

# FUNDING NATURE, NOT PAPERWORK

## Policy and Programmatic Pathways to Speed Restoration Permitting



### BACKGROUND

Leaders around the globe have committed to restoring 30% of the world's degraded ecosystems but right now, the costs of permitting burn through up to 1/3 of a restoration project's budget. We need money to go to Nature, not paperwork. Over the past two years, the Environmental Policy Innovation Center (EPIC) has quantitatively and qualitatively analyzed policies and processes related to permitting restoration projects (see summary on p. 4). One consistent theme in our research findings is that the permitting process presents significant challenges and often results in major project delays. The objective of this concept note is to showcase multiple pathways to speed permitting, along with excerpts from enabling policy text (in gray boxes). These examples could be tailored and replicated in other contexts.

#### Pathways to speed restoration permitting:

1. EVALUATE STATE PERMITTING
2. CREATE A CATEGORICAL EXCLUSION / PROGRAMMATIC ANALYSIS
3. CREATE A PROGRAMMATIC BIOLOGICAL OPINION
4. USE NATIONWIDE AND REGIONAL PERMITS
5. CREATE A DEDICATED / RAPID RESPONSE PERMIT REVIEW TEAM
6. USE TECHNOLOGY FOR PERMITTING EFFICIENCIES, TRANSPARENCY, AND ACCOUNTABILITY
7. SYSTEMATICALLY STREAMLINE MULTIPLE PERMITS
8. ADDRESS FUNDING FOR PERMIT STAFF AND PRIORITIZE TIMELINESS

#### 1. EVALUATE STATE PERMITTING

Our research has found that multiple state streamlining efforts began with an executive order or state legislation requiring an evaluation and set of recommendations for streamlining permitting. The purpose of the evaluation can be specific to streamlining restoration (ex. [CA Executive Order N-82-20, 2020](#), [MD HB 869, 2022](#)), broader environmental permitting (ex. [LA SB 292, 2006](#)), or can be an evaluation of all state permitting (ex. [VA HB 244, 2022](#)).

#### Excerpt of Text from [CA Executive Order N-82-20, 2020](#)

"3. To advance efforts to conserve biodiversity, the California Natural Resources Agency is directed to take the following actions within existing authority and resources: ...b. Implement actions to increase the pace and scale of environmental restoration and land management efforts by streamlining the State's process to approve and facilitate these projects."

#### Excerpt of Text from [MD HB 869, 2022](#)

"SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That

(a) The Department of Environment's Wetlands and Waterways Program Division shall conduct a comprehensive study, analysis, and evaluation of:

(1) State statutes and regulations that affect permitting or completion of ecological restoration projects permitted by the [Division];

(2) the permit and permit review process for ecological restoration permits in the State...

(4) the average time it takes between project submittal to project approval for an ecological restoration project in the State compared to other states; and

(5) the efficiency and effectiveness of the current joint application permit and permit review processes and current counter-incentives to watershed-based stream restoration...

(c) The [Division] shall develop legislative and regulatory recommendations based on the results of the comprehensive study, analysis, and evaluation required under subsection (a) of this section." This bill also includes details on what the final report should include and sets a deadline to report to the state Assembly.

#### 2. CREATE A CATEGORICAL EXCLUSION / PROGRAMMATIC ANALYSIS

In the context of the National Environmental Policy Act (NEPA), a categorical exclusion, or CATEX, defines a group of projects that are determined to have little to no impact and therefore can be exempt from certain regulatory requirements which streamlines the approval process. NEPA has [thousands of existing CATEXs](#) and new language in the [Fiscal Responsibility Act of 2023](#) allows one agency to use an existing CATEX of another agency. There are also CATEXs for state versions of NEPA. California's Statutory Exemption for Restoration Projects exempts CEQA requirements for restoration projects that meet certain criteria and Washington's Fish Habitat Enhancement Program exempts fish habitat projects from the state's SEPA ([CA SB 155, 2021](#), and [WA 2SHB 2879, 1998](#)).

# PATHWAYS TO SPEED RESTORATION PERMITTING

NEPA is also streamlined through programmatic environmental assessments / impact statements that allow one analysis to cover subsequent activities of a plan, policy, project (e.g., [Trinity River Watershed Restoration Project](#)), or program (e.g., NOAA [coastal habitat restoration activities](#), [FEMA resilience projects](#)).

