THE CORPS REGULATORY PROGRAM AND LAND DISTURBING ACTIVITIES

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Discussion Topics

- Program Overview
- Corps Jurisdiction
- Is it Regulated?

CORPS REGULATORY JURISDICTION

Section 9, Rivers and Harbors Act (RHA) of 1899 (33 USC 401):

A permit is required for the construction of bridge, causeway, dam or dike across any “navigable water of the United States.”

Section 10 of the RHA of 1899 (33 USC 403):

Prohibits the unauthorized obstruction or alteration of any “navigable water of the United States.”

Section 404 of the Clean Water Act (33 USC 1344):

Prohibits the discharge of dredged or fill material into all “waters of the United States, including wetlands” without obtaining a permit from the Corps of Engineers.

RHA Navigable Waters Above the Georgia Fall-line

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- Chattahoochee River below Gainesville
- Tallapoosa River
- Coosawattee River below Ellijay
- Conasauga River
- Toccoa River
- South & West Chickamauga Creeks
- Coosa River & Oostanaula River (but NOT Etowah)
- Corps Lakes - Lanier, Hartwell and Carters Lake (but NOT Allatoona)
- TVA Lake Blue Ridge (but NOT Nottely or Chatuge)

Section 404 of the Clean Water Act

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- To restore and maintain the chemical, physical and biological integrity of the waters of the U.S.
- Requires that you obtain a permit from the Regulatory Branch for the discharge of dredged or fill material in any water of the U.S., including wetlands.

Section 404 of the Clean Water Act

Definitions:

High Tide Line: shoreward limit of Corps jurisdiction for all tidal waters (Section 404 regulated activities); intersection of land and water at the maximum height reached by a rising tide.

Section 404 of the Clean Water Act

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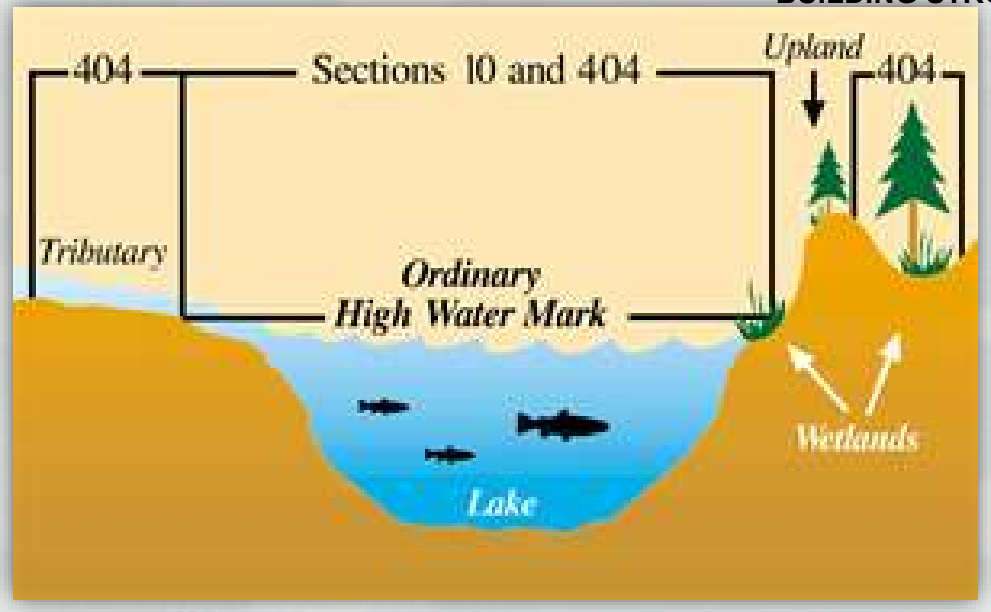
Definitions:

Ordinary High Water: shoreward limit of Corps jurisdiction for all non-tidal waters; line on the shore of streams and lakes established by the normal fluctuations in the water level.



Activities regulated as a "discharge of fill material"

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- Material that has the effect of:
  - Replacing any portion of a water of the U.S. with dry land; or
  - Changing the bottom elevation of any portion of a water of the U.S.

