

# USACE HONOLULU DISTRICT REGULATORY PROGRAM OVERVIEW

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US Army Corps  
of Engineers®





# REGULATORY MISSION



To protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions.

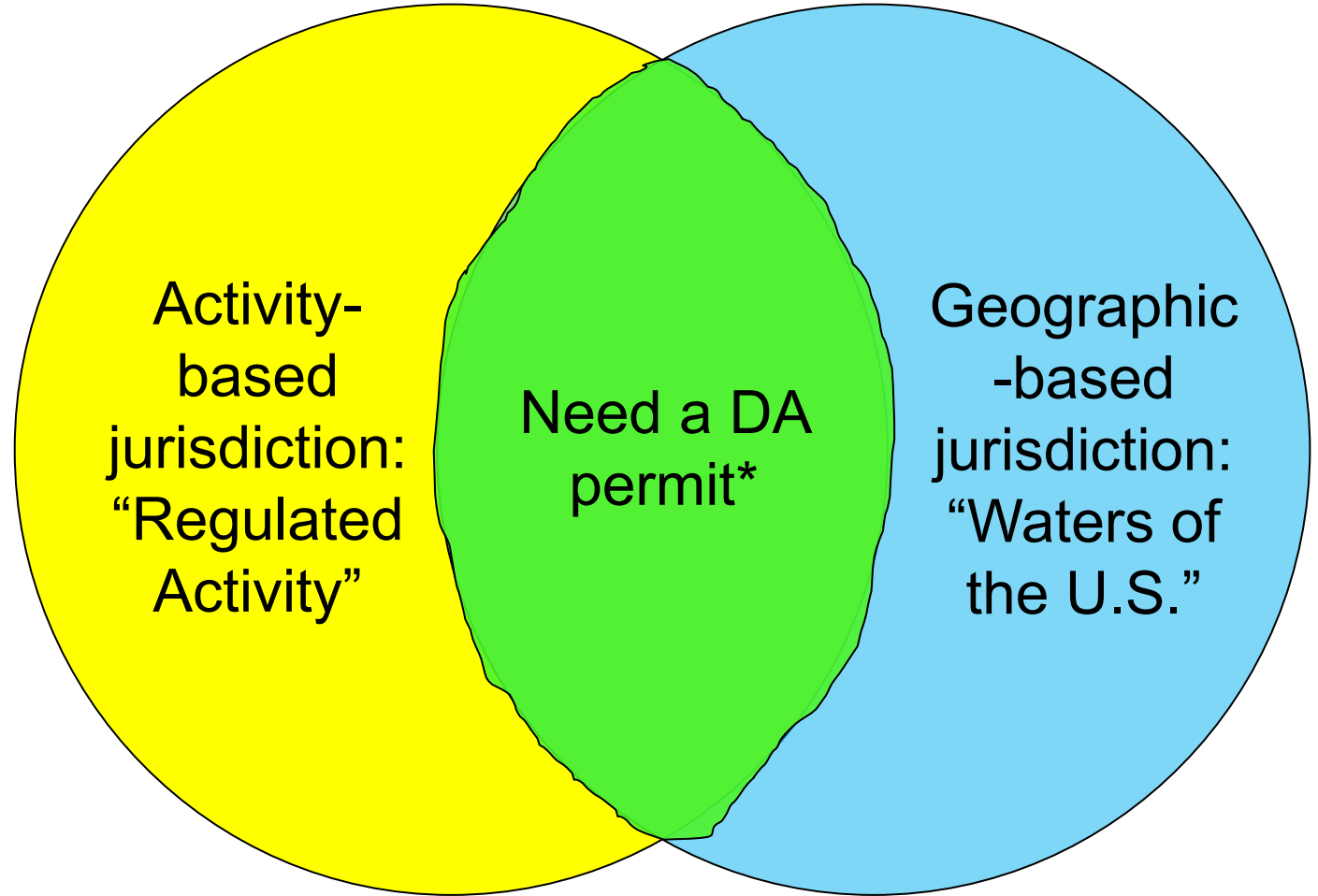




# WHAT DO WE DO?



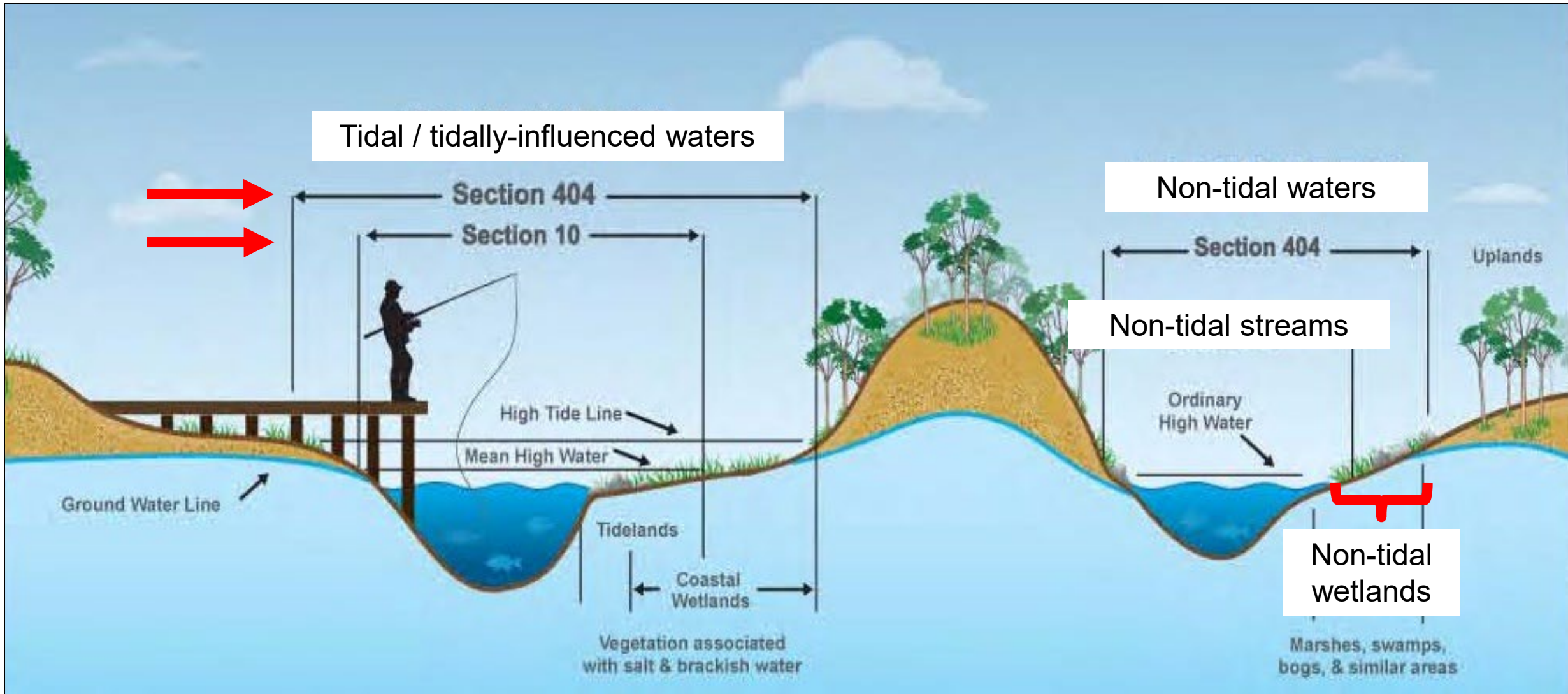
Review Department of the Army (DA) “Corps” permit applications for certain **activities in waters of the U.S.**



*\*unless an exemption applies*



# JURISDICTION: TIDAL VS NON-TIDAL





# NEW DEFINITION OF WATERS OF THE U.S.



In Honolulu District

- **Amended “January 2023 Rule”**
- Effective as of September 8, 2023
- Removal of the significant nexus standard
- Scalia plurality opinion from *Rapanos v. U.S.* (2006) on WOUS:
  - “relatively permanent, standing or continuously flowing bodies of water forming geographic features’ that are described in ordinary parlance as ‘streams, oceans, rivers, and lakes”
  - Adjacent wetlands = “having a continuous surface connection to WOUS”



See <https://www.epa.gov/wotus> for additional information.  
Please contact [wotus-outreach@epa.gov](mailto:wotus-outreach@epa.gov) with any questions.



