



US Army Corps
of Engineers
Buffalo District

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

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What does the Corps do?



Navigation



Flood control



Aquatic
Resources



Dredging/Surveys



Harbors

Regulatory Jurisdiction





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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 of the 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 U.S.'

- 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 U.S.’

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



Physical/Hydrological Functions

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

Wetland: Chemical Functions

- Waste Treatment/Pollution Interception
- Biogeochemical Cycling

Other Functions

- Habitat
- Nurseries
- Migration



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.

Fuel – peat

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 (Sec. 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 (Sec. 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 Report
- Project Plans (8.5" x 11" format!)
- Wetland Impact Acreage
- Avoidance/Minimization Summary
- Wetland Functional Assessment
- Proposed Conceptual Mitigation Plan



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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



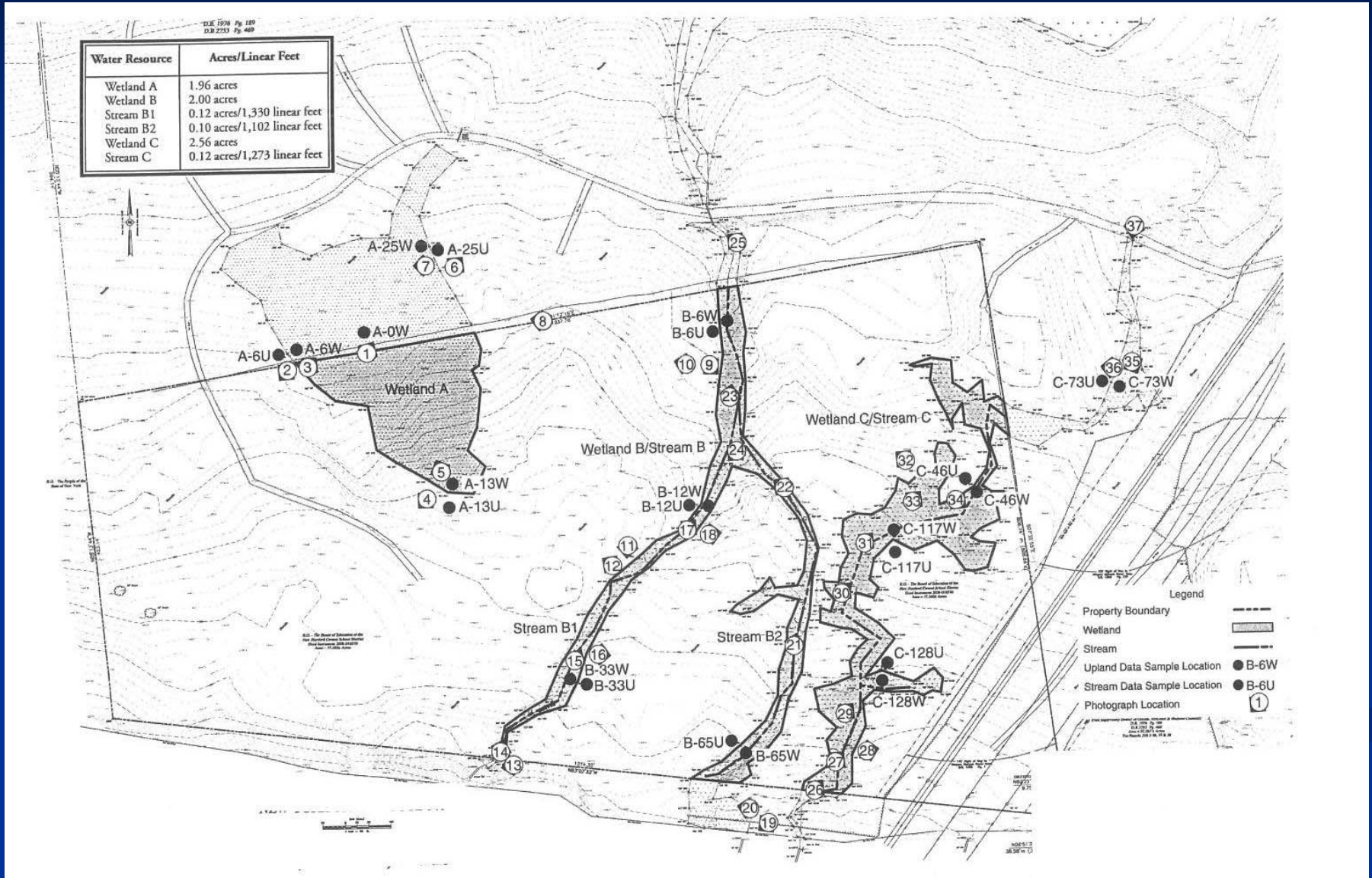
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Wetland Delineation

Performed in accordance with 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

Delineation Map





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Department of the Army

Permits Include:

Individual Permits

- Letter of Permission (LOP)
- Standard Individual Permit (IP)

General Permits

- Regional Permits (RP)
- Nationwide Permits (NWP)

Compensatory Mitigation





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Compensatory Mitigation

- ONLY FOR UNAVOIDABLE IMPACTS!!
- Based on Functions and Services approach as well as acreage
- 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



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Mitigation Design

- See Buffalo District Guidance Document at web site: www.lrb.usace.army.mil/orgs/reg/index.htm
- NOT Stormwater Retention Basins
- Replace Lost Functions and Services
- Must be Protected (Conservation Easement, Deed Restriction, Etc.)
- Monitored for at least 5 years
- Incorporate Performance Goals (i.e. plant diversity, invasive species, hydrology, etc.)



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Monitoring & 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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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?

