

# How the Federal Wetlands Regulatory Program Works in Practice, Including the Roles of Federal Agencies, State Agencies, Local Governments and Consultants

Eric Somerville, US Environmental Protection Agency

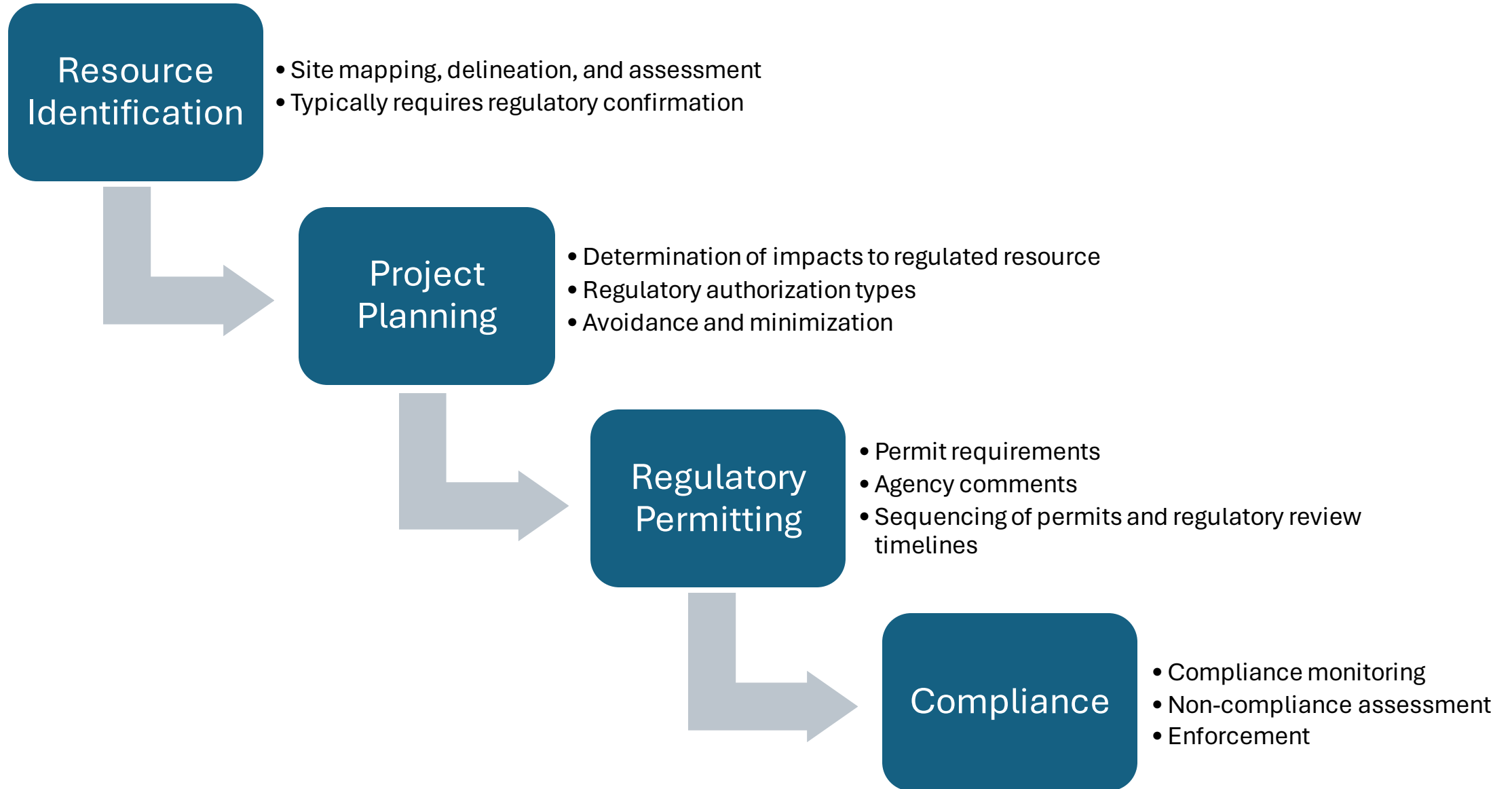
Jason O’Kane, US Army Corps of Engineers

Tony Greco, Nutter & Associates, Inc.

