DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, NORTHWESTERN DIVISION
PO BOX 2870
PORTLAND OR 97208-2870

REPLY TO
ATTENTION OF

CENWD-PDS

29 March 2006

MEMORANDUM FOR

Commander, Kansas City District
Commander, Omaha District
Commander, Portland District
Commander, Seattle District
Commander, Walla Walla District

SUBJECT: Department of the Army Section 404 Authorization for Replacement of Uplands; Northwestern Division Regulatory Program

1. Nationwide Permit (NWP) 3(iii) contains the following language, which is causing confusion for the general public, as well as Northwestern Division Regulatory employees:

> "Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a Section 404 permit provided the uplands are restored to their original pre-event location. This NWP is for the activities in waters of the United States associated with the replacement of the uplands."

2. To help alleviate confusion, the following clarification is provided regarding when a Department of the Army (DA) authorization may be necessary to replace upland areas lost as the result of a discrete event, such as a flood or hurricane. Development of this clarifying guidance was coordinated with HQUSACE:

a. If the post-event (new) Ordinary High Water Mark (OHWM) or High Tide Line (HTL) remains at the same location as the pre-event (old) OHWM/HTL, no DA authorization is required for work to occur above (landward) the OHWM/HTL. If work is proposed to occur below (riverward/seaward) the OHWM/HTL, a DA authorization will likely be required for the work in this area.

b. If the new OHWM/HTL establishes below the old OHWM/HTL, no DA authorization is required for work to occur above (landward) the new OHWM/HTL. If work is proposed to occur below (riverward/seaward) the new OHWM/HTL, a DA authorization will likely be required for work in this area.

c. If the new OHWM/HTL establishes above (landward) the old OHWM/HTL, no DA authorization is required for work to occur above the new OHWM/HTL. If work is proposed to occur below (riverward/seaward) the new OHWM/HTL, a DA authorization will likely be required for work in this area.

3. For the cases referenced above, a discrete event has likely caused a permanent change in the OHWM/HTL. Therefore, in accordance with 33 CFR Part 328.5, permanent changes in the OHWM/HTL should be examined and verified by the District Engineer, along with any changes in the lateral extent of jurisdiction.

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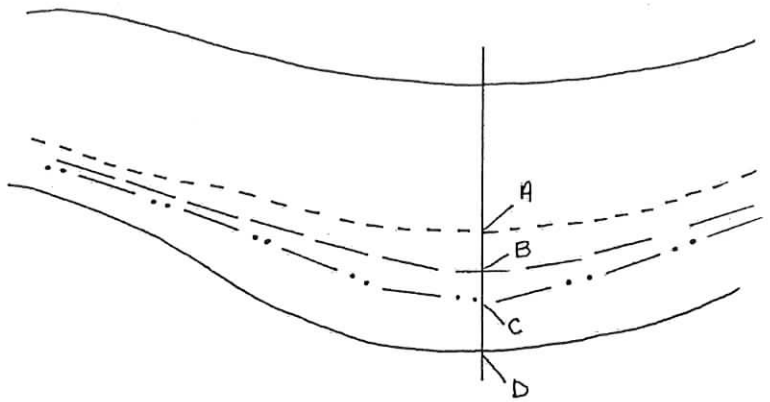
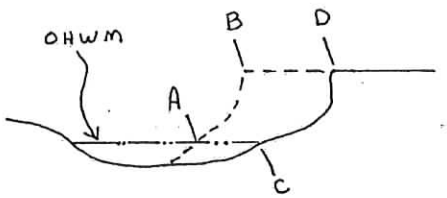
4. The following diagram graphically illustrates case 2.c. above:

- No DA authorization required to replace uplands lost between C and D
- DA authorization required to replace uplands lost between B and C, as the area is now a water of the US





A – Pre-event OHWM/HTL
B – Pre-event bank
C – Post-event OHWM/HTL
D – Post-event bank

5. All Northwestern Division Districts shall post this clarifying guidance on their websites. My point of contact for this action is Mr. Timothy Carey at (303) 979-4120 or Mr. Peter Gibson at (505) 808-3880.

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