## Excerpt of Text from the [Fiscal Responsibility Act of 2023](#)

“SEC. 109. ADOPTION OF CATEGORICAL EXCLUSIONS.  
An agency may adopt a categorical exclusion listed in another agency’s NEPA procedures for a category of proposed agency actions for which the categorical exclusion was established consistent with this paragraph. The agency shall—  
(1) identify the categorical exclusion listed in another agency’s NEPA procedures that covers a category of proposed actions or related actions;  
(2) consult with the agency that established the categorical exclusion to ensure that the proposed adoption of the categorical exclusion to a category of actions is appropriate;  
(3) identify to the public the categorical exclusion that the agency plans to use for its proposed actions; and  
(4) document adoption of the categorical exclusion.”

## Excerpt of Text from [CA SB 155, 2021](#)

“This bill would, until January 1, 2025, exempt from CEQA projects that conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and habitat upon which they depend or that restore or provide habitat for California native fish and wildlife. For the exemption to apply, the bill would require those projects to meet certain requirements\*... The bill would require the Natural Resources Agency to report annually to the Legislature all determinations made under the bill.”

\* These are the “certain requirements” ([Public Resources Code section 21080.56](#)):

- (a) This division [CEQA] does not apply to a project that is exclusively one of the following:
- (1) A project to conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend.
  - (2) A project to restore or provide habitat for California native fish and wildlife.
- (b) An eligible project may have incidental public benefits, such as public access and recreation.
- (c) This section does not apply to a project unless the project does both of the following:
- (1) Results in long-term net benefits to climate resiliency, biodiversity, and sensitive species recovery.
  - (2) Includes procedures and ongoing management for the protection of the environment.”

## Excerpt of Text from [FEMA Programmatic Environmental Analysis for New Mexico Watershed Resilience and Post-Wildfire Projects, 2022](#)

“This PEA facilitates compliance with NEPA for a range of proposed actions that promote watershed resiliency and post-wildfire actions in NM, regardless of FEMA funding source. If a future project is consistent with the scope and effects described in the PEA, then FEMA will prepare a Record of Environmental of Consideration (REC). The REC will refer to the PEA in its analysis, address site-specific conditions, evaluate effects relating to other project elements, list any mitigation measures, and document compliance with applicable environmental and historic preservation laws. FEMA will prepare an Environmental Assessment tiered from the PEA if a future project is consistent with the scope described in the PEA, but creates effects not described herein; creates effects greater in magnitude, extent, or duration than described herein; or requires mitigation measures to minimize effects that have not been described in the PEA.”

## 3. CREATE A PROGRAMMATIC BIOLOGICAL OPINION

Within the context of the Endangered Species Act, a programmatic biological opinion (PBO) streamlines permits for multiple similar actions for a region or for a particular species. A [NOAA factsheet](#) lists 11 PBOs covering multiple types of restoration in Western states (2012-2023, see also the CA PBO below).

## Excerpt of Text from [California Statewide Restoration Programmatic Biological Opinion, 2022](#)

“The purpose of this consultation is to provide statewide section 7 consultation coverage, for multiple [72] federally-listed species under USFWS jurisdiction, for a range of proposed restoration actions... All NOAA, USACE or USFWS programs can utilize this PBO for restoration projects they fund, authorize, or carry out [in California].” The PBO lists 10 specific restoration project types, and requires projects to “result in a net increase in aquatic or riparian resource functions &/or services and be consistent with USFWS Recovery Plans or recovery-related documentation for Covered Species” to be eligible. The PBO contains 121 pages of species-specific protection measures and design guidelines. The PBO includes a goal of reviewing applications within 90 days.

## 4. USE NATIONWIDE AND REGIONAL PERMITS

The Corps of Engineers uses general permits including nationwide permits and regional permits to streamline wetland and stream permitting under section 404 of the Clean Water Act. For projects with minimal adverse environmental affects, one permit covers all activities within a category &/or geographic region rather than having each project permitted through a lengthier ‘individual permit.’ There is a faster timeline (e.g., 1-3 months rather than a year or more) to determine that the project falls within the category.

# PATHWAYS TO SPEED RESTORATION PERMITTING

Nationwide permit 27 covers restoration projects with net ecological benefits. EPIC identified 30 regional permits (RGP) covering various categories of restoration projects in different locations.

