U.S. ARMY CORPS OF ENGINEERS REGULATORY PROGRAM IN VERMONT



Speaker: Amanda Sayles

Date: January 23, 2024



OVERVIEW



Program Goals & Regulatory Authorities

- § 10 of the Rivers and Harbors Act
- § 404 of the Clean Water Act (CWA)
 - Exemptions under § 404 of the CWA

Jurisdiction

- Jurisdictional Waters
- Exclusions

Permitting Process

- Forms of Authorization
- Permit Conditions



PROGRAM GOALS & REGULATORY AUTHORITIES







PROGRAM GOALS



- Provide strong protection of the Nation's aquatic environment, including wetlands, while allowing reasonable and necessary development to proceed
- Provide balanced decisions that are timely, predictable, transparent, consistent, rooted in sound science, and compliant with applicable laws







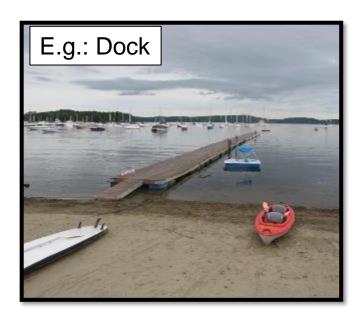


REGULATORY AUTHORITIES

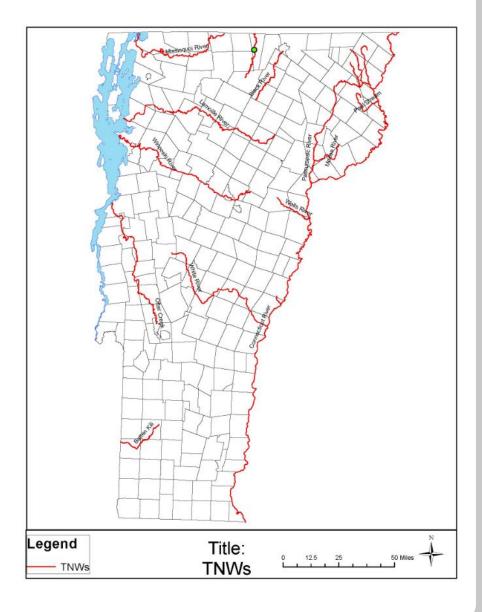


Section 10 of the Rivers and Harbors Act:

Structures and work that are located in, under or over **navigable waters of the U.S.** that affect the course, location, or capacity of such waters; or the excavating from or depositing material in navigable waters.









REGULATORY AUTHORITIES

Section 404 of the Clean Water Act:

The discharge of dredged or fill material into <u>all</u> waters of the U.S. (WOTUS)

Discharge of dredged or fill material fill is:

- Material (e.g. rock, sand, soil) placed in WOTUS where the material has the effect of replacing any WOTUS with dry land or changing the bottom elevation of WOTUS
- Redepositing of dredged or fill material
 - Grading, excavation/backfill
- Mechanized land clearing
- Temporary access roads, construction mats
- Temporary water diversions (e.g. cofferdams)







REGULATORY AUTHORITIES



Discharge Of Dredged Or Fill Material Is Not:

- Dredging/excavation and incidental fallback
- Activities that involve only the cutting or removing of vegetation above the ground (mowing, rotary cutting, chain-sawing)
- Pile Driving













US Army Corps of Engineers ®

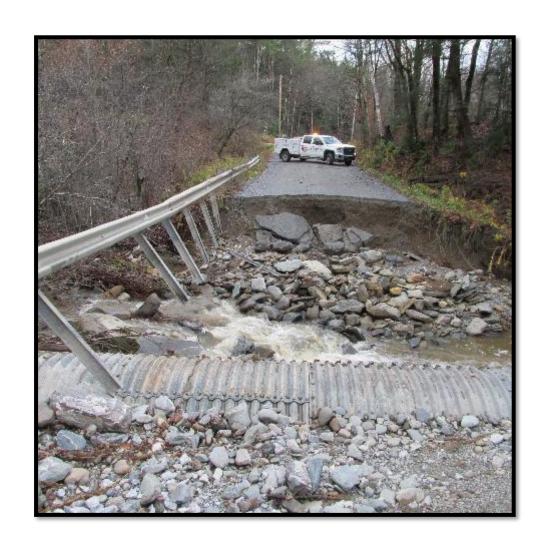


404(f) EXEMPTIONS 33 CFR 323.4 (a)2

HAH I

Maintenance:

- Including emergency reconstruction of recently damaged parts, of currently serviceable structures such as riprap, bridge abutments, dams, causeways, etc.
- Does not include modifications that change the character, scope, or size of the original fill design.
- Must occur within a reasonable time after damage occurs





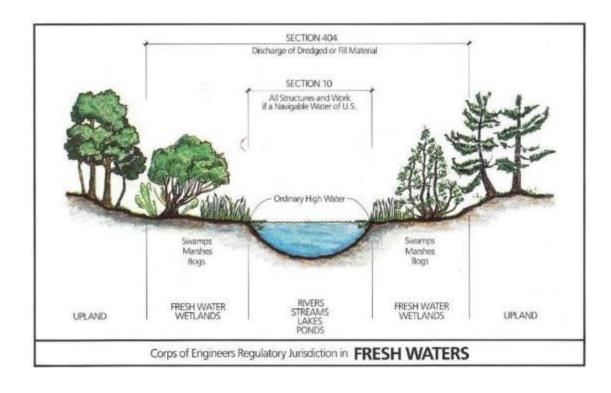






LIMITS OF JURISDICTION – ORDINARY HIGH WATER MARK (OHWM) & FRESHWATER WETLANDS







"The term *ordinary high water mark* means that line on the 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."



2023 RULE



- (a)(1)(i) Traditional Navigable Waters ("TNWs")
 - (ii) Territorial Seas
 - (iii)Interstate Waters
- (a)(2) Impoundments of Jurisdictional Waters
- (a)(3) Tributaries
- (a)(4) Adjacent Wetlands
- (a)(5) Intrastate lakes and ponds, streams, and wetlands that do not fall within (a)(1) -(a)(4)

***The 2023 Rule was published in the Federal Register on 18 January 2023. Effective Date 08 September 2023.



(a)(2) TRADITIONAL NAVIGABLE WATERS

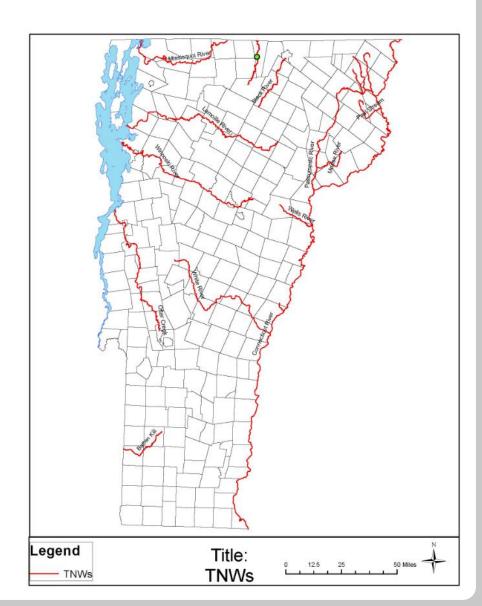


Waters which are currently used, or were used in the past, or may be susceptible to <u>use in interstate or foreign commerce</u>, including all waters which are <u>subject to the ebb and flow of the tide</u>.

TNWs in Vermont:

- Lake Champlain
- Lake Memphremagog
- Moose River
- Winooski River
- Connecticut River
- Otter creek
- White River
- Missisquoi River
- Black River
- Wells River

- Lamoille River
- Waits River
- Batten Kill
- Paul Stream
- Passumpsic River
- East Branch Passumpsic River
- Nulhegan River
- East Branch Nulhegan River
- Black Branch Nulhegan River
- Yellow Branch Nulhegan River
- Ompompanoosuc River





(a)(2) IMPOUNDMENTS



CHARACTERISTICS:

Created by discrete structures (often human-built) like dams or levees that typically have the effect of raising the water surface elevation, creating or expanding the area of open water, or both

•Can be natural (like beaver ponds) or artificial (like reservoirs)

•Can vary in size, with some being very small and others being very large

•Can be located off-channel (i.e., an impoundment with no outlet or hydrologic connection to the tributary network) or in-line with the channel (i.e., an impoundment with a hydrologic connection to

the tributary network)