- Fill material includes: Rock, Sand, Soil, Clay, Plastics, Construction debris, Wood chips, Overburden from excavation, or Materials used to create any Structure in waters of the US.

Activities regulated as a "discharge of dredged material"

- mechanized land clearing
- grading
- excavation (with associated discharge)

Trenching in wetlands

Activities Regulated under Section 404

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Discharge of “dredged” material into wetlands

riprap

What requires a Section 404 Permit?*

- Placement of fill material
- Slab-on-grade foundations
- Most road construction
- Dam construction and Impoundment
- Levee and dike construction
- Mechanized land clearing
- Grading and landscaping
- Certain pile-supported structures

*In other words, most projects involving the placement of fill, structures or dredged material into waters.

Waters of the United States

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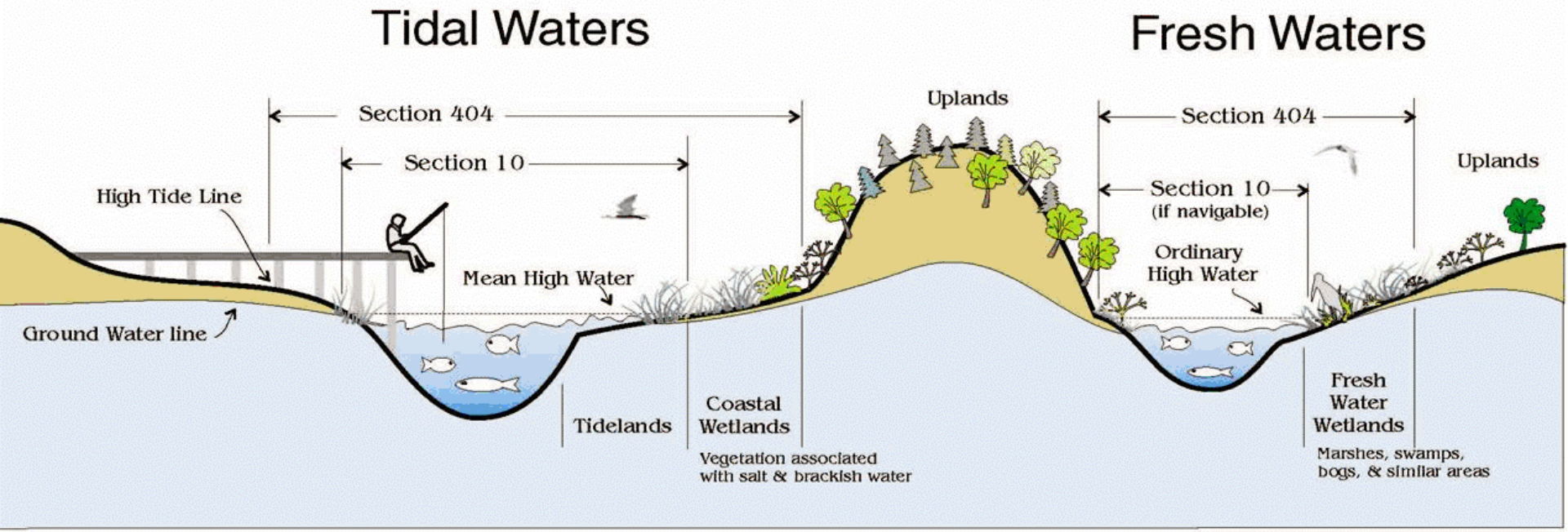
CORPS OF ENGINEERS REGULATORY JURISDICTION



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

What are Wetlands?

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Wetland Definition - 33 CFR 328.3(c)(4)

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Those areas inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include marshes, swamps, bogs, and similar areas.

