Today’s Agenda

10:00 – 11:15  Overview of Corps & EGLE Regulatory Programs, Jurisdiction
11:15 – 11:30  Break
11:30 – 12:00  Wetland Delineations & Data Sheets

12:00 – 1:00  ~ LUNCH ~

1:00 – 2:00  The Complete Permit Application
2:00 – 3:00  MiWaters
3:00 – 3:15  Break
3:15 – 4:15  Permit Coordination & Evaluation
4:15 – 5:15  Mitigation
Regulatory Overview

Regulatory Project Managers
Corps Detroit District Regulatory Office
EGLE Bay City District Office
October 17, 2019
Overview

- Corps - Authorities & Jurisdictional Waters
- EGLE Water Resources Regulations
- Activity Jurisdiction
- Geographic Jurisdiction
- Example Project
Mission: We serve the Nation by delivering world-class engineering and construction for –

- Economic Vitality (Great Lakes Navigation)
- National Security
- Water Resources Management
- Environmental Sustainability
- Emergency Assistance

- 95 Navigation projects
- 99 miles of structures
- 611 miles of channels
- 3,200 miles of coastline
Detroit District: Primary Missions

- Navigation/Hydropower
- Environmental Initiatives
- Flood Risk Management
- Emergency Management
- Recreation
- International & Interagency Support
- Military Construction
- Regulatory Program
Regulatory Field Offices
Regulatory Program Mission

To provide strong protection of the Nation’s aquatic environment.
This will be accomplished through: coordination with agencies and the public; fair, reasonable, and timely decisions; accurate and timely jurisdiction determinations; and monitoring, compliance, and enforcement of permit laws, regulations and policies.
Regulatory Authorities

**Section 10**
*Rivers and Harbors Act of 1899*
- Navigable waters of the U.S.
- Structures and work

**Section 404**
*Clean Water Act*
- Waters of the U.S., including wetlands
- Discharge of dredged or fill material
Section 10 of the Rivers and Harbors Act of 1899
Section 404 of the Clean Water Act
Overview

- Corps Program & Jurisdictional Waters
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Mission Statement

The Michigan Department of Environment. Great Lakes and Energy mission is to protect Michigan’s environment and public health by managing air, water, land, and energy resources.
Since the mid-1970’s, special resources that exist at the interface between land and water have been protected by programs in the Division.
These programs are based on several state laws enacted between 1955 and 1989 which are now codified as the following parts of the Natural Resources and Environmental Protection Act (NREPA):

Part 31 – Floodplain Management
Part 301 – Inland Lakes and Streams
Part 303 – Wetlands Protection
Part 323 – Shorelands Protection and Management
Part 325 – Great Lakes Submerged Lands
In conjunction with these programs, the Division also administers the following parts of NREPA:

Part 35 – Use of Water in Mining Low-Grade Ore
Part 307 – Inland Lake Levels
Part 311 – Local River Management
Part 313 – Surplus Waters
Part 315 – Dam Safety
Part 326 – Great Lakes Submerged Logs Recovery
Part 339 – Control of Certain State Lands
Part 341 – Irrigation Districts
Part 353 – Sand Dune Protection and Management
Part 761 – Aboriginal Records and Antiquities
Part 31, Water Resources Protection (Floodplain Regulatory Authority)

Reduces property damage caused by flooding through regulation of activities in floodways and floodplains.

Regulated activities:
Any occupation, filling, or grade changes within floodplain.

Okemos, 1975
Note that houses are not flooded.
Michigan has over 36,000 miles of streams, and more than 11,000 lakes and ponds, providing fish and wildlife habitat, and recreational opportunities.
Part 301 Regulated Activities

- Dredge or fill bottomland
- Construct, enlarge, extend, remove, or place a structure on bottomland
- Construct, reconfigure, or expand a marina
- Create, enlarge, or diminish an inland lake or stream
- Structurally interfere with the natural flow of an inland lake or stream
- Construct an artificial waterway that ultimately connects to or is within 500 feet of the OHWM of an existing inland lake or stream
- Connect any natural or artificial water with an existing inland lake or stream
Part 303, Wetlands Protection

Protects wetland functions and values by requiring permits for activities within regulated wetlands.
Part 303 Regulated Activities

- Deposit or place fill material in a wetland
- Dredge or remove soil or minerals from a wetland
- Construct, operate, or maintain any use or development within a wetland
- Drain surface water from a wetland
Part 323, Shorelands Protection and Management

Identifies high-risk erosion areas along the Great Lakes shoreline and regulates construction in these areas.

**Regulated activities:**
Erect, install, move, or enlarge a permanent structure on a parcel of property, any portion of which is designated as a high-risk erosion area.
Part 353, Sand Dune Protection and Management
Protects Critical Dune Areas

- In 1989, the Dune law was amended to include residential, commercial and industrial development in designated critical dunes; this law is now Part 353
- 70,000 acres were designated as Critical Dune Areas (CDA)
Regulated activities:
Any developmental, silvicultural, or recreational activity that significantly alters the physical characteristic of a critical dune area or a contour change.