# Permitting Process – Applicants' Perspective

- Regulatory Permitting Process
- Navigating Regulatory Programs
  - Federal
  - State
  - Local
- Compensatory Mitigation
  - Process
  - Considerations
  - Program Administration
- Enforcement

# Regulatory Permitting Process

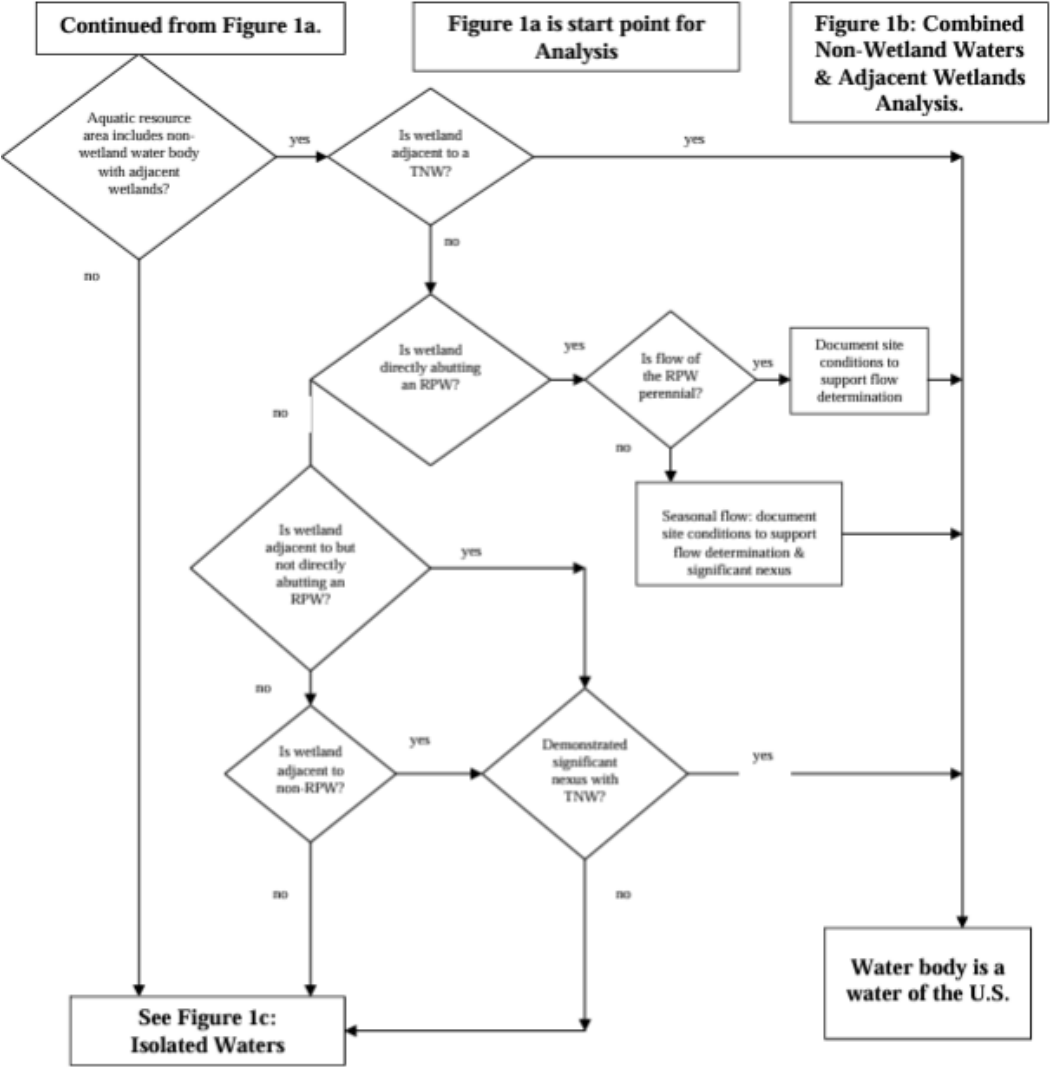
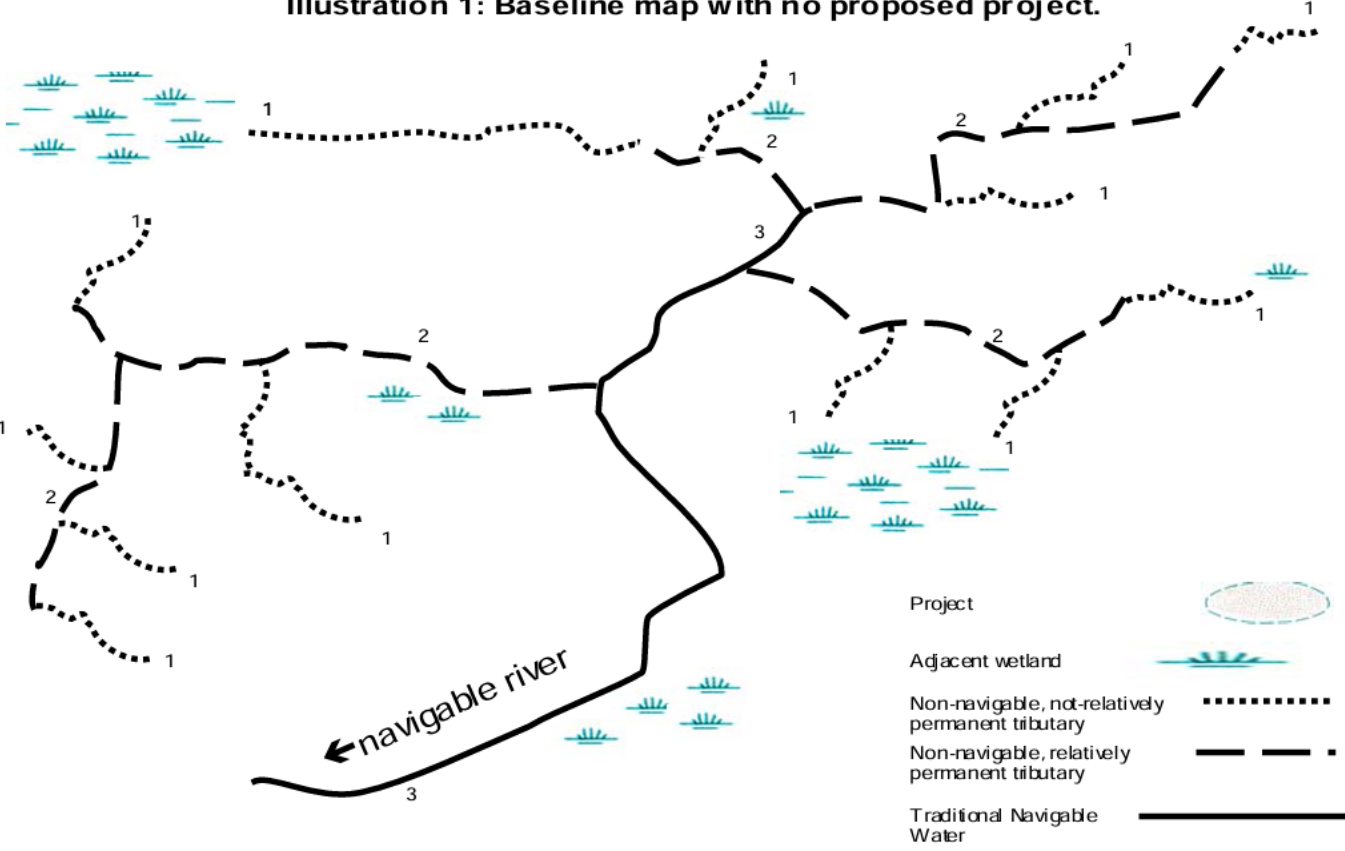