Wetlands – Three Parameter Method

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1) Hydrology

2) Hydrophytic Vegetation

3) Hydric Soils

1987 Wetlands Delineation Manual & Regional Supplement

http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/reg_supp/

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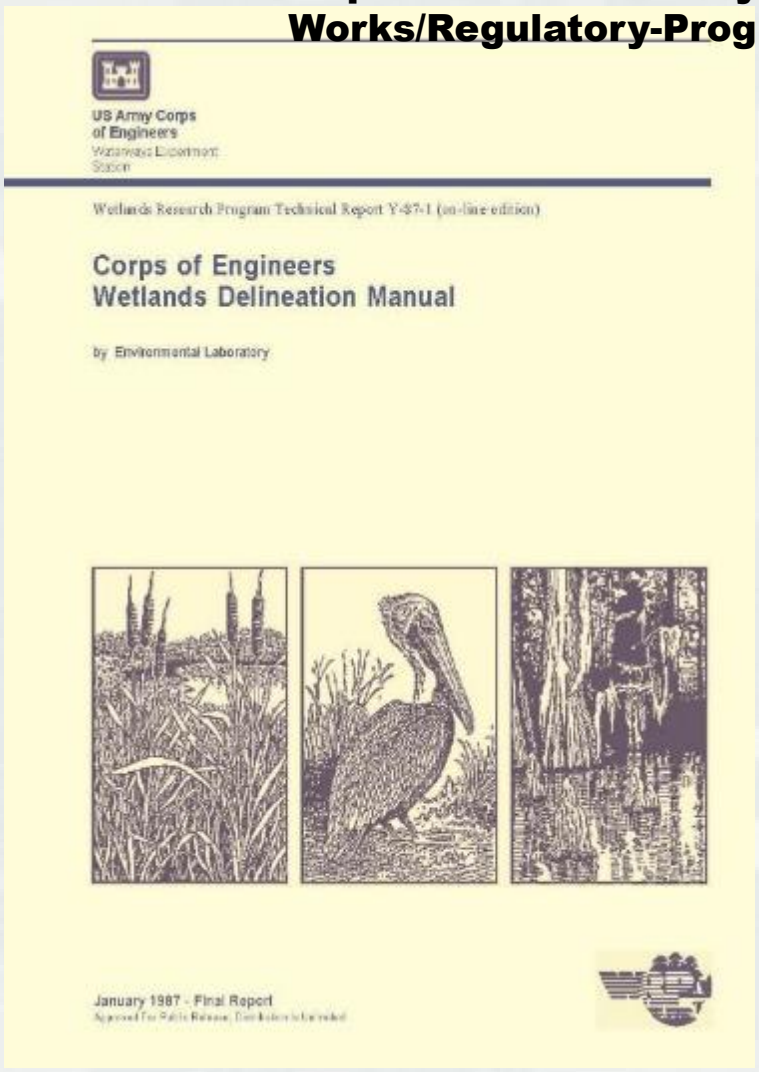

Ordinary High Watermark

Line of Jurisdiction in Freshwater

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Ordinary High Watermark (OHWM)

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Characteristics of an OHWM

Regulatory Guidance Letter (RGL) 05-05

- Clear, natural line impressed on the bank
- Changes in the character of soil
- Shelving
- Vegetation matted down, bent, or absent
- Leaf litter disturbed or washed away
- Sediment deposition
- Water staining
- The presence of litter and debris
- Destruction of terrestrial vegetation
- The presence of wrack line
- Sediment sorting
- Scour
- Multiple observed or predicted flow events
- Abrupt change in plant community

