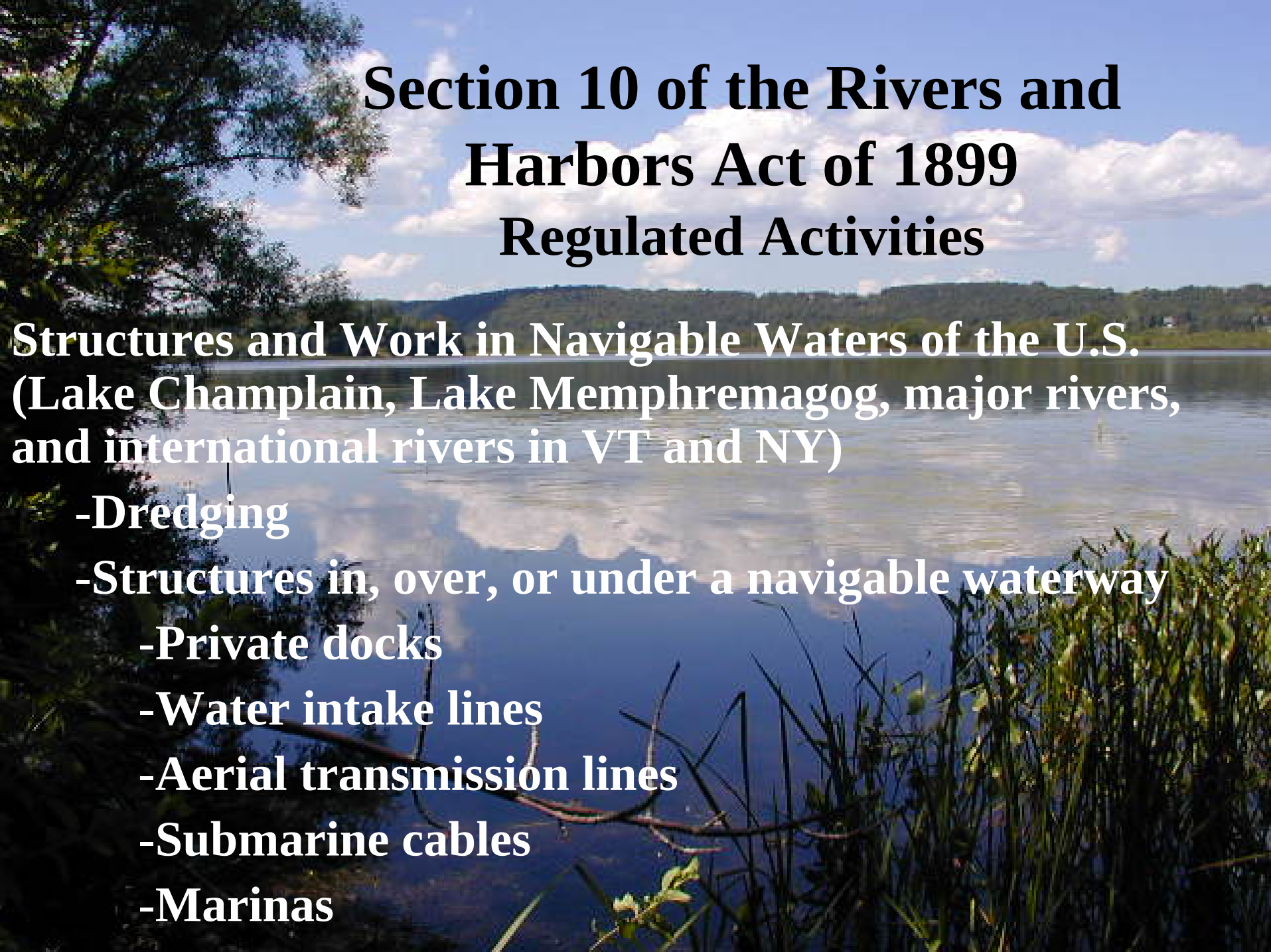
U.S. Army Corps of Engineers
Regulatory Program

Regulatory Authorities

- Section 10 of the Rivers & Harbors Act of 1899
- Section 404 of the Clean Water Act



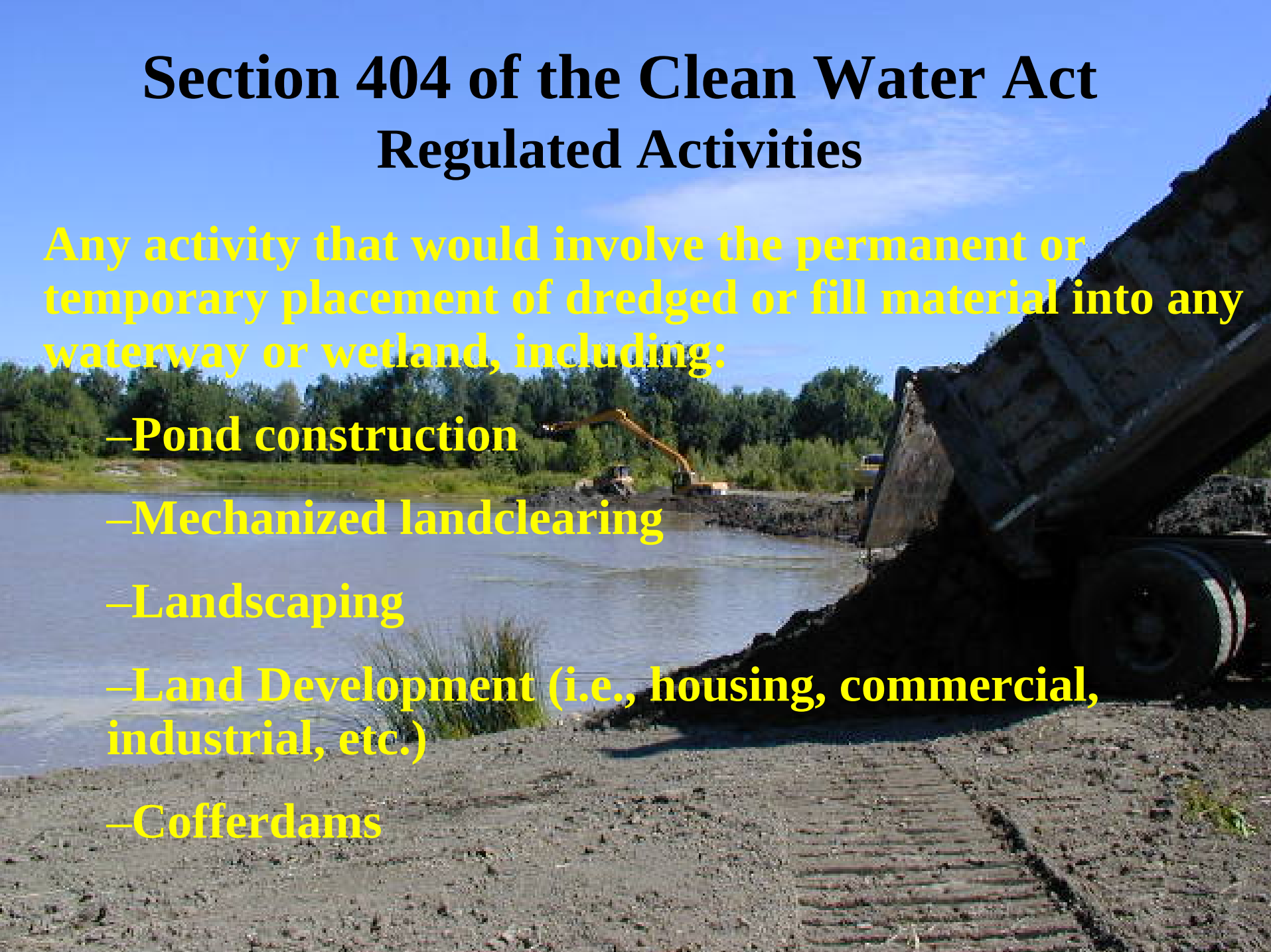
Section 10 of the Rivers and Harbors Act of 1899

Regulated Activities

Structures and Work in Navigable Waters of the U.S. (Lake Champlain, Lake Memphremagog, major rivers, and international rivers in VT and NY)

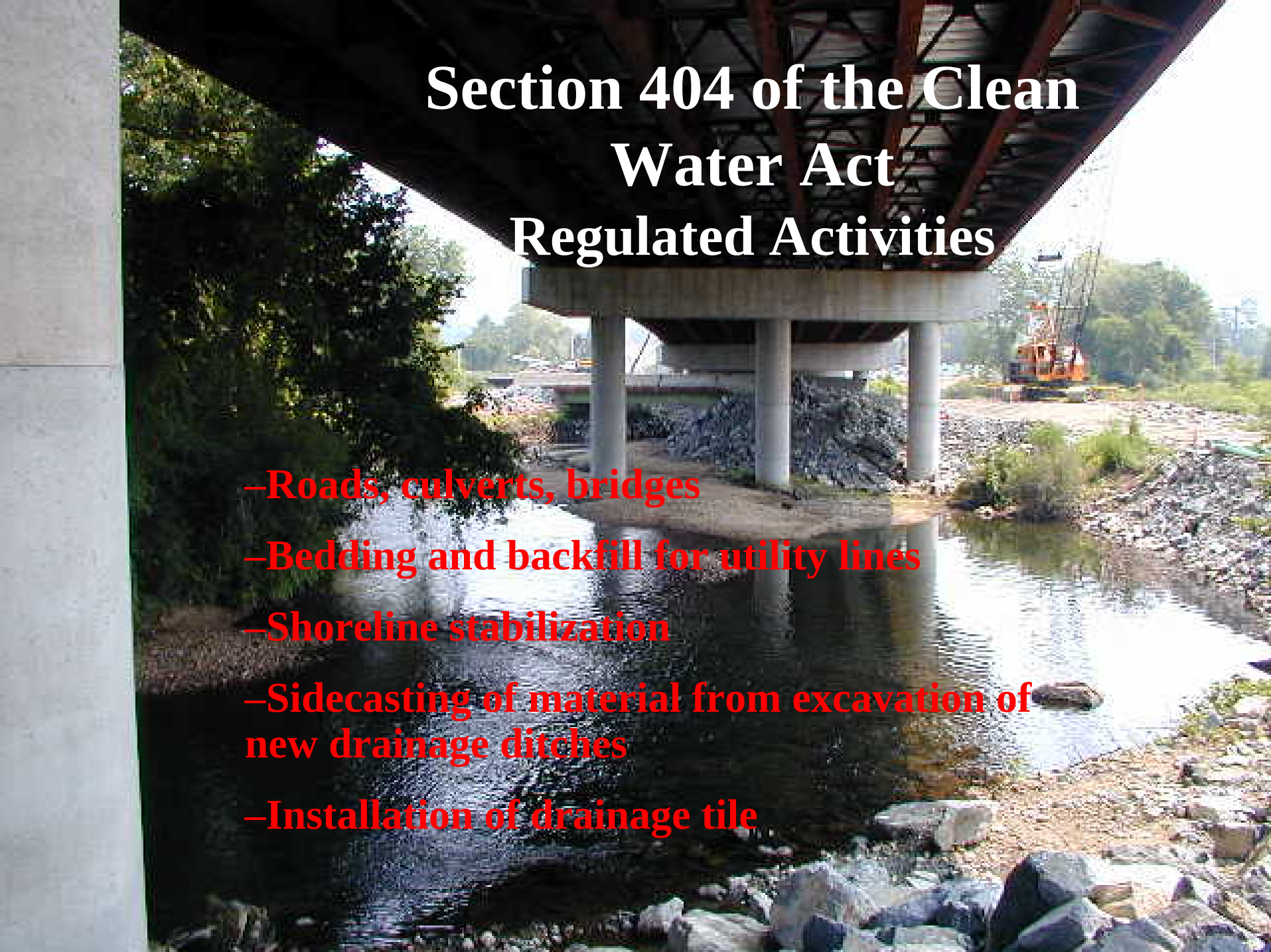
- -Dredging
- -Structures in, over, or under a navigable waterway
  - -Private docks
  - -Water intake lines
  - -Aerial transmission lines
  - -Submarine cables
  - -Marinas

Section 404 of the Clean Water Act
Regulated Activities



Any activity that would involve the permanent or temporary placement of dredged or fill material into any waterway or wetland, including:

- **–Pond construction**
- **–Mechanized landclearing**
- **–Landscaping**
- **–Land Development (i.e., housing, commercial, industrial, etc.)**
- **–Cofferdams**



Section 404 of the Clean Water Act
Regulated Activities

- –Roads, culverts, bridges
- –Bedding and backfill for utility lines
- –Shoreline stabilization
- –Sidecasting of material from excavation of new drainage ditches
- –Installation of drainage tile

Agricultural Exemptions

- Plowing, tilling, etc., provided the work would not result in a change to the hydrology of the wetland

- Farm or Stock Ponds

- Maintenance, but not construction, of drainage ditches

- Farm roads

Forms of Authorization New England District Vermont

- **VT General Permit**
  - **Minimal Impact Projects – impacts not to exceed one acre**
- **Individual Permit**
  - **Projects with greater than minimal impacts or in excess of one acre of impact**

South Bay, Lake Memphremagog, Newport, VT

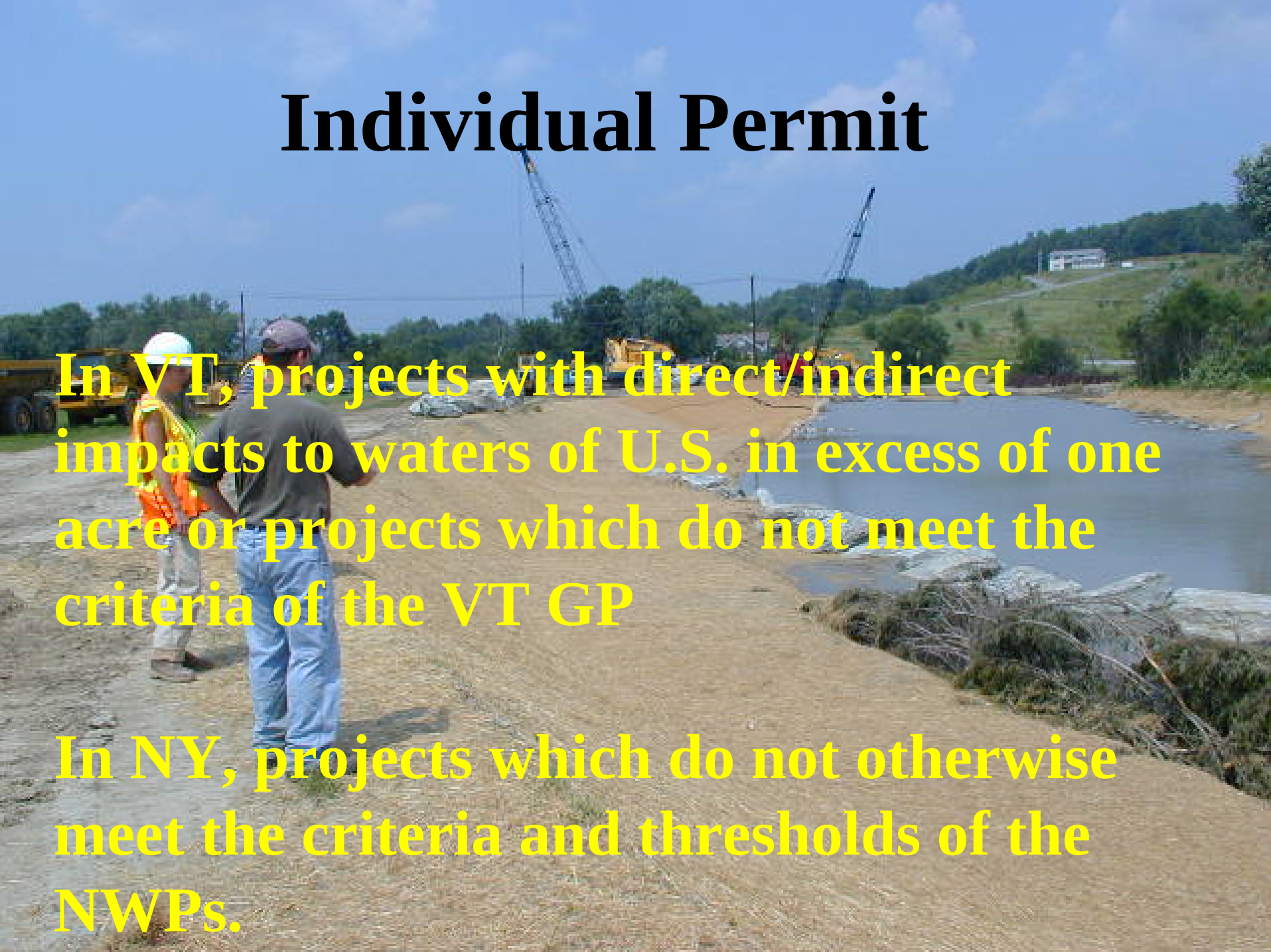
Forms of Authorization
New York District

-Individual Permits

-Nationwide General Permits

- NWP #3 – Maintenance
- NWP# 13 – Bank Stabilization
- NWP #14 – Linear Transportation Projects
- NWP #18 – Minor Discharges
- NWP #39 – Commercial/Institutional Developments
- NWP # 40 – Agricultural Activities

Individual Permit



In VT, projects with direct/indirect impacts to waters of U.S. in excess of one acre or projects which do not meet the criteria of the VT GP

In NY, projects which do not otherwise meet the criteria and thresholds of the NWPs.

Alternatives Analysis

- **Only the Least Environmentally Damaging Practicable Alternative (LEDPA) to accomplish the basic project purpose can be permitted**

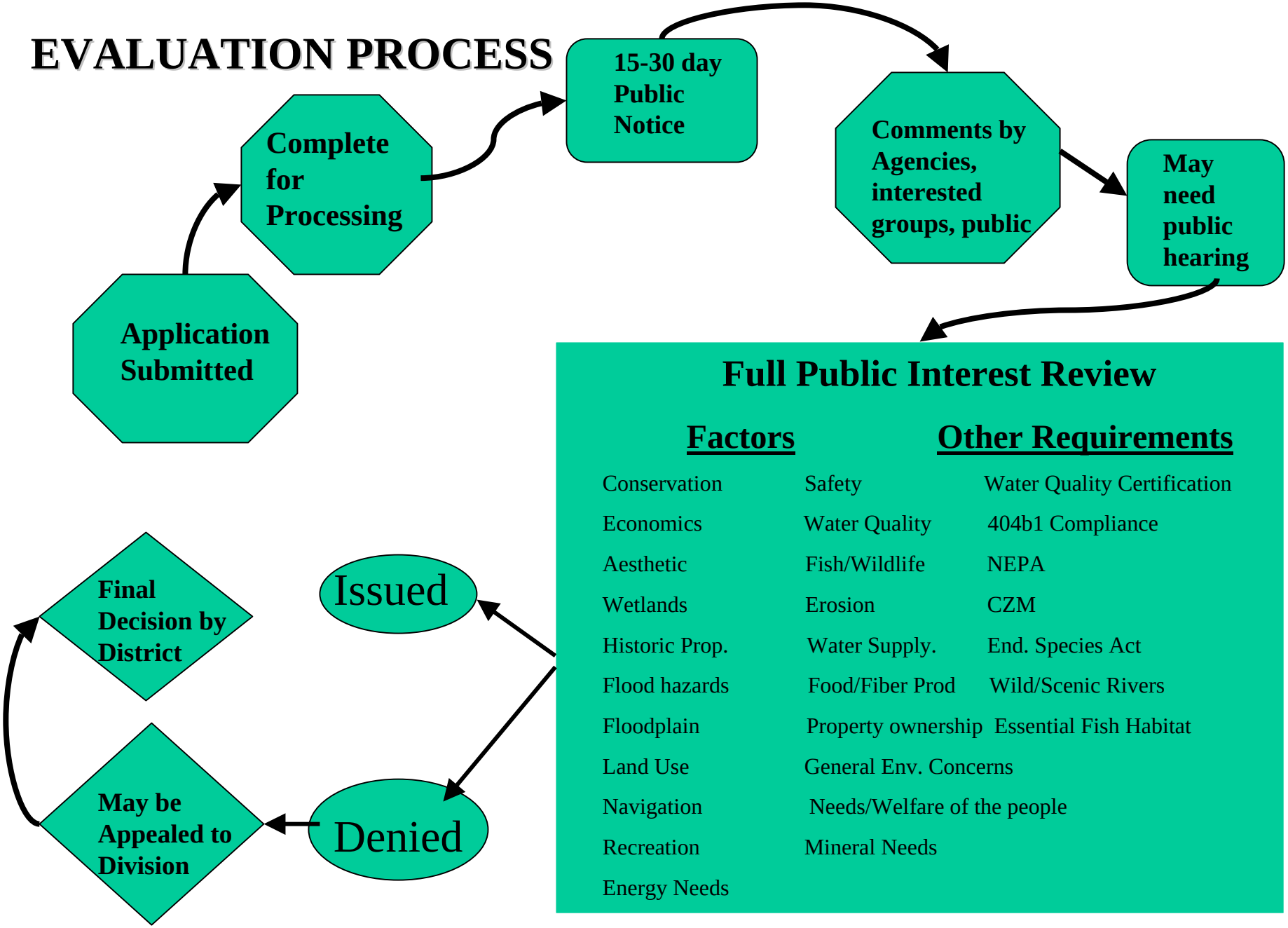
Alternatives Analysis/Mitigation Sequencing

AVOID impacts to waters of the U.S. to the maximum extent practicable (off-site alternatives analysis; leads to LEDPA site)

MINIMIZE impacts to waters of the U.S. (at the LEDPA site) to the maximum extent practicable

MITIGATE for the unavoidable impacts of the project

INDIVIDUAL PERMIT EVALUATION PROCESS



Our Resource Agency Partners

U.S. Fish & Wildlife Service
U.S. Environmental Protection Agency
National Marine Fisheries Service
USDA NRCS
VT/NY State Historic Preservation Offices
VT/NYS Departments of Environmental Conservation
Adirondack Park Agency

U.S. Fish & Wildlife Service

- Impacts to fish and wildlife habitat

- Required to consult under Section 7 of the Endangered Species Act when a project could result in impacts to a Federally listed threatened or endangered species or their critical habitat.

U.S. Environmental Protection Agency

- Impacts to Water Quality

- Alternatives [Compliance with 404(b)(1) Guidelines]

National Marine Fisheries Service

- Impacts to Essential Fish Habitat

USDA Natural Resources Conservation Service

- Agricultural issues

VT and NY State Historic Preservation Offices

Effects to cultural resources (archaeological and/or historic) that are eligible for the National Register of Historic Places

VT and NYS Departments of Environmental Conservation

- Water Quality Certification

- Similar goals in regulatory programs

Adirondack Park Agency

Activities within the Adirondack Park

Questions on the
Permit Process??

Vermont Agricultural Conversions

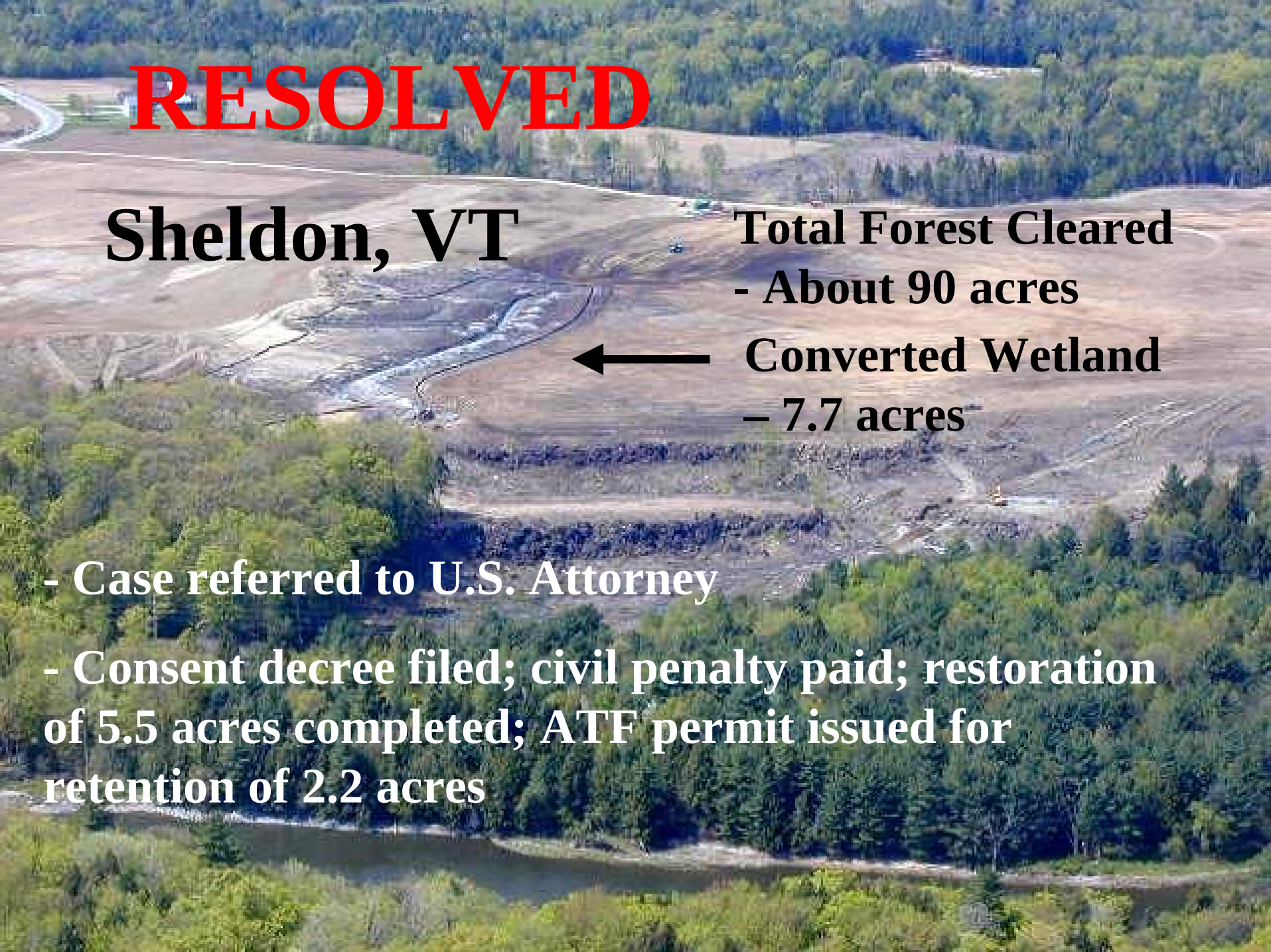
The Problem:

- Large land conversion projects where forest is being converted into cropland.
- Smaller projects where existing farm fields have been expanded or improved with additional drainage.

Why Do We Have Jurisdiction?

While the conversion of wetland to cropland still retains the acreage as open space, the methodology necessary to accomplish the conversion is usually jurisdictional.

- **–Mechanized landclearing**
- **–Ditching with sidecasting of excavated material**
- **–Discharge of fill (backfilling) associated with the installation of drainage tile**



RESOLVED

Sheldon, VT

Total Forest Cleared
- About 90 acres

Converted Wetland
– 7.7 acres

- Case referred to U.S. Attorney

- Consent decree filed; civil penalty paid; restoration of 5.5 acres completed; ATF permit issued for retention of 2.2 acres

RESOLVED

Fairfield, VT

- 4.6 acres of wetland conversion and relocation of stream
- Case referred to U.S. Attorney
- Consent Decree
- Restoration Complete
- Civil Penalty Paid

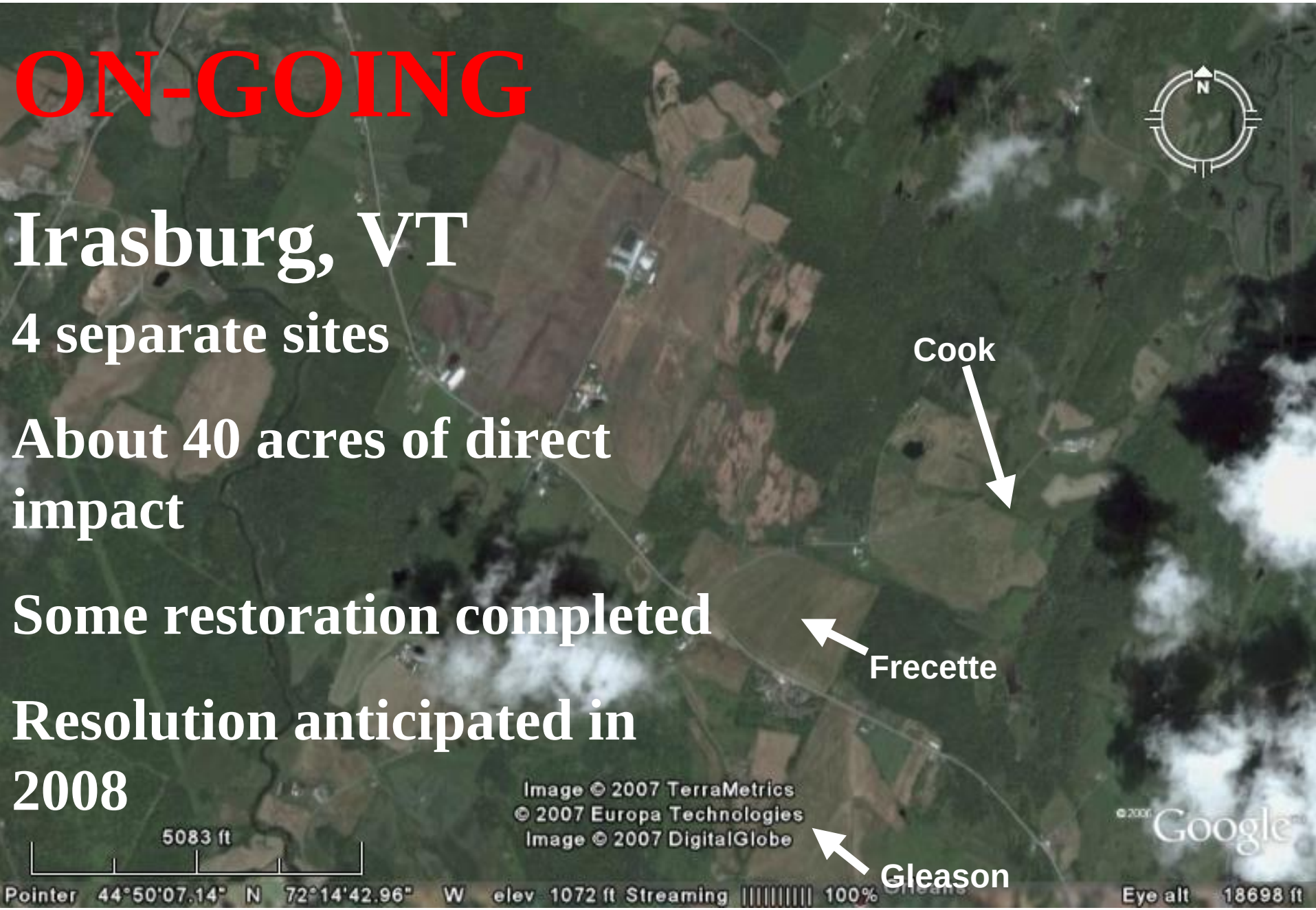
RESOLVED

St. Albans, VT

- 42 acre conversion of forested, scrub-shrub, and “old field” wetland.

- Joint Corps/EPA negotiations with landowner and his attorney for resolution

- Restoration of 32 acres; ATF permit for retention of 10 acres of conversion issued


ON-GOING
Irasburg, VT
4 separate sites
About 40 acres of direct impact
Some restoration completed
Resolution anticipated in 2008
Cook
Frecette
Gleason
N
Image © 2007 TerraMetrics
© 2007 Europa Technologies
Image © 2007 DigitalGlobe
5083 ft
Google
Pointer 44°50'07.14" N 72°14'42.96" W elev 1072 ft Streaming 100%
Eye alt 18698 ft

Back Coventry Road

Pre/Post Clearing

Flow

Flow

Flow

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