

Chapter 4. Regulatory Considerations

All wetland restoration projects in Vermont need to comply with federal, state, and local regulations. Depending on the size and complexity of the project, as well as the size and significance of the associated wetlands, this process will vary in the amount of time and effort involved. So, plan accordingly. Anything more involved than passive restoration or simple revegetation will likely at least require submitting a restoration plan to the Vermont Wetlands Program and receiving approval before work can begin.

In the sections below we help you navigate the regulatory framework by describing the most relevant federal, state, and local regulations in turn. You will need to consider how each category of regulations may impact your project and understand that it is the responsibility of the project proponent to apply for and obtain all required approvals. While we lay out the basic framework of the relevant regulations here, it is always recommended to read the most current regulations and permitting conditions for yourself.

Regulatory Quick Reference Guide	
MAJOR CONSIDERATIONS	Federal US Army Corps of Engineers General Permit If your project is eligible for self-verification under GP 10, no application or notification is required. If not, Contact NE District of the USACE for pre-construction notification.
	State Vermont Wetland Rules All projects, with few exceptions, must submit a restoration plan to the Vermont Wetlands Program and receive approval before work can begin. If your project involves placing fill or cutting trees in a wetland or its buffer, or constructing new access routes or trails, further State permitting may be required.
	Vermont Stream Alteration Rule If your project involves modifying a stream channel you may need a Stream Alteration Permit. Modifications greater than 10 cubic yards in perennial streams require permitting. Contact the District River Management Engineer.
Local Zoning, Land Use, and Local Ordinances. Investigate your local regulations and contact the town Zoning Administrator or town Planning Commission to ask about any local concerns.	
OTHER CONSIDERATIONS	National Historic Preservation Act: Applies to historical sites and archeological artifacts and remains. Contact the Division for Historic Preservation (VDHP).
	Flood Hazard and River Corridors: Check ANR Atlas for nearby areas and corridors. Contact Town if project is located near a river or large stream.
	Lake Encroachment Permitting and the Shoreline Protection Act: May apply if project is within 250 feet of a lake or pond. Contact regional Lake and Shoreland Permit Analyst for technical assistance.
	Rare, Threatened, and Endangered Species: Check ANR Atlas for nearby occurrences. Contact Vermont Fish & Wildlife Department if relevant.
Construction Stormwater Permit: May apply for certain thresholds of earth disturbance. Contact Vermont Stormwater Division.	
Act 250: Restoration projects must comply with the terms of existing Act 250 permits.	
Easements and Covenants: Restoration projects must comply with the terms and conditions of existing easements and covenants.	

Federal Regulations

In Vermont, the New England District of the U.S. Army Corps of Engineers (USACE) regulates work conducted in navigable waterways under the Rivers and Harbors Act, as well as the discharge of dredged or fill material into wetlands and aquatic areas under the Clean Water Act. This effectively means that all work within any wetland, stream, river, pond or lake requires a permit from USACE.

U.S. Army Corps of Engineers - General Permits

To make the process more efficient, the New England District has issued general permits (GPs) for certain activities with minimal adverse effects on the aquatic environment. If your project qualifies for what is called self-verification authorization, the project may proceed in compliance with federal regulations without application or notification to the USACE. If it does not qualify for self-verification, a pre-construction notification must be submitted to the USACE, and written verification must be obtained before starting work. If you have any questions, contact information is available on the New England USACE website, and pre-application meetings are encouraged.



Self-verification eligible projects must also comply with other federal laws such as the National Historic Preservation Act, the Endangered Species Act, and the Wild and Scenic Rivers Act. The Vermont Division of Historic Preservation must be contacted if any previously unknown historic, cultural, or archeological remains or artifacts are discovered during permitted work.

The most relevant GP for wetland restoration projects is GP 10, Aquatic Habitat Restoration and Enhancement Activities. It is important to note that USACE GPs are valid for 5 years and their conditions may change when they are renewed. Ensure that you are reviewing the most current GP criteria.

Example GP 10 from the 2022-2027 Department of Army General Permits for the State of Vermont:

GP 10. Aquatic Habitat Restoration, Establishment and Enhancement Activities (Sections 10 and 404): Activities in waters of the United States (WOTUS) associated with the restoration, enhancement, and establishment of wetlands and riparian areas; the restoration and enhancement of streams and other open waters; the relocation of non-navigable WOTUS, including streams and associated wetlands for reestablishment of a natural stream morphology and reconnection of the floodplain; and the restoration and enhancement of shellfish, fin fish and wildlife, provided those activities result in net increases in aquatic resource functions and services.

