

# DISTRICT WETLAND AND STREAM REGULATIONS



GOVERNMENT OF THE  
DISTRICT OF COLUMBIA  
**MURIEL BOWSER, MAYOR**



# District Department of Energy & Environment

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## Regulatory Review Division

Water Resources Plan Review and Flood Control Branch

Wetland and Stream Permit/WQC Review



GOVERNMENT OF THE  
DISTRICT OF COLUMBIA  
MURIEL BOWSER, MAYOR



# OUTLINE

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- Emergency Rulemaking
- District Wetlands and Streams
- Overview – District Wetland and Stream Regulations
- Overview – Permit Application Requirements
- Demonstration - How to Apply
- Next Steps





# EMERGENCY RULEMAKING

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- Federal rulemakings significantly curtailed District's ability to protect wetlands and streams
- Navigable Waters Rule removed regulatory protection for ephemeral streams and many wetlands
- Chapters 25 & 26, Title 21 DC Municipal Regulations
- Effective now



# WHAT IS A WETLAND?

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## Definition:

"An area that is inundated by tides or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions; and, includes a marsh, swamp, pond or vernal pool."





# WHAT IS A WETLAND?

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# AQUATIC RESOURCE FUNCTIONS

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- Water quality
- Wildlife habitat
- Groundwater recharge
- Shoreline erosion protection
- Floodwater storage
- Retention, assimilation, and transformation of nutrients and pollutants
- Riparian buffers
- Stream baseflow





# HISTORY OF WETLANDS IN THE DISTRICT

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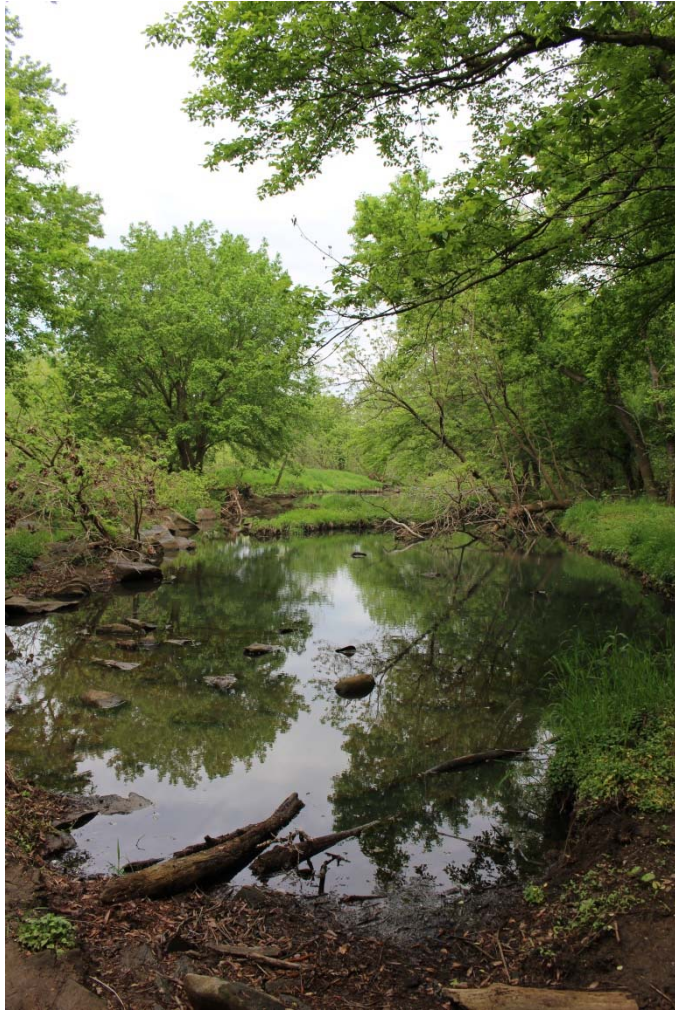
# HISTORY OF WETLANDS IN THE DISTRICT

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# 2020 Wetland Conservation Plan

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- No net loss and eventual net gain of wetland acreage and function
- Inventory and assessment
- Wetland Registry geodatabase
- Detailed program and implementation plan
- Wetlands of special concern





