VERMONT
AGENCY OF NATURAL RESOURCES

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DATE: July 14, 2026

TO: Representative Trevor Squirrell, Chair
Legislative Committee on Administrative Rules (LCAR)
Vermont State House
115 State Street
Montpelier, VT 05633-5301
TSquirrell@leg.state.vt.us

FROM: Misty Sinsigalli, Commissioner
Vermont Department of Environmental Conservation
1 National Life Drive, Davis 3
Montpelier, VT, 05620-3520
Misty.Sinsigalli@vermont.gov

RE: Proposed Final Vermont Wetland Rules, 25-P040

Delivery via email

Dear Chair Squirrell,

Thank you for extending the adoption deadline for the proposed Vermont Wetland Rules (VWR). The extension enabled the Vermont Agency of Natural Resources (ANR or Agency) Department of Environmental Conservation (DEC) to discuss amending Section 6.26 of allowed uses relating to housing with Let's Build Homes (LBH) and the Vermont Natural Resources Council (VNRC). In turn, VNRC has been working closely with partner members of the Water Caucus. Collectively, we have reached agreement on draft changes to the proposed VWR and working together on housing issues. As such, I am submitting amended proposed Vermont Wetlands Rules for consideration by LCAR. Note however, that ANR does not speak for LBH or VNRC, the agreement should not be construed as precedential, and any legal or policy arguments and assertions contained in this letter are ours alone.

ANR continues to maintain that the original proposed rule was legally authorized, scientifically grounded, and carefully bounded. However, we recognize that in the

absence of an agreement, litigation is virtually certain and would significantly delay and undermine efforts to address the housing crisis. Litigation would likely polarize the parties and divert resources from working together on this important and complex problem. LBH and ANR support, and VNRC does not oppose, the following changes to the proposed wetland rules:

- Elimination of allowed uses for housing in unmapped Class II wetlands.
- Requirement for a wetland delineation within the last 10 years, for allowed use housing projects within the 26 to 50 foot buffer of Class II wetland.
- Change to the designated area that limits allowed uses for residential housing projects and related utilities, to within a half mile of designated areas that are served by public sewer or water services or soils that are adequate for wastewater disposal.
- Requires notification of construction to the wetland program at least thirty days prior to construction.

As amended, the construction of residential housing and associated linear utilities are allowed uses within the outer portion of Class II wetland buffers in designated areas. In addition, linear utilities are also allowed in designated areas and Class II wetlands, provided that a stringent set of best management practices are met. Please see the attached redlined documents highlighting the new changes for LCAR consideration. Attachment A and Appendix B show the changes and I have also attached a markup of the entire rule.

For the reasons set forth below, DEC requests that LCAR withdraw its objection and allow this rulemaking to proceed. The proposed amendments to Section 6.26 of the Vermont Wetland Rules now set forth two distinct allowed uses related to facilitating housing development consistent with smart growth principles within designated areas in the State. This narrow set of locations constitute about 3% of Vermont and have been designated by the State of Vermont Agency of Commerce and Community Development and the Land Use Review Board, based on the following statutes and legislation. See, 24 V.S.A. Chapter 76A, 10 V.S.A. Chapter 151 (§§ 6033 and 6034), and Act 181 of 2024. The proposed amendments include the following allowed uses:

1. the construction of housing and associated infrastructure within 25 to 50 feet of the buffers of mapped and delineated Class II wetlands.
2. the construction and installation of linear utilities within Class II wetlands in accordance with a stringent set of best management practices.

The sunset date of 2030 remains unchanged. In addition, the rule is amended to align the language related to designated areas with Act 181 of 2024, limiting allowed uses for residential housing projects and related utilities, to within a half mile of designated areas under certain circumstances. 10 V.S.A. § 6001 (3)(D)(viii)(III) This is a significant change in the scope of the allowed use.

These changes are responsive to public comments that expressed concerns about

allowing housing and utility construction in unmapped wetlands and the reliance on the current Vermont Wetland Inventory (VWI) maps under the previously proposed rules filed with LCAR. The changes also eliminate any ambiguity about whether wetland functions will be protected, and whether allowed uses for housing would undermine the statutory requirement that DEC ensure that there is a net gain of wetlands in Vermont. This proposal is eminently reasonable, targeted, evidence-based and entirely consistent with the Agency's authority. The Agency's responses to LCAR's objections in light of this proposal are outlined below.