Typical Stream Cross-Section

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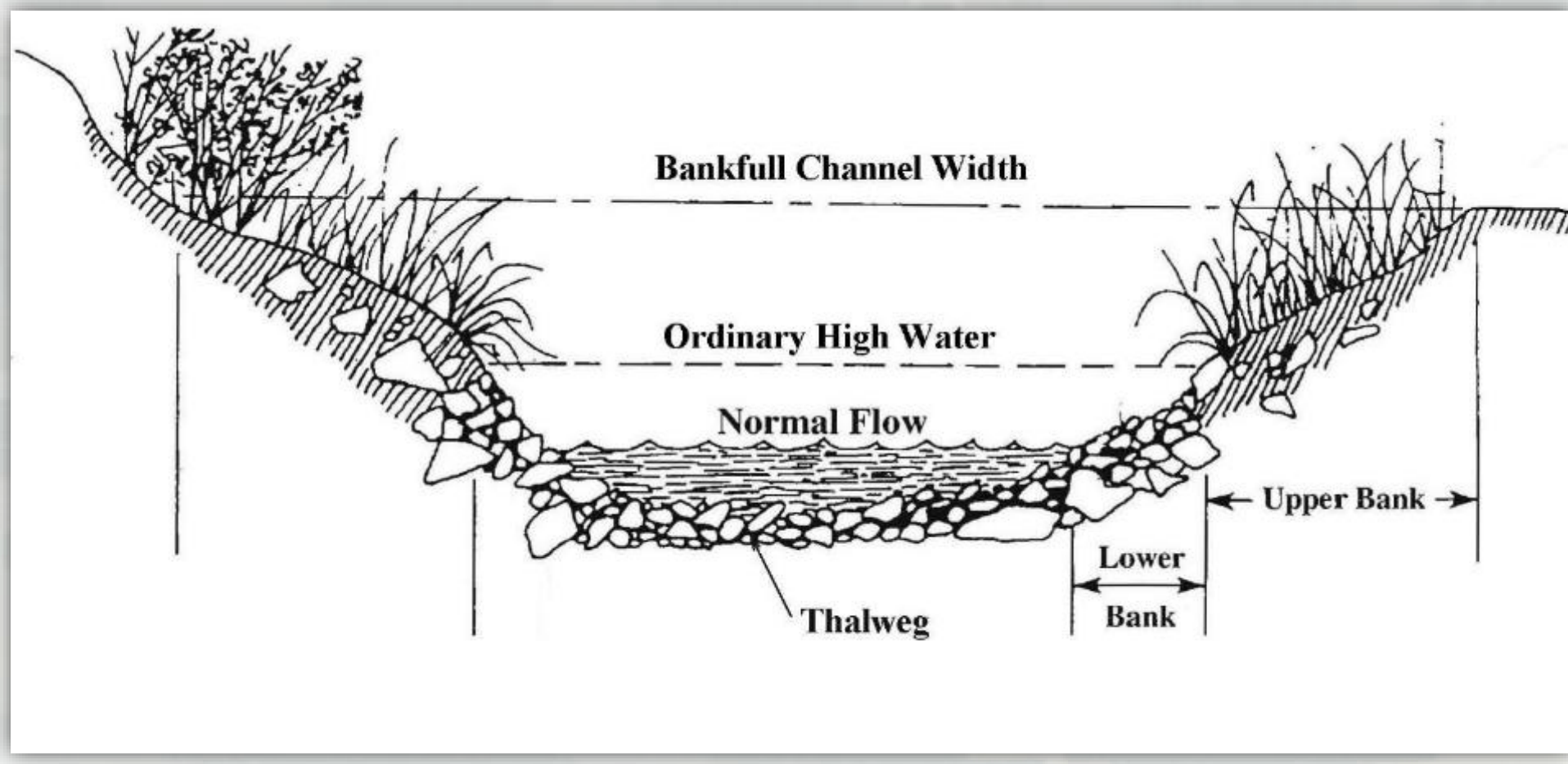
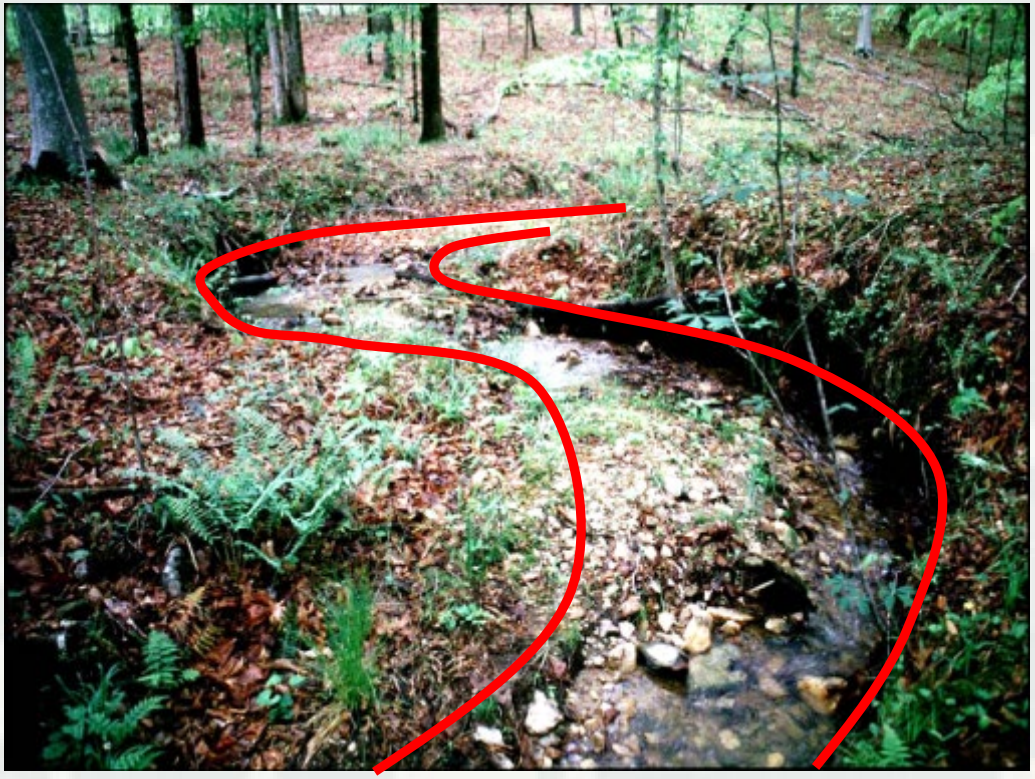


