

Why Do You Need to Know About Permits?

As a property owner, you may already know that making use of your property can be complex. Zoning requirements have become accepted and routine, but more recent restrictions aimed at protecting natural resources are less familiar.

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Congress has recognized that wetlands (also called swamps, bogs, marshes, and quagmires), long thought to be economic wastelands, have important functions in preserving environmental quality.

To address the problem of wetlands destruction, Congress authorized a permitting process that restricts activities with the potential to do irrevocable harm to wetlands. As a result, anyone who is considering a change in the use of land must determine whether that property includes regulated wetlands, either tidal or nontidal, and whether a permit is required before any changes are made.

Are There Wetlands On Your Property?

Not all wetlands subject to regulation have enough water for ducks to land in, and some wetlands don't always look wet, but still may require a permit before they can be disturbed. How can you determine whether you have property that may be protected by federal or state regulations?

Do any of these characteristics describe parts of your property?

- Is there an area that doesn't usually look wet, but that squishes underfoot during some periods of the year?
- Are there areas where rainwater stands on the surface for days or weeks during some seasons?
- Is there a river, stream, or creek with soggy land on either side?
- Are there water marks on trees or buildings, indication where water covered the area to that depth in the past?
- Are there lines of debris washed onto the land, or layers of sediments left in trees or shrubs by past flooding?

A "yes" to any of these questions may mean that parts of your property could be subject to state and federal regulations. Identifying wetlands areas that are regulated can be a complex process, involving the presence of

certain plants and special soil types, as well as standing water or saturated soil. However, you can get help in finding out whether there are regulated wetlands on your property from the U.S. Army Corps of Engineers.

Where Can You Get Help?

The U.S. Army Corps of Engineers is the principal agency that administers the wetlands permit program and makes the final decision on permit applications.

You can ask the Corps to determine the presence of wetlands on your land.

If you aren't sure whether a damp area on your property is a wetlands, you can request a site visit from the local field-office scientist of the Corps of Engineers, who will make a preliminary determination about the presence of absence of regulated wetlands on the site.

Even if you are not submitting a permit application, you can ask the Corps to determine the presence of wetlands on your land. When wetlands identification is not part of a permit process, it may be some time before a site visit can occur, since the Corps' first priority is to identify wetlands on property for which permits are pending.

If you are planning a construction project, the local field-office scientist also can help you identify alternative ways of carrying out the project without affecting wetlands, so that your work need not be delayed by the permit process. In fact, although few permits are actually denied (less than three percent of all applications), about one-third are significantly modified to reduce wetlands impact.

The precise boundaries of the land subject to regulation is crucial information in applications for wetlands permits. Determining the actual extent of the wetlands, and identifying the line where it meets uplands, usually is done by the Corps after an application has been filed, particularly for minor projects with little wetlands impact. However, an independent assessment of wetlands boundaries may be necessary when several acres are involved, and will speed the permit process. The Corps' field offices maintain a list of wetlands consultants in your area.

Who Needs Permits?

Generally, a permit is required any time material is placed in a water body, or its adjacent wetlands, for any purpose. Permits also are required for activities in other kinds of wetlands that may not be next to open water; the placement of dredged or fill materials in wetlands is the triggering activity that makes a permit necessary.

If you plan to carry out any of these activities on your property, you should contact the Corps of Engineers:

- building a structure, or paving an area for roads or parking, on property that includes regulated wetlands
- erecting a bulkhead or using stone riprap to protect a river edge or shoreline from erosion, especially where wetlands will be filled in behind the shoreline
- protection
- dredging or damming a stream or wetlands to create a pond or lake
- building a boat-dock, pier, or mooring piles on a shoreline or river bank
- clearing undisturbed wetlands to grow crops

Conditions That May Require a Permit

1. The water body is tidal and you are:

- dredging channelward of mean high water,
- filling channelward of mean high water,
- building a structure channelward of mean high water,
- filling channelward of the high tide line (extreme high water) but landward of mean high water, or
- discharging fill into adjacent wetlands

2. The water body is nontidal, a traditionally navigable stream, and you are:

- dredging channelward of the ordinary high water elevation
- building a structure channelward of ordinary high water elevation
- filling channelward of the ordinary high water elevation
- filling landward of ordinary high water, but into adjacent wetlands

3. The waterbody is nontidal, is not a traditionally navigable stream, and the stream has a normal flow greater than five cubic feet per second, and you are:

- filling channelward of the ordinary high water elevation

- filling into adjacent wetlands
- filling completely across the stream (a dam)
- channelizing the stream channelward of the ordinary high water elevation

4. The waterbody is nontidal, and is a lake, impoundment, isolated wetlands, or headwaters, and you are:

- filling or dredging

Aren't There Exemptions?

Established agriculture, timbering, and ranching operations are exempted from the Corps' jurisdiction, as long as these activities are ongoing and do not convert wetlands to a new use.

