

Appendix G

**Army Corps Letter
July 7, 2004**



CERTIFIED MAIL - RETURN RECEIPT REQUESTED



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

July 7, 2004

Regulatory Division
CENAE-R-200302257

Craig C. Lizotte
ESS Group, Inc., Suite 240
888 Worcester Street
Wellesley, MA 02482

Dear Mr. Lizotte:

This letter responds to your request for a determination of jurisdiction for wetlands areas located at Valley Motorsports Park Project off of Route 25 in Tamworth, New Hampshire.

Ruth Ladd of our Regulatory Division conducted a field inspection of the site on May 3 and 4, 2004. During this inspection, areas (labeled on the plans, "Valley Motorsports Park Project, Motorsports Holdings, LLC, Tamworth, NH", sheets EX-1 through EX-16, dated February 27, 2004 and revised May 21, 2004) were reviewed for potential jurisdiction. All wetlands on the site were determined to be Waters of the United States by reason of being contiguous or neighboring to tributary streams (including Wetland CC on Sheet EX-3).

Wetland delineations of the 6.47-acre "in-holding" Parcel A and the interior boundaries of Wetland A, as shown on Sheet EX-5, were not verified.

The delineation of Waters of the United States, including jurisdictional wetlands, on the drawing you submitted entitled "Valley Motorsports Park Project, Motorsports Holdings, LLC, Tamworth, NH", sheets EX-1 through EX-16, as revised May 21, 2004 is accurate.


Our verification of this project's wetland delineation under the January 1987 Corps of Engineers Wetlands Delineation Manual is valid for a period of five years from the date of this letter unless new information warrants revision of the determination before the expiration date.

The Corps of Engineers has implemented an administrative appeals process for jurisdictional determinations, permit denials and proffered permits whose terms and conditions you object to. A Notification of Administrative Appeal Options form and flow charts explaining the appeals process and your options are enclosed with this letter. However, in order to retain your right to appeal, you must submit the enclosed NAAO form within 60 days of this letter's date.

For appeals of permit denials, proffered permits and approved jurisdictional determinations, you must complete Section II of the NAAO form ("Request for Appeal") and submit it along with any supporting or clarifying information to the following address: James W. Haggerty, Regulatory Appeals Review Officer, US Army Engineer Division, North Atlantic, Fort Hamilton Military Community, Bldg. 301, General Lee Avenue, Brooklyn, NY 11252-6700, Telephone: (718) 765-7150, E-mail: James.W.Haggerty@nad02.usace.army.mil. Questions regarding the Corps appeals process should be directed to Mr. Paul F. Howard, Acting Chief, Policy and Technical Analysis Branch at (978) 318-8674 or at the above address.

Enclosed to this letter is a form explaining the basis for our jurisdictional determination. If you have any questions please contact Michael Hicks, of my staff, at (978)-318-8157.

Sincerely,



Christine Godfrey
Chief, Regulatory Division

Enclosures

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: Valley Motorsports Park Project		File Number: 200302257	Date: July 7, 2004
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
	PERMIT DENIAL		C
X	APPROVED JURISDICTIONAL DETERMINATION		D
	PRELIMINARY JURISDICTIONAL DETERMINATION		E

SECTION I: The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg/or> Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization in care of "Regulatory Division." If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the District Engineer, in care of the Chief, Regulatory Division, as specified in the last paragraph of the coverletter. Your objections must be received within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization in care of "Regulatory Division." If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer in care of: James W. Haggerty, Regulatory Appeals Review Officer, US Army Engineer Division, North Atlantic Fort Hamilton Military Community, Bldg. 301, General Lee Avenue, Brooklyn, NY 11252-6700 Telephone: (718) 765-7150, E-mail: James.W.Haggerty@nad02.usace.army.mil. The Division Engineer must receive this form within 60 days of the date of this notice.