# AMENDED 2023 RULE: FRAMEWORK



## Categories of Jurisdictional Waters

(a)(1)

- (i) Traditional Navigable Waters
- (ii) Territorial Seas
- (iii) Interstate Waters

(a)(2) Impoundments of Jurisdictional Waters

(a)(3) Tributaries

(a)(4) Adjacent Wetlands

(a)(5) Intrastate lakes and ponds that do not fall within (a)(1) – (a)(4)



**\*NOTE:** For efficiency, this slide’s list of the categories of jurisdictional waters are shorthand for the jurisdictional categories in the regulations. See 33 CFR 328.3(a) and 40 CFR 120.2(a).

*The information provided in this presentation is generally relevant to implementing either the 2023 rule, as amended, or the pre-2015 regulatory regime. Determinations of jurisdiction are case-specific determinations based on the record, and factual concerns or questions about the application of Sackett v. EPA may be raised in the context of a particular determination. In addition, the agencies may in the future provide revised or additional administrative guidance to address implementation of the 2023 Rule, as amended, or the pre-2015 regulatory regime, consistent with Sackett.*





# NOT CONSIDERED WATERS OF THE U.S.



## 33 CFR Part 328.3(b)

1. Waste treatment systems
2. Prior converted cropland
3. Certain ditches
4. Artificially irrigated areas
5. Certain artificial lakes/ponds
6. Pools/ornamental pools
7. Waterfilled depressions created in dry land
8. Swales and erosional features





# TYPES OF PERMITS

## General Permits

- Nationwide Permits
- ENG Form 6082 (most current one says expired, but still valid)
- Corps processing time is 60 days