Examples of exempted activities include plowing, cultivation, farm-pond and irrigation-ditch maintenance, construction of farming or forestry roads, and soil conservation practices.

What Type of Permit Will You Need?

There are three kinds of permits for activities that alter wetlands: nationwide, regional and individual permits.

Both the nationwide and regional permits are general authorization. To avoid the burdensome and time consuming paperwork that would result if each project were considered individually, the Corps recognizes that certain types of activities receive a streamlined review.

In a few cases, no notification or permit application is required to conduct a proposed activity. However, you may wish to receive confirmation from the Corps that your proposed project is covered by these general permits.

Whatever the project, general permits always are subject to certain conditions, for example, minimizing or avoiding discharges into wetlands, avoiding impact on aquatic species, and proper maintenance of structures.

Applications for activities with minimal environmental impacts receive a streamlined review.

If these conditions are not met, then the property owner may be subject to enforcement action and fines. To be sure that these conditions are met, you

can request the Corps to review the project and provide a letter stating that the activity as proposed satisfies the special conditions of a general permit.

Is Your Project Covered By a Nationwide Permit?

If you are considering construction in or near wetlands areas, your work may be covered by a nationwide permit. This type of permit covers activities that are similar across the nation, such as construction of road crossings, boat ramps, or farm building.

Some activities covered by nationwide permits do not require any notification to regulating agencies. However, in some cases, the Corps' district office must receive a notification letter (called a pre-discharged notification) before construction begins and, in some of those cases, the site's wetlands must be delineated. If it appears that your proposed project is covered by a nationwide permit, you can request a site visit from the local Corps representative to determine whether a pre-discharged notification is required.

In many cases, even if an activity is covered by a nationwide permit, the Virginia Marine Resources Commission or a local wetlands board (discussed later in this guide) must approve the project, so an application must be filed. VMRC recommends that an application be filed for any of these activities to ensure that your project will not be subject to legal action. Applications for these activities receive a speedy review.

Is Your Project Covered By a Regional Permit?

If you are considering an activity that may affect a wetland, and that is not covered by a nationwide permit, check to see whether the activity is covered by one of the Corps' regional permits for Virginia. These permits, like nationwide permits, are designed to facilitate the permitting process, but they differ in that they are specific to the region in which they are issued.

Examples in Virginia include maintenance of existing drainage ditches, placement of navigation buoys, or activities of the Virginia Department of Transportation. Applications are generally required to obtain these permits, but like the nationwide permits, they undergo a shorter review than individual permits.

Does Your Project Need An individual Permit?

If your project is not covered by a nationwide or regional permit, you must apply for an individual permit, which is used for more complex projects than those covered by the general permits. An individual permit is issued after the Corps has evaluated the specific project, and determined that the proposed activity is not contrary to the public interest.

Individual Permits: What Is the Process?

No matter what kind of wetlands are on your property (whether tidal or nontidal), your application for an individual permit must be submitted to the Virginia Marine Resources Commission (VMRC). To streamline the application process for individual permits, VMRC serves as the general clearinghouse by sending applications to appropriate federal, state, and local agencies for review.

Generally, the individual process involves these steps:

Step 1: A permit application is sent to VMRC, where it is assigned an application number and routed to all reviewing agencies.

Step 2: Within 15 days after an application is received, the applicant is notified if more information is needed. Once the application is complete, VMRC and the Corps issue public notice of the proposed project, and the public is invited to comment. Public comment periods last 15 to 30 days, but may be extended. To be included on mailing lists for public notice, contact the Corps' district office in Norfolk. At the end of the public comment period, objections to the application are furnished to the applicant, who may voluntarily attempt to resolve conflicts with objectors. Objections often concern obstacles to navigation, such as piers or boathouses. Some objections, such as those concerning the exact location of property lines, or existing legal restrictions on deeds, will not cause the Corps to deny a permit, but local laws and regulations still may have to be satisfied.

VMRC holds monthly public meetings in Newport News to hear public concerns when objections to a proposed project have been raised during the public comment period.

Step 3: The application is reviewed at joint meetings of state and federal review agencies, held monthly. A public hearing may be held by the Corps, though requests for these hearings are granted only if information on the

project can be obtained in no other way, and very few are granted. Thirty days advance notice is given for public hearings.

Step 4: The application is either approved or disapproved. If the application is not approvable, the Corps will inform the applicant of a preliminary recommendation of denial, and allow time for the application to be modified and resubmitted. If modifications are substantial, the application may need to go back through the public notice process; otherwise, it is reviewed once again by the state and federal agencies, and the permit is either approved or denied.

How Long Does the Permit Process Take?

The Corps' policy is to approve or deny an application within 60 days after the complete application is received. In some cases, gathering information to adequately review an individual permit application can be a lengthy process. An applicant's request for the Corps to identify wetlands on a large site may make the review period longer, as may public hearings on compliance with state regulations.

Accomack County does have a Wetlands Board