



# Are You Planning Work in a Waterway Or Wetland ?

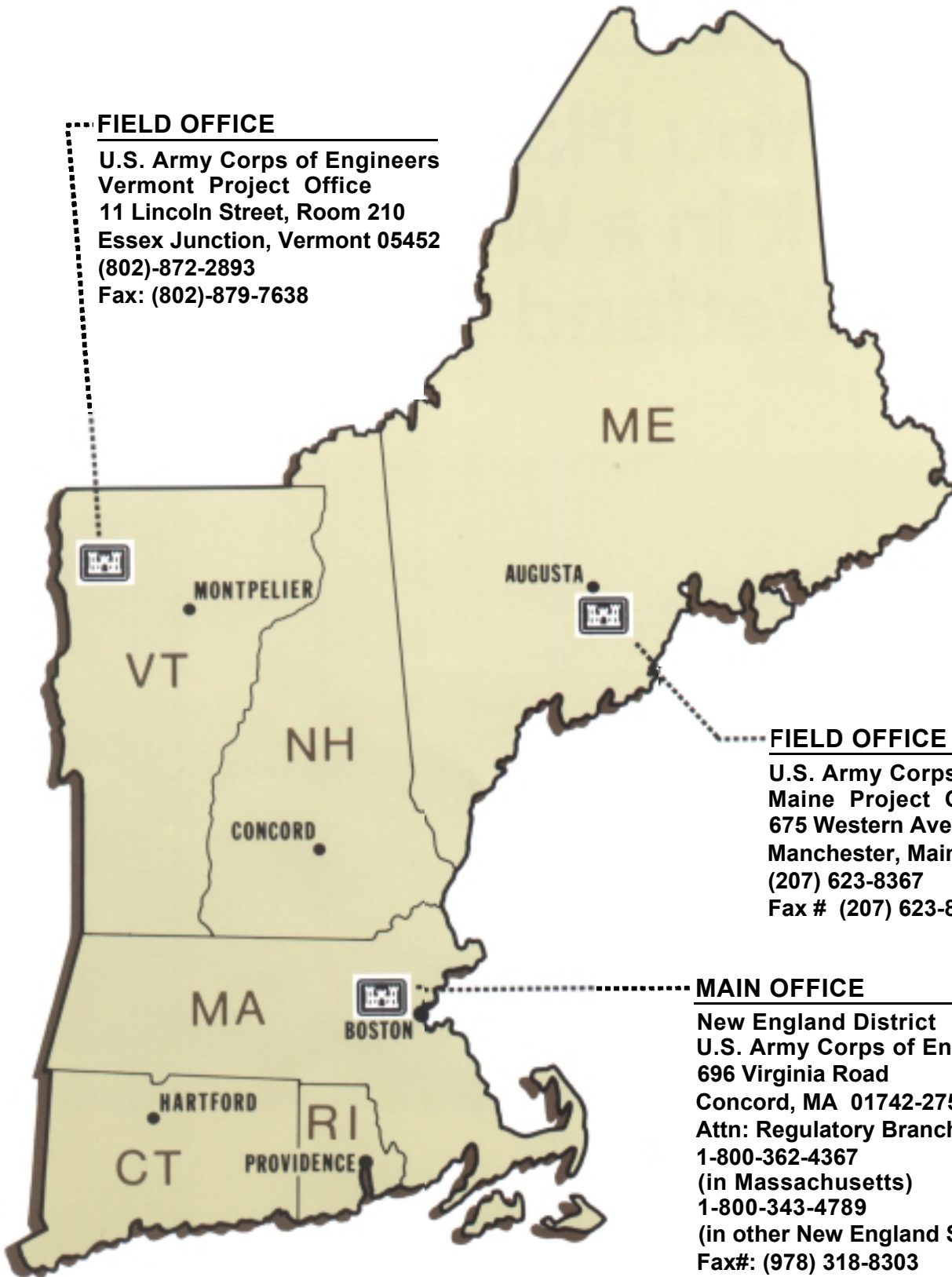


**US Army Corps  
of Engineers**  
New England District



**FIELD OFFICE**

U.S. Army Corps of Engineers  
Vermont Project Office  
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Essex Junction, Vermont 05452  
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Concord, MA 01742-2751  
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(in Massachusetts)  
1-800-343-4789  
(in other New England States)  
Fax#: (978) 318-8303



**US Army Corps  
of Engineers**  
New England District

## Introduction

The U.S. Army Corps of Engineers is a worldwide organization that provides engineering services and construction support for a wide variety of military and civil projects.