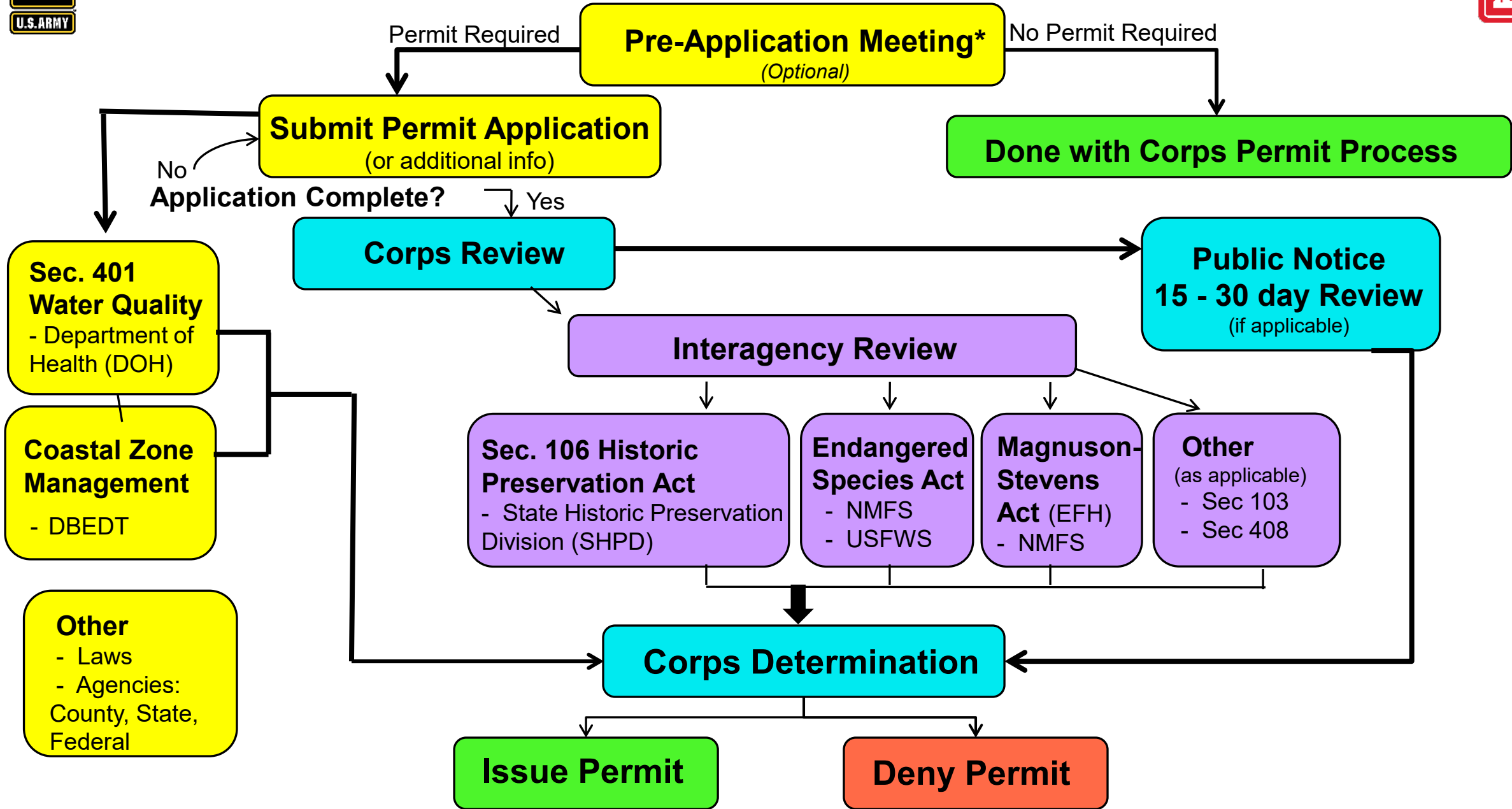
## Individual Permits

- Standard Permits or Letters of Permission
- ENG Form 4345
- Corps processing time is 120 days
- Adjacent property owner names and mailing addresses
- Alternatives analysis





# CORPS REVIEW PROCESS





# PERMITTING STORMWATER ACTIVITIES – SECTION 10



- Structures or work in Section 10 waters (tidally-influenced)
  - Dredging
  - Installation, replacement, retrofit pipes and outfalls in, over, or under WOUS (not open trench)
  - Temporary structural construction BMP