## Excerpt of Text from Chesapeake Bay TMDL RGP, 2022

"This TMDL RGP provides a streamlined form of Department of the Army (DA) authorization for activities that provide nutrient and sediment reductions... and produces functional lift within the project site... and [is] part of an acceptable watershed strategy... Activities authorized by this TMDL RGP include... the restoration and enhancement of Waters of the United States [WOTUS]." A self-certification is available if the project meets all activity specific requirements, meets general conditions of the RGP, does not result in permanent loss / conversion waters of the US (WOTUS), and permanent impacts are < half an acre / < 1,000 linear feet.

## 5. CREATE A DEDICATED / RAPID RESPONSE PERMIT REVIEW TEAM

Maryland Department of the Environment's (MDE) created a dedicated team of permit review staff (2 engineers and a natural resources planner) that solely handles stream restoration projects along with producing guidance documents/checklists to help ensure complete application submissions. MDE's website shows that it met its goal of issuing permits within 90 days 91% of the time in 2022.

The Promoting Efficient and Engaged Reviews (PEER) Act proposed in 2023 would have created a rapid response permitting task force to streamline NEPA reviews for certain types of projects (see below).

## Excerpt of Text from PEER Act, 2022

" (a) RAPID RESPONSE PERMITTING TASK FORCES-- The Federal Permitting Director shall convene interagency sector-specific teams of experts, including independent agencies, as appropriate, (referred to in this section as a "Rapid Response Permitting Task Force")...

(b) SECTORS--The sectors to be covered by [the task force] shall be at the discretion of the Federal Permitting Director, but shall include...

(5) environmental restoration and nature-based projects.

(c) RESPONSIBILITIES--Each [task force] shall--

(1)(3) seek to reduce bottlenecks and facilitate the successful and timely review of permit applications...

(4) identify strategies to address disputes or complicated issues..."

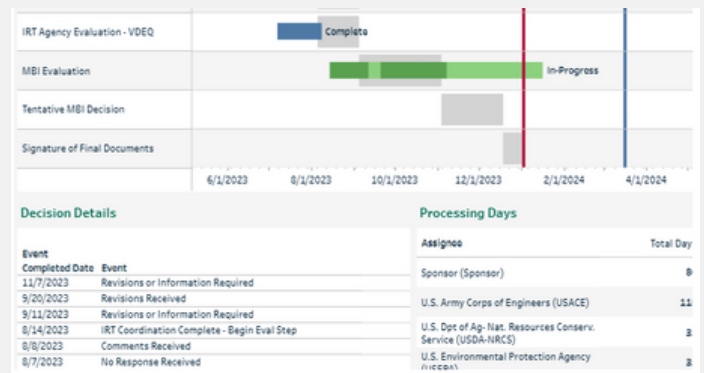
## 6. USE TECHNOLOGY FOR PERMITTING EFFICIENCIES, TRANSPARENCY, AND ACCOUNTABILITY

Our research has identified multiple states using technology to streamline permitting and provide transparency and agency accountability to permit review deadlines. Two programs stand out.

First, Virginia's Permitting Enhancement and Evaluation Program (PEEP) is an online tool that was catalyzed by a law requiring all agencies to determine whether/how to streamline state regulations (VA HB 244, 2022). PEEP brings together 13 state DEQ permits into one publicly-accessible system that creates an overall Gantt chart of the target timeframe for permit approvals, tracks where permits are in the approval process & whose desk they're on (including the project applicant and external agencies), and how much time the process is taking. PEEP shines in providing automation and project management of permits, creating a dashboard for staff (and their supervisors), email reminders of deadlines, and real-time reports on agency performance on target timelines.

Another stand-out example is Washington state's online Permit Timeliness Central Repository. This online tool was also catalyzed by a state bill focused on transparency and tracking for public accountability and permit timelines. The bill is quite prescriptive, describing at length how the policy goal will be accomplished (WA HB 2192, 2014). For example, the bill spends a full page on how agencies should create a strategy and evaluate their "quality management, accountability, and performance system." The bill requires an online platform with data access and visualizations as well as regular public reports indicating which permits are 'most improved' and 'most in need of improvement.'