The Corps primary military mission is to provide the armed forces of the United States with modern facilities to strengthen the nation's defensive capability and ensure combat readiness.

The Corps primary civilian mission is to develop, manage and protect the country's water resources. Corps projects reduce flood damage, improve harbors and navigation channels, protect stream banks and shorelines, generate hydroelectric power, and preserve and safeguard the environment.

Through its Regulatory Program the Corps administers laws passed by Congress to regulate various activities in waters and wetlands. This brochure answers the following questions to help you plan activities regulated by the Corps:

- What activities are regulated by the Corps?
- What are the limits of the Corps' jurisdiction?
- What permits does the Corps issue?
- How do I apply for a permit?
- How does the permit review process work?

You should refer to Title 33 Code of Federal Regulations, Parts 320 through 330 for a full explanation of the Corps regulations. To review these regulations or to obtain information, contact the Corps of Engineers office nearest you.



## History of Corps Regulations

The U.S. Army Corps of Engineers began regulating the nation's waters in 1899 when Congress passed the Rivers and Harbors Act. The primary focus of this Act was the protection of navigation.

In 1968, increasing national concern for the environment and water resources led to the adoption of "Public Interest Review". This process considered fish and wildlife values, conservation, pollution, aesthetics, ecology, and other public interest factors in the review of projects.

In order to further promote water quality, Congress passed the Federal Water Pollution Control Act Amendments of 1972. Section 404 of that Act established a permit program to regulate discharges of dredged or fill material into waters of the United States at specified disposal sites.

Initially, the Corps of Engineers limited its regulatory authority under Section 404 to navigable waters of the United States. This was later expanded to regulate the discharge of dredged or fill material beyond the traditional navigable waters to all waters of the United States, including wetlands.

New laws and policies since that time, including the Clean Water Act of 1977, have further revised the Corps Section 404 authority. The regulations also clarified that a 404 permit cannot be issued unless the proposed project complies with the Environmental Protection Agency's 404(b)(1) guidelines. These guidelines are designed to protect wetlands and other special aquatic sites from unnecessary destruction or degradation.



## What Activities Are Regulated by the Corps ?

The U.S. Army Corps of Engineers regulates activities in waterways and wetlands under the authority of several Federal laws.

***Construction of any dam or dike across any navigable water of the United States:*** Section 9 of the Rivers and Harbors Act of 1899 authorizes the Corps to regulate the construction of any dam or dike across any navigable water of the United States. The Corps also issued permits for the construction of bridges and causeways until 1966 when this authority was transferred to the U.S. Coast Guard. Discharges of dredged or fill materials into any navigable water also requires authorization under Section 404 of the Clean Water Act.

***Structures or work in or affecting navigable waters of the United States:*** Section 10 of the Rivers and Harbors Act of 1899 authorizes the Corps to regulate structures and work in navigable waters of the United States.

Structures and work include, without limitation, the following:

- any wharf, dolphin, weir, boom, breakwater, jetty, or groin;
- bank protection or stabilization activity (e.g. riprap, revetment, or bulkhead);
- permanent mooring structures such as pilings;
- aerial or subaqueous power transmission lines;
- intake or outfall pipes;
- permanently moored floating vessels;
- tunnels, artificial canals;
- boat ramps;
- aids to navigation;
- any permanent or semi-permanent obstacle or obstruction;
- dredging or disposal of dredged material, excavation, and filling; or
- other modifications affecting the course, location, condition, or capacity of navigable waters of the United States.

***Transportation of dredged material for ocean disposal:*** Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, authorizes the Corps to regulate the transportation of dredged material for the purpose of disposal in the ocean. Discharges of dredged or fill materials into territorial seas also require authorization under Section 404 of the Clean Water Act.



***Discharge of dredged or fill material into all waters of the United States including wetlands:*** Section 404 of the Clean Water Act authorizes the Corps to regulate the discharge of dredged or fill material into all waters of the United States. The definition of waters of the United States includes wetlands.

Discharge of fill material includes, without limitation, the following activities:

- placement of fill that is necessary to the construction of any structure or impoundment requiring rock, sand, dirt, or other material for its construction;
- site-development fills for recreational, industrial, commercial, residential, and other uses;
- causeways or road fills, dams and dikes;
- artificial islands;
- property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments;
- beach nourishment;
- levees;
- fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and
- artificial reefs.