# 2020 Status of District Wetlands

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- 289 acres, 291 individual wetlands
- Over 92% located within 500 feet or less of development
- 76% <0.5 acre in size and 66% <0.25 acre in size
- 169 acres tidal, 120 acres non-tidal
- 114 acres forested, 7.6 acres scrub shrub, 144.6 acres emergent, 22.8 acres unconsolidated bottom
- 74% on NPS land

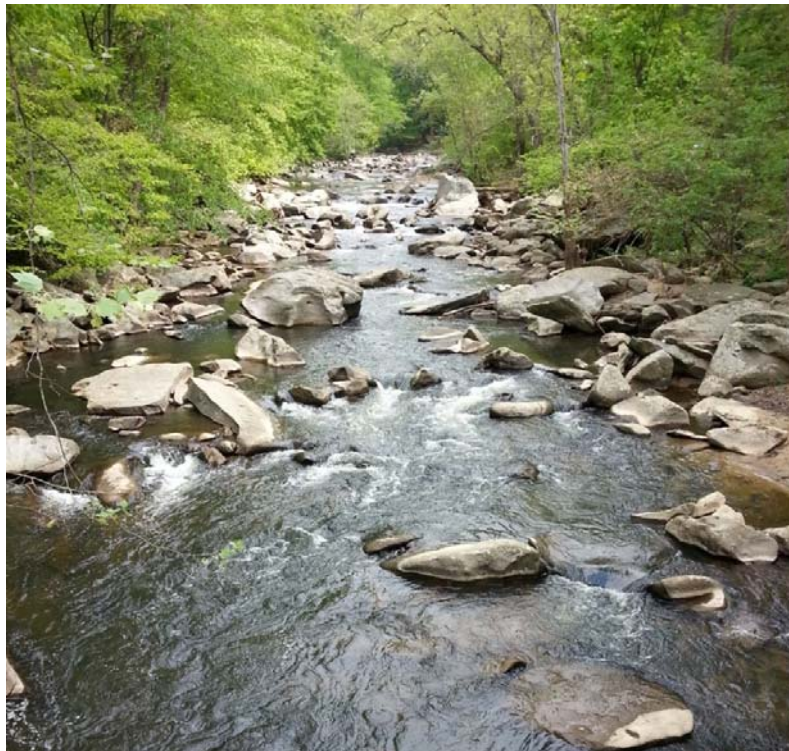


# WHAT IS A STREAM?

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## Definition:

“A channel or conveyance of surface water with perennial, intermittent, or ephemera flow and having defined bed and banks, whether natural or artificial.”





# HEADWATER STREAMS

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## EPHEMERAL AND INTERMITTENT STREAMS

- Individually or cumulatively exert a strong influence on the biological, chemical, and/or physical integrity of downstream waters



# OVERVIEW - DISTRICT WETLAND AND STREAM REGULATIONS

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- Fisheries and Wildlife Omnibus Act - critical areas designation
- Federal vs. District jurisdiction
- District Wetland and Stream permit (WSP) vs. Water Quality Certification (WQC)
- Key Regulatory requirements:
  - Water dependency and analysis of practicable alternatives
  - Avoidance and minimization analyses
  - Mitigation
  - Fees
  - Wetlands of special concern



# Water Dependency Analysis / Analysis of Practicable Alternatives

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## 21 DCMR § 2605

DOEE will only issue permits for water-dependent projects and non-water dependent projects that have no practicable alternatives

- Justification that water access is required for basic project purpose
- Does water access enhance project vs. function as essential element of project (i.e., dock, environmental education center)?
- Similar to 404(b) guidelines for special aquatic sites
- If non-water dependent, then analysis of practicable alternatives

# Analysis of Practicable Alternatives

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## 21 DCMR § 2605

- Can basic project purpose be accomplished using one or more other sites in same general area that would avoid impacts?
- Would reduction in size, scope, configuration, or density of project accomplish basic project purpose?
- Consider alternative designs
- Is project necessary to meet demonstrated public benefit?
- Examine at least 4 alternative sites, including no-action alternative



# Avoidance and Minimization Analyses

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First, you must

***AVOID***

if you cannot, then

***MINIMIZE***

as a last resort,

***MITIGATE***

# Avoidance and Minimization Analyses

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## 21 DCMR § 2606

- Modify size, scope, configuration, density of project
- Address site constraints – infrastructure, access, zoning
- Confine impacts to fringe or periphery of wetlands and streams





# Mitigation

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Goal: no net loss and eventual net gain