I. Agency Authority

As noted in previous filings, Title 10 V.S.A. Chapter 37 sets forth statutory authority to adopt the Vermont Wetlands Rules under 10 V.S.A. § 905b(18) and 10 V.S.A. § 913(a). Both sections authorize ANR to promulgate wetlands rules and § 913(a) explicitly provides the Secretary with authority to promulgate allowed uses. Allowed uses usually do not impose requirements like wetland delineations, permitting, best management practices, or mitigation and compensation, however there is no prohibition from imposing such requirements.

LCAR's relied on the Attorney General Opinion 2025-01 (Opinion) in support of the objection that the Agency exceeded its authority because the proposed rule sets forth allowed uses in a portion of a wetland buffer. The Opinion states that the Secretary cannot "immediately and categorically halve" fifty-foot wetland buffers or, "unilaterally create a new, categorical exception to wetlands permitting requirements because statute requires that permitting exemptions be created by rule." Note however that the Opinion specifically supports the promulgation of allowed uses in wetlands pursuant to rulemaking undertaken in accordance with 3 V.S.A. Chapter 25. In addition, the current VWR already contains categorical classifications by the Secretary. Specifically, the rule designates certain wetlands as categorical Class II wetlands without any analysis of the site or the functions and values of such wetlands. See Section 4.6. Here, rulemaking is exactly the course of action taken by the Secretary, and the rules are consistent with both the Opinion and Title 10 V.S.A. Chapter 37.

II. Legislative Intent

It is well established that a rule must be consistent with legislative intent. A rule may not "compromise[] the intent of the authorizing statute." *Lemieux v. Tri-State Lotto Comm'n*, 164 Vt. 110, 113, 666 A.2d 1170, 1172 (1995) (citing cases); see also, 3 V.S.A. § 842(b)(2) (grounds for LCAR objections include where rule is contrary to legislative intent). In determining whether a rule complies with legislative intent, the Court examines "the plain language of the statute, and if this language is clear and unambiguous," the Court interprets and enforces "the statute according to its terms." *Maple Run Unified Sch. Dist. v. Vermont Hum. Rts. Comm'n*, 2023 VT 63, ¶ 13, 311 A.3d 139; *In re Carroll*, 2007 VT 19, ¶ 9, 181 Vt. 383, 925 A.2d 990.

LCAR and stakeholders opposed amendments to the Wetlands Rules based on the

policy and net gain sections of Title 10 V.S.A. Chapter 37, specifically §§ 901 and 918. The provisions requiring net gain of wetlands were adopted via Act 121 in 2023. The proposed changes filed with this letter eliminate any credible allegation that the allowed uses associated with housing will be inconsistent with net gain. This is because the proposal no longer contains allowed uses for housing related construction in unmapped wetlands and requires delineation within the last 10 years. The Vermont Agency of Natural Resources is engaged in wetland restoration work that results in annual net gains that are orders of magnitude larger than the impacts associated with wetland permitting. See the annual wetlands reports on wetland permitted losses and gains that the Agency submits to the General Assembly.[1]

The proposed allowed uses in the outer portion of a Class II wetland align with the statutory goal of avoiding impacts to wetlands where possible. The proposed rule allows construction only within the outer 25 feet of the 50-foot buffer; the inner 25 feet closest to the wetland will remain fully intact. This is a higher standard than any other existing allowed use, none of which require any portion of the buffer to be preserved. These provisions are narrowly defined, limited to designated growth areas representing approximately 3% of Vermont's area and will expire in 2030, whereas no other existing allowed uses under the Rules are subject to location or temporal constraints. In other words, all other allowed uses are statewide until changed in accordance with rulemaking.

In addition, the proposed allowed uses are only applicable to growth areas that are already designated for growth. Concentrated growth patterns have environmental benefits such as reducing sprawl, protecting forest blocks and habitat, reducing potential greenhouse gas emissions, and continuing to protect the highest quality wetland resources. This is a narrowly crafted, proportionate and reasoned avenue for facilitating housing development.

Finally, the rule allows for the construction and installation of linear utilities within Class II wetlands, subject to stringent best management practices and compensation for any permanent impact exceeding 5,000 square feet, consistent with 10 V.S.A. § 918(B). The best management practices are essentially equivalent to the requirements of an individual permit. As such, these proposed changes are entirely consistent with the policies of protecting wetlands and ensuring a net gain of significant wetlands in Vermont.