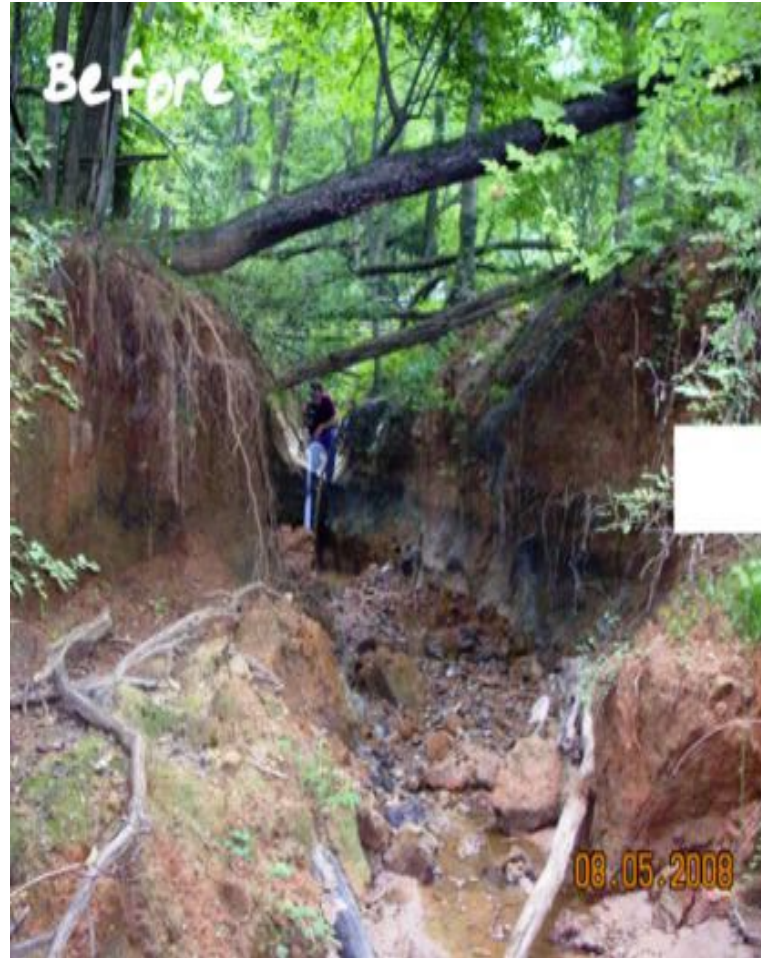




# PERMITTING STORMWATER ACTIVITIES – SECTION 404



- Discharge of fill (all WOUS)
  - Grading/ grubbing, including temporary, e.g., open trench installation, fill BMPs
  - Maintain infrastructure with rock or concrete, e.g., pipes
  - Stream or wetland restoration
  - Shoreline management, e.g., living shoreline





# NO PERMIT REQUIRED

1. Activities in uplands
2. Non-regulated Activities
3. Exemptions





# ACTIVITIES IN UPLANDS



Typical upland stormwater monitoring and management activities:

- Install weather station / monitoring equipment
- Rain garden
- Permeable pavers
- Bioswales
- Rainwater harvesting
- Tree planting
- Land preservation





# NON-REGULATED ACTIVITIES



## Structures in Non-tidal WOUS

(Section 404 = ONLY discharge of fill regulated)

- No permit required for most pipes, loggers, scaffolding, or weirs (unless cast-in-place concrete)







# NON-REGULATED ACTIVITIES



## Work in non-tidal WOUS:

- One-step excavation with upland disposal, i.e., removal of accumulated sediment a single scoop at a time
- Clearing vegetation, green waste, or debris (not grubbing)

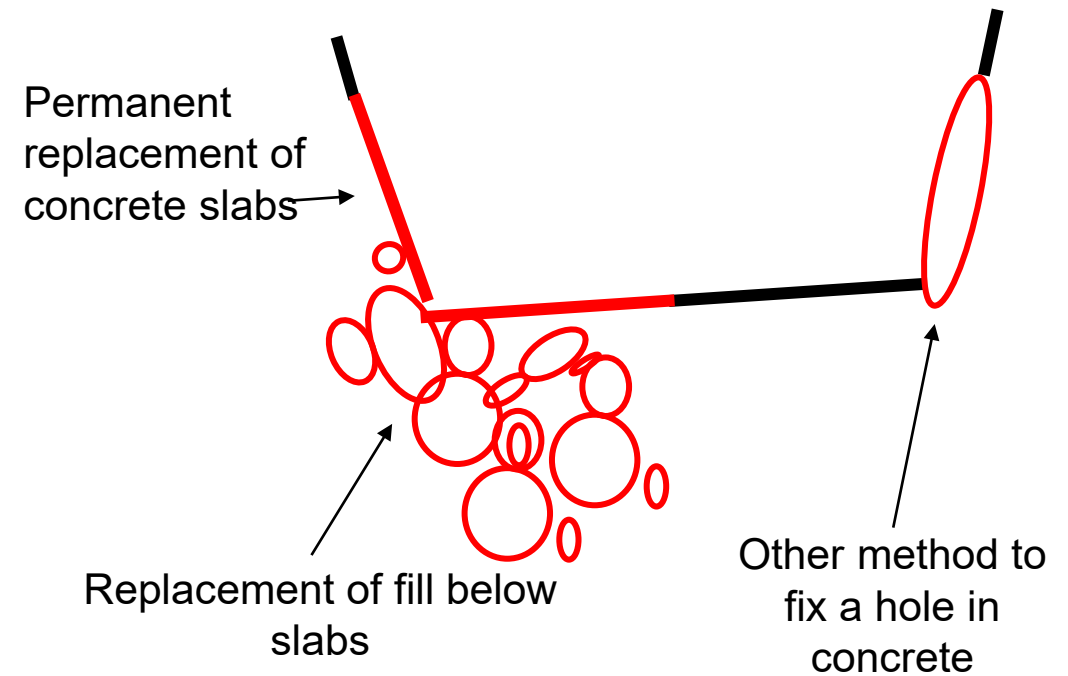




# SECTION 404(F) CWA PERMIT EXEMPTIONS



- Maintenance for currently serviceable project
  - IF: no change to **character, size, or scope** of original fill design
  - Examples:
    - Replacing dislodged concrete panel from a concrete-lined channel to restore to previous design → No Permit Required
    - Character can include the level of permeability, i.e., changing riprap to grouted riprap is NOT the same character = NOT exempt
- Other exemptions for farm/forestry roads and ditches

