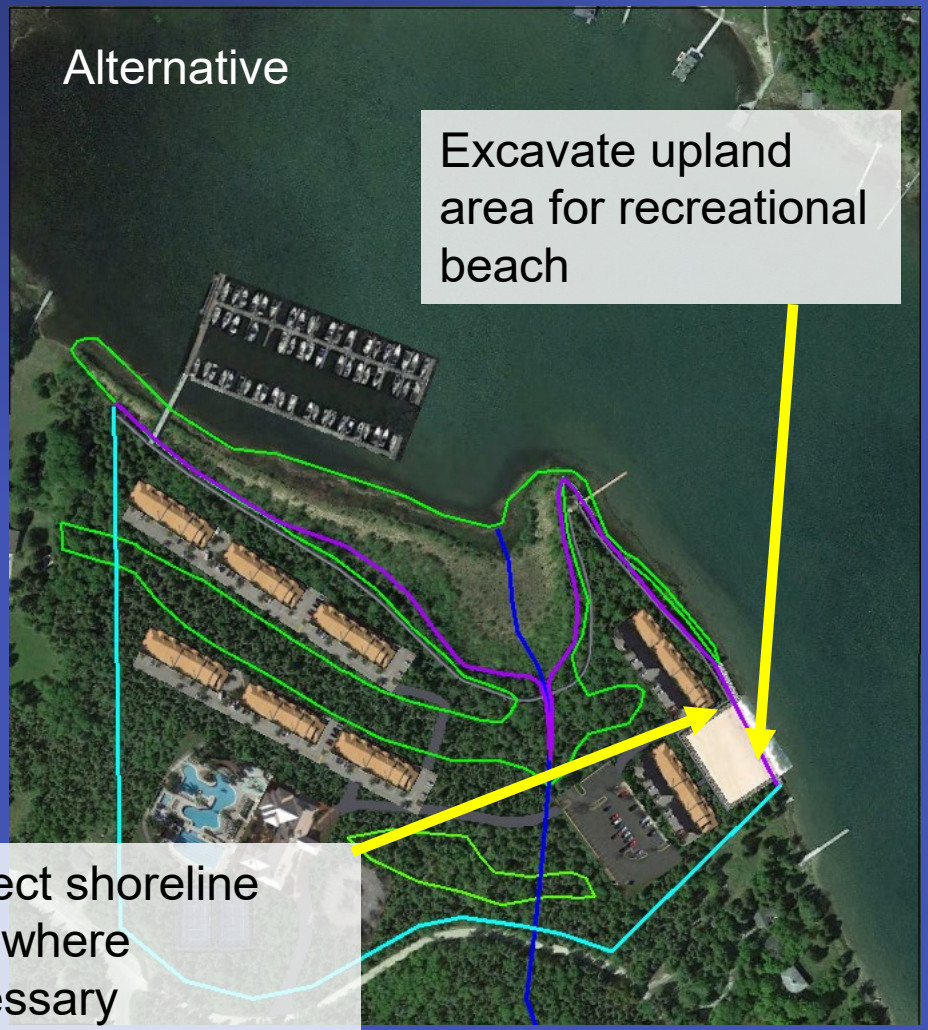
Alternatives analysis



Alternatives analysis

Alternatives analysis

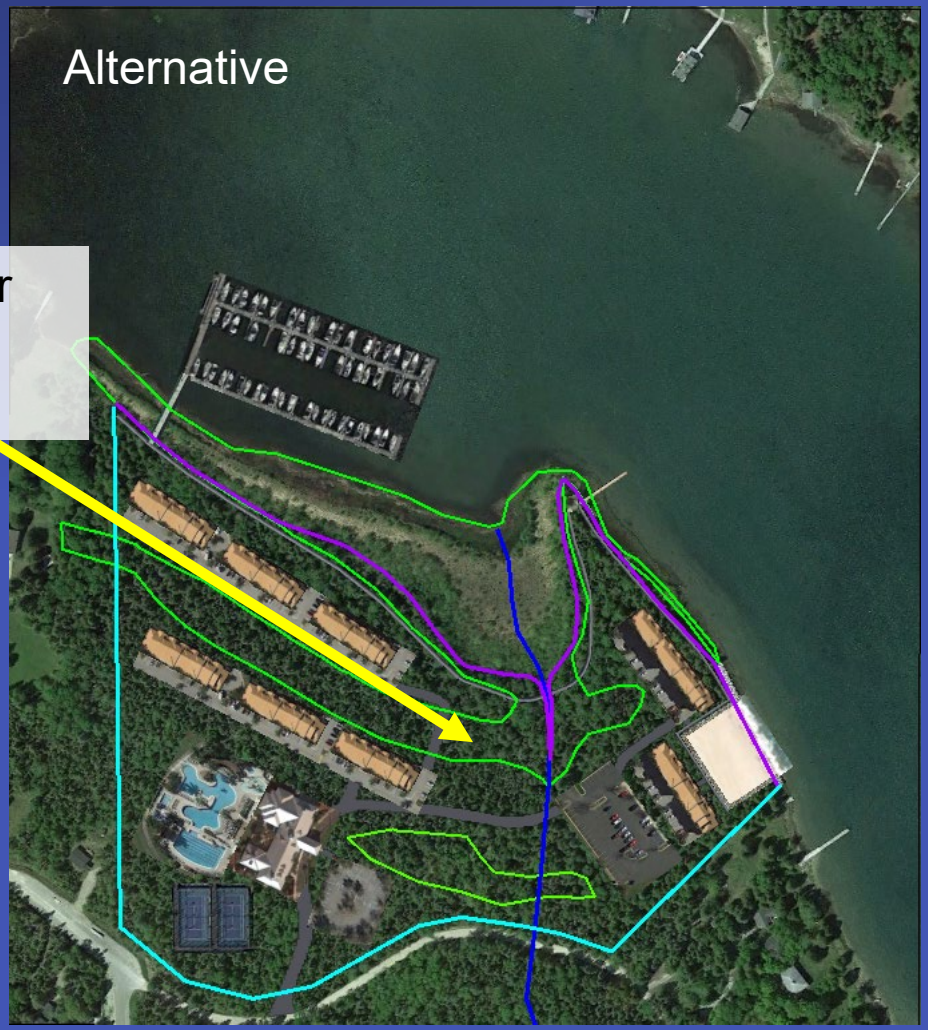




Protect shoreline only where necessary

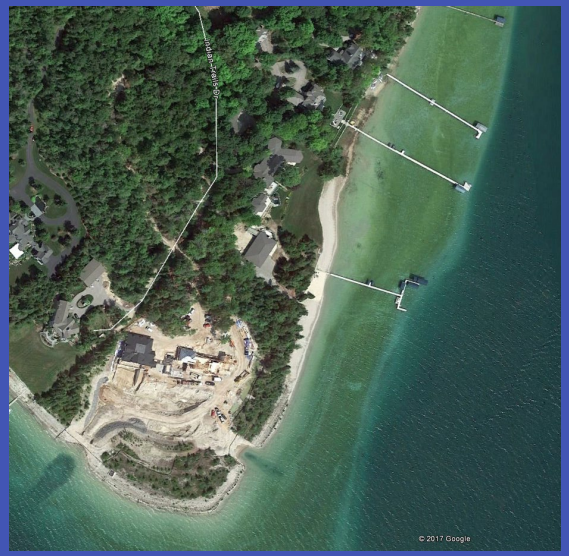
Alternatives analysis

Directional drill for utilities instead of trenching



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