### Screenshot Sample of Tool - VA PEEP



### Screenshot Sample of Tool - WA Permit Timeliness Repository

The screenshot shows the 'Permit Timeliness - View' page on Data.WA.gov. It features a table with columns for Permit Name, Agency, Year, Complete To Decision - Averag., Complete To Decision - Max., and Comments. The table lists various permit types and their associated agencies and years.

Permit Name	Agency	Year	Complete To Decision - Averag.	Complete To Decision - Max.	Comments
Fish Stocking Application Permit - (Inf...	Fish and Wildlife (WDFW)	2017	7.89	35.99	Agencies requ...
Scientific Collection Permit (SCPs)	Fish and Wildlife (WDFW)	2019	26.6	56	Agency requ...
Monthly Annual Fixed Load (3 or 4 axle)	Transportation (WSDOT)	2016	1	1	Agency updat...
Double Trailer Monthly or Annual	Transportation (WSDOT)	2016	1	1	Agency updat...
Class 2 - Alcohol Permit	Liquor & Cannabis Board ...	2018	1	11	Agency updat...
Scientific Collection Permit (SCPs)	Fish and Wildlife (WDFW)	2018	31.5	102	Aug Dec Time ...
Scientific Collection Permit (SCPs)	Fish and Wildlife (WDFW)	2016	33.4	75	Aug Dec Time ...
Cottage Food Operations Permit - New...	Agriculture (WSDA)	2020	28	266	Combined wit...
Cottage Food Operations Permit - New...	Agriculture (WSDA)	2018	44.4	124	Combined wit...
Cottage Food Operations Permit - New...	Agriculture (WSDA)	2017	62	164	Combined wit...
Cottage Food Operations Permit - New...	Agriculture (WSDA)	2016			Combined wit...
Cremated Remains Disposition	Licensing (DOL)	2018	1	1	Connected by

# PATHWAYS TO SPEED RESTORATION PERMITTING

## 7. SYSTEMATICALLY STREAMLINE MULTIPLE PERMITS

California's Cutting Green Tape (CGT) includes many elements already noted (in #1, #2, and #3), but we call it out as a unique "all hands on deck" approach and add additional streamlining elements of the initiative not yet mentioned. Initially, CGT focused on small voluntary restoration projects (<5 acres or <500 linear feet), and created a streamlined 30- to 60-day approval process for CESA (the state's endangered species act) and the state's Lake and Streambed Alteration agreements (Habitat Restoration and Enhancement Act [AB 2193](#), 2014); and a CEQA Categorical Exemption ([CEQA Exemption 15333](#)). Elements of CGT were subsequently modified to expand streamlining benefits to more restoration projects. For example, a September 2021 [CEQA Statutory Exemption for Restoration Projects](#) and an August 2022 Statewide General Order for 401 certifications for restoration projects both remove size limits and voluntary project restrictions (State Water Resources Control Board [General Order WQ 2022-0048-DWQ](#)). California also has a unique 'OpLaw' (Operation of Law Letter) provision for Lake and Streambed alteration requests which provides automatic approval if the department is delayed beyond 60 days and the application is deemed complete ([Fish and Game Code section 1602\(a\)\(4\)\(D\)](#)).

## 8. ADDRESS FUNDING FOR PERMIT STAFF AND PRIORITIZE TIMELINESS

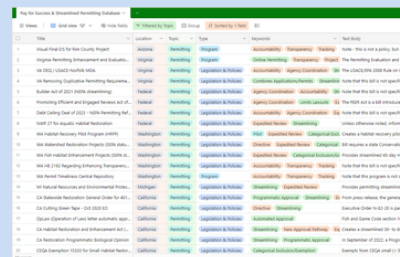
Lack of staffing has come up in all of the 31 informational interviews EPIC conducted as part of the research noted at right. One possible funding source for additional staff is the Infrastructure Investment and Jobs Act (IIJA), which the Corps tapped into to hire 200 employees in their regulatory division. For state agencies, another source of funding for staffing is through permit fees. In 2012, [CA SB 1148](#) changed state code to establish fees to cover the staff time of reviewing mitigation banks. Permittees in the state were somewhat supportive as long as the deadlines adopted in the bill were met, which our research has shown is not the case. Even with sufficient funding, agencies can fail to meet deadlines if it is not a priority for leadership or if other changes are not put in place to support more timely reviews. The Corps recently emphasized its commitment to meeting timelines and requires monthly updates to national leadership. We do not yet have data to analyze whether this has created an effect, but it is a step in the right direction.