Special exception:
Proposed contour changes to a grade that is steeper than 33%.
Part 325, Great Lakes Submerged Lands

Protects the public trust, riparian rights, and the environment

There is approximately 3,288 miles of Great Lakes shoreline in Michigan.
Part 325 Regulated Activities

- Dredging

- Connecting a canal, ditch, lagoon, or similar waterway to the Great Lakes or Lake St. Clair

- Filling or construction on bottomlands
- Construction or expansion of marinas
- Removal of shoreline vegetation
Overview

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- Example Project
Examples of activities that require a Corps and EGLE Permit

Docks, boat houses
Examples of activities that require a Corps and EGLE Permit

Walkways/paths
Examples of activities that require a Corps and EGLE Permit

- In wetlands
- In waterways

Placement of fill
Examples of activities that require a Corps and EGLE Permit

Culverts
Examples of activities that require a Corps and EGLE Permit

Remove riprap

Place stone
Examples of activities that require a Corps and EGLE Permit

Marinas, Breakwaters
Examples of activities that require a Corps and EGLE Permit

Mooring buoys
Examples of activities that require a Corps and EGLE Permit

Dredging
Examples of activities that require a Corps and EGLE Permit

Placement of sand, grooming
Examples of activities that require a Corps and EGLE Permit

Riprap, Stairs
Examples of activities that require a Corps and EGLE Permit

Seawalls and backfill
Examples of activities that require a Corps and EGLE Permit

Temporary fill for equipment access

Silt curtain

Temporary construction measures
Examples of activities that require ONLY a Corps Permit

Seasonal structures
- Docks
- Boat hoists

State exemption
- Private
- Non-commercial
- Removed annually
- Does not impede use of water
- Does not impede flow
Examples of activities that require ONLY a EGLE permit

Regulated activities in:

- Inland lakes or streams (that are not Section 10 waters)
- Regulated wetlands not adjacent to Section 10 waters
- High Risk Erosion Areas
- Floodplains
Overview

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Navigable Waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce (33 CFR Part 329).

Soo Locks
Navigable Waters

- Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity.
Section 10 Limits of Navigability

Grand River Section 10
Cutoff: Fulton Street Bridge
Section 404
Corps Waters of the U.S.

- Navigable waters of the U.S.
- Tributaries to Navigable Waters of the U.S.
- Wetlands adjacent to waters listed above
- All interstate waters including interstate wetlands.
Sections 10 and 404 Jurisdiction

Diagram: LRL Regulatory
Section 404 Program in Michigan

Operates under a Memorandum of Agreement with the USEPA that defines the federal and state roles in the program

- Administered under Michigan law: Parts 301 and 303 of the NREPA
- Policies and procedures specific to state needs
- Some projects require EPA review

USACE retains jurisdiction over Section 10 waters and adjacent wetlands
Navigable Waters and Adjacent Wetlands
Corps Jurisdiction Determination (JD) Options

- When either activity jurisdiction or geographic jurisdiction is in doubt – give us a call
- Have conversation with your project manager for your site specific situation
No JD Option

- Default practice in State of Michigan is the No JD option
  - No JD does NOT mean the Corps does not have jurisdiction
  - Good option when jurisdictional questions may not arise
  - Requires less documentation
Corps JD Options

Preliminary JD
- Advisory in nature
- May shorten the processing time
- Not appealable

Approved JD
- Official Corps determination
- May take longer
- Must have legal access to the property
- Appealable (33 CFR Part 331)
- Valid for 5 years
Ordinary High Water Mark (OHWM)

- Jurisdictional limit for waterways
- Physical characteristics of the shoreline
  - Typically determined by a site visit
- OHWM by elevation on the Great Lakes
  - Used when OHWM can not be clearly determined by physical characteristics
<table>
<thead>
<tr>
<th>Lake</th>
<th>Corps</th>
<th>EGLE</th>
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</thead>
<tbody>
<tr>
<td>Lake Superior</td>
<td>603.1’</td>
<td>602.6’</td>
</tr>
<tr>
<td>Lake Michigan/Huron</td>
<td>581.5’</td>
<td>580.5’</td>
</tr>
<tr>
<td>Lake St. Clair</td>
<td>576.3’</td>
<td>575.3’</td>
</tr>
<tr>
<td>Lake Erie</td>
<td>573.4’</td>
<td>572.2’</td>
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</tbody>
</table>
Corps OHWM (581.5’ IGLD 1985)

Corps Jurisdictional Area

Approx 1’

EGLE OHWM 580.5’
Corps & EGLE OHWM
Corps OHWM
Corps Ordinary High Water Mark

OHWM

Corps’ Jurisdictional Area

Current Water Elevation
Corps Ordinary High Water Mark
One year later...

