



Documenting Assumable Waters in Florida

November 6, 2020



FL Assumable Waters

Summary

- **Assumable Waters Subcommittee**
- **Early concerns**
 - Memo
- **Evolution**
- **Working with the U.S. Army Corps of Engineers (USACE) and the U.S. Environmental Protection Agency (EPA)**
 - Retained Waters
- **GIS Layers**
- **Lessons Learned**



Assumable Waters Subcommittee

Majority Opinion for Retained Waters

- **Excerpt from Executive Summary of Final Report: “...that the EPA develop guidance or regulations to clarify that when a state or tribe assumes the 404 program, the USACE must retain authority over waters included on lists of waters regulated under Section 10 of the Rivers and Harbors Act (RHA).” ... “the majority of the Subcommittee recommends the lists be used with two minor modifications: any waters that are on the Section 10 lists based solely on historic use (e.g., based solely on historic fur trading) are not to be retained (based on the Congressional record and statute), and waters that are assumable by a tribe (as defined in the report) may also be retained by the USACE when a state assumes the program. The majority recognizes that waters may be added to Section 10 lists after a state or tribe assumes the program, and recommends in that case, such waters may also be added to lists of USACE-retained waters at that time.”**



Assumable Waters Subcommittee – 2

Majority Opinion for Assumable Waters

- **Excerpt from Executive Summary of Final Report: “The USACE CWA regulatory definition of ‘adjacent’ would be used to identify adjacent wetlands, and the USACE would retain administrative authority only over adjacent wetlands within the agreed-upon administrative boundary. This administrative line could be negotiated at the state or tribal level to take into account existing state regulations or natural features that would increase practicability or public understanding; if no change were negotiated, a 300-foot national administrative default line would be used.”**



Early Concerns

- **Would administrative boundary bisect projects?**
 - **Would applicants now need three permits instead of two?**
 - **What would coordination look like?**
 - **Definitely not more efficient**
- **What if Section 10 list is not comprehensive?**



Evolution

Administrative Boundary

- **Notice of Proposed Rule and rulemaking workshops (May/June 2018)**
 - **Stakeholders concerned regarding bisection**
- **Think, think, think...**
 - ***“Hey, is there anything that says the administrative boundary has to be static?”***



Evolution – 2

Retained Waters

- **Memorandum for Commanding General, USACE**
 - **Subject: Clean Water Act Section 404(g) – Non-Assumable Waters**
 - **Issued July 30, 2018**
- ***“For ease of implementation and to provide transparency to states, tribes and the public, the Corps will use existing RHA Section 10 lists of waters as a starting point, which could be amended by the Corps as appropriate consistent with applicable regulations and case law.”***



Working With USACE

Defining Retained Waters

- **Several conference calls**
- **Two-day, face-to-face meetings at USACE headquarters in Jacksonville**
- **Many good ideas on both sides**



Working With EPA

Administrative Boundary

- **Team needed to get buy-in from EPA for non-static administrative boundary**
- **Result: there appears to be nothing in law that says an administrative boundary has to be static**



Result

Definition of Retained Waters

“Retained Waters’ means those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, including wetlands adjacent thereto. The Corps will retain responsibility for permitting for the discharge of dredged or fill material in those waters identified in the Retained Waters List (Appendix A), as well as all waters subject to the ebb and flow of the tide shoreward to their mean high water mark that are not specifically listed in the Retained Waters List, including wetlands adjacent thereto landward to the administrative boundary.” ...



Result – 2

Definition of Retained Waters

... “The administrative boundary demarcating the adjacent wetlands over which jurisdiction is retained by the Corps is a 300-foot guide line established from the ordinary high water mark or mean high tide line of the retained water. In the case of a project that involves discharges of dredged or fill material both waterward and landward of the 300-foot guide line, the Corps will retain jurisdiction to the landward boundary of the project for the purposes of that project only.”

