

Jacksonville District's Regulatory Program: Strategies for Success

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US Army Corps of Engineers

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Outline



- Proposed Clean Water Act Rule
- Interpretive Rule
- Setback guidance
- Other USACE authorizations
- Efficiencies



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Proposed Clean Water Act Rule

- Published in Federal Register April 21, 2014
- Public comment period open until October 20, 2014
- U.S. Environmental Protection Agency (USEPA) and Department of the Army believe that the draft rule is *consistent with the U.S. Supreme Court's SWANCC and Rapanos decisions*
- USEPA, Army and Office of Management and Budget have met with various agencies, groups and organizations to listen to their concerns about the proposed rule



Proposed Clean Water Act Rule

(cont'd)

- Provides *additional clarity* regarding geographic scope of Clean Water Act (CWA) jurisdiction
- *Improves national consistency and predictability* of jurisdictional decisions applicable to all CWA programs



(Clean Water Act, Sections 303, 309, 311, 402, and 404)



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Proposed CWA Rule

- Categories of waters addressed:
 - Navigable waters
 - Interstate waters/wetlands
 - Territorial seas
 - Impoundments of waters
 - Tributaries
 - Adjacent waters/wetlands
 - Other waters
- New definitions:
 - Tributary
 - Neighboring
 - Riparian area
 - Floodplain
 - Significant nexus



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Proposed CWA Act Rule Implementation

- Expect slight increase (3%) over 2008 guidance in jurisdictional tributaries, adjacent and other waters
- New JD Form and documentation requirements
- New technical tools for the field to support determinations
- Policy for handling recent pending/near expiring JDs
- Public/stakeholder outreach



Interpretive Rule Exemption*

- Issued April 3, 2014
- Clarifies the permitting exemption* to discharges of dredged or fill material
- Associated with certain agricultural *NRCS conservation practices* designed and implemented to protect and enhance water quality
- The interpretive rule will:
 - Improve the consistency and integration of programs as is fully consistent with the law
 - Promote the mutual objectives of regulations and statutes
 - Increase clarity and predictability for the agriculture community, who wants to protect the resources on their lands



*Clean Water Act Section 404 (f)(1)(a)

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Interpretive Rule Exemption* (cont'd)

- Activities must be implemented in conformance with *NRCS technical conservation practice standard*
 - NRCS standards provide technical requirements, which are tailored to state and local conditions and provide specifications for installation of conservation measures
- Must be part of *established (i.e., ongoing) farming, ranching, or silviculture operation*
- Any farmer can utilize; *no need to be enrolled in NRCS program*



Interpretive Rule Exemption* (cont'd)

- Landowners do *not need to determine whether the activities are in waters of the U.S. nor obtain site-specific pre-approval* from either USACE or the USEPA before implementation of a practice standard
- *CWA Section 404(f)(2) is not affected* by the interpretive rule and activities may still be recaptured if they meet the terms of 404(f)(2)
- The USEPA, USACE and the USDA have entered into a *Memorandum of Understanding (MOU)* to develop and implement a process for identifying, reviewing and updating NRCS agricultural conservation practices



**Clean Water Act Section 404 (f)(1)(a)*

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Setback Guidance

- Current version released July 18, 2013 and revised December 18, 2013
- Allows for safe navigation and effective operation and maintenance of federal channel
- Structures should be no closer than 100' of the near design edge of the channel
- With proper justification, variances allow for structures to be located a lesser distance from the near design edge of the channel

