

**FIELD LEVEL AGREEMENT BETWEEN
THE US ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
AND
THE NATURAL RESOURCES CONSERVATION SERVICE
CONCERNING WETLAND DETERMINATIONS AND DETERMINATIONS OF
REGULATED AND UNREGULATED ACTIVITIES IN GEORGIA**

I. PURPOSE, SCOPE AND AUTHORITY

A. The United States Army Corps of Engineers (USACE) has authority under Section 404 of the Clean Water Act (CWA) and the Natural Resources Conservation Service (NRCS) has authority under the Food Security Act (FSA) to regulate and monitor certain activities in waters of the United States. On February 25, 2005, the US Department of the Army and the US Department of Agriculture-Natural Resources Conservation Service (NRCS) entered into a Partnership Agreement. This agreement included a commitment to establish partnership goals and encouraged the USACE and NRCS to enter into field level agreements to improve public service, management of water, and related natural resources through harmonious and effective cooperative agency efforts. On February 25, 2005, NRCS and USACE issued Joint Guidance Concerning Wetland Determinations for the Clean Water Act and the Food Security Act of 1985.

B. The USACE, Savannah District, and the NRCS in Georgia, consistent with the July 7, 2005, Partnership Agreement and February 25, 2005, Joint Guidance, hereby establish policies and procedures for Wetland Determinations for regulated and unregulated activities. The purpose of this Field Level Agreement (FLA) is to enable the USACE and NRCS to more effectively utilize their staff and resources in performing Wetland Delineations, Jurisdictional Determinations and Exemption Determinations within the State of Georgia. Nothing in this agreement is intended to diminish, modify or otherwise affect the policies and procedures established in the National Partnership Agreement or Joint Guidance.

II. TERMS

A. Wetland Delineations depict the boundaries of waters of the US, such as wetlands and streams.

B. Verified Wetland Delineations depict the boundaries of waters of the US, such as wetlands and streams, and have been certified as accurate in writing from the NRCS or USACE for FSA or CWA purposes, respectively.

C. Jurisdictional Determinations by the NRCS or USACE identify the areas and/or activities subject to jurisdiction under provisions of the FSA or CWA, respectively.

D. Preliminary Jurisdictional Determinations by the USACE identify the areas and/or activities subject to jurisdiction under provisions of the CWA at an approximate (sketch) level of accuracy.

E. Final Jurisdictional Determinations by the USACE identify the areas and/or activities subject to jurisdiction under provisions of the CWA at an exact (survey) level of accuracy.

III. PROCEDURES

A. Wetland Delineations

1. NRCS will be able to perform Wetland Delineations on any property. However, delineations must be verified by the NRCS for FSA purposes and verified by the USACE for CWA purposes.

2. NRCS Wetland Delineations will typically be made as described in the National Food Security Act Manual (NFSAM).

3. USACE Wetland Delineations will typically be made as described in the 1987 Corps of Engineers Wetland Delineation Manual.

4. If the NRCS finds that an area consists of all uplands (no wetlands, streams or ditches are present), the USACE agrees that this finding is adequate for a Clean Water Act (CWA) no jurisdiction determination and that no USACE verification/permit is required.

B. Jurisdictional Determinations

1. Jurisdictional Determinations performed by the NRCS must be verified by the USACE for purposes of the CWA.

2. The NRCS will inform landowners that Jurisdictional Determinations verified by the NRCS are not valid for CWA purposes.

3. The USACE will inform landowners that Jurisdictional Determinations by the USACE may not be valid for FSA purposes. All USACE Jurisdictional Determinations will include the statement “This delineation/determination has been conducted to identify the limits of the US Army Corps of Engineers’ Clean Water Act jurisdiction for the particular site identified in this request. This delineation /determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are US Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.”

4. The NRCS will inform landowners that Jurisdictional Determinations by the NRCS may not be valid for CWA purposes. All NRCS Jurisdictional Determinations will include the statement “This delineation/determination has been conducted for the purpose of implementing the wetland conservation provisions of the Food Security Act of 1985. This determination/delineation may not be valid for identifying the extent of the USACE’s CWA jurisdiction of this site. If you intend to conduct any activity that constitutes a discharge of dredge or fill material into wetland or other waters, you should request a jurisdictional determination from the local office of the USACE prior to starting work.”

5. Final Jurisdictional Determinations by the USACE for CWA purposes will remain valid for a period of 5 years unless new information warrants revision prior to that date.

C. Exemption Determinations

1. Activities for the purpose of maintaining existing farm ponds, farm roads, center pivot crossings or irrigation ditches (returning it to a pre-existing condition) in waters of the United States are exempt from CWA jurisdiction provided they meet the criteria outlined in Section 404(f) of the Clean Water Act and Section 323.4(a)(3), Title 33 of the Code of Federal Regulations (CFR).

2. NRCS and USACE will follow procedures outlined in the “Georgia Farm Pond Exemption Guide” when providing assistance to persons requesting technical assistance in construction of farm ponds or persons requesting assistance with a determination as to whether a proposed farm pond is or is not regulated under the CWA.

3. NRCS will maintain a log in each field office for ponds that, based on information provided by the farmer, would not be regulated under the CWA. The logs will identify the following information: landowner’s name, address, pond size, purpose of the pond, county, and lat/long coordinates of the proposed pond. In January of each year, a copy of the logs will be forwarded to the NRCS State Conservation Engineer for submittal to the USACE, Savannah District.

4. In order for center pivot crossing construction in wetlands/streams to be considered exempt and not regulated under the CWA, the project must meet the criteria outlined in Section 404(f) of the Clean Water Act and Section 323.4(a)(3), Title 33 of the CFR. In addition, crossings will not exceed 8’ in width at the top, side slopes will not exceed 3:1, and the crossing will be properly culverted or bridged to maintain normal surface water flows.

5. In order for irrigation ditch construction in wetlands/streams to be considered exempt and not regulated under the CWA, the project must meet the criteria outlined in Section 404(f) of the Clean Water Act and Section 323.4(a)(3), Title 33 of the CFR. In addition, all excavated material will be disposed of on high ground if at all possible or

placed alternately in piles on either side of the ditch to maintain normal surface water flows. Excavated material cannot be converted into a road unless that road would be exempted separately as a farm road for agricultural purposes.

6. In order for farm road construction in wetland/streams to be considered exempt and not regulated under the CWA, the project must meet the criteria outlined in Section 404(f) of the Clean Water Act and Section 323.4(a)(3), Title 33 of the CFR. In addition, the farm must demonstrate it would not be possible to access the area to be farmed from any other high ground (upland) access point even if that point is on other property. Road width will be the minimum necessary for the intended farm purpose. Road length will be the minimum necessary to cross the wetland/stream (at the narrowest point of the wetland), land clearing (stump removal) will be confined to the footprint of the road and it will be culverted sufficiently to maintain normal surface water flows.

IV. GENERAL

A. The policy and procedures contained in this FLA do not create any rights either substantive or procedural to a jurisdictional determination or a farm pond exemption determination by either agency or the United States.

B. This agreement shall take effect ten (10) days after the date of the last signature below and will continue until modified or revoked by agreement of any of the parties or until revoked by any party alone upon written notice.

C. The USACE, Savannah District, and the NRCS in Georgia will review this FLA on an annual basis, for the purpose of modification or extension. If this FLA is not modified or revoked it will automatically be extended indefinitely.



Mark S. Held
Colonel, US Army
US Army Corps of Engineers, Savannah District



DATE



James E. Tillman, Sr.
State Conservationist
Natural Resources Conservation Service



DATE