### Excerpt of Text from [CA SB 1148, 2012](#)

"SEC. 2. Section 711 of the Fish and Game Code is amended to read:  
711. (a) It is the intent of the Legislature to ensure adequate funding from appropriate sources for the department. To this end, the Legislature finds and declares that...  
(6) The costs of a conservation and mitigation banking program, including... the review, approval, establishment, monitoring, and oversight of, banks, shall be reimbursed from revenues of conservation and mitigation bank application fees...  
SEC. 14. (b) The department shall collect a fee of \$25,000 per bank agreement package to fund the cost of the department's review services...  
(2) If the department determines that the bank agreement package is complete, within 90 calendar days of that determination, the department shall determine whether or not it is acceptable..."

## EPIC RESEARCH ON RESTORATION PERMITTING

### Permit Streamlining Database

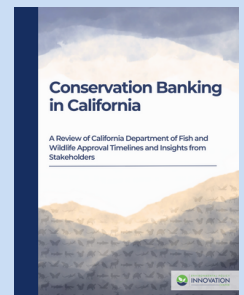


Title	Location	Type	Comments
AB 1000 - Streambed Alteration and Rehabilitation Act	California	Permitting	Streambed Alteration and Rehabilitation Act
AB 1001 - Streambed Alteration and Rehabilitation Act	California	Permitting	Streambed Alteration and Rehabilitation Act
AB 1002 - Streambed Alteration and Rehabilitation Act	California	Permitting	Streambed Alteration and Rehabilitation Act
AB 1003 - Streambed Alteration and Rehabilitation Act	California	Permitting	Streambed Alteration and Rehabilitation Act
AB 1004 - Streambed Alteration and Rehabilitation Act	California	Permitting	Streambed Alteration and Rehabilitation Act
AB 1005 - Streambed Alteration and Rehabilitation Act	California	Permitting	Streambed Alteration and Rehabilitation Act
AB 1006 - Streambed Alteration and Rehabilitation Act	California	Permitting	Streambed Alteration and Rehabilitation Act
AB 1007 - Streambed Alteration and Rehabilitation Act	California	Permitting	Streambed Alteration and Rehabilitation Act
AB 1008 - Streambed Alteration and Rehabilitation Act	California	Permitting	Streambed Alteration and Rehabilitation Act
AB 1009 - Streambed Alteration and Rehabilitation Act	California	Permitting	Streambed Alteration and Rehabilitation Act
AB 1010 - Streambed Alteration and Rehabilitation Act	California	Permitting	Streambed Alteration and Rehabilitation Act

[bit.ly/EPICdatabase](http://bit.ly/EPICdatabase)

Contains over 35 records of legislation, policy, programs, and case studies. The information provides the raw 'ingredients' that could be used to replicate permit streamlining in other contexts. This research is the source of examples in this report.

### Mitigation Bank Approval Timeline Analyses



[bit.ly/mitigationbankresearch](http://bit.ly/mitigationbankresearch)

[bit.ly/mitigationbankresearchPhase2](http://bit.ly/mitigationbankresearchPhase2)

[bit.ly/CDFWbankresearch](http://bit.ly/CDFWbankresearch)

In a national report released in March 2023, EPIC revealed persistent delays in the approval of a class of wetland and stream restoration projects called 'mitigation banks.' These delays hinder the availability of offsets for impacted waterways during the coming surge in infrastructure building. The researchers analyzed US Army Corps of Engineers (Corps) data and found that the average project took 1.5x longer than required "on the regulator's desk." The full timeline for project approval — including back and forth between the Corps and applicants — takes over 1,000 days on average (the longest project took over 12 years!). Follow-on research published in September 2023 identified the top bottlenecks in the Corps' review process and highlighted dozens of solutions that could be implemented.

EPIC also researched mitigation bank approval timelines at the state level in California. The process of establishing conservation banks in the state is currently constrained by inefficiencies and regulatory 'green tape.' EPIC discovered that the California Department of Fish and Wildlife does not have a way to evaluate its own processing time based on the 'timestamp' data it records. Data from alternative sources indicates the total timeline ranges from 761 - 1,740 days.

### ABOUT EPIC

*The mission of the Environmental Policy Innovation Center (EPIC) is to build policies that deliver spectacular improvement in the speed and scale of conservation.*

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