Corps regulations apply to both permanent and temporary work. Examples of temporary discharge include dewatering of dredged material before final disposal or temporary fills for access roadways, cofferdams, storage and work areas.

## What are the Limits of the Corps Jurisdiction?



The Corps regulations broadly define two important terms, “*waters of the United States*” for the purpose of Section 404 of the Clean Water Act; and “*navigable waters of the United States*” for Section 10 of the Rivers and Harbors Act.

### *Waters of the United States*

The definition of “waters of the United States” includes the following:

- a. Navigable waters of the United States.
- b. Wetlands.
- c. Tributaries to navigable waters of the United States, including adjacent wetlands and lakes and ponds.
- d. Interstate waters and their tributaries, including adjacent wetlands.
- e. All other waters of the United States not identified above, such as isolated wetlands, intermittent streams, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, where the use, degradation or destruction of these waters could affect interstate or foreign commerce.

Section 404 of the Clean Water Act defines the landward limit of jurisdiction as the high tide line in tidal waters and the ordinary high water mark as the limit in non-tidal waters. When adjacent wetlands are present, the limit of jurisdiction extends to the limit of the wetland.

### *Navigable Waters of the United States*

This term includes the oceans and navigable coastal and inland waters, lakes, rivers, and streams. Corps jurisdiction extends shoreward to the mean high water line.

The Corps general definition of navigable waters of the United States is “those waters subject to the ebb and flow of the tide shoreward to the mean high water mark 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.”

Within the New England District, the Corps has determined the following to be navigable waters of the United States:

Maine: All tidal waters and their tributaries to the head of tide; Kennebec River to Moosehead Lake; Penobscot River to the confluence of the East and West Branch at Medway; Lake Umbagog within the State of Maine.

New Hampshire: All tidal waters and their tributaries to the head of tide; Merrimack River from the Massachusetts-New Hampshire State line to Concord; Lake Umbagog within the State of New Hampshire; Connecticut River to Pittsburg.

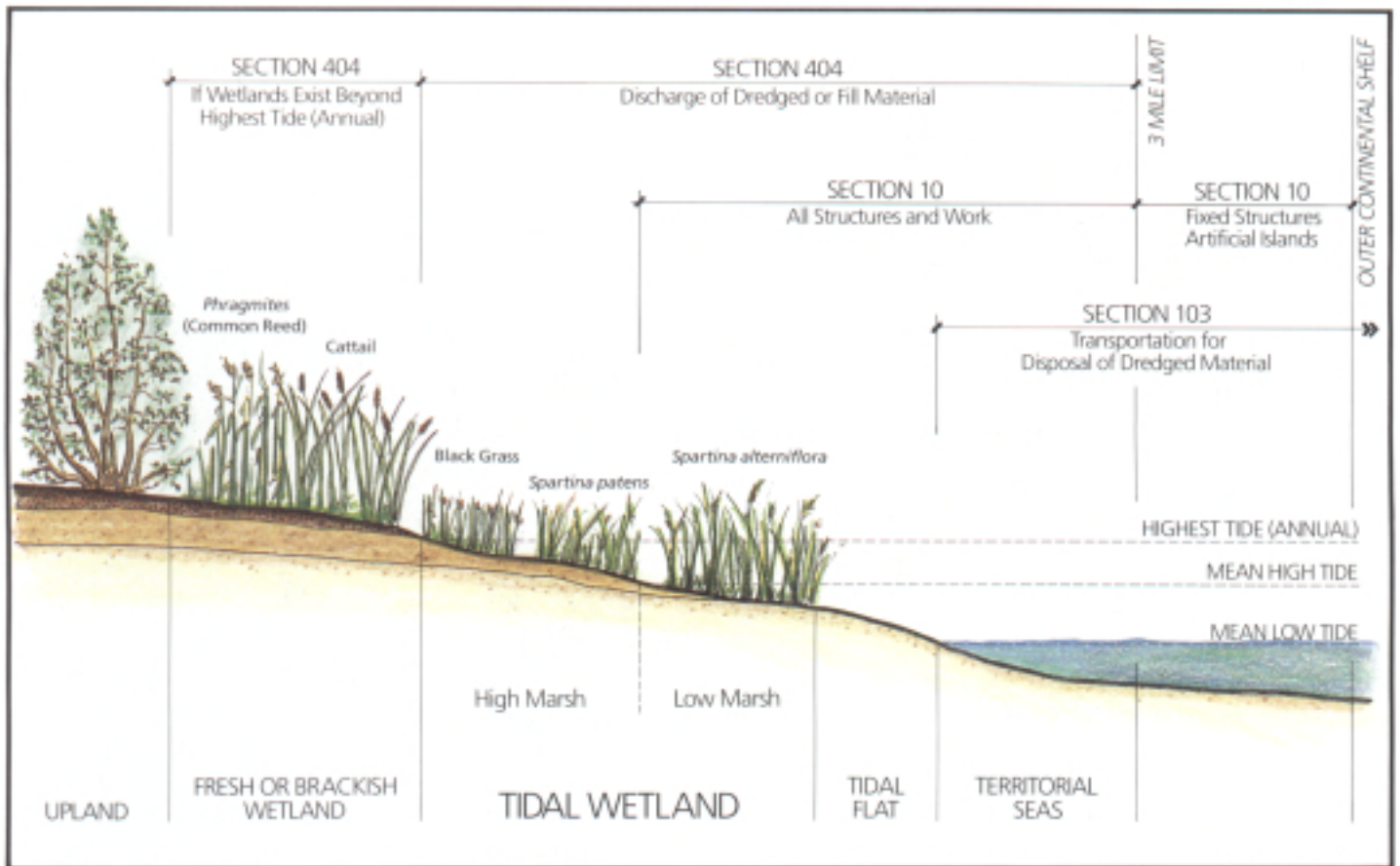
Vermont: Lake Champlain; Lake Memphremagog; many rivers.