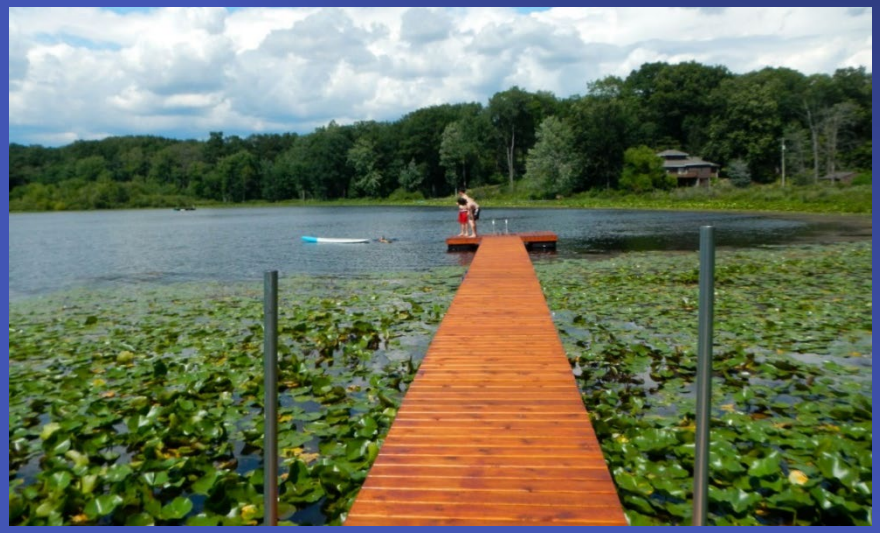
EGLE review process

- GP, MP, Individual and Major projects are all reviewed based on the applicable statues.
- Each statue 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 <u>shall not issue a permit</u> 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 325 - 32505