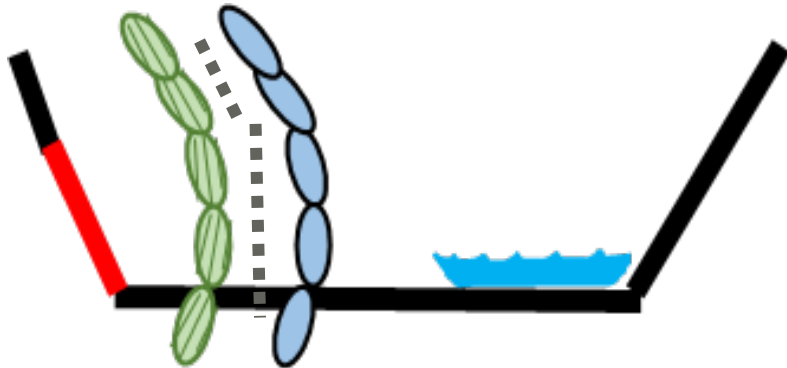




# CAVEATS TO CWA PERMIT EXEMPTIONS

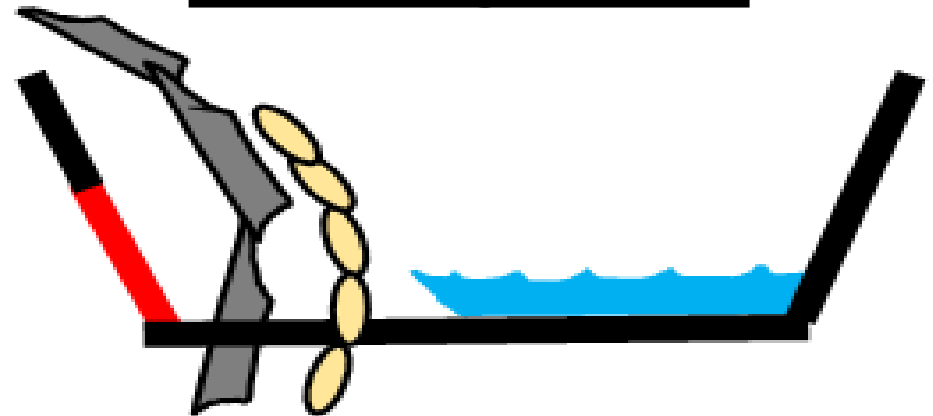
- Does not apply to work in Section 10 waters
- Exemption does NOT include fill for BMPs (e.g., sandbag berm) which requires a Corps permit
- Natural stream channel is NOT a constructed structure/original fill. Stream clearing in a natural channel needs a permit (vs exempt in concrete-lined channel)

## Structure



Mulch/coconut-fiber-filled socks, sheet piles, or water-filled forms: needs permit **ONLY** in tidal WOUS