- Required to offset functional, temporal, and permanent losses
- In advance or concurrent with approved impacts, otherwise higher ratios to offset temporal loss
- Minimum 1:1 ratio for in-kind functional replacement
- Higher ratios when in-kind functional replacement not possible



# Mitigation Methods

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In order of preference:

1. **CREATION** of a new wetland
2. **RESTORATION** of a previously existing wetland or stream
3. **ENHANCEMENT** of an existing wetland or stream functions
4. **PRESERVATION** of an existing wetland or stream

21 DCMR § 2607, 2608





# Mitigation Sites

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In order of preference:

1. **ON-SITE** where impacts will occur
2. **IN DRAINAGE BASIN ...**
3. **IN SUB-WATERSHED ...**
4. **OUTSIDE WATERSHED, BUT WITHIN DISTRICT**

**GOAL:** no net loss and eventual net gain

**21 DCMR § 2607, 2608**



# Mitigation Mechanisms

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Permittee responsible, on-site,  
in-kind

- No net loss of acreage  
and function

*PREFERRED OPTION*

Payment into District's  
Wetland and Stream Trust  
Fund

- Justification required
- Not USACE approved
- <2,500 SF unavoidable  
impacts





# Wetland and Stream Trust Fund

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## 21 DCMR § 2611

- *Unavoidable impacts*  
<2,500 SF for single project  
can pay
- *Not a substitute for  
avoidance and  
minimization*
- Not USACE-approved
- Payments calculated  
based on realistic cost for  
District to implement  
mitigation **in-lieu** of  
permittee



# Fees

## 21 DCMR § 2604

- Initial application - based on size, and project type
- Paid online through SGS when application is submitted

Wetland and Stream Permit Review and/or Water Quality Certification Review	\$750.00
Minor Permit/Certification Modification (projects with impacts < 5,000 SF)	\$750.00
Major Permit/Certification Modification (projects with impacts $\geq$ 5,000 SF)	\$1,500.00
Request DOEE to perform Presence/Absence Survey	Desktop Review \$50.00
Request DOEE to perform Presence/Absence Survey	Site Visit \$75.00 for first hour plus \$100 for each additional hour





# Fees

## 21 DCMR § 2604

- Supplemental - based on proposed impact
- Paid online through SGS after DOEE has commented on application but prior to issuance of WSP/WQC

< 5,000 SF	\$1,500.00
≥ 5,000 SF to < ¼ acre	\$3,000.00
≥ ¼ acre to < ½ acre	\$4,500.00
≥ ½ acre to < ¾ acre	\$6,000.00
≥ ¾ acre to < 1 acre	\$7,500.00
≥ 1 acre	\$9,000.00

# Fees

## 21 DCMR § 2604

- Additional - based on mitigation and contamination
- Paid online through SGS after DOEE has commented on application but prior to issuance of WSP/WQC

Permittee-Responsible Mitigation Plan Review	\$1,580.00
Permittee-Responsible Mitigation Site Inspection/Monitoring for Impacts to PEM <sup>1</sup> /PSS <sup>2</sup> Wetlands and/or Streams	\$3,950.00
Permittee-Responsible Mitigation Site Inspection/Monitoring for Impacts to PFO <sup>3</sup> Wetlands	\$6,900.00
Contaminated soil, sediment, groundwater, or surface water within project site	\$1,300.00

# Wetlands of Special Concern

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## 21 DCMR § 2616

- Similar to MD wetlands of special state concern
- Unique areas containing ecologically significant communities or habitat
- Higher mitigation ratios
- Nearly all located on NPS land
- Map available on website