Great Lakes lease review criteria

The Department may permit, by lease or agreement, projects…

- **In the public interest**
- **Which will not impair or substantially injure the public trust**
- **Have terms and conditionals that are just and equitable**

EGLE Part 303 - 30311

Wetland review criteria

- A permit for an activity listed in Section 30304 <u>shall not be approved</u> 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 353 - 35304

Critical Dune review criteria

The Department shall issue a permit unless…

- The project will significantly damage the public interest by significant and unreasonable depletion or degradation of
  - Diversity
  - Quality
  - Function

- Special exception review

for impacts to slopes >33.3%

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

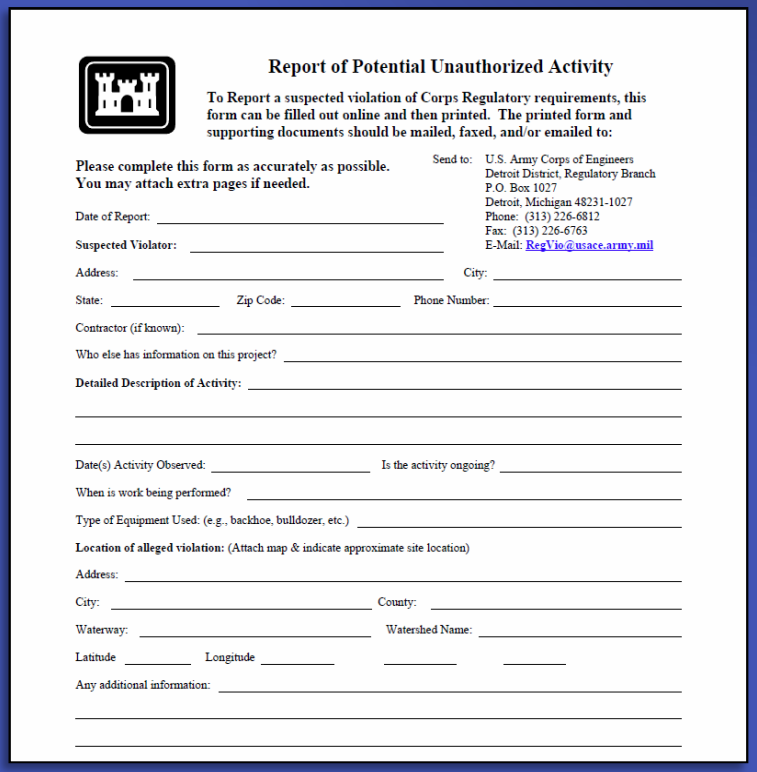
Compliance and Enforcement

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



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.

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

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: _____

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?

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.

Purpose of Enforcement

"It is important to view enforcement as one of the tools available to achieve compliance.

Enforcement in and of itself is not a goal – compliance is the goal."

