

# Corps Regulatory Permitting for Habitat Restoration, Creation, and Enhancement Activities

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# Presentation Overview

- Corps Regulatory Authorities
- Types of Permits
- Issues and Solutions
- Pre-application Consultation



# Regulatory Permit Sections

U.S. Army Corps of Engineers - Baltimore District



# Authorities

- Section 10 of the Rivers and Harbors Act of 1899
  - ▶ Dredging activities, construction of structures, aerial or subaqueous utility lines, etc. in or over *navigable waters of the U.S.*







# Authorities

- Section 404 of the Clean Water Act
  - ▶ Regulates discharge of dredged or fill material into *all waters of the U.S.*, including jurisdictional wetlands
  - ▶ Goal of the Clean Water Act: to *restore* and maintain the physical, chemical, and biological integrity of the nation's waters
  - ▶ Water quality is a shared goal







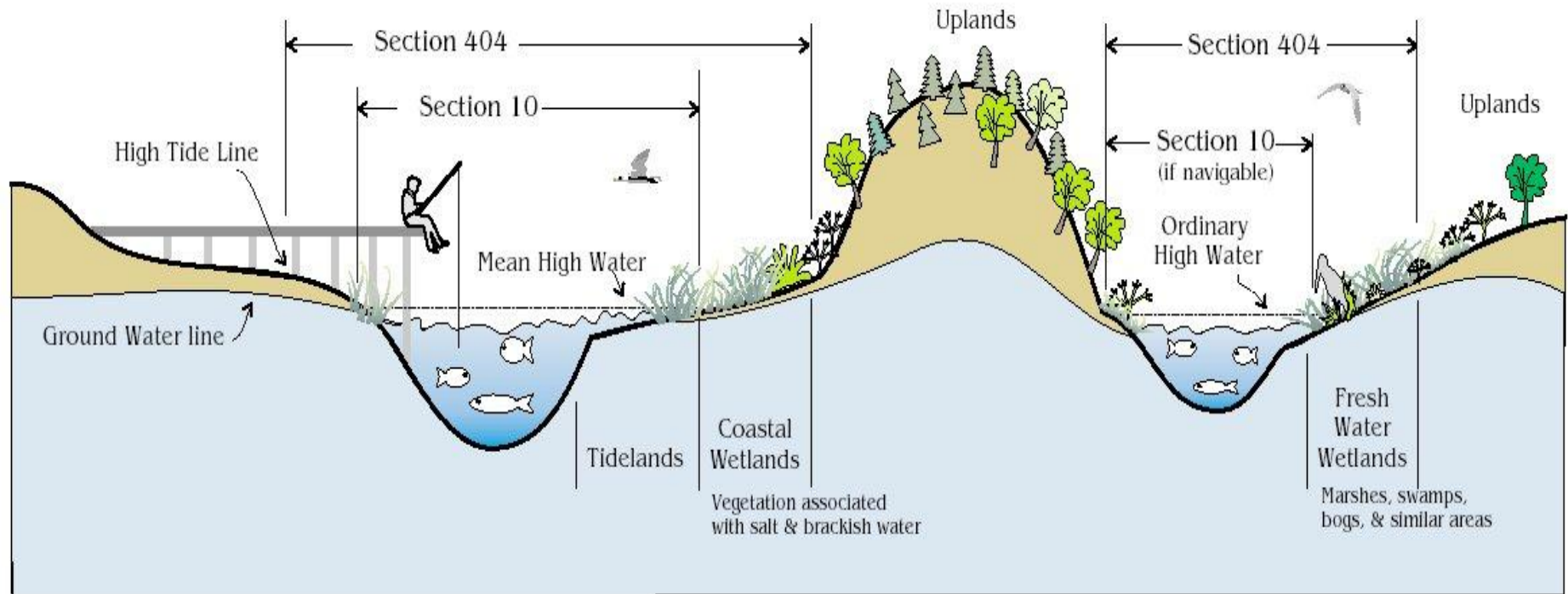




# CORPS OF ENGINEERS REGULATORY JURISDICTION

## Tidal Waters

## Fresh Waters



**Section 103**  
Ocean Discharge  
of Dredged Material

Typical examples  
of regulated activities

Ocean discharges of  
dredged material

**Section 404**  
Disposal of Dredged or Fill Material  
(all waters of the U.S.)

All filling activities, utility lines, outfall structures,  
road crossings, beach nourishment, riprap,  
jetties, some excavation activities, etc.

