

U.S. Army Corps of Engineers Regulatory Branch New York Section

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What does the Corps do?



Flood control

Dredging/Surveys

Harbors



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Regulatory Jurisdiction



Buffalo District
Civil Works Area
Regulatory Boundary

Lake Ontario
Auburn
Buffalo
New York
Bowling Green
Orwell
Lake Erie
Ohio
Pennsylvania



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Regulatory Program

- To provide strong protection of the Nation's aquatic environment, including wetlands.
- To enhance the efficiency of the Corps administration of its regulatory program.
- To ensure that the Corps provides the regulated public with fair and reasonable decisions.



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Section 10
Rivers and Harbors Act of 1899

Regulatory Authority Over:

- Navigation and Structures in Navigable Waters
- Docks
- Dredging



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Section 404
Clean Water Act of 1977

- Applies to waters of the United States (33 CFR 328.3)
- Discharges of dredged or fill material are regulated
- Goal - to preserve the physical, chemical and biological integrity of U.S. waters



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Waters of the United States

- Navigable Waters
 - (Section 10 and Navigable in fact)
- All Interstate Waters
- Streams (ephemeral, intermittent, perennial)
- Abutting/Adjacent Wetlands



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Waters of the United States

Limits of jurisdiction for waters of the U.S.

- Ordinary high water mark
- Wetland/upland boundary



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What is a Wetland?



“Those areas that are inundated or saturated by surface or ground water 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.”



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Functions and Services

Function: Properties that a wetland naturally provides

Service: Properties that are valuable to humans



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Physical/Hydrological Functions

- Flood Control
- Coastal Protection
- Ground Water Recharge
- Sediment Traps

Chemical Functions

- Waste Treatment/Pollution Interception
- Biogeochemical Cycling

Other Functions

- Habitat
- Nurseries
- Migration



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Wetland Services

Food

Commercial Animal Populations

- Fish and shellfish that depend on wetlands for food or habitat constitute more than 75% of the commercial and 90% of the recreational harvest.
- fur-bearing animals such as muskrat, beaver, otter, and mink, as well as reptiles such as alligators.

Timber/Fiber Production

- Wetlands supporting timber totals about 55 million acres, two-thirds of which occurs east of the Rockies

Recreation, Aesthetics, Education



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Department of the Army Permit is Required:

- For activities which involve a discharge of dredged or fill material into a water of the United States (Section 404, Clean Water Act).
- For any structure or work that takes place in, under, or over a navigable water, or wetlands adjacent to navigable waters (Section 10, Rivers and Harbors Act).



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Regulated Activities

- Discharge of Dredged or Fill Material into Waters of the United States
 - Filling to Create Dry Land
 - Mechanized Land Clearing
 - Regrading/Landscaping
 - Excavation (?)
 - Culvert Installation
 - Digging a Pond
 - Isolated Waters (!?)



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Permit Requirements

404(b)(1) Guidelines

- Project Purpose – Water Dependency
- Alternatives Analysis - On-Site vs. Off-site
- Least Environmentally Damaging Practicable Alternative
- Avoid Impacts
- Minimize Impacts



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Submittal Requirements

- Joint Application For Permit (Corps/DEC)
- Wetland Delineation Maps and Report
- Project Plans (8.5 x 11 format)
- Wetland Impact Acreage
- Avoidance/Minimization Summary
- Wetland Functional Assessment
- Proposed Conceptual Mitigation Plan (if permanent fill impacts are greater than 0.10 acre)



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Public Interest Review Factors

- Apply only to work that is regulated
- Balancing process
 - Wetland values
 - Conservation of natural resources
 - Wildlife values
 - Recreation
 - Flood hazards
 - Economics
- Consideration of property ownership



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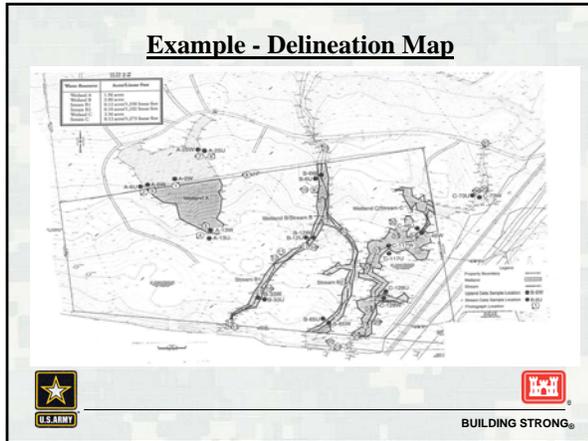
Wetland Delineation

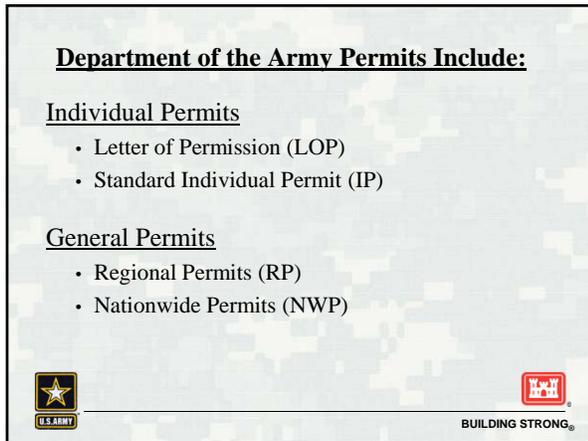
Performed by a qualified biologist in accordance with the 1987 Federal Wetland Delineation Manual, the Northeast Regional Supplement, and the Field Indicators of Hydric Soils in the United States Manual

- Three criteria:
 - hydrophytic vegetation
 - hydric soils
 - hydrology



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Compensatory Mitigation

- ONLY FOR UNAVOIDABLE IMPACTS to wetlands having greater than 0.10 acre of permanent fill.
- Based on Functions and Services approach and/or watershed approach – not net loss of wetland acreage, functions, or services
- April, 2008 Mitigation Rule as re-prioritized preferred mitigation guidelines: 1) use of mitigation banks; 2) in-lieu fee; 3) on-site in-kind creation or creation in adjacent watershed; 4) off-site out-of-kind creation; also preservation and/or enhancement



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Monitoring and Enforcement

Ensure compliance with the terms and conditions of Department of the Army permits

Investigate unauthorized activities

Alleged violations (public reporting)

Resolution of violations

- Restore/remove fill
- Seek after-the-fact authorization
- Mitigation to replace lost functions and services
- USEPA, US Attorney's Office



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USACE Early Involvement:

- May help reduce the applicant's cost of plan design and redesign.
- May reduce redundancy of review time by the Planning and Zoning Boards.
- May facilitate permitting within timely deadlines instead of at the "11th hour" when bids are due out or when grant money is due to expire.



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Other Programs

- Section 401 Water Quality Certification (NYS Department of Environmental Conservation)
- Coastal Zone Management Program (NYS Department of State)
- Endangered Species Act (U.S. Fish and Wildlife Service)
- Section 106 of the Historic Preservation Act (NYS Office of Parks Recreation and Historic Preservation)



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Questions?



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