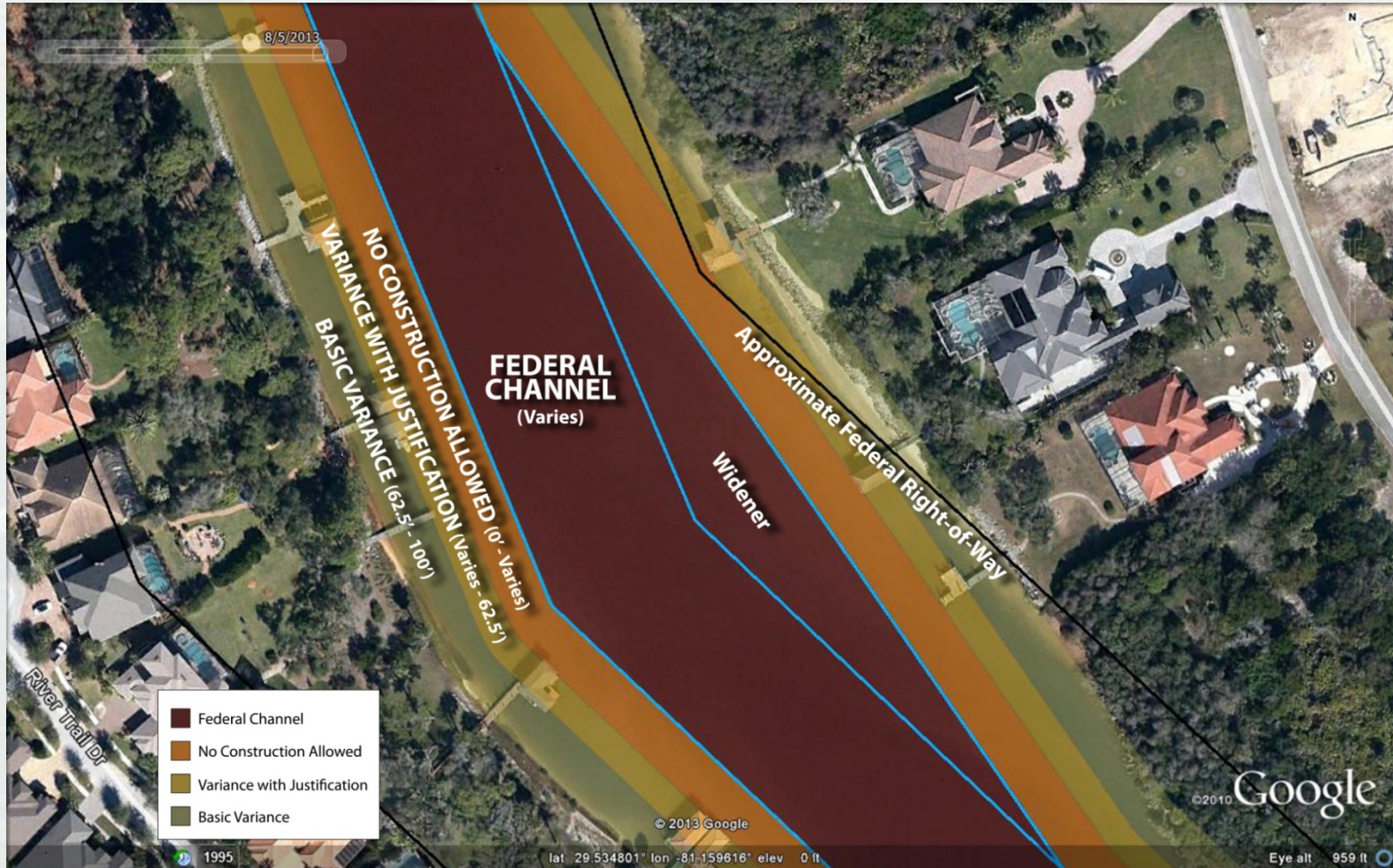


Setback Guidance (cont'd)

- Expands terms and definitions
- Explains utilization of X&Y coordinates to determine location of proposed structures and requires High Accuracy Reference Network update of the NAD83
- Requires hydrographic survey
- Requires justification to be closer than standard setback, such as proof that no dredging is allowed
- Expands restrictions; structures generally not allowed less than 62.5' from the near design edge of the channel
- Adds width restriction for structures located less than 62.5' from near design edge of channel
- Revises absolute minimum setback from 3X project depth (top of slope) to 3X project depth plus 2'



Setback Guidance (cont'd)



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Federal Land Interests

- USACE has land interests (generally easements) associated with federal projects
- Land encumbered by federal interests cannot be disposed unless the land interest is no longer needed in support of the operation, use and maintenance of the federal project
- *A Consent to Easement* authorizes permanent structures on federal land interest
- Failure to obtain a *Consent to Easement* invalidates a Department of the Army regulatory permit
- Federal regulation has zero tolerance for unauthorized encroachments on federal land interests (*Title 36 CFR Section 327.20*)



Modifications of Federal Projects

- Pursuant to Section 14 of the Rivers and Harbors Act (*33 U.S.C. 408*) the Secretary of the Army may grant permission for modification of a USACE federal project
- Modifications include alterations, improvements and encroachments
- Modifications cannot impair the authorized function of a federal project
- The non-federal sponsor must concur with the modification being proposed by an outside (third) party
- RHA Section 408 approvals are distinct from and must be granted prior to any Department of the Army regulatory permit



Efficiencies

- Historic Property “Key”
- Statewide programmatic consultation with National Marine Fisheries Service
- Use of Department of the Army application ENG 4345
- Development of templates associated with mitigation banking
- Incorporation of species impacts into mitigation banking instruments
- Utilization of Regulatory In-lieu Fee and Bank Information Tracking System (RIBITS)



Efficiencies: RIBITS

Allows online tracking of mitigation banks and in lieu fees including:

- Contacts
- Services
- Available credits
- Ledgers
- Reporting
- Bank & ILF documents
- Policy documents

RIBITS
Regulatory In-lieu Fee and Bank Information Tracking System

Navigation

- Home
- Mitigation Concepts
- Existing Banks & ILF Sites
- Reporting
- Bank & ILF Establishment
- Assessment Tools
- Credit Classifications
- Related Sites
- Training
- ILF Programs

Filter View & Login

LOGIN

USACE District: ALL DISTRICTS

State: ALL STATES

USFWS Field Office: ALL OFFICES

Feedback

News

- Plug-in Information
- Security Certificates

Map Results



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Efficiencies: General Permits

- State Programmatic General Permit (SPGP) since 1995
- Covers 4 activities for shoreline development/structures
 - Includes FDEP Self Certifications (since 2008)
 - Hillsborough County & SJRWMD recently became designees for SPGP; currently working same with SWFWMD
- 9 active Programmatic General Permits (PGP)
 - Developing PGP with SJRWMD for up to 3 acres of fill in wetlands in northeast FL (SAJ-111)
 - Developing PGP with Seminole Tribe
 - Developing PGP with Mobile District for activities on Lake Seminole
- 18 active Regional General Permits (RGP)



Questions?



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