## Discharge of fill



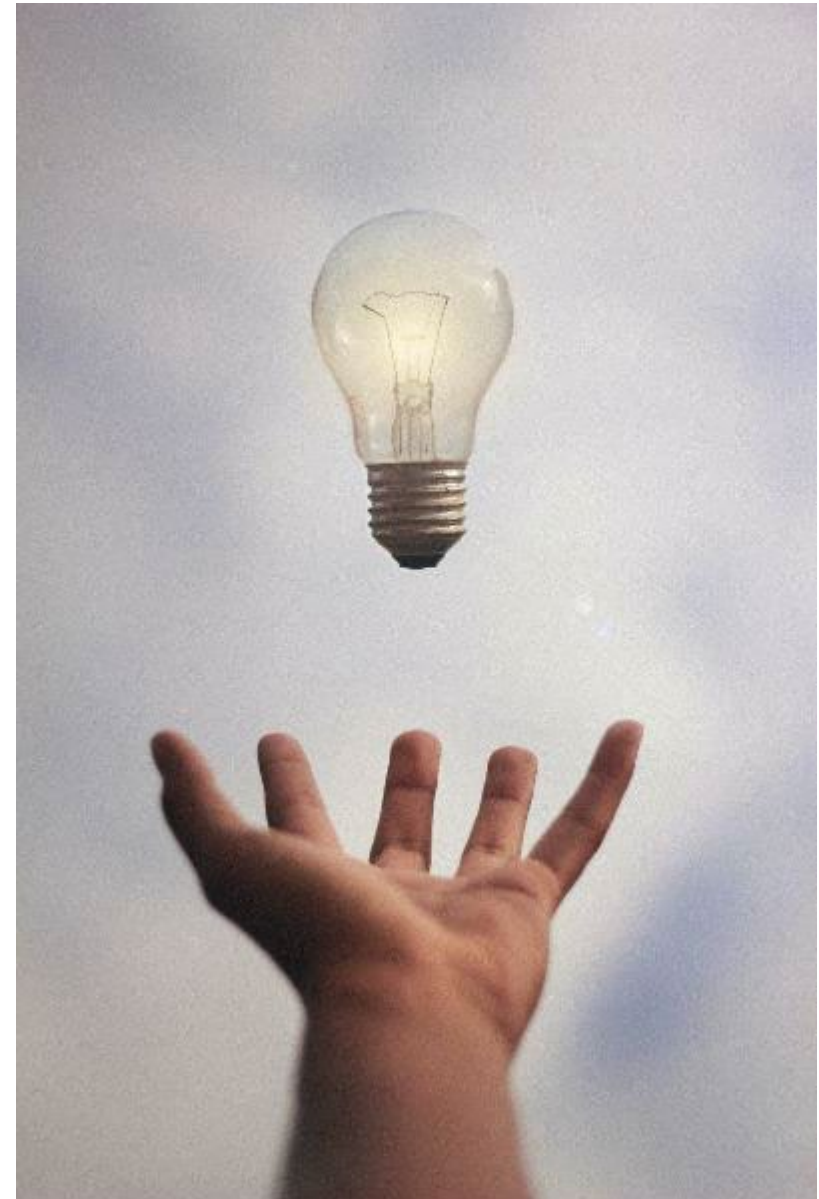
Gravel bags or sand bags: needs permit in **ALL** WOUS



# NON-REPORTING NATIONWIDE PERMITS



- Regulated activities, NOT exempted
- Meet NWP terms and conditions AND:
  - Activity-specific conditions for non-reporting
  - ESA effect determination: no effect
  - Section 106 NHPA effect determination: no potential to cause effect
- No PCN or verification letter





# SECTION 401 – BLANKET

- Blanket = Corps permit includes Section 401 WQC, no need to contact DOH directly
- most NWP's and Letter of Permission
- Must meet terms and conditions





# KEYS TO A GOOD APPLICATION



- Complete work description with BMPs (design % not important)
  - Project footprint (square feet)
  - Fill material(s) volumes (cubic yards)
  - Anticipated project duration
- Project plans with
  - Clear impact footprints in WOUS
  - WOUS limits (e.g., OHWM)
- Other minimization efforts
- Project background info:
  - E.g., Substrate composition, historic properties