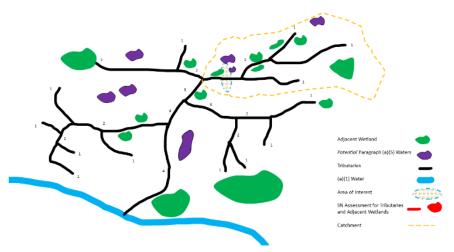




(a)(3) TRIBUTARIES



- A tributary for purposes of the 2023 Rule includes rivers, streams, lakes, ponds, and impoundments, regardless of their flow regime, that flow directly or indirectly through another water or waters to a traditional navigable water, the territorial seas, an interstate water, or a paragraph (a)(2) impoundment. (88 FR 3082)
- The 2023 Rule text specifies that, in order to be a jurisdictional (a)(3) tributary, the tributary must meet either the relatively permanent standard or the significant nexus standard.
 - Relatively permanent standard means the flow is not in direct response of precipitation
 - Significant nexus standard will be applied if the tributary is not relatively permanent
 - The 2023 Rule preamble explains the scope of **significant nexus** (i.e., which waters are "**similarly situated**" "**in the region**").





(a)(4) ADJACENT WETLANDS





 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. Wetlands generally include swamps, marshes, bogs, and similar areas.



EXCLUSIONS:

Categories of Exclusions

- (b)(1) Waste treatment systems
- (b)(2) Prior converted cropland
- (b)(3) Certain ditches
- (b)(4) Artificially irrigated areas that would revert to upland if irrigation ceased
- (b)(5) Certain artificial lakes and ponds
- (b)(6) Artificial reflecting or swimming pools or other small ornamental bodies of water
- (b)(7) Certain waterfilled depressions
- (b)(8) Swales and erosional features







JURISDICTIONAL DETERMINATIONS



A jurisdictional determination (JD) is a written USACE determination that a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act or under Section 9 or 10 of the Rivers and Harbors Act of 1899 (33 CFR 331.2).

- Two types: Preliminary Jurisdictional Determination (PJD) **Approved** Jurisdictional Determination (AJD)
- JDs are typically made at the request of the landowner or project proponent. USACE generally does not issue a JD of any type when a JD is not requested.
- Additional information can be found in the Corps Regulatory Guidance Letter (RGL) 16-01, including the request form:

https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Guidance-Letters/

PERMITTING PROCESS







USACE PERMITS



Vermont General Permits (VTGPs):

Consists of 21 activity-based GPs
https://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Vermont-General-Permit/

Self-Verification (SV)

- Project proponent confirms that project will comply with all terms and general conditions (GCs) of VTGPs
 - Impact threshold is generally <5,000 sq. ft. for each GP and <200 linear ft. along banks
 - No notification Process

- Pre-Construction Notification (PCN)
 Requires application submittal and project plans
 Impacts ≥5,000 sq. ft., but <1acre

 - Submit an application

Individual Permit

- Impacts ≥1 acre
- Projects that do not meet the "minimal impact" criteria of the VTGPs
- Alternatives Analysis required
- Submit an application