-EGLE C&E Policy & Procedure

Types of Enforcement

Administrative

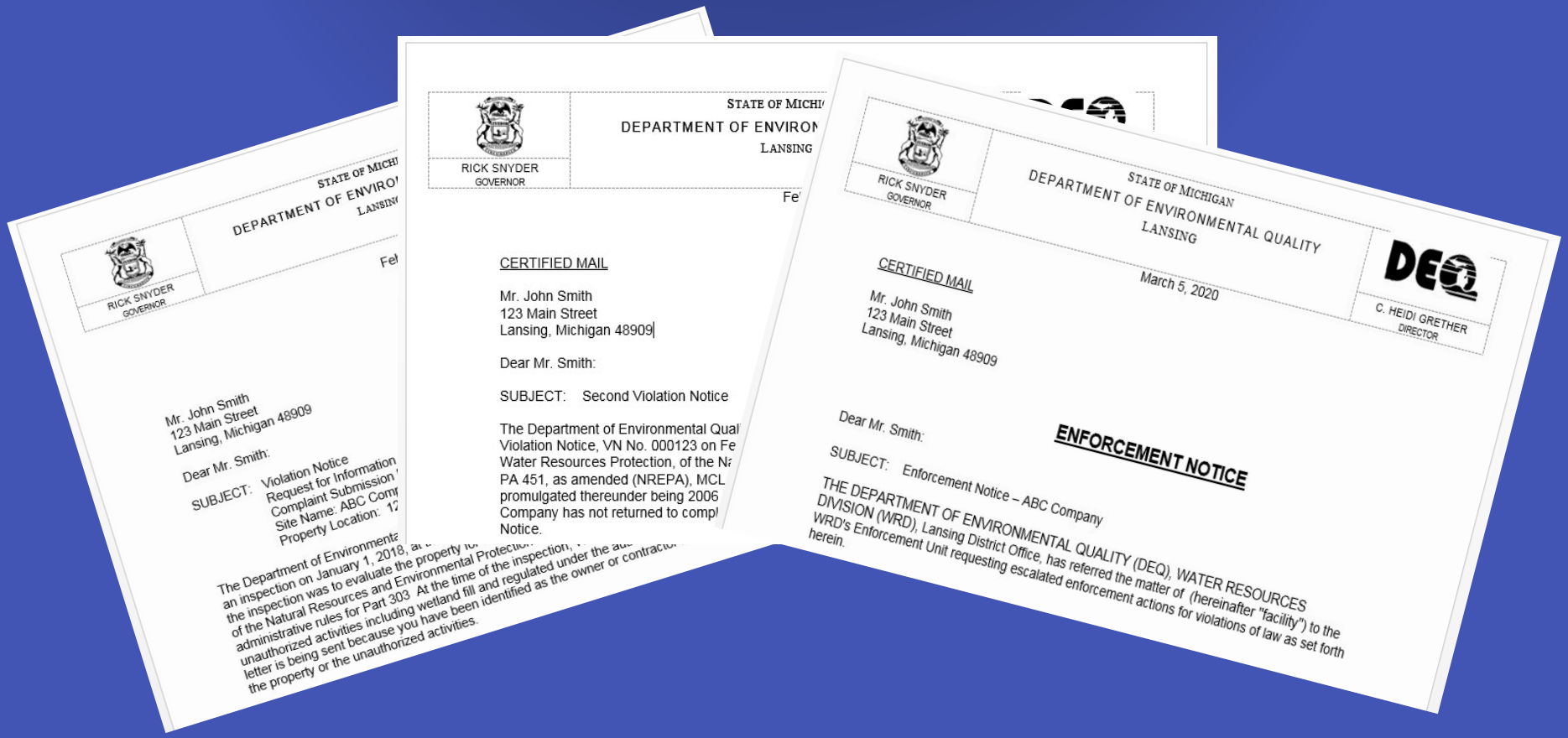
Civil

Criminal

Administrative

- Identification of a violation by EGLE.
- EGLE is required to document the violation.
  - Compliance Communication
  - Violation Notice
  - Request for Information
- This is the 1st opportunity to make corrective actions!

Violation Notices



STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING

RICK SNYDER
GOVERNOR

C. HEIDI GRETHER
DIRECTOR

March 5, 2020

CERTIFIED MAIL

Mr. John Smith
123 Main Street
Lansing, Michigan 48909

Dear Mr. Smith:

SUBJECT: Enforcement Notice – ABC Company

ENFORCEMENT NOTICE

THE DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ), WATER RESOURCES DIVISION (WRD), Lansing District Office, has referred the matter of (hereinafter "facility") to the WRD's Enforcement Unit requesting escalated enforcement actions for violations of law as set forth herein.

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING

RICK SNYDER
GOVERNOR

CERTIFIED MAIL

Mr. John Smith
123 Main Street
Lansing, Michigan 48909

Dear Mr. Smith:

SUBJECT: Second Violation Notice

The Department of Environmental Qual
Violation Notice, VN No. 000123 on Fe
Water Resources Protection, of the Na
PA 451, as amended (NREPA), MCL
promulgated thereunder being 2006
Company has not returned to compl
Notice.