# Navigating Regulatory Programs

- **Federal Definition:** Wetlands are defined as those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are transitional areas between open water and dry land and are often found along bays, lakes, rivers and streams. Some are drier than others and may have standing water or saturated soil conditions only during part of the year. Examples include bottomland forests, swamps, bogs, marshes, wet meadows and seasonal wet woods.
  - **Federal Regulation:** The “waters of the United States” are defined in paragraph (a) of this rule: (1) traditional navigable waters, the territorial seas, and interstate waters (“paragraph (a)(1) waters”); (2) impoundments of “waters of the United States” (“paragraph (a)(2) impoundments”); (3) tributaries to traditional navigable waters, the territorial seas, interstate waters, or paragraph (a)(2) impoundments when the tributaries meet either the relatively permanent standard or the significant nexus standard (“jurisdictional tributaries”); (4) wetlands adjacent to paragraph (a)(1) waters; wetlands adjacent to and with a continuous surface connection to relatively permanent paragraph (a)(2) impoundments or to jurisdictional tributaries when the jurisdictional tributaries meet the relatively permanent standard; and wetlands adjacent to paragraph (a)(2) impoundments or jurisdictional tributaries when the wetlands meet the significant nexus standard (“jurisdictional adjacent wetlands”); and (5) intrastate lakes and ponds, streams, or wetlands not identified in paragraphs (a)(1) through (4) that meet either the relatively permanent standard or the significant nexus standard (“paragraph (a)(5) waters”). (33 CFR Part 328, 40 CFR Part 120)
- **Georgia Definition:** “State Waters” means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural and artificial, lying within or forming a part of the boundaries of the State which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation, except as may be defined in O.C.G.A. 12-7-17(8) (O.C.G.A. 12-7-3(16)).
  - **Georgia Regulation:** The State mandated buffer requirements apply to these State Waters that have wretched vegetation by normal stream flow. Coastal marshlands are addressed in a separate document and have state mandated buffers that are measured from the Jurisdictional Determination (JD) Line established by the Coastal Marshland Protection Act and implemented by the Coastal Resources Division (CRD).

# Navigating Regulatory Programs – Example (CWA Program)

Illustration 1: Baseline map with no proposed project.