Stream Bed and Bank

- The bed is the physical confine of the normal water flow.
- The stream banks are the lateral channel margins during all but flood stage.



Intermittent or Perennial?

Perennial Stream Definition: "has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow".

Source: *Federal Register,* January 6, 2017

Intermittent or Perennial?

Intermittent Stream Definition: "has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow"

Source: *Federal Register,* January 6, 2017

What about Ephemeral?

Ephemeral Stream Definition: “An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Water table is located below ephemeral stream beds year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.”

Source: *Federal Register, January 6, 2017*

What about Ephemeral?

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- Is a gully/erosional feature in the landscape ephemeral?
- No consistent OHWM present
- Typically not indicated as a channel on USGS or Soil Survey
- Typically found in headwaters landscape position

Permitting

- There is no minimum threshold for impacts – ASSUME ALL FILLS REQUIRE A PERMIT
- There are some regulated activities that do not require an application be submitted prior to construction
- To be on the safe side, we encourage communication with our office on ALL potentially regulated activities and include this requirement on your plan checklists

Temporary Work

- Determine if any temporary work will be required
  - Staging area for equipment or materials
  - Road crossings (culverts/rock fords)
  - Coffer dams; Wetland mats
- Capture temporary work in permit
  - Include in permit drawings
  - For NWPs, determine if NWP 33 (Temporary Construction, Access, and Dewatering) is needed

Activity Regulated by Corps?

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Enforcement: Confirming a Violation

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1. Is the area jurisdictional?
2. Is the activity regulated? (discharge of fill?)
3. Was the activity authorized?

Common Enforcement Questions

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- Who turned me in?
- I know who turned me in!
- Are ducks more important than people?
- This is a mosquito/rat infested dump!
- What harm have I done?
- This is my land...Can't I do what I want?
- It's not my land...I'm just the contractor!
- Can I just finish working/filling, today?
- What will happen if I don't stop work?
- Can/will I be prosecuted?
- Will I be fined?
- Will I have to remove the fill/restore?
- The Mayor said it was OK to work.
- Why are you singling me out?

Filling in Floodplain

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- Is this a “Section 404” Discharge?
- Is the Filled Area a Jurisdictional Water of the U.S.?
- If so, where is the wetland boundary?

Regulated Under Section 404?