**Section 10**  
All Structures and Work  
(navigable waters)

Dredging, marinas, piers, wharves,  
floats, intake / outtake pipes,  
pilings, bulkheads, ramps, fills,  
overhead transmission lines, etc.

# Clean Water Act Section 404

- Permit required from the Corps to discharge dredged or fill material into waters of the US
- Stream restoration, TMDL, or SWM projects in *perennial, intermittent, and ephemeral streams, and jurisdictional wetlands*: DA permit required
- Corps level of involvement in project review is commensurate with the degree of impact





# Clean Water Act Section 404

- *Alternatives analysis* is the centerpiece of the 404 review
- Identify the *practicable* alternative which has the least adverse impact on the aquatic ecosystem (e.g., wetland/waters)
- *Practicable* means available and capable of being done taking into consideration cost, existing technology, and logistics in light of overall project purposes



# Types of Department of the Army Permits

- **Maryland State Programmatic General Permit-4 (MDSPGP-4)**
  - ▶ Federal authorization and expedited permitting for activities with **minimal impacts; on-site minimization of impacts**
  - ▶ Majority of projects authorized are verified by MDE without the need for Corps review of the application
  - ▶ Most activities are limited to **½ acre and/or 2,000 linear feet** of streams and other waters of the U.S. (total of all temporary/permanent impacts)
  - ▶ Category A: generally non-reporting to the Corps
  - ▶ Category B: reporting to the Corps; coordination w/Agencies





# Types of DA Permits

- **Nationwide Permit (NWP)**

- ▶ Federal authorization on a nationwide basis for commonly recurring activities that have minimal individual, and cumulative adverse impacts to the environment.
- ▶ Many NWPs suspended in MD since duplicated by the MDSPGP-4; some NWPs retained
- ▶ Baltimore District has applied some regional conditions



# Types of DA Permits

## ■ Individual Permit (IP)

- ▶ Large/complex projects exceeding thresholds and conditions of nationwide and general permits (highways on new alignment, subdivisions, dredging)
- ▶ Potential for more than minimal impacts
- ▶ Public notice to interested parties, general public, adjacent property owners, agencies
- ▶ Clean Water Act Section 404(b)(1) Guidelines analysis
- ▶ Practicability of off-site alternatives
- ▶ Corps public interest review
- ▶ Corps compliance with NEPA analysis (typically an EA)





# MDSPGP-4

- Tidal Marsh Creation/Beach Nourishment Activity
  - ▶ Tidal marsh creation and/or beach nourishment activities, including construction of stone containment structures (e.g., groins and low profile stone sills) and placement of fill for shoreline erosion control
  - ▶ Limits
    - Category B –  $\frac{1}{2}$  acre impacts to tidal waters of the U.S.; 50 feet channelward of the MHW shoreline
    - Category A - 17,500 square feet of impacts to tidal waters of U.S.; 35 feet channelward of the MHW shoreline, 500 feet in length
  - ▶ Must be located in unvegetated shallow water areas (i.e., no impacts to marsh, wetland, SAV)



# MDSPGP-4

- Nontidal Bank Stabilization Activity
  - ▶ Bank stabilization activities necessary for erosion prevention and protection
  - ▶ Limits –  $\frac{1}{2}$  acre nontidal waters of the U.S. and 2,000 linear feet of stream



# NWP 27-Aquatic Habitat Restoration, Establishment, & Enhancement Activities

- No acreage limit, but the terms limit the types of activities authorized
- Activities must result in net increase in aquatic resource functions and services





# NWP 27-Aquatic Habitat Restoration, Establishment, & Enhancement Activities

- Applicant must demonstrate/document in the permit application and supporting info how the terms and conditions of the NWP are met, including how the project will achieve a net increase in aquatic resources functions and services over the existing conditions
- Functions: physical, chemical, biological processes that occur in aquatic ecosystems