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING

RICK SNYDER
GOVERNOR

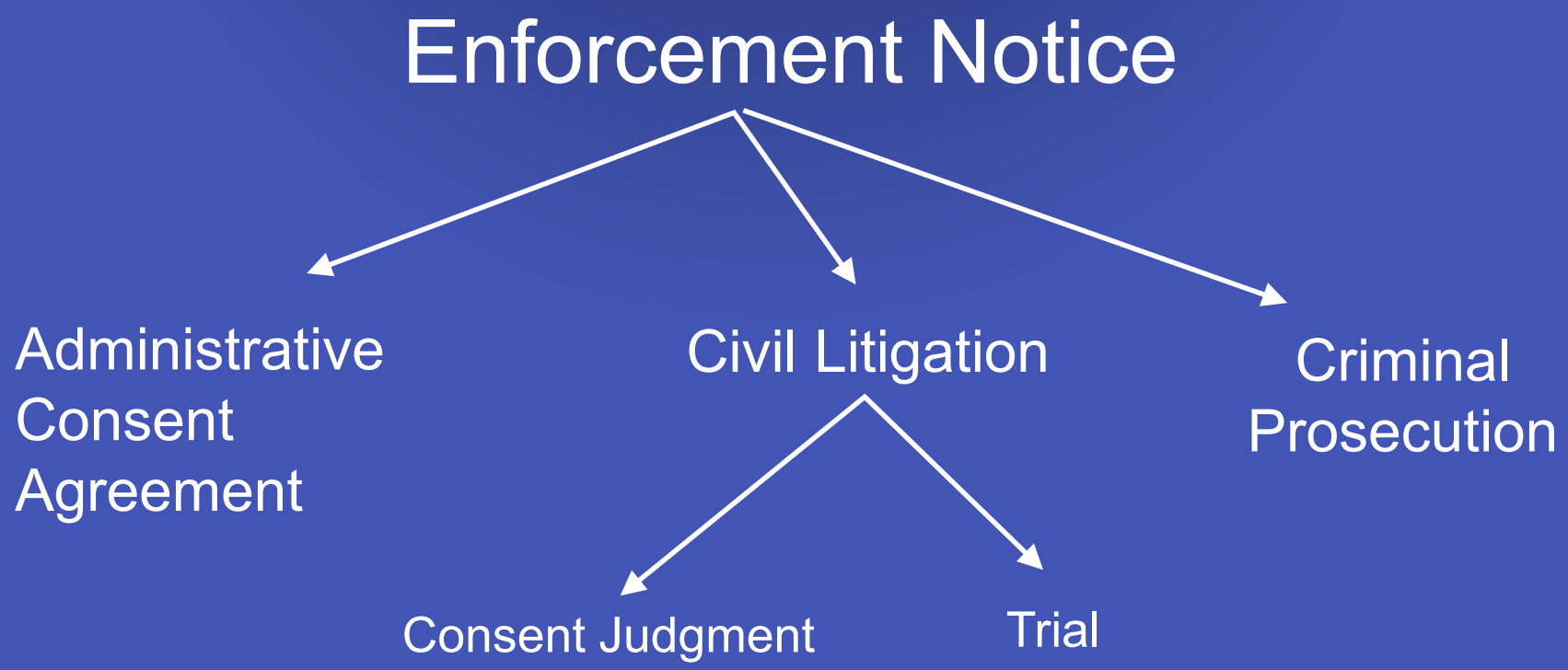
Mr. John Smith
123 Main Street
Lansing, Michigan 48909

Dear Mr. Smith:

SUBJECT: Violation Notice
Request for Information
Complaint Submission
Site Name: ABC Comp
Property Location: 12

The Department of Environmenta
an inspection on January 1, 2018, a
the inspection was to evaluate the property
of the Natural Resources and Environmental Protection
administrative rules for Part 303 At the time of the inspection,
unauthorized activities including wetland fill and regulated under the au
letter is being sent because you have been identified as the owner or contracto
the property or the unauthorized activities.

Escalated Enforcement Pathways



Civil Enforcement

- Large Resource impacts
- AG will be involved
- Process escalates as needed
- Restoration is primary consideration
- May involve financial penalties
- Generally, settle by a Mutual Agreement (ACO)

CIVIL LITIGATION

- EGLE refers the matter to the to the Attorney General's Office
- Attorney General files a complaint
- Resolution is in the form of a Consent Judgement or Trial

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY, Plaintiff, v JOHN SMITH, in his professional capacity as the OWNER of ABC COMPANY, Defendant.	No. 2017- -CE HON. _____
Bob Miller (P12345) Assistant Attorney General Michigan Department of Attorney General Environment, Natural Resources, and Agriculture Division P.O. Box 30755 Lansing, MI 48909 (517) 373-7540 allisonyokomd@michigan.gov Attorney for Plaintiff	

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

COMPLAINT

1. Plaintiff, the Michigan Department of Environmental Quality ("Plaintiff" or "DEQ"), by and through its attorneys, Bill Schuette, Attorney General of the State of Michigan, and Bob Miller, Assistant Attorney General, states:

Criminal Prosecution

- Referral to Environmental Investigation Section (EIS)
- Civil Prosecution not warranted
- Misdemeanor
- May involve financial penalties
- Generally settled through Court Order or Jury Verdict

Summary

- The EGLE's Enforcement Process is usually progressive
- The best option is to correct violations quickly and completely
- Violations have to be documented by EGLE staff
- If a matter ends up in civil enforcement, a mutual agreement is usually better for all parties involved
- The purpose of enforcement to ensure and encourage compliance with State Laws

Permit Evaluation Flow-Chart

Pre-Application Meeting
(optional)

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Application

↓

Evaluation/Coordination

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Decision

Questions?