OHWM

Corps’ Jurisdictional Area

Last Year’s Water Elevation

Current Water Elevation
Example
Corps Ordinary High Water Mark
Example

Corps Ordinary High Water Mark
Corps Section 10 Jurisdiction

Navigable Waterway
(Sections 10 and 404)
Corps Jurisdiction in Tributaries

Portions of drain where bottom elevation is below OHWM of Navigable Water (Sections 10 and 404)
Corps Jurisdiction in Tributaries

Adjacent Wetlands (Section 404)

Portions of tributary where bottom elevation is below OHWM of Navigable Water (Sections 10 and 404)

Navigable Waterway (Sections 10 and 404)
Example
Corps Jurisdiction – Drain Cleanout

Jurisdictional Area for Dredging

Navigable Waterway

OHWM of Navigable Waterway

Existing bottom

Water level

Proposed bottom after dredging

Top of bank

A

B

C

D
Example Corps Jurisdiction
Drain Cleanout Cross-section B

- Water level
- Proposed bottom elevation for dredging
- OHWM
- Existing bottom elevation

EGLE
Example Corps Jurisdiction
Drain Cleanout Cross-section C
Example Corps Jurisdiction

Drain Cleanout Cross-section D

Water level

Proposed bottom elevation for dredging

Existing bottom elevation

OHWM

EGLE
Corps Jurisdiction - Example

Jurisdictional Area

OHWM Elevation
Corps Jurisdiction - Example
Structures Overhead

Jurisdictional Structure

OHWM Elevation

[Diagram of structures overhead with labeled parts]
Corps Jurisdiction - Example

OHWM Elevation
Corps Jurisdiction - Example

Non-Jurisdictional Fill

Jurisdictional Fill

OHWM Elevation
Corps Jurisdiction - Example

OHWM Elevation

Excavation area
Corps Jurisdiction - Example

OHWM Elevation

Excavation area
Corps Jurisdiction - Example

OHWM Elevation

Jurisdictional Work

Non-Jurisdictional Work

Excavation area
EGLE Jurisdiction

Part 31: Drainage area greater than 2 sq. miles

Part 301: Ordinary High Water Mark (OHWM)

Part 303:
- Connected to or located within 1,000 feet of one of the Great Lakes or Lake St. Clair
- Connected to or located within 500 feet of an inland lake, pond, river, or stream
- Greater than 5 acres in size
- The EGLE has determined that the wetland is essential to the preservation of the state's natural resources

Part 323: Areas designated on map

Part 325: Elevation of 580.5 feet IGLD85 (Lake Huron)
- 575.3 feet IGLD85 (Lake St. Clair)
Part 31, Floodplains

- All streams and drains have a floodplain
- Non-mapped floodplains may be regulated!
- We do not have a publicly available map of all regulated floodplain areas.
- Please call your local floodplain engineer to determine if the drainage area for your project is > or < 2 sq. miles.

www.Michigan.gov/floodplainmanagement
Part 301, Inland Lakes and Streams (OHWM)
Section 10 vs Part 301
Part 303, Wetlands Protection

Within 1,000 feet of a Great Lake

Within 500’ of a river

Greater than 5 acres in size

24 acres

Lake Huron
Part 323, Shorelands Protection and Management

High Risk Erosion Area

Interactive map at http://www.mcgi.state.mi.us/wetlands/
or
PDF maps available at www.michigan.gov/criticaldunes
Erosion rates are parcel specific and can change over time.
Part 323 and 353

- High Risk Erosion area
- Critical Dune area
- Interactive map at http://www.mcgi.state.mi.us/wetlands/
or
- PDF maps available at www.michigan.gov/criticaldunes
EGLE Part 325: Example on Lake Michigan

- Corps regulates to 581.5 IGLD85
- EGLE regulates to 580.5 IGLD85
- Critical Dunes

Water’s edge to mapped boundary
Part 325, Great Lakes Submerged Lands (OHWM – Lake Huron)

- Corps regulates to 581.5 IGLD85
- EGLE regulates to 580.5 IGLD85
Many statues overlap. Depending on where your project area is located, three or more statutes may apply.
Overview

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Applying Jurisdiction
Geographic Jurisdiction - EGLE

Waterward:
Part 325, Great Lake
Part 301, River and Shoreline

Landward:
Part 303, Wetland
Part 301, Stream
Part 31, Floodplain
Activity Jurisdiction - Corps

Dredging  Marina  Silt curtain  Fishing dock  Boardwalk

Section 10 only
Activity Jurisdiction - Corps

Sections 10 and 404
Activity Jurisdiction - Corps

Wetland fill for utility line?

Section 404 only

Wetland fill for condos and parking

Mechanized landclearing/grading

Wetland fill for utility line?
Activity Jurisdiction - EGLE

- Corps-regulated activities plus:
  - Additional stream fill
  - Floodplain fill
  - Additional wetland fill
Riparian interest

- Applicant would need an easement from adjacent owners

OR

- Modify the project to fit within RIA
Questions ?