Massachusetts: All tidal waters and their tributaries to the head of tide; Merrimack River to the New Hampshire State line; all of the Connecticut River within the State of Massachusetts.

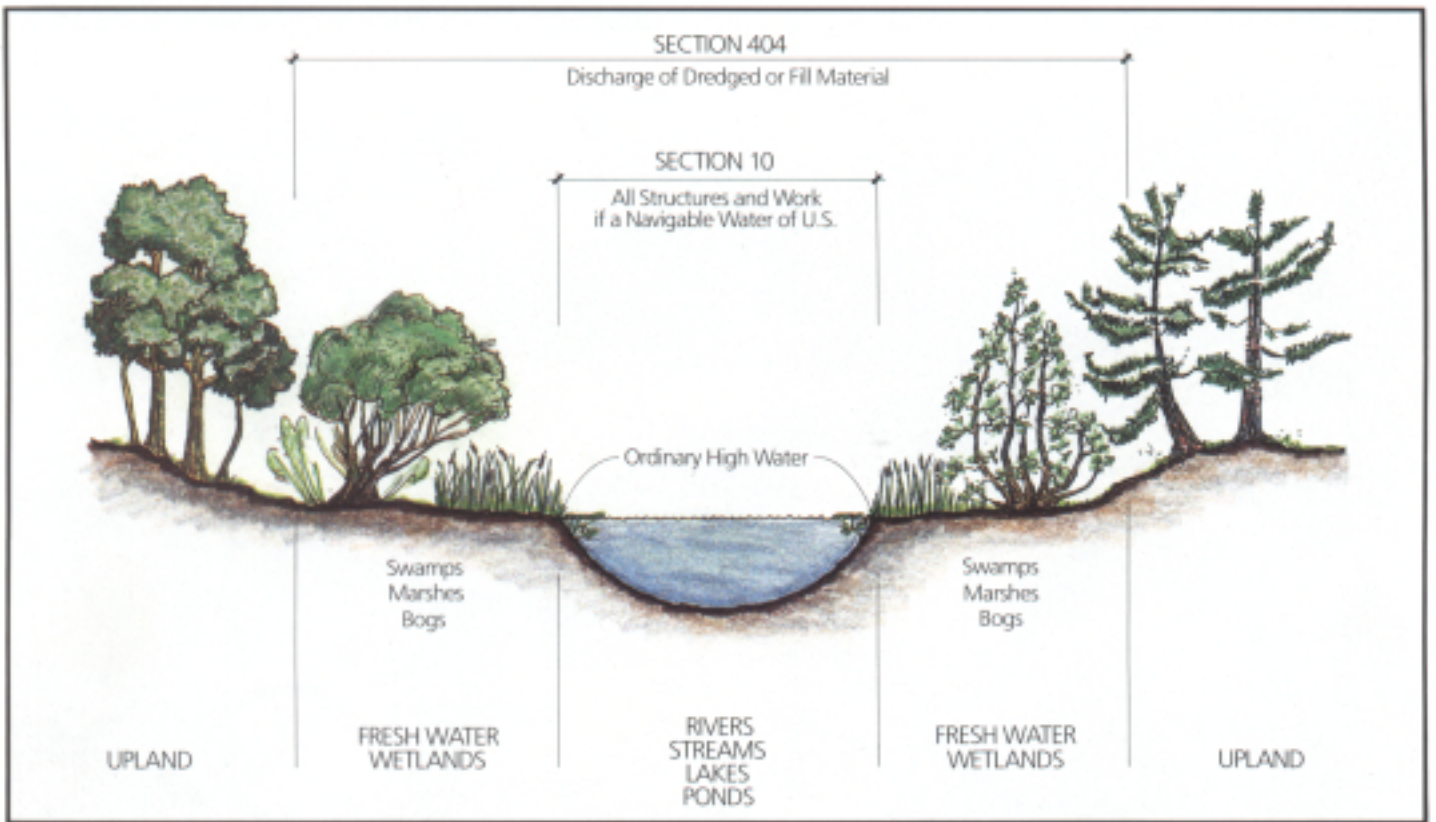
Connecticut: All tidal waters and their tributaries to the head of tide; Connecticut River to the Massachusetts State line.