APPLICATION U.S.ARMY



U.S. Army Corps of Engineers (USACE) APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT		Form Approved - OMB No. 0710-0003	l 	1			
For use of this form, see 33 CFR 325. The proponent agency is CECW-CO-R. Expires: 08-31-2023							
he public reporting burden for this collection of information, OMB Control Number 0710-0003, is estimated to average 11 hours per response, including the time or reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of formation. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, twins mo-alex est mixed-dod-information-collections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall e subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. PLEASE DO NOT ETURN YOUR APPLICATION TO THE ABOVE EMAIL.				y Complete? Yes No IF YES, D	DESCRIBE THE COMPLETED W	IORK	
PRIVACY ACT STATEMENT				1			
uthorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, ection 103, 33 USC 1413; Regulatory Programs of the Corps of Engineers; Final Rule 33 CFR 320-332. Principal Purpose: Information provided on this form till be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and							
cal government agencies, and the public and may be made available as part of a public notice as required by Federal law. Submission of requested information							
voluntary, however, if information is not provided the permit application cannot producible copies which show the location and character of the proposed active nd be submitted to the District Engineer having jurisdiction over the location of ystem of Record Notice (SORN). The information received is entered into our.	vity must be attached to this application (see the proposed activity. An application that is not permit tracking database and a SORN has be	sample drawings and/or instructions) not completed in full will be returned. een completed (SORN #A1145b)		Owners, Lessees, Etc., Whose Property Ac		an be entered here, please attach	a supplemental (Ist).
nd may be accessed at the following website: http://dp.cld.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570115/a1145b-ce.aspx				- Canc	-	•	
,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	FILLED BY THE CORPS)		structions)				
. APPLICATION NO. 2. FIELD OFFICE CODE	DATE RECEIVED 4. I	DATE APPLICATION COMPLETE			_		
(ITEMS BELOW TO BE	FILLED BY APPLICANT)			State -	2	ip -	
. APPLICANT'S NAME	8. AUTHORIZED AGENT'S NAME AND TO	TTLE (agent is not required)					
irst - Middle - Last -	First - Middle -	Last -		State -	Z	ip -	
ompany -	Company -				_	-	
-mail Address -	E-mail Address -						
. APPLICANT'S ADDRESS: 0. AGENT'S ADDRESS:		ND/OR FILL MATERIAL IS TO BE DISCHARGED	State -	7	ip -		
ddress-	Address-			- Canc	-	•	
ity - State - Zip - Country -	City - State -	Zip - Country -					
. APPLICANT'S PHONE NOs. w/AREA CODE	10. AGENTS PHONE NOs. w/AREA COD	E		State -	7	ip -	
. Residence b. Business c. Fax	a. Residence b. Business	c. Fax				·	
STATEMENT OF AUTHORIZATION				wals/Denials received from other Federal, S IDENTIFICATION			
 I hereby authorize, to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application. 				PPROVAL* NUMBER	DATE APPLIED D	ATE APPROVED	DATE DENIED
			Cubic Yards:				
SIGNATURE OF APPLICANT DATE			Type				
NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY			ds Amount in Cubic Yards				
2. PROJECT NAME OR TITLE (see instructions)) zoning, building, and flood plain permits			
NAME OF WATERBODY, IF KNOWN (if applicable) 14. PROJECT STREET ADDRESS (if applicable) Address		ions)	recomp, containing, and index present permission and the permission of the permissio				
5. LOCATION OF PROJECT							
atitude: •N Longitude: -W	City - State-	Zip-	ations)	CANT DATE	SIGNATURE OF		DATE
8. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions)			ctions)	y the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly in block 11 has been filled out and signed.			
tate Tax Parcel ID Municipality				in block it has been lined out and sign	nea.		
ection - Township - Range -				that: Whoever, in any manner within the jurisdiction of any department or agency of the United States			
NG FORM 4345, SEP 2022 PREVIOUS ED	DITIONS ARE OBSOLETE.	Page 1 of 3	-	nceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent I not more than \$10,000 or imprisoned not more than five years or both.			



GP # 9 SHORELINE AND BANK STABILIZATION



GP 9. SHORELINE AND BANK STABILIZATION PROJECTS (Sections 10 & 404): Bank stabilization activities necessary for erosion protection along the banks of lakes, ponds, streams, and any other open waters. Includes bulkheads, seawalls, riprap, revetments or slope protection and similar structures, as well as vegetative planting, soil bioengineering, or alternative techniques that are a combination of the two (e.g. living shorelines), specifically for the purpose of shoreline protection.

Not authorized under GP 9: (a) Bank stabilization ≥ 500 LF in total length and/or involving more than an average of 1 CY of fill per linear foot placed below the plane of the ordinary high water mark (OHWM) in Lake Champlain, Lake Memphremagog and Wallace Pond and adjacent wetlands; (b) Stream channelization or relocation activities; or (c) breakwaters, groins and jetties.

Self-V	/erifica	tion E	ligible
--------	----------	--------	---------

- No fill in Lake Champlain, Lake Memphremagog, Wallace Pond and adjacent wetlands.
- 2. Bank stabilization < 200 linear feet long and does not exceed an average of 1 CY of fill per linear foot placed below the plane of OHWM in WOTUS other than Lake Champlain, Lake Memphremagog, Wallace Pond and adjacent wetlands.
- < 5,000 SF of temporary fill associated with bank stabilization in waterways and/or wetlands, other than Lake Champlain, Lake Memphremagog, Wallace Pond and adjacent wetlands.