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("Point-source Discharge")

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Erosion Control BMPs and Corps Regulation

- Streambank Stabilization - placement of structures below the ordinary high water mark
- Check Dam - not to be placed in live streams
- Channel Stabilization - stabilizing streambanks permitted, but no more than immediate outlet protection typically allowable
- Stream Diversion Channel - for temporary dewatering during installation of drainage structures in streams

Erosion Control BMPs and Corps Regulation

- Gabion - typically used for stabilizing along streambanks in order to backfill uplands lost to severe erosion
- Grade Stabilization Structure - similar to outlet protection when placed within waters
- Rock Filter Dam - not to be placed in live streams
- Temporary Sediment Basin - not to be placed in live streams; proposal to convert to permanent facility considered major impact

Erosion Control BMPs and Corps Regulation

- Temporary Sediment Trap - similar to temporary dewatering basin for dredged spoil stockpile; design to avoid re-entry of dredge water into waterbody
- Temporary Stream Crossing - can be permitted provided affected area restored to pre-construction conditions following removal
- Turbidity Curtain - commonly used in maintenance dredging operations and in "wet" crossings of streams
- Topsoiling – commonly associated with temporary sidecasting of topsoil for utility line crossings in wetlands
- Vegetated Waterway or Stormwater Conveyance Channel - alteration of natural streams requires a permit

Summary Points

- The Corps regulates activities involving both obstruction of navigation and the placement of fills or structures within jurisdictional wetlands/waters.
- The Corps first determines the location of all jurisdictional wetlands/waters within the work area, then emphasizes avoidance and minimization of impacts.
- The Corps permitting program considers the nature and the scale of the activities within wetlands/waters.
- If in question of whether a permit may be required, contact the local Corps office before proceeding with the work.

Questions?

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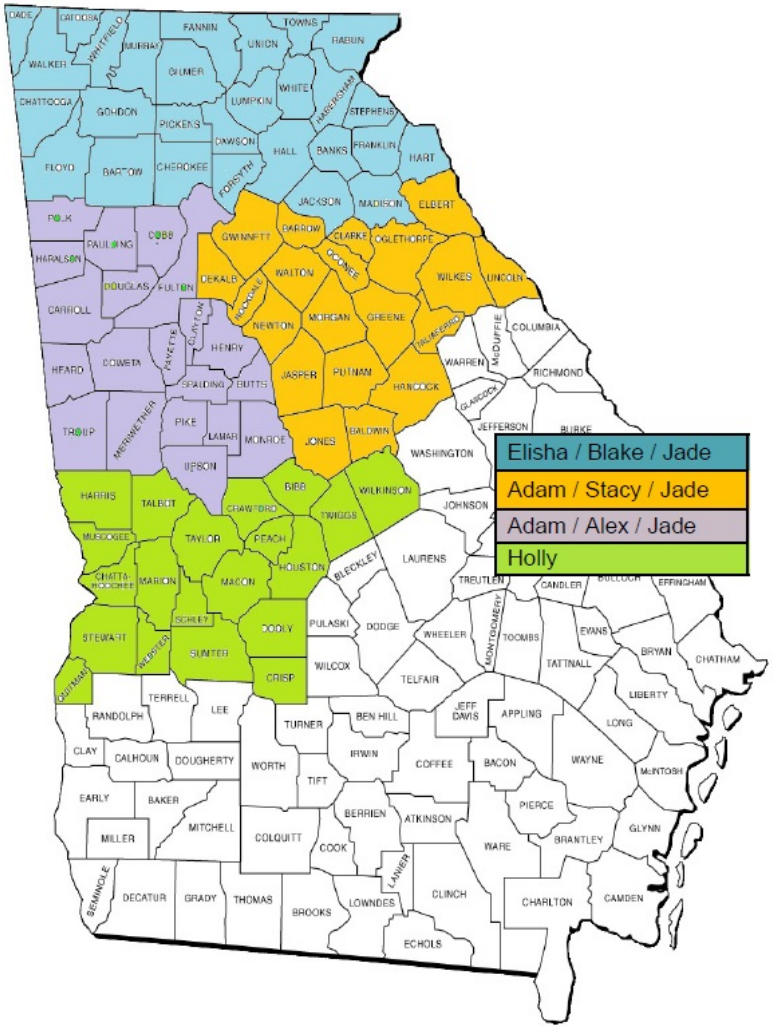

Savannah District, Regulatory Branch, Piedmont Section

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