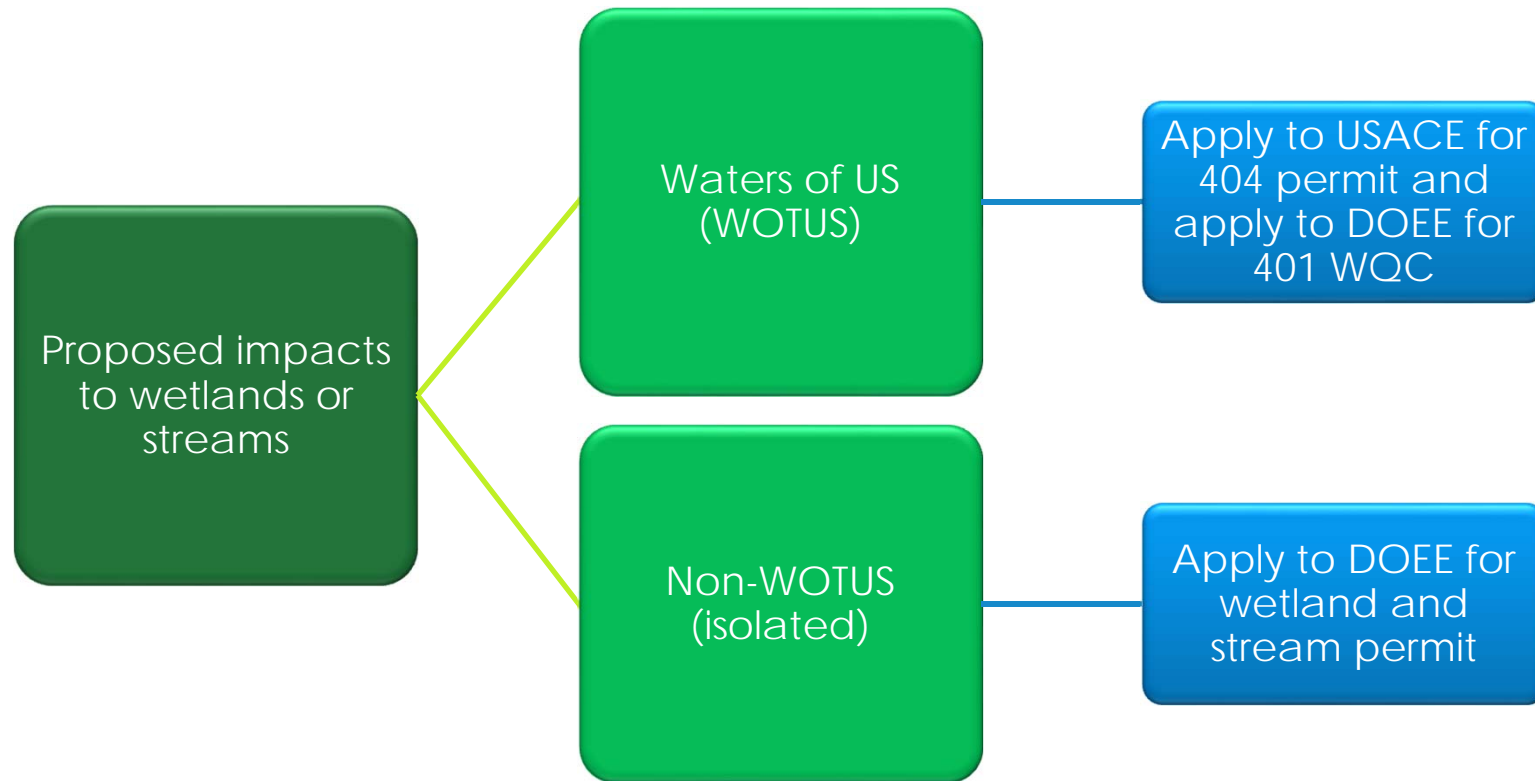
# OVERVIEW – WSP/WQC APPLICATION REQUIREMENTS

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- WSP vs. WQC
- Project Planning
  - Wetland Registry
  - Pre-application meeting
  - Presence/absence survey
  - Delineation/Jurisdictional determination
- DEMO – How to Apply
  - SGS
  - Fees