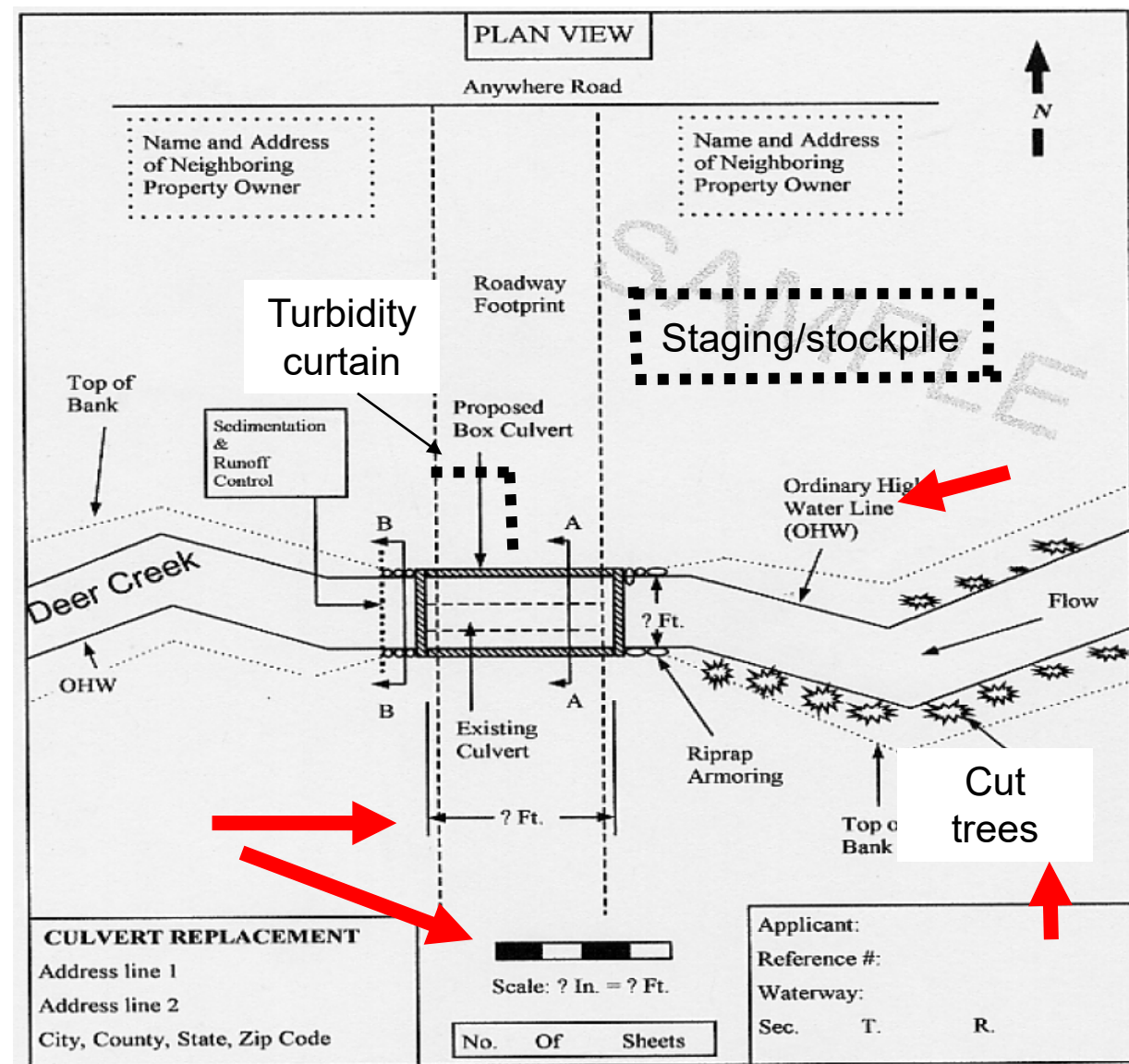




# BASIC APPLICATION, PRE-APP INFORMATION



- Location of staging / stockpiling / access areas in uplands
  - although outside Corps permit area, uplands info still needed for NHPA or ESA scope
    - Documentation of completed consultation for Federal applicant, e.g., FHWA
- Construction method, equipment, phasing, detours, BMPs
  - Even if no permit is required for the project work, BMPs may require a permit
  - BMPs affect project effect on ESA, 106, EFH





# HOW TO APPLY FOR A PERMIT



NWP Application at:

<https://www.poh.usace.army.mil/Missions/Regulatory/Permits/Nationwide-Permits/>

Submit application or schedule a pre-application meeting:

**CEPOH-RO@usace.army.mil**

Questions? Call: **808-835-4303**



**QUESTIONS?**