• **C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer in care of: James W. Haggerty, Regulatory Appeals Review Officer, US Army Engineer Division, North Atlantic Fort Hamilton Military Community, Bldg. 301, General Lee Avenue, Brooklyn, NY 11252-6700. Telephone: (718) 765-7150, E-mail: James.W.Haggerty@nad02.usace.army.mil. The Division Engineer must receive this form within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer in care of: James W. Haggerty, Regulatory Appeals Review Officer, US Army Engineer Division, North Atlantic Fort Hamilton Military Community, Bldg. 301, General Lee Avenue, Brooklyn, NY 11252-6700. Phone: (718) 765-7150, E-mail: James.W.Haggerty@nad02.usace.army.mil. The Division Engineer must receive this form within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district at the address below for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process you may contact Ms. Ruth Ladd at:

Acting Chief, Policy Analysis/Technical Support Branch
Corps of Engineers
696 Virginia Road
Concord, MA 01742 or by calling (978) 318-8818

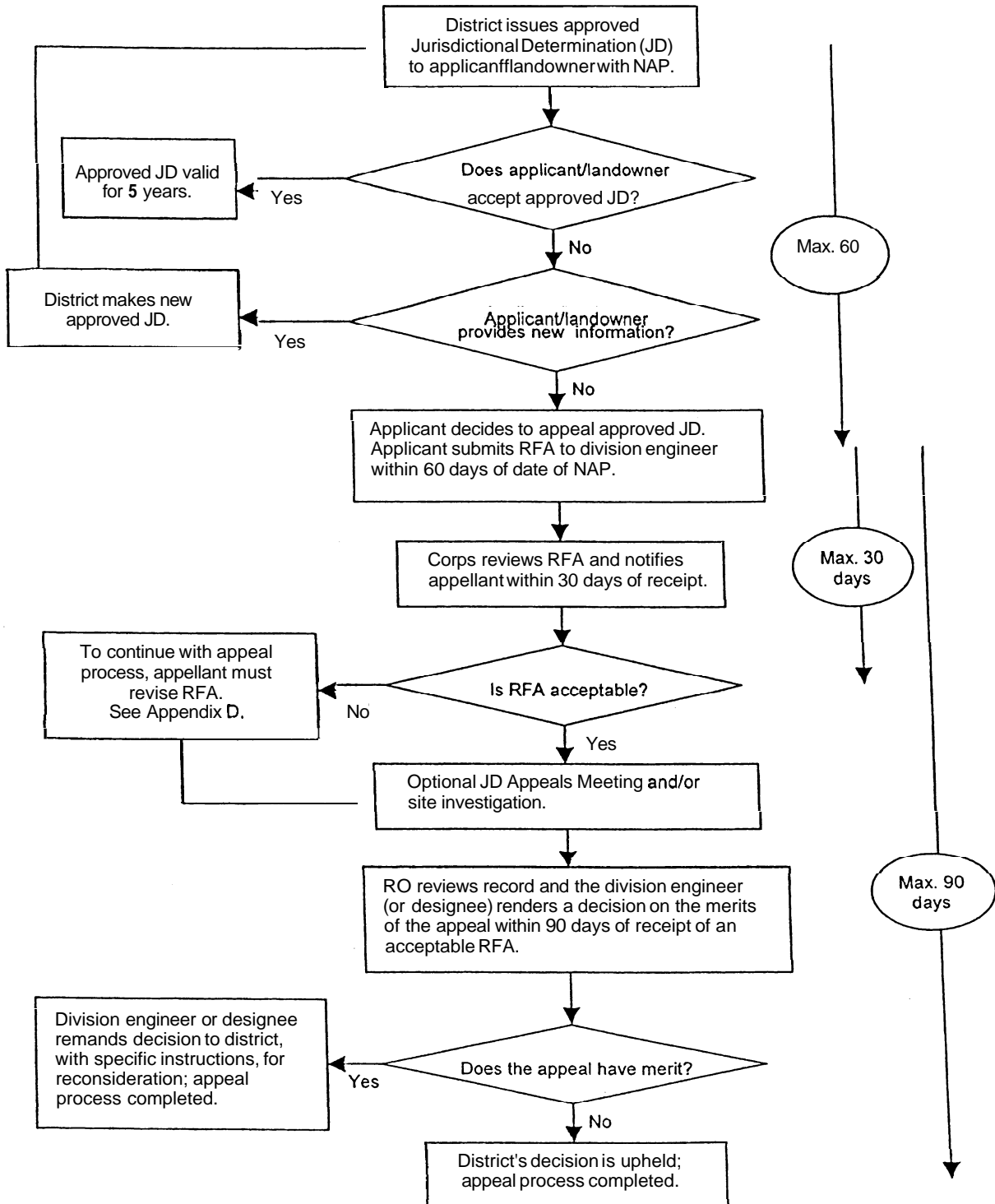
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

Administrative Appeal Process for Approved Jurisdictional Determination



**U.S. ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
BASIS OF JURISDICTIONAL DETERMINATION**

Applicant: Valley Motorsports Park Project File No. 200302257
Date: 7-7-04

I. Jurisdictional Determination

- No waters of the United States are found on this site. (See 1)
 All wetlands and/or waters on this site are waters of the U.S. (See 2 and 3)
 Some wetlands and/or waters on this site are waters of the U.S., others are not, as described in the Corps-approved delineation. (See 1, 2 and 3)