# NWP 27-Aquatic Habitat Restoration, Establishment, & Enhancement Activities

- Pre-Construction Notification (PCN) required for *all NWP 27 activities* in the Baltimore District
- Does not *authorize conversion of a stream or wetlands to another aquatic habitat type*, stream channelization, or the relocation or conversion of tidal waters, including tidal wetlands to other aquatic uses (e.g., conversion of tidal wetlands into open water impoundments)



# What is Causing Delay?

- ❑ Primarily environmental concerns
- ❑ In-stream stormwater management
- ❑ In-stream impoundments and dams
- ❑ Blocking aquatic organism/fish passage
- ❑ No alternatives analysis for a project
- ❑ Loss of high quality aquatic resources





# What is Causing Delay?

- ❑ Restoration projects (e.g., regenerative stormwater conveyance systems) in perennial streams, and associated high quality forested floodplains, and adjacent wetlands.
- ❑ Changes to stream hydrology (e.g., sediment transport reach to accretion reach)
- ❑ Incomplete permit applications



# Permit Application Information

- ❑ Complete the Joint Federal/State permit application:  
applicant name, sponsor, location, address, waterway
- ❑ Detailed project description
- ❑ Wetland/stream delineation
- ❑ Complete set of plans
- ❑ Quantify impacts (temporary and permanent)
- ❑ Alternatives analysis



# Permit Application Information

- ❑ Photographs (on-site and aerial)
- ❑ Baseline site conditions narrative or report
- ❑ Description/documentation for net increases in aquatic resources functions and services
- ❑ Maintenance plan
- ❑ Monitoring plan
- ❑ Commitment to submit as-built drawings





# Solutions

- ❑ If practicable, move as far upstream in the watershed and avoid impacts to waters of the U.S.
- ❑ Focus site selection on degraded systems, not on relatively stable streams with mature forested floodplains and adjacent wetlands



# Solutions

- ❑ Corps has agreed to work with the EPA Chesapeake Bay Program and EPA R3 Regulatory to explore options for addressing concerns and improving the permit process
- ❑ Involve the agencies early in the planning process – *pre-application consultation*



# Pre-Application Consultation

- ❑ Agencies meet with the applicant *in advance of a permit application*
- ❑ Agencies offer input at the *planning stages* of a project (field/office meeting)





# Pre-Application Consultation

- ❑ Alternatives analysis is the centerpiece of the Corps Section 404 review
- ❑ Discuss alternatives to avoid/minimize impacts which should be evaluated
- ❑ Information requirements for a permit application



# Pre-Application Consultation

- ❑ We can provide guidance and a preliminary signal regarding the permissibility of a project (*red, yellow, or green light*)
- ❑ For restoration, site selection is key
- ❑ We can have a pre-app meetings for restoration projects proposed for grant funding (this is strongly encouraged)



# Pre-Application Consultation

- ❑ Maryland State Highway Administration TMDL projects
- ❑ Planning to schedule several field days with SHA to review 40 potential TMDL projects (e.g., stream restoration) to discuss site selection and permissibility



# Pre-Application Consultation

- ❑ Expedites the permit process
- ❑ Cost and time savings to applicants
- ❑ Time well spent by applicants and agencies





# Pre-Application Consultation

- ❑ Contact the Corps and/or MDE to schedule a pre-app meeting (both regulatory agencies need to be present)
- ❑ MDE pre-app form
- ❑ Background information: location, waterway, delineation, impacts, baseline data on resource, proposed improvements, concept plans



# Pre-Application Consultation

- ❑ Monthly Interagency Joint Evaluation (JE)  
Meetings in Annapolis, Maryland – 4<sup>th</sup>  
Wednesday of the month
- ❑ Federal/State agencies participate in JE
- ❑ Great venue for pre-app



# Additional Information

- Visit the US Army Corps of Engineers - Baltimore District Regulatory web site at:
- [www.nab.usace.army.mil/Regulatory/](http://www.nab.usace.army.mil/Regulatory/)



# Goals

- Mandate to protect the nation's waters
- Fair/reasonable decisionmaking process
- Public service