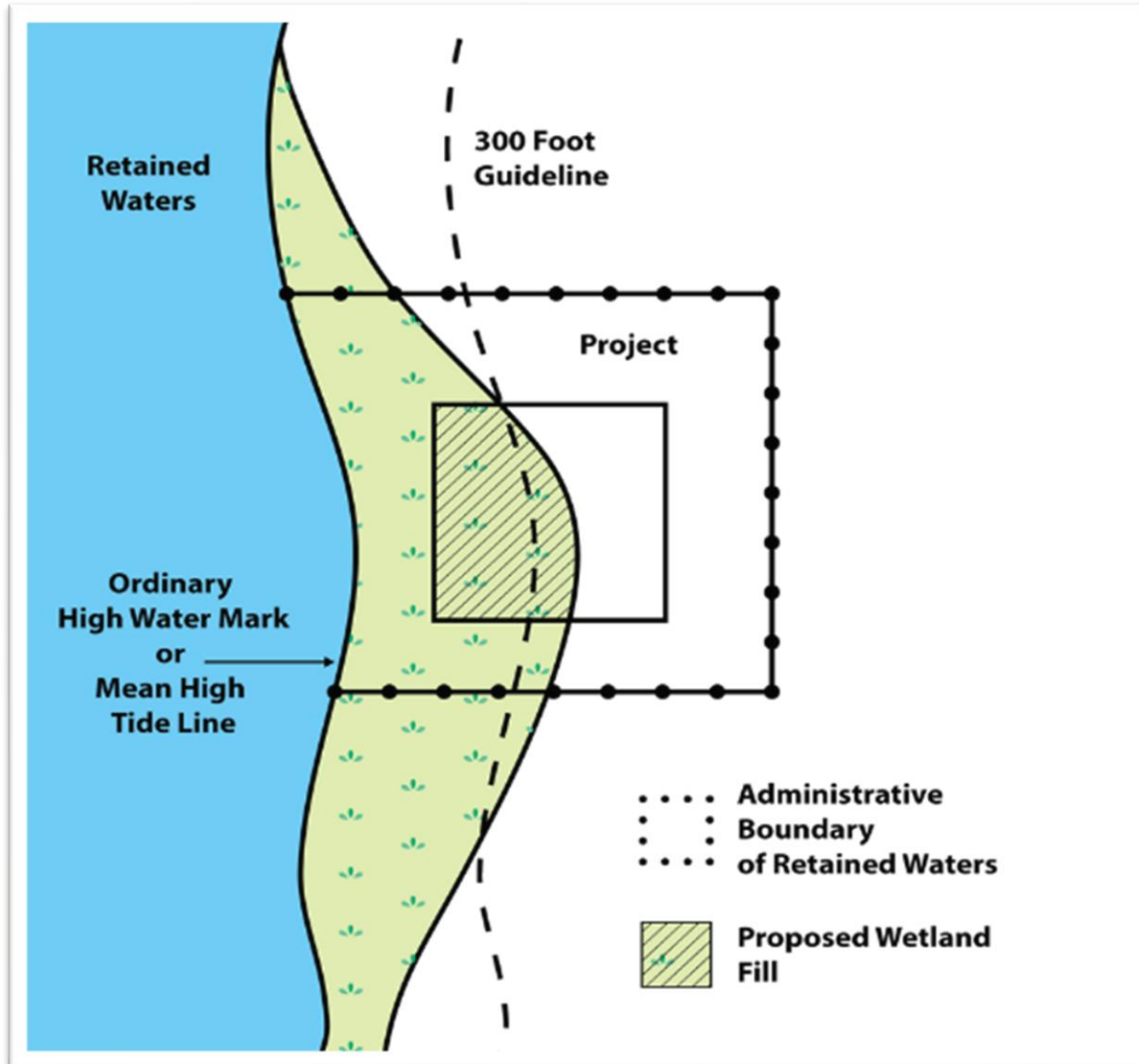


Win-Win

- **Neither agency (USACE or DEP) wanted projects to be bisected**
- **Stakeholders did not want projects to be bisected**

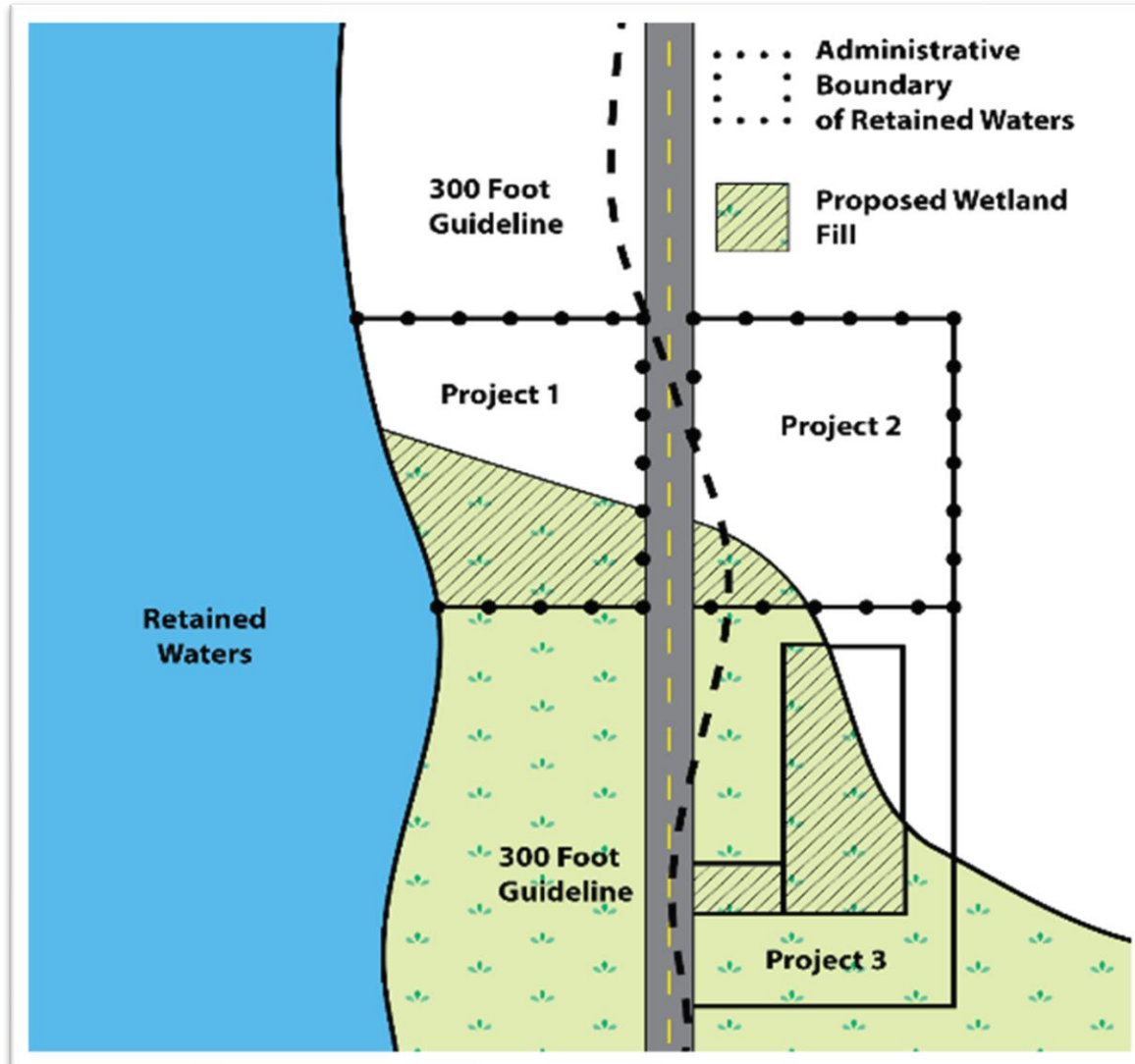


Example 1



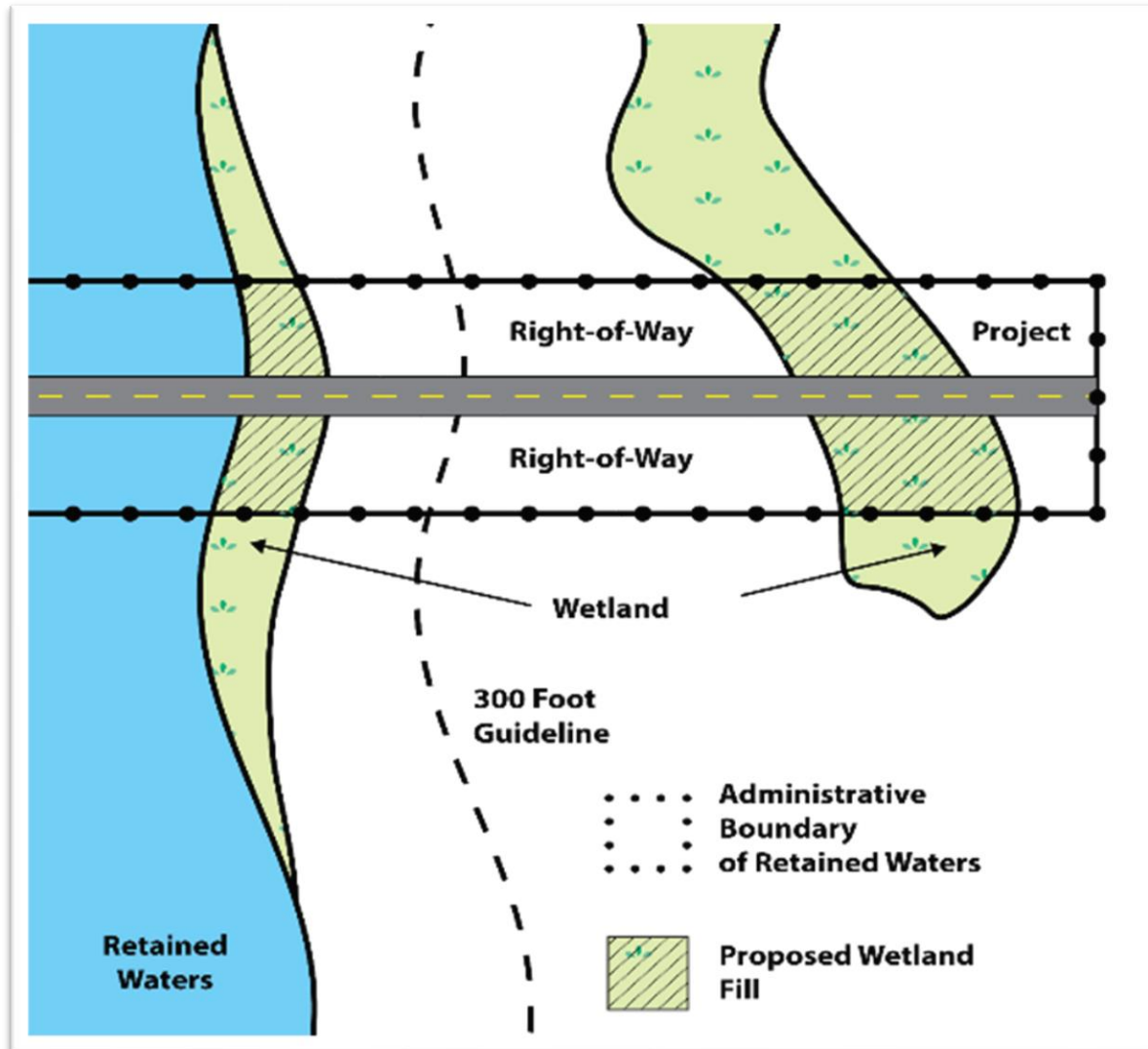


Example 2





Example 3





GIS Solutions

Layers

Demo and explanation for creation and use of retained waters GIS layer (with administrative guide line)



Lessons Learned

- **Sometimes policy recommendations and decisions from “higher ups” need to be made to provide enough clarity to move forward**
 - Assumable Waters Subcommittee Report
 - USACE memo
- **Think outside the box!**
 - Non-static administrative boundary
- **Welcome collaboration**
 - Best outcomes occur when everyone can contribute and take something away from the table
- **If you have an idea but are unsure if it will fly, ask**
 - You might get a yes!



Contact Information

Heather Mason

850-245-8480

Heather.Mason@FloridaDEP.gov

Camille Beasley

850-245-8493

Camille.Beasley@FloridaDEP.gov