III. Arbitrary

LCAR contended that the reliance on updated Vermont Significant Wetlands Inventory (VSWI) was arbitrary. As noted above, the proposal no longer relies on the VSWI. It is well established that a rule will not be upheld if it is arbitrary. *In re Club 107*, 152 Vt. 320, 323, 566 A.2d 966, 968 (1989). It is not enough that a challenger disagrees with an

[1] The most recent (2026) report can be found here: Vermont-Wetland-Permitted-Losses-and-Gains-2025-Legislative-Report.pdf

agency decision. Rather, an agency's decision will be upheld where the agency "acted within the scope of its authority, made findings supported by the evidence, and articulated a rational explanation for its position." *Beyers v. Water Res. Bd.*, 2006 VT 65, ¶ 19, 180 Vt. 605, 910 A.2d 810; see also *State Dep't of Taxes v. Tri-State Indus. Laundries*, *Inc.*, 138 Vt. 292, 294, 415 A.2d 216, 218 (1980) ("judicial review of agency findings is ordinarily limited to whether, on the record developed before the agency, there is any reasonable basis for the finding"); accord *Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486, 517 (2d Cir. 2005) ("the court must uphold the regulations if [the agency] has established in the record a reasonable basis for its decision") (citation and internal quotations omitted).

The allowed uses proposed in Section 6.26 are now even more narrowly defined and limited in impact. They are only applicable to housing projects located in a small set of well-defined areas that encompass about 3% of Vermont land specifically designated as "growth areas" by the State of Vermont (in accordance with legislative intent), and they expire in 2030. The proposed rules advance important smart growth policy objectives set forth in Act 59 of 2023 and work performed in connection with the Global Warming Solutions Act, such as the Climate Action Plan and Resilience Implementation Plan. In addition, the allowed uses for housing projects continue to be subject to other regulatory oversight. For example, the rule does not exempt housing in designated areas from municipal zoning, flood regulations, U.S. Army Corps of Engineering regulations, and Vermont stormwater, wastewater, and threatened and endangered species regulations.

LCAR also asserted that the allowed use for linear utilities and application of Attachment B of the proposed Rules is arbitrary because "the rule does not demonstrate how any of the criteria . . . will be demonstrated." The standards set forth in the rules and the BMPs impose stringent requirements related to the installation of linear utilities, that are protective of wetlands. These are exactly the types or requirements that would be imposed by wetland permits. The BMPs are incorporated into the rule and are enforceable. Any person who builds housing under the allowed uses is required to register with the Wetlands Program at least thirty days prior to construction and as such, the Wetland Program will have notice and an opportunity to conduct compliance reviews.

Conclusion

In conclusion, the Agency is proposing allowed uses that apply to a limited narrowly defined type of project (i.e., housing), are geographically-constrained to designated areas to enable housing projects within 3% of Vermont land already designated for growth, and sunset on a date certain. This is a targeted, evidence-based regulatory amendment that a reasonable person would support in response to the ongoing housing crisis in Vermont. The Agency is committed to facilitating thoughtful and sustainable housing development in the State in a manner that balances the needs for housing with minimizing the resulting impacts to Vermont's natural resources, writ large.

We remain committed to finding common ground with legislators and stakeholders on reforms that create real opportunities for Vermonters to build homes in environmentally sustainable ways.

Sincerely,

Misty Sinsigalli
Commissioner
Vermont Department of Environmental Conservation

ATTACHMENT A

SECTION 6: ALLOWED USES

The following uses shall be allowed in a Class I or Class II wetland and in its buffer zone without a permit, provided that the configuration of the wetland's outlet or the flow of water into or out of the wetland is not altered and that no draining, dredging, filling, or grading occurs except as may be provided for in subsections 6.01, 6.02, 6.03, 6.04, 6.07, 6.08, 6.12, 6.13, 6.14, 6.15, 6.16, ~~and~~ 6.22, and 6.26 below. Designation of allowed uses in these rules shall not provide relief from liability for violations that commenced prior to the effective date of such allowed use.