Pre-Construction Notification Required

- 1. Work not eligible for SV.
- Bank stabilization <500 linear feet and an average of < 1 CY of fill per linear foot placed below the plane of OHWM in Lake Champlain, Lake Memphremagog, Wallace Pond and adjacent wetlands.

U.S.ARMY

GENERAL CONDITION #11 § 106 OF THE NATIONAL HISTORIC PRESERVATION ACT



SV

 The applicant contacts the State Historic Preservation Officer

AND

 The applicant contacts the Stockbridge-Munsee Tribal Historic Preservation Officer when in Bennington, Rutland, or Addison County. OR if the project is in any other county in Vermont the Wampanoag Tribe of Gay Head (Aquinnah) shall be notified.

AND

A "no effect" determination was reached

PCN

 <u>USACE</u> consults with the State Historic Preservation Officer

AND

 <u>USACE</u> consults with the Stockbridge-Munsee Tribal Historic Preservation Officer when in Bennington, Rutland, or Addison County. OR if the project is in any other county in Vermont the Wampanoag Tribe of Gay Head (Aquinnah) shall be notified by the USACE.



GENERAL CONDITION #12 § 7 OF THE ENDANGERED SPECIES ACT

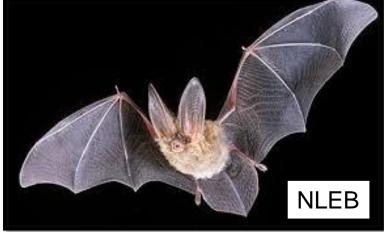


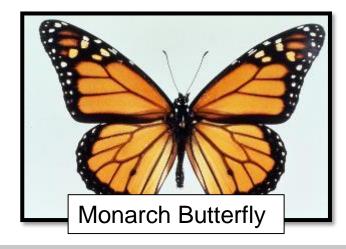












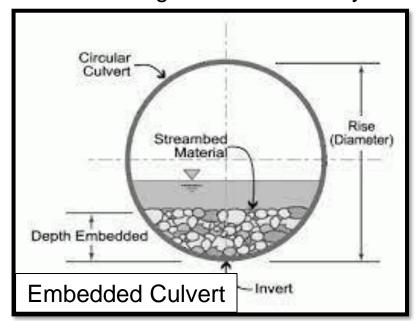


GENERAL CONDITION #20 WATERWAY/ WETLAND WORK AND CROSSING



All permanent crossings of rivers, streams, brooks, etc. shall meet the following performance standards in order to qualify for SV (See GP for entire list):

- Design the structure to maintain a streambed composition and form throughout the culvert similar to and continuous with the adjacent reaches.
- In stream work is completed between July 1 to October 1
- Permanent and temporary crossings of waterbodies and wetlands shall be installed in such a manner as to
 preserve hydraulic and ecological connectivity, on either side of the crossing. The permittee shall take
 necessary measures to correct wetland damage due to lack of hydraulic connectivity.

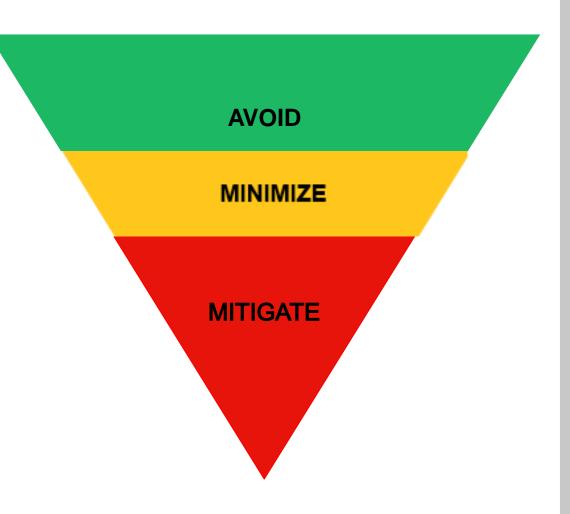




GENERAL CONDITION #3: MITIGATION (AVOIDANCE, MINIMIZATION, & COMPENSATORY MITIGATION)