Rhode Island: All tidal waters and their tributaries to the head of tide.

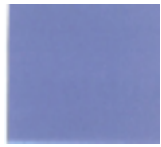




Corps of Engineers Regulatory Jurisdiction in **TIDAL WATERS**



Corps of Engineers Regulatory Jurisdiction in **FRESH WATERS**



## Wetlands

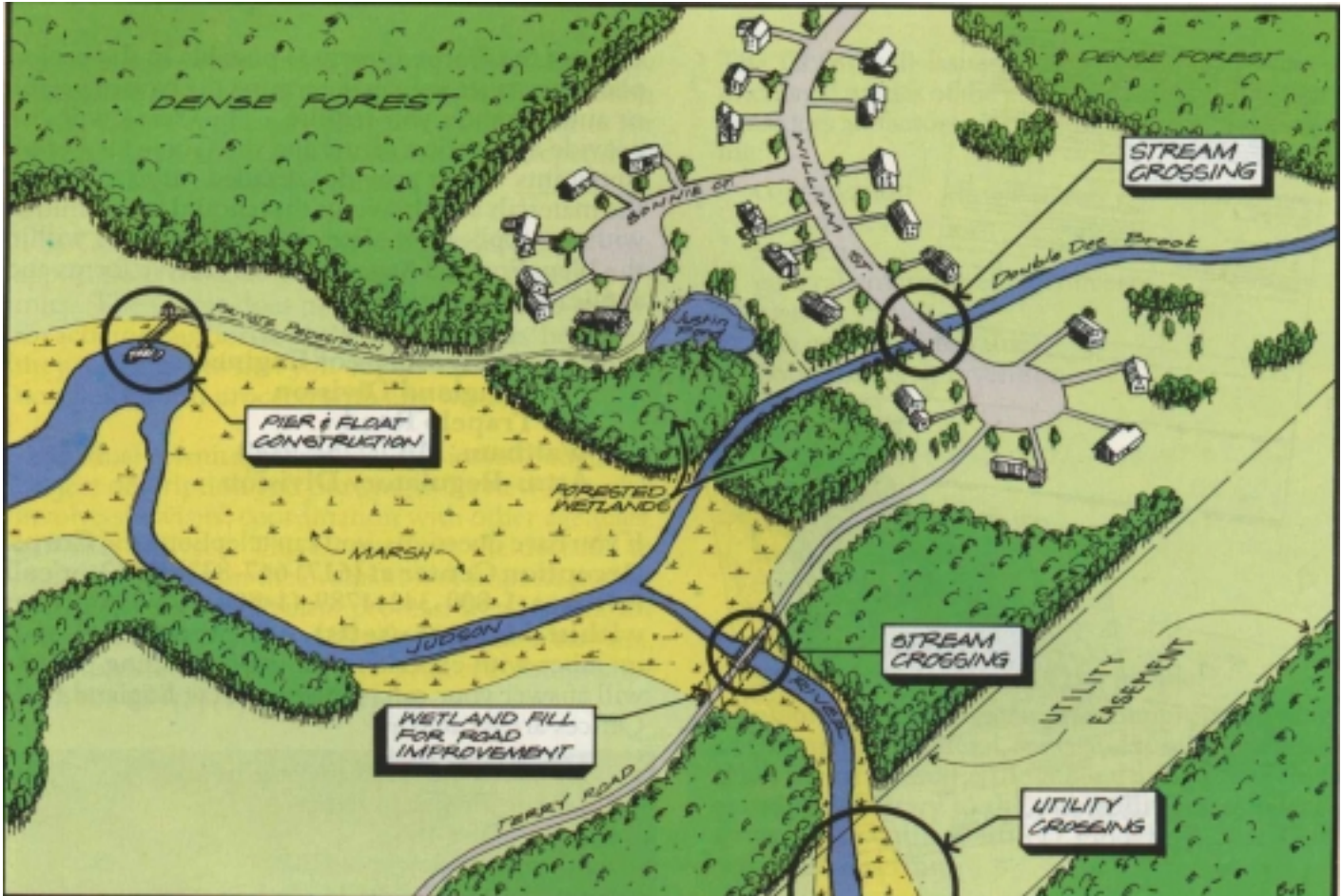
The term *wetlands*, including those adjacent to "waters of the United States," is defined as "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." The term "adjacent" means bordering, contiguous, or neighboring, including those areas separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like.