Not authorized under GP 10: Stream channelization activities.

Self-Verification Eligible	Pre-Construction Notification Required
<ol style="list-style-type: none"> 1. No fill in Lake Champlain, Lake Memphremagog, Wallace Pond and adjacent wetlands 2. Permanent and temporary impacts are < 5,000 SF in waterways and/or wetlands 3. The activity does not convert a stream to wetland or vice versa, or wetland to a pond or uplands 4. Temporary structures in navigable WOTUS not exceeding 30 days 	<ol style="list-style-type: none"> 1. Work not eligible for self-verification 2. Permanent or temporary impacts are: <ol style="list-style-type: none"> a. In Lake Champlain, Lake Memphremagog, Wallace Pond, adjacent wetlands; or b. ≥5,000 SF in all other waterways and/or wetlands. 3. Permanent structures in navigable WOTUS 4. Sea Lamprey control projects 5. Water impoundments 6. Dam removals 7. Restoration, establishment and/or enhancement activities approved for use by a USACE-approved in-lieu fee program or USACE-approved mitigation bank, with impacts of any size

Other GP General Conditions:

No impacts on historic properties

No impacts to federally threatened and endangered species

No more than minimal impact on navigation

Construction mats are allowed as temporary impacts

Areas of temporary fill and/or cofferdams must be included in total impacts to determine eligibility

No dewatering shall occur with direct discharge to waters or wetlands. Discharge points back into waters and wetlands shall use energy dissipators and erosion and sediment controls

The material in sandbags shall not be released during removal

In-stream work shall be conducted during the low flow period of July 1 to October 1 in any year

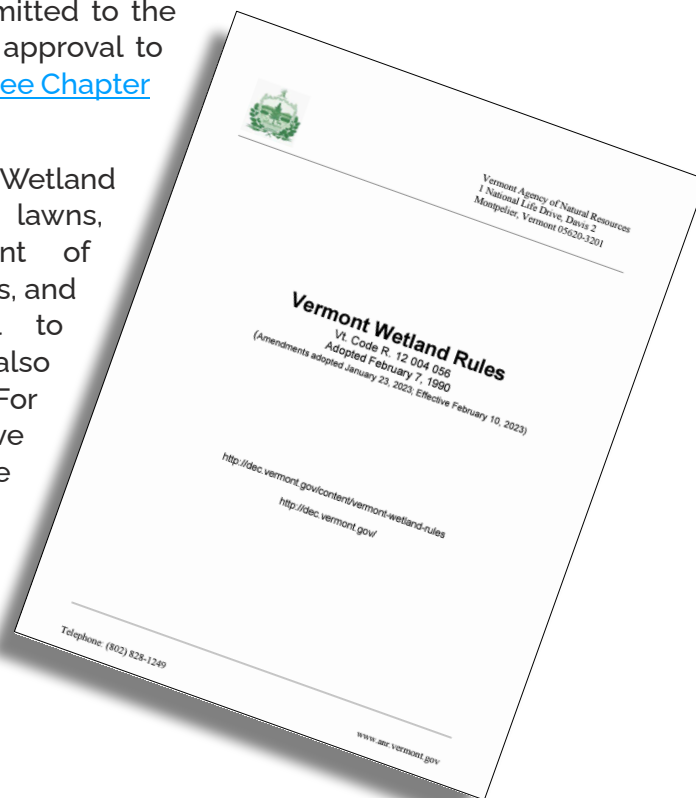
State Regulations

There are two major pieces of state legislation regulating activities likely to occur during wetland restoration: the Vermont Wetland Rules and the Vermont Stream Alteration Rule. We cover each in turn. Other potential state regulatory considerations are described at the end of the section.

Vermont Wetland Rules**Allowed Use**

Wetland restoration, including invasive species management, is currently an allowed use under the Vermont Wetland Rules, provided that the activities are carried out in accordance with an approved plan. This means that wetland restoration projects taking place within wetlands or their buffers may not always need a permit, but they do always require a restoration plan to be submitted to the Vermont Wetlands Program, and for approval to be administered before work begins ([see Chapter 2](#)).

THE EXCEPTION: According to the Wetland Rules, “Activities within existing lawns, including mowing, the placement of barbecue pits, sand boxes, bird houses, and other similar activities incidental to ordinary residential use” are also considered an allowed use. For restoration projects that only involve passive restoration or simple revegetation planting, a restoration plan may not be necessary. If in doubt, contact the Vermont Wetlands Program for advice.



Permit Triggers

Though wetland restoration is an allowed use, there are certain activities that may be part of a restoration project that still require permitting. Your District Wetland Ecologist will determine whether or not your project requires permitting. Here are some guidelines:

FILL

Placement of fill within a regulated wetland or its buffer often triggers a permit requirement. This may be relevant if a project involves stockpiling soil or creating a new access route with roadbed material or other fill. However:

Fill used directly to restore ecological processes (such as when plugging ditches) likely won't trigger permitting.

Access routes built from temporary timber mats do not need a permit, so long as there is no cutting of woody vegetation, minimal soil compaction, and the mats are in place for less than one growing season.

Access routes that do not involve fill and are later restored during the project may not need a permit.

TRAILS

Creating new trails may require a permit.

Site Visits and Wetland Delineations

As part of the restoration plan review, the District Wetlands Ecologist may require a site visit. This is more likely in scenarios where permits are potentially required, which is also when a formal wetland delineation conducted by a qualified professional would be required.



Most wetland delineations will need to be conducted during the growing season.

Vermont Stream Alteration Rule

The Vermont Stream Alteration Rule applies to perennial streams and watercourses. These streams generally have a watershed greater than 0.5 square miles and surface flows that are not frequently interrupted during normal seasonal low flow periods. A summarized version of the rule is as follows:

A person shall not change, alter, or modify the course, current, or cross section of any watercourse (i.e. perennial stream) by movement, fill, or excavation of ten cubic yards or more of instream material in any year, unless authorized.

Many restoration projects will not involve the movement, fill, or excavation of ten cubic yards or more of instream materials, in which case authorization will not be necessary. If your plans do involve significant stream alteration, project managers should contact the DEC District River Management Engineer early in the planning process. They may require a site visit and can help you navigate the permitting process. Habitat improvement projects will likely be covered under the Vermont Stream Alteration General Permit.

Stream Alteration Planning Guidance:

In-stream earthwork, bank stabilization, berm removal, and floodplain reconnection must be conducted between July 1 and October 1.

Restoration practices that may, depending on the area affected, trigger the Vt. Stream Alteration Rule:

- Woody Material Addition
- BDA and PALS installation

Other State Considerations

Flood Hazard Areas and River Corridors

Flood hazard areas and river corridors are regulated by both municipalities and the state. These areas are defined in the Vermont Flood Hazard Area and River Corridor Rule, and maps of flood hazard areas and river corridors can be found on the ANR Atlas. If a flood hazard area, river corridor, or any perennial stream falls within 50 feet of your project area, you may need to obtain a permit. Contact your town Zoning Administrator or Planning Commission first to ask how to proceed. Then contact your regional River Scientist or regional Floodplain Manager if necessary. In general, projects will have to meet a No Adverse Impact Standard to avoid restricting or diverting the flow of flood waters.

Lake Encroachment Permitting and the Shoreline Protection Act

If your project is within 250 feet of a lake or pond you may need to navigate Lake Encroachment Permitting and the Shoreline Protection Act. Contact your regional Lake and Shoreland Permit Analyst for technical assistance.

Stormwater Construction Program

Construction activities that result in earth disturbance may require a Construction Stormwater Permit. This is generally for disturbances greater than 1 acre, but all projects involving earth disturbance should investigate the permitting requirements.

Rare, Threatened, and Endangered Species

Rare, threatened, and endangered species, both plants and animals, require special protection. Check for nearby occurrences and populations on the ANR Atlas and contact the Vermont Fish and Wildlife Department for advice if there are any within a half-mile of the project area.

Act 250 (Existing)

If a property has an existing Act 250 permit you will need to make sure that the restoration project complies with the conditions of the permit. Contact your Act 250 District Coordinator for assistance.

Local Regulations and Property-Specific Restrictions

In addition to State and Federal permitting programs, individual towns, and some private properties may be encumbered by restrictions, rules, or regulations relevant to a wetland restoration project.

Local Regulations

Local regulations may also impact restoration projects, but are too varied to address in this manual. The best approach is to investigate any relevant local regulations early in the planning process and contact the town Zoning Administrator or Planning Commission to ask if they have any local concerns.

Easements and Covenants

If a property has an easement or covenant you will need to make sure that the restoration project complies with their terms and conditions. Research the property ownership and easement holdings in the municipal land records. Relevant items may include conservation easements, utility rights-of-way, public trails, and public access easements.