* * * *

6.26 Construction of residential housing projects and related required utilities, including draining, dredging, filling, grading, or vegetation clearing that meet the requirements of this subsection.

a. The residential housing project is located within an area:

1) Designated under 24 V.S.A. chapter 76A as a Downtown Development District, Village Center, New Town Center, Growth Center, or Neighborhood Development Area;

2) ~~Outside~~Within one half mile of an area described in subdivision (a)(1) of this subsection, and served by public sewer or water services or soils that are adequate for wastewater disposal~~located along the extension or terminus of a public sewer or water line available for connection that serves the designated area~~, and at least 51 percent of the parcel shall be located within one-half mile of the designated center boundary; or

3) Designated by the Land Use Review Board as Tier 1A or Tier 1B in accordance with 10 V.S.A §§ 6033-6034.

b. The residential housing project is served by public sewer infrastructure or located on soils adequate for wastewater disposal and capable of supporting one or more wastewater systems to serve all proposed residential connections.

c. No draining, dredging, filling, grading, or vegetation clearing will occur nor will the residential housing project be located:

1) Within a Class I wetland or its buffer zone; or

2) ~~2)~~ Within, or within 25 feet of, ~~the mapped area~~ of a Class II wetland delineated within the past ten years, provided that the delineation is or was approved by the Secretary ~~shown on the Vermont Significant Wetlands Inventory at the time of the residential housing project's registration under~~

~~subdivision (e) of this subsection~~.

d. Notwithstanding subdivision (c)(2) of this subsection, a linear utility or access infrastructure servicing residential housing may cross ~~the mapped area of~~ a Class II wetland or within 25 feet of ~~the mapped area of~~ a Class II wetland provided:

   (i) The crossing is practicably unavoidable;

   (ii) The linear utility or access infrastructure would result in less than 5,000 square feet in permanent impact cumulatively, or, before project construction commences, offset credits have been purchased through the In Lieu Fee Program at a ratio following the U.S. Army Corps of Engineers' New England District Compensatory Mitigation Standard Operating Procedures (April 26, 2024); and

   (iii) The linear utility or access infrastructure is designed, constructed, and maintained in compliance with the Best Management Practices for Installation of Linear Utilities and Access Infrastructure Servicing Residential Housing (Appendix B).

e. The residential housing project is registered with the Secretary on or before January 1, 2030. The registrant shall notify the Secretary in writing at least ~~within~~ 30 days prior to the commencement of ~~after~~ construction ~~commences~~.

* * *

SECTION 11: REPEAL OF TEMPORARY PROVISIONS

Sections 2.1, 2.2~~43~~, 2.2~~67~~, 2.3~~43~~, and 6.26 of these rules are repealed effective January 1, 2030.

* * *

APPENDIX B - Best Management Practices for the Installation of Linear Utilities and Access Infrastructure Servicing Residential Housing

(a) **General Practices.** The following general practices are applicable to all activities eligible under subdivision (d) of subsection 6.26 of the Vermont Wetland Rules:

1. The crossing shall be in the least impactful location of the ~~mapped area of~~ Class II wetland and 25' buffer zone practicable. Please refer to section (c) of these best management practices for recommended avoidance and minimization practices that may assist in selecting an appropriate crossing location.
2. A continuous line of orange snow fence or flagging tape shall be installed along the limits of disturbance within the ~~mapped area of~~ Class II wetland and 25' buffer zone prior to the start of construction.
3. If a stormwater construction permit is required for the activity, the activity shall comply with the erosion prevention and control requirements of that permit. If no stormwater construction permit is required, the activity shall comply with the following minimum erosion prevention and sediment control requirements:
   (A) Prior to commencement of construction, a continuous line of silt fence shall be properly installed immediately upgradient of the snow fence or tape and shall be regularly maintained. Silt fence shall be installed on the contour and shall not be installed in areas of concentrated flow, including stream channels or ditches.
   (B) Accumulated sediment shall be removed from the silt fence before and after any significant storm event or whenever sediment reaches one-half of the height of the fence. Removed sediments shall be disposed of in a stable upland area outside the 50-foot buffer zone and at least 100 feet from waters of the State, as defined under 10 V.S.A. § 1251, and shall, at a minimum, be immediately stabilized with seed and mulch.
   (C) All other disturbed soils shall be seeded and mulched within 48 hours after final grading.
   (D) All sediment barriers and construction fencing shall be removed following the successful establishment of vegetation.
4. If a stream alteration permit is required for activity, the activity shall comply with the requirements of that permit. If no stream alteration permit is required, the activity comply with the minimum following requirements:
   (A) In-stream work shall be conducted using the method that results in the least disturbance of stream flow and prevents any discharge of sediment downstream. Stream flow shall be diverted from the work area at all times.
   (B) All equipment used in or adjacent to a stream shall be clean, properly maintained, and free from fuel, hydraulic fluid, and gear oil leaks. There shall be no discharge of uncured concrete to the stream flow.
   (C) Pumping from excavation areas shall be discharged to an overland area or settling basin such that the effluent shall be essentially clarified before reentering the stream flow.