Wetlands generally include swamps, marshes, bogs, and similar areas. Federal, State and local wetlands jurisdiction may be defined differently. For Corps programs, the wetlands boundary must be determined according to the mandatory technical criteria for vegetation, hydrology and soils as described in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands. Applicants often retain the assistance of qualified consultants to prepare wetland delineations. Dataforms are available from the nearest Corps office. When reviewing applications the Corps will confirm the limits of Jurisdiction for regulated activities. The Corps will sometimes check the limits of wetlands at the site of proposed work.





## What Permits Does the Corps Issue?



The Corps issues different types of permits to authorize construction and fill activities. The Corps distinguishes between two categories of permits; *individual permits* and *general permits*.

*Individual permits* are required if the project does not fall under the criteria for general permits. These permits are individually reviewed by the Corps.

*General permits* apply to activities the Corps has determined are substantially similar in nature and cause minimal environmental impacts, both individually and cumulatively. The Corps requires notification for some general permits before the activity is authorized and work can begin.

There are two types of general permits: *nationwide permits* and *regional permits*.

*Nationwide permits* are a series of permits which are defined in the Corps regulations for certain minor projects. Some examples are aids to navigation which meet U.S. Coast Guard requirements, outfalls and

intakes which have received an NPDES permit, single private mooring buoys, backfill and bedding for utility lines, minor bank stabilization, and minor road crossings. All nationwide permits have special conditions which must be met in order for a project to qualify for nationwide permit status. Some nationwide permits also require notification to the Corps before work begins.

*Regional permits* apply to certain minor activities authorized by the Corps on a regional or statewide basis. Activities allowed by a regional permit may include docks, piers and mooring buoys in tidal waters, minor road work by a town or state agency, minor hydro projects and maintenance dredging with upland disposal. In some states, the Corps authorizes certain activities under State Program General Permits. Most regional permits require that the Corps be notified before work begins.

## How do I Apply for a Permit?

Contact the Corps as early as possible in the project planning stages to help determine the type of permit or authorization you require. The Corps will also provide application forms and the Guide for Permit Applicants which provides detailed information on the materials and drawings that should be submitted with the application. For any work planned within the New England States, you can receive forms and applications by writing to:

**U.S. Army Corps of Engineers  
New England District  
696 Virginia Road  
Concord, MA 01742-2751  
Attn: Regulatory Branch**

If you have questions, you can telephone the **Corps Reception Center** at (978) 318-8338, or call toll-free 1-800-343-4789, (1-800-362-4367 from within Massachusetts). A professional staff member with experience in the permitting process will answer your call. The two New England Field Offices are located at:

**U.S. Army Corps of Engineers  
Maine Project Office  
675 Western Avenue #3  
Manchester, Maine 04351  
(207) 623-8367/8124, and**

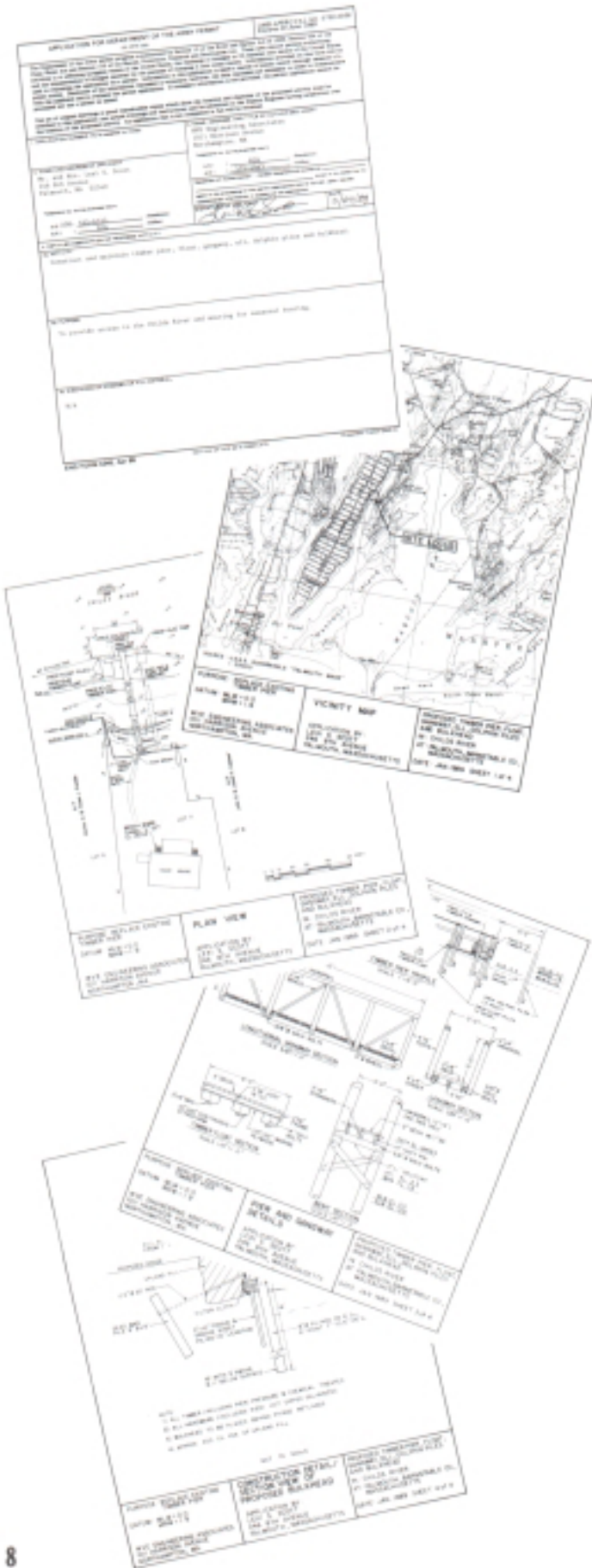
**U.S. Army Corps of Engineers  
Vermont Project Office  
11 Lincoln Street, Room 210  
Essex Junction, Vermont 05452  
(802)-872-2893.**

Other federal laws and regulations also may affect the processing of your application. These include:

**Section 401 of the Clean Water Act** requires applicants to obtain a certification or waiver from the state water pollution control agency to discharge dredged or fill materials. This agency reviews the activity's effect on water quality standards.

**Section 307(c) of the Coastal Zone Management Act of 1972, as amended**, requires applicants to obtain a certification or waiver that the activity complies with the State's coastal zone management program for activities within a State's coastal zone.

The Corps requires that you meet all conditions for a permit, including obtaining these certifications, before a permit can be issued.



## How Does the Permit Review Process Work?

Applicants are encouraged to contact the Corps early in the planning stages of any project within jurisdiction of the Corps regulatory program. Time frames for processing permit applications will vary depending on the complexity of the project.

The Corps uses a streamlined procedure to process applications for activities authorized by general permits. The Corps does not require a detailed review for activities authorized by general permits, however, they recommend that you obtain written authorization before you proceed with any work.

Individual permit applications must include a detailed project description and drawings. Review may also involve site visits, coordination with other agencies, and data analysis. The Corps bases the decision to issue the permit on the evaluation of impacts during the **Public Interest Review** process. In addition, for activities under Section 404 of the Clean Water Act, the Corps also evaluates the project's compliance with the **404(b) (1) guidelines**.



**Public Interest Review** is the process the Corps uses to evaluate the probable and cumulative impacts of the proposed activity and its intended use on the public interest. The permit program is designed to insure:

1. That our nation's water resources are safeguarded.
2. That our nation's water resources are used in the best interest of the public.
3. That environmental, social, and economic concerns of the public are considered.

The Corps will issue a Public Notice advising all interested parties of the proposed activity. The Corps considers all factors relevant to the proposal including:

- conservation
- economics
- aesthetics
- general environmental concerns
- historic values
- fish and wildlife values
- flood damage prevention
- land use
- navigation
- recreation
- water supply
- water quality
- wetland values
- energy needs
- safety
- food production
- the needs and welfare of the people.

The Corps gives consideration and appropriate weight to comments of federal, state, and local agencies and other experts as well as the general public. Unless the project is contrary to the public interest, subject to compliance with 404(b)(1) guidelines, the Corps will grant a permit.

The **404(b) (1) guidelines**, prepared by the Environmental Protection Agency in consultation with the Corps, are the federal environmental regulations for evaluating the filling of waters and wetlands. The guidelines restrict discharges of dredged or fill material where less environmentally damaging, practicable alternatives exist.

The Corps, not the applicant, first defines the "basic project purpose" of the proposed activity. The applicant gathers all necessary data for the evaluation of practicable alternatives for the project consistent with the analysis of alternatives reviewed by the Corps. The guidelines also assume that alternatives exist for non-water dependent projects. It is important to understand that if a less damaging practicable alternative to the project exists, the Corps will not issue the permit. When unavoidable impacts occur, the Corps requires all appropriate and practicable action be taken to mitigate such impacts.

## Questions and Answers

What activities require Corps permits?

Construction or fill activities in waters of the United States, including wetlands, such as:

- Construction of structures such as bulkheads, piers, catwalks, boathouses, and pilings.
- Backfill and bank excavation, dredging, filling, and depositing dredged material in wetlands such as marshes, swamps, bogs and in waterways.
- Construction of overhead and underwater transmission lines, cables and pipes.
- Construction of breakwaters, jetties, groins and stone revetments.

Who applies for a permit from the U.S. Army Corps of Engineers?

Any individual, business, organization or governmental agency performing the activities listed above.

When should I apply?

The Corps recommends that you apply as early as possible in the project planning stages. The Corps application review process for an individual permit usually includes site visits, coordination with other agencies and data analysis. Therefore, contact the Corps as a first step and prior to beginning any work.

If local or state permits have been issued, is a Corps of Engineers permit still necessary?

Yes. Corps permits are required in addition to any State or local permits.

Is a permit still required if I own the land?

Yes. Even if you own the land, you are still required to get a permit or authorization.

What will happen if I do not get a Corps permit?

Persons responsible for willful and direct violation of Section 10 of the Rivers and Harbors Act of 1899 or Section 404 of the Clean Water Act may be fined up to \$25,000.00 per day of violation and imprisoned for up to one year, or both.

Why are wetlands important?

Wetlands provide several direct benefits to people. They form a buffer area which protects the shoreline from erosion by waves and moderate storm surges. Wetlands act as natural water storage areas during floods and storms by retaining high waters and gradually releasing them, thereby reducing storm damage. Wetlands, especially seasonally inundated freshwater wetlands, may recharge groundwater. During dry periods, rain and surface water infiltrate underlying or nearby aquifers, providing sources of local drinking water. Wetlands also purify water, not only by filtering and removing pollutants, but also by assimilating and recycling them.

Wetlands provide food and habitat for an abundance of animal life. They offer breeding, spawning, feeding, cover and nursery areas for fish and are important nesting, migrating and wintering areas for waterfowl.



Flood Control



Navigation



Conservation



Wildlife Habitat



Recreation



Fisheries/Food Production

## A Glossary of Terms

***dredged material*** - material that is excavated or dredged from waters of the United States, including wetlands.

***discharge of dredged material*** - any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified discharge site located in waters of the United States and the runoff or overflow from a contained land or water disposal area.

***discharge of fill material*** - the addition of fill material into waters of the United States, including wetlands.

***fill material*** - any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a waterbody.

***high tide line*** - a line or mark left upon tide flats, beaches, or along shore objects that indicates the intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined by tidal gages, physical markings or characteristics, vegetation lines, a more or less continuous deposit of fine shell or debris on the foreshore or berm, or other suitable means such as a line of oil or scum along the shore that delineate the general height reached by a rising tide. The term includes spring high tides and other high tides that occur with periodic frequency, but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

***mean high water mark*** - with respect to ocean and coastal waters, the line on the shore established by the average of all high tides. It is established by survey based on available tidal data (preferably averaged over a period of 18.6 years because of the variations in tide). In the absence of such data, less precise methods to determine the mean high water mark are used, such as physical markings, lines of vegetation or comparison of the area in question with an area having similar physical characteristics for which tidal data are readily available.

***ordinary high water mark*** - the line on shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

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