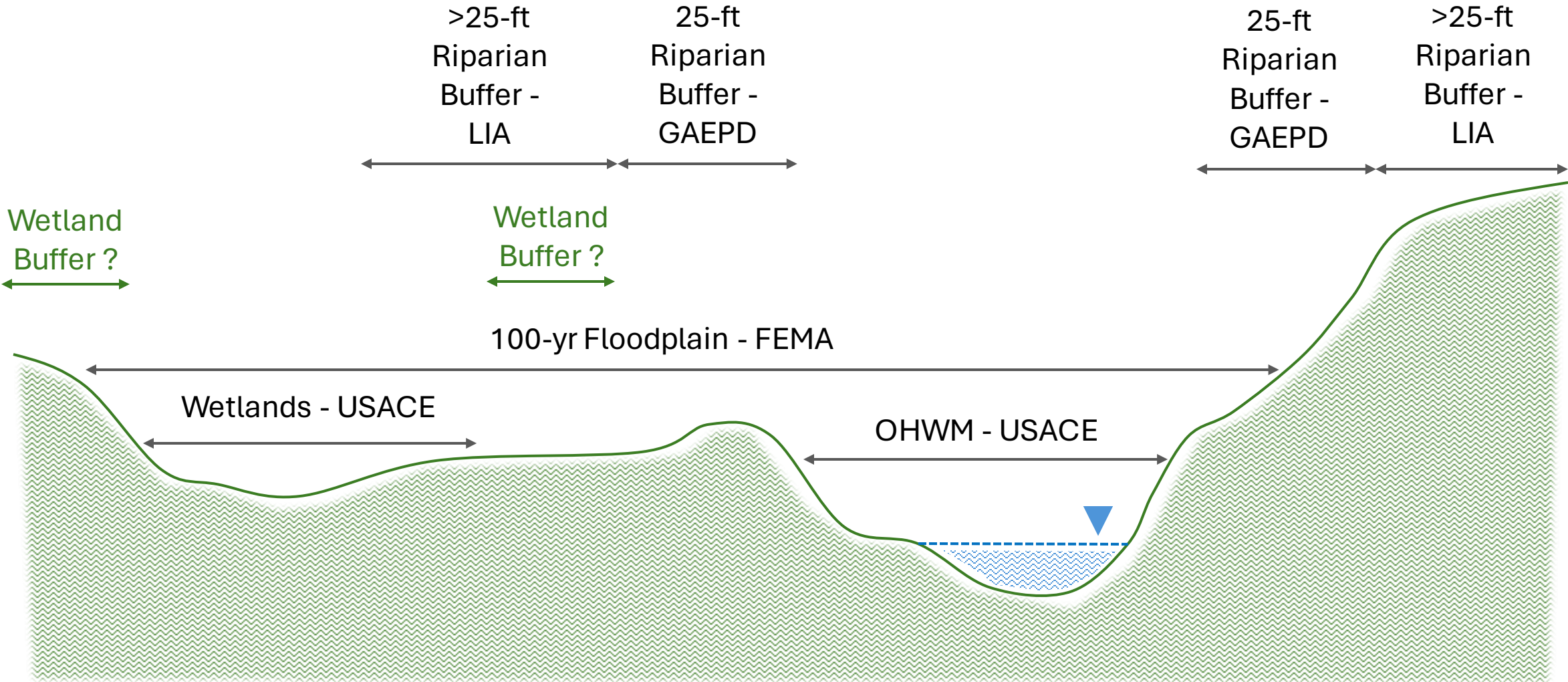


Source: U.S. Army Corps of Engineers Jurisdictional Determination Form Instructional Guidebook, 2007

# Regulatory Program Overlap

- Multiple layers of regulatory requirements for any given project
  - Federal: CWA (404 and Section 10 Waters)
  - State: NPDES, Stream Buffers
  - Local: NPDES, Land Disturbance, FEMA, Stream Buffers, Tree Protection
- Can involve multiple review offices
  - Federal: USACE + USEPA, USFWS, FEMA
  - State: GAEPD, SHPO
  - Local: Engineering Dept., Watershed Management Dept., Conservation Dept.
- Permit issuance can require prior regulatory authorizations
  - 404 permit (federal) can require 401 WQC (state)
  - LDP (local) can require SBV (state)
  - LDP (local) can require FEMA (federal)
  - SBV (state) can require ESPCP (local)
- Specific requirements vary from state to state, locality to locality, and a crosswalk does not exist

# Regulatory Program Overlap



# Compensatory Mitigation

- Process for providing offsets for impacts to regulated resource
- Considerations:
  - Methodology for assessing debit (impact) and credit (replacement) generation
  - Market availability for 3<sup>rd</sup> party mitigation
  - Resource availability for project-specific mitigation
  - Evaluation of sufficiency of mitigation
- Program applicability and administration



A dense forest of tall, thin trees, likely cypresses, with water reflecting their trunks and branches. The scene is dimly lit, suggesting a shaded or overcast day. The water is calm, creating clear reflections of the trees. The overall atmosphere is quiet and somewhat somber.

Questions