(D) All areas of stream bank disturbed during construction shall be suitably reshaped and stabilized using stone fill or a vegetative planting prior to completion of the project. The extent of stream bank disturbance shall be strictly limited, and all existing vegetation shall be maintained to the greatest degree practicable. Stream work shall be limited to the period from June 1 through October 1.

(E) Culvert invert elevations shall be installed six inches below the stream bed level.

5. All equipment shall be cleaned prior to work in wetlands and buffer zones so that it contains no observable soil or vegetation, in order to prevent the spread of invasive species.

6. At the edge of any access road or driveway, where it crosses a ~~mapped area of~~ Class II wetland or its 25' buffer zone, markers consisting of split-rail fence, large boulders, or comparable alternative shall be installed at regular intervals no more than 30 feet apart. These markers shall be installed prior to sale or occupancy of any residential dwellings.

7. If the impact is temporary in nature, stockpiling of material shall be done on filter fabric or an equivalent barrier within the wetland and buffer zone. Temporarily removed wetland soils shall be returned in the reverse order that they were removed and restored to their prior condition to match the original soil profile.

8. Except as provided in subsection (7) of this section, removed and stockpiled materials shall be located outside of the wetlands and buffer zones and at least 50 feet from surface waters. Appropriate erosion controls measures described in subsection (3) of this section shall be used.

9. Impacts from equipment access to the site shall be minimized by using existing or other low impact routes. Equipment access methods shall be used in the following order of preference:

   (A) Accessing wetland areas with construction mats or during frozen or dry conditions. Winter construction under frozen conditions may minimize ground disturbance and reduce impacts to wildlife;

   (B) Delineating the limits of disturbance using a combination of silt fence, flagging, or snow fence;

   (C) Using low-ground pressure or tracked vehicles in wetlands to minimize compaction and rutting;

   (D) Minimizing equipment use in wetlands and limiting vehicle trips; and,

   (E) Restoring the project site to reverse soil compaction and stabilize the soil on the site and replanting the site if vegetation has been destroyed.

(10) Activities shall maintain or mimic pre-existing drainage to avoid unnecessary ditching or concentration of flow. Crossings in low-lying or seasonally saturated areas shall be designed to accommodate subsurface drainage, including utilizing measures such as French mattresses or underdrains.

(11) Where roadside ditches are required for new or upgraded roads, they shall be sized to accommodate anticipated runoff volumes and shall use vegetated swales and buffer strips whenever practicable.

(12) Where culverts are needed, they shall be installed in a number and size sufficient to equalize hydrology, avoiding lowering waters on one side of the crossing. Culverts shall also be designed and installed to allow for aquatic organism passage.

(13) Final earthwork shall restore wetlands and buffer zones to their original grade and vegetative cover utilizing native seed sources, except where earthwork establishes a permanent access feature.

(b) **Activity-Specific Practices.** The following practices apply to the corresponding activities identified below that are eligible under subdivision (d) of subsection 6.26 of the Vermont Wetland Rules:

(1) Placement, relocation, removal, or upgrade of overhead utility lines in wetland or buffer zone:

(A) Poles and wires shall be located to minimize clearing of vegetation to the extent practicable.

(B) Removal of woody vegetation in the wetland and buffer zone shall occur only within an existing or designated right-of-way ("ROW") for the utility, or for removal of danger trees outside the maintained ROW.

(C) Vegetation management shall be limited to clearing necessary to maintain the line in a safe and efficient manner:

(i) If cutting of wetland vegetation cannot be avoided, the work shall be performed by hand (e.g., chain or hand saw) rather than with heavy equipment to preserve wetland soils; and

(ii) Vegetation shall be cut at ground level, leaving root systems intact.

(2) Installation of underground utilities:

(A) Where feasible, trenchless construction methods shall be used to reduce or eliminate surface disturbance.