1. The jurisdictional determination outlined in the attached EA/SOF or letter, which states there **are** no waters of the United States present at the site, is based on the following:

- The site consists entirely of uplands.
- The Corps has made a case-specific determination that although there are waters present on the site, they are not Waters of the United States based on the following:
- Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR 328.3.
 - Prior converted cropland, pursuant to 33 CFR Part 328(a)(8) dated August 25, 1993.
 - Non-tidal drainage or irrigation ditches excavated on dry land.
 - Artificially irrigated areas, which would revert to upland if the irrigation ceased.
 - Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
 - Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
 - Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a) (C-H below).
 - Isolated wetland with no nexus to interstate commerce.
 - Other (explain) _____

Comments: _____

X 2. The jurisdictional determination outlined in the attached EA/SOF or letter, which states there **are** waters of the United States present at the site, is based on the following:

 The waters on the site are subject to the ebb and flow of the tide.

 The waters present at the site are part of the territorial seas (baseline to 3-mile limit).

 The waters on the site have been determined to be navigable Waters of the United States for New England (list attached.)

 The waters on the site are interstate waters, including interstate wetlands.

 The waters present at the site contain impoundments of waters otherwise defined as waters of the United States.

 X The waters present at the site are part of a tributary system to waters identified in this section.

 X There are wetlands present at the site which are adjacent to waters (other than waters that are themselves wetlands) identified in this section. Note that adjacency means bordering, contiguous or neighboring and/or ecological connections.

 The waters on the site are other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sand flats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes or natural ponds containing a nexus to interstate commerce, and are navigable.

The nexus to interstate commerce consists of:

 Recreation or other purposes

 Fish or shellfish

 Industrial or commercial purposes

 Commercially saleable timber products

 Sand, gravel, oil, gas, clay, peat, or other commodities of commerce

 Other (explain) _____

Comments: _____

3. The lateral extent of the waters of the United States at the site, including wetlands, as identified on the plans in the file was based on one or more of the following:

The limit of Corps jurisdiction for wetlands has been determined by the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and guidance supporting the Manual, based on the following:

Wetland delineation data sheets.

Site specific information on soils, vegetation, and hydrology.

Field verification conducted by the Corps on 5/3&4/04

The limit of Corps jurisdiction in a waterway has been determined to be:

OHW (non-tidal)

MHW (for Section 10)

HTL (for Section 404)

Comments: _____

Michael Hicks
Michael Hicks
Project Manager
Regulatory Branch

U.S. ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
NON-TIDAL NAVIGABLE WATERS OF THE UNITED STATES

The following non-tidal waters have been determined to be Navigable Waters of the United States subject to permit jurisdiction in the New England District area.

Maine – Kennebec River to Moosehead Lake; Penobscot River to the confluence of the East and West Branch at Medway, Maine; Lake Umbagog within the State of Maine.

New Hampshire – Merrimack River from the MA – NH state line to Concord, New Hampshire; Lake Umbagog within the State of New Hampshire; Connecticut River to Pittsburg, New Hampshire.

Massachusetts – Merrimack River to the New Hampshire state line; all of the Connecticut River within the Massachusetts state line.

Connecticut – Connecticut River to the Massachusetts state line.

Vermont – Navigability studies and determination has been completed in Vermont. The following lists show the results of these determinations:

Navigable waterways based on present or potential future use for interstate commerce:

Lake Champlain
Lake Memphremagog
Connecticut River
Ompompanoosuc River to Mile 3.8
Waits River to Mile 0.9

Navigable waterways based on past historical use for interstate commerce:

Black River from its mouth to Mile 25 Craftsbury
Battenkill River to Mile 50 Manchester
Lamoille River from its mouth to Mile 79 Greensboro
Missisquoi River from its mouth to Mile 88.5 Lowell
Otter Creek from its mouth to Mile 63.8 Procter
Winooski River from its mouth to Marshfield
Moose River from Passumpsic River to Victory Town line
Nulhegan River from its mouth to its source including the East Branch, Back Branch, and Yellow Branch
Paul Stream from its mouth to its source
East Branch, Passumpsic River from Passumpsic River to East Haven
Passumpsic River from its mouth to the East Branch
Wells River from its mouth to Groton Pond
White River from its mouth to its source