# PERMITTING REQUIREMENTS

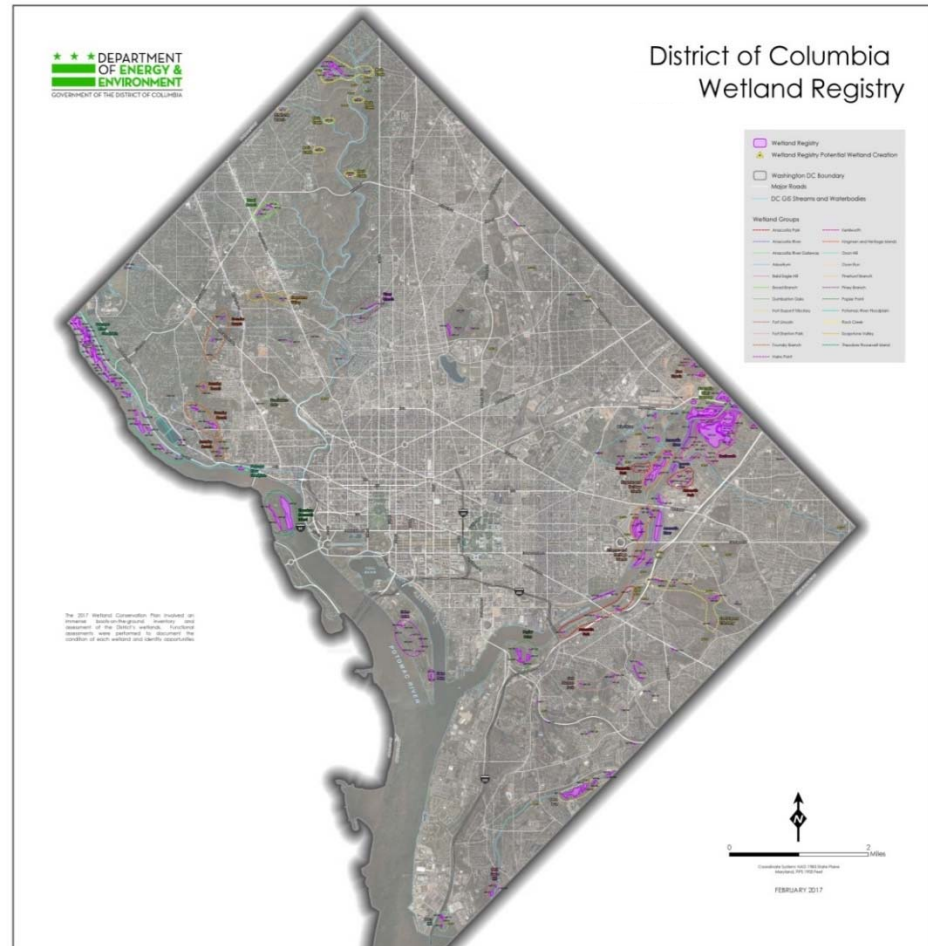
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# PROJECT PLANNING

## WETLAND REGISTRY:

- Mapped nearly all District Wetlands
- Critical tool for project planning
- Stream layer included
- *Does not replace site-specific delineations*
- Access on DOEE website:  
<https://doee.dc.gov/service/wetland-registry>





# PROJECT PLANNING

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## Pre-application meeting

- 30 days prior to submitting WQC application – required by federal CWA regulations
- Recommended for most projects, especially large/complex



# PROJECT PLANNING

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## Presence/Absence Survey

- Recommended prior to selecting a project site
- Very early in planning process
- Environmental consultants
- Can request DOEE to perform
- *Does not replace need for wetland and stream delineation*





# PROJECT PLANNING

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## **Wetland and Stream Delineation**

- Required for WSP/WQC applications
- Using USACE Method and Regional Supplements
- Flag boundaries and generate report

## **Jurisdictional Determination**

- Necessary to determine WSP vs. WQC
- Preliminary JD or formal = any decision documentation from Corps



# PERMIT APPLICATION REQUIREMENTS

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## 21 DCMR § 2602

Application documents required for most projects:

- Project description
- USACE Joint permit application form
- Wetland and stream delineation report and mapping
- Site photographs
- USACE jurisdictional determination decision document
- Avoidance and minimization analysis
- Site plan - grading, ESC, profile, cross-sections
- Mitigation plan, if applicable
- Functional assessment, if applicable

# HOW TO APPLY FOR WSP/WQC

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DOEE's website updated with details on required documentation, guidance, and instructions on how to **apply**: <https://doee.dc.gov/service/wetlands-and-streams-district>

**Surface and Groundwater System:**

<http://doee.dc.gov/swdb>



# DEMO - HOW TO APPLY FOR WSP/WQC

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Surface and Groundwater System:

<http://doee.dc.gov/swdb>





# NEXT STEPS

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- Gather feedback during public comment period
- Send comments to [Wetlandprogram@dc.gov](mailto:Wetlandprogram@dc.gov) by 12/16/20
  - DOEE to consider and respond to comments
- Emergency rulemaking effective for up to 120 days from adoption
- Final rulemaking within 120 days from adoption

# QUESTIONS / COMMENTS?

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