(B) Excavation trenches shall be limited in width, using the smallest feasible bucket or trenching equipment.

(C) Trenches shall be filled, mulched, and seeded immediately or upon final inspection of the line.

(D) If directional boring is used, the bore depth beneath the wetland shall not puncture any confining layer necessary to maintain wetland hydrology.

(E) If drilling or boring is utilized, drilling fluid shall be composed of bentonite clay, clean water, and any biodegradable drill soaps or polymers. No diesel fuel shall be used as an additive.

(3) Access roads and driveways:

(A) Access shall be limited to upland areas or existing maintained roads to the extent practicable.

(B) Where access cannot be limited to upland areas or existing roads, access may be conducted on other existing primitive roads or existing managed areas in wetlands or buffer zones where practicable.

(C) Where existing roads are unavailable for access, access shall be conducted in a manner that minimizes rutting and earth disturbing activities by meeting the practices under subsection (a)(9) of these best management practices.

(c) **Avoidance and Minimization Recommendations.** The following planning, pre-construction, post-construction, restoration, and maintenance practices are recommended where practicable to avoid and minimize wetland impacts.

(1) Project Planning:

- Site infrastructure away from low-lying and poorly drained areas.
- Minimize the width of typical access roads through wetlands or utilize existing crossings.
- Avoid both above- and below-ground wetland crossing impacts.
- Design with the grade of the land to avoid earthwork as much as possible and to maintain existing drainage characteristics.
- Target existing corridors or developed areas, such as easements, roads, roadway shoulders, bridges or old railroad beds, as the first alternative preference.
- Avoid disturbing stream beds; if they must be disturbed, utilize a straight and narrow section with low banks.
- Avoid construction access or work in organic soils.
- Consider spanning a wetland by locating utility poles on either side of the wetland, instead of disturbing the interior.
- If attaching utility lines to a bridge or other structure, be aware of possible floodplain constraints.
- If underground piping cannot be avoided, install it in a crack-proof casing so that the area above the piping can be replanted with vegetation.
- Co-locate all utilities and use trenchless methods when practicable
- Share driveways to limit wetland crossings in subdivisions or neighborhoods.
- Use boulders, gabions, or retaining walls where appropriate to reduce the amount of filling needed for slopes.
- Keep the size of cleared maintenance areas above and around utility lines to a minimum.
- For electric lines, consider suspending the wires above any wetland tree canopy or place over a lower cover type (shrubs or emergent marsh).
- Avoid diversion of surface water and groundwater sources, which could affect nearby wetlands. Sub- draining effects from trench installation must be guarded against.
- Use the Vermont Natural Heritage Inventory database to evaluate whether any Rare, Threatened, or Endangered Species wetland habitat exists or exemplary wetland natural communities exist on the site and avoid impacts to those areas.

(2) Before Construction:

- Administer pre-job briefings to ensure everyone is conducting work according to these best management practices.
- Ensure that soil erosion and sediment controls are properly installed and maintained, including silt fences, sediment basins, and other erosion controls to prevent sediment from leaving the work area.
- Have all necessary materials on hand before beginning work.
- Designate construction staging and vehicle access routes to avoid sensitive sites and minimize disturbance.

(3) During Construction within wetland and buffer:

- Limit construction to outside the breeding and migratory seasons of wetland wildlife.
- Limit construction activities to the low-flow periods, the appropriate time-of-year restrictions, or to when the soil is frozen.
- Preserve all low-growing varieties of vegetation adjacent to wetlands to the fullest extent possible in order to minimize erosion potential.
- Limit tree removal to only those trees necessary.
- During trenching and temporary earth disturbance, preserve and stockpile the top 6–12 inches of topsoil separately, then replace it after backfilling to support rapid restoration and reduce ecological impact.
- Use structures or devices to prevent sub-draining or groundwater movement along pipelines, such as anti- seepage collars, intermittent clay barriers, trench plugs or clay saddles.
- Conduct work manually, whenever feasible.
- For underground utilities through wetlands, install pipe sleeves that wires or smaller pipes can be placed within to allow for easy access for future utility maintenance and repair.
- If dewatering of trenches is necessary, pump water into an acceptable, properly designed dewatering basin.
- Stabilize disturbed soils as soon as possible through seeding, mulching, or planting—especially on banks and slopes.

(4) Site Restoration and Maintenance

- Begin site restoration (grading, erosion control, topsoil replacement) immediately following construction, aiming to stabilize the site within three days of completing work.
- Plan for restoration to be completed before the end of the growing season and as soon as possible after installing the utility or access.
- Remove all construction-related features from restoration areas and restore affected locations to their former condition.
- Stabilize all disturbed areas outside of the cleared maintenance zone with grasses and vegetation.

- Utilize a seed mix comprised of native species that is appropriate to the pre-construction site conditions, such as site-appropriate woody species, in all temporary wetland impact areas.
- Restore wetland soils and hydrology to existing conditions or grades, avoiding compaction.
- Restore disturbed stream channels to original width and substrate.
- Maintain the road shoulder by hand cutting or mowing.
- Include the maintenance schedule for standard utility projects and the entity responsible for post- construction stabilization and restoration.
- Include methods for completing regular and emergency repairs to utility lines.

~~(d) **Recommendations for Residential Housing Projects.** For all other components of a residential housing project qualifying as an allowed use under subsection 6.26 of the Vermont Wetland Rules, the following practices are recommended to help avoid and minimize impacts to affected wetlands and buffer zones, limit future disturbances, and support the protection of wetland functions and values. These recommendations may also assist in project planning where federal permitting is applicable.~~

~~(1) Please be aware that federal Clean Water Act (section 404) regulations may apply to your project. Federal review would require a delineation of wetlands using the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands, as amended, and supplemental guidance documents issued by the U.S. Army Corps of Engineers.~~

~~(2) Evaluate whether practicable alternatives exist and document steps taken to avoid impacts entirely whenever possible. If not practicable, minimize the footprint and degree of impact. This often involves adjusting alignments, project scale, construction methods, or timing to limit disruptions.~~

~~(3) Configure lots to completely avoid wetland encroachment. This includes providing adequate yard space for future homeowners to add a deck, shed or pool to their property without impacts to adjacent wetlands.~~

~~(4) Site structures at least 10 feet from any buffer zone for maintenance and construction.~~

~~(5) To reduce future homeowner encroachment, where residential areas are within 25' of the wetland buffer, include durable markers, such as split-rail fence, large boulders, or equivalent alternative, at regular intervals (30' or less) at the 50-foot buffer zone of the adjacent wetland or at the edge of wetland/buffer impacts.~~

~~(6)~~(1) ~~Plan snow storage areas in uplands or parking lot areas that avoid wetland impacts. If space is limited, snow may need to be removed from the property to avoid pushing it into wetlands and surface waters.~~

VERMONT
Vermont Agency of Natural Resources
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Vermont Wetland Rules

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(Amendments adopted January 23, 2023; Effective February 10, 2023)

Revision Effective Date:

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http://dec.vermont.gov/

Vermont Wetland Rules

CODE OF VERMONT RULES
AGENCY OF NATURALRESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
VERMONT WETLAND RULES
ENVIRONMENTAL PROTECTION RULES CHAPTER 30

Vermont Wetland Rules

Contents

SECTION 1: GENERAL

1.1 Purpose and Applicability

It is the policy of the State of Vermont to identify, protect and ~~protectrestore~~ significant wetlands and the values and functions which they serve in such a manner that ~~the goal of no~~ net ~~lossgain~~ of such wetlands and their functions is achieved.

These rules are adopted under the authority of the Secretary of Natural Resources (Secretary) pursuant to 10 V.S.A. § 905b(18). This statute limits the applicability of these rules to those wetlands which are so significant that they merit protection in this program. Wetlands that are not significant should be assumed to have public value, and therefore may merit protection under other statutory or regulatory authority.

Except as provided for below, these rules shall apply to all other land uses occurring within a significant wetland or its associated buffer zone that are commenced after February 23, 1990. These rules shall not apply to any land use for which:

(1) a complete application for all local, state and federal permits related to either the regulation of land use or the protection of wetlands had been submitted as of February 23, 1990, and where the applicant does not subsequently file an application for a permit amendment in a way that would have an undue, adverse impact on a protected function of a significant wetland, and substantial construction of the project commences within two years of the date on which all such local, state and federal permits become final;

(2) all local, state and federal permits related to either the regulation of land use or the protection of wetlands had been obtained as of February 23,1990 and where substantial construction of the project commenced by February 23, 1992; or

(3) no local, state or federal permits related to either the regulation of land use or the protection of wetlands are required and where substantial construction was commenced prior to February 23, 1990.