- AVOID IMPACTS to waters of the U.S. to the maximum extent practicable
- MINIMIZE IMPACTS to waters of the U.S. to the maximum extent practicable
- MITIGATE for the unavoidable impacts of the project
 - VT In-Lieu-Fee



DUCKS UNLIMITED-VERMONT IN-LIEU FEE

Total land preserved: ~ 734.24 acres



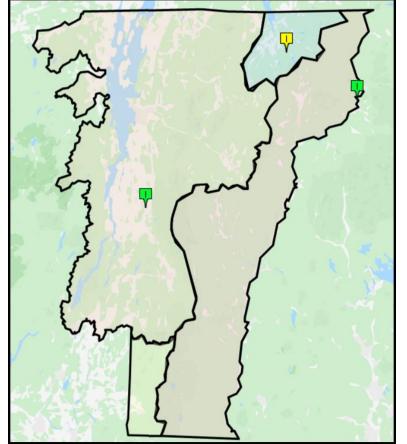
PROGRAM

Date of instrument approval: January 2011

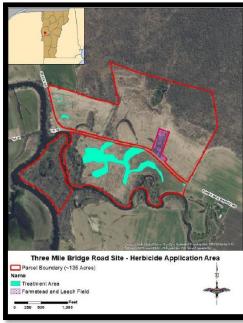
Program Sponsor: Ducks Unlimited, Inc. - Great Lakes Office

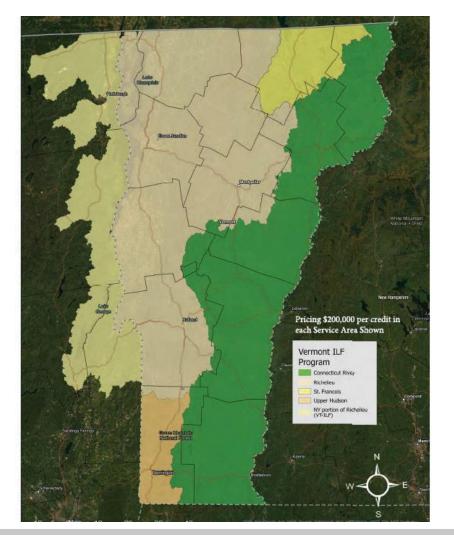
Estimated value of program (total funds accrued to date): ~\$5 Million

Total ILF projects initiated: 3 and 1 pending approval Total credits required by authorized projects: 47.82 **Cost of 1 wetland credit:** \$200,000 (aprox. \$4.59/SF)









Number of Service Areas: 4 (*Richelieu extends into the State of New York)

USACE VERMONT PROJECT OFFICE

Contact USACE to discuss jurisdiction and permit requirements

Address:

U.S. Army Corps of Engineers Vermont Project Office 11 Lincoln Street Essex Junction, Vermont

Phone:

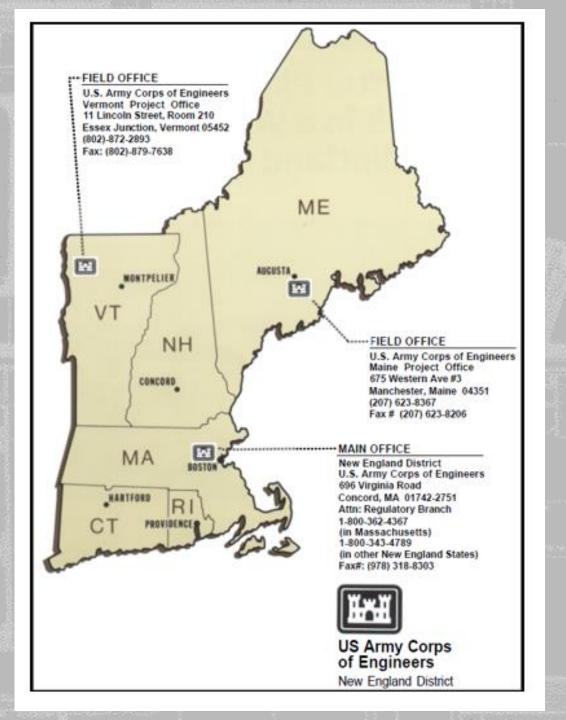
802-872-2893

Email:

cenae-r-vt@usace.army.mil







QUESTIONS?