1.2 Enforcement

Violations of these rules are subject to enforcement under applicable Vermont law including, but not necessarily limited to, the provisions of 10 V.S.A. §§ 1272, 1274, 1275, 8001-8016, and 8221 and 3 V.S.A. § 2822.

SECTION 2: DEFINITIONS

For the purposes of these rules, the terms below shall have the following meanings unless a different meaning clearly appears from the context. Examples are illustrative only and not exhaustive.

2.1 **Access Infrastructure Servicing Residential Housing** means necessary access roads and driveways to provide access for the construction or use of the residential function of a residential housing project.

~~2.1~~2.2 **Alpine Peatland** means a peat-accumulating wetland occurring in small bedrock basins at or above 3,500 feet in elevation, on only a few of Vermont's highest summits. Typical species include alpine bilberry, leatherleaf, Labrador tea, black crowberry, cottongrass, Bigelow's sedge, and Sphagnum.

~~2.2~~2.3 **Aquatic Life** means all organisms that, as a part of their natural life cycle, live in or on waters. Aquatic life is synonymous with Aquatic Biota as defined in the Vermont Water Quality Standards.

~~2.3~~2.4 **Board** means the Natural Resources Board.

~~2.4~~2.5 **Bog** means an acidic wetland that is isolated from mineral-rich groundwater sources by deep peat accumulation and therefore receives most of its water and nutrients from precipitation. Typical species include Sphagnum, leatherleaf, bog laurel, small cranberry, stunted black spruce, pitcher plant, three-seeded sedge, and other sedges.

~~2.5~~2.6 **Buffer zone** means the area contiguous with a significant wetland which serves to protect those values and functions sought to be preserved by its designation, consistent with 10 V.S.A.§ 902(9). The buffer zone for a Class I wetland shall extend at least 100 feet from the border of the wetland, unless the Department determines otherwise pursuant to 10 V.S.A. § 915. The buffer zone for a Class II wetland shall extend at least 50 feet from the border of the wetland unless the Secretary determines otherwise under section 914 of Title 10.

~~2.6~~2.7 **Class I wetland** means a wetland that:

(A) is identified on the Vermont significant wetlands inventory maps as a Class I wetland;

(B) the former Water Resources Board identified in rules of the Board as a Class I wetland; or

(C) the Secretary determines, based on an evaluation of the extent to which the wetland serves the functions and values set forth at 10 V.S.A. § 905b(18)(A) and in Section 5 of these rules, is exceptional or irreplaceable in its contribution to Vermont's natural heritage, and therefore merits the highest level of protection. See 10 V.S.A. § 902(6).

~~2.7~~2.8 **Class II wetland** means a wetland other than a Class I or Class III wetland that:

(A) is a wetland identified on the Vermont significant wetlands inventory maps; or

(B) the Secretary determines merits protection, based on an evaluation of the extent to which the wetland serves the functions and values set forth at 10 V.S.A. § 905b(18)(A) and Section 5 of these rules, either taken alone or in conjunction with other wetlands. See 10 V.S.A. § 902(7).

~~2.8~~2.9 **Class III wetland** is a wetland that is neither a Class I nor a Class II wetland. See 10 V.S.A. § 902(8).

~~2.9~~2.10 **Compensation** means the mitigation of undue adverse impacts on the protected functions of significant wetlands by the replacement of those protected functions lost or impaired, through wetland creation, restoration, enhancement or preservation. Compensation may also include payment of fees to ~~a federal~~an "in-lieu fee" program or mitigation bank that has been approved by the Secretary.

~~2.10~~2.11 **Contiguous** means sharing a boundary or touching. This shall include situations where a structure, such as a road or railroad, divides a wetland and there is surface water connection over, through or under that structure.

~~2.11~~2.12 **Dredge** means lowering the bottom elevation or any cleaning, deepening, widening, or excavating, either temporarily or permanently.

~~2.12~~2.13 **Emergent Vegetation** means erect, rooted herbaceous (nonwoody) plants that maybe flooded at the base but do not tolerate prolonged inundation of the entire plant. Typical species include cattails, sedges, and bulrushes.

~~2.13~~2.14 **Environmental notice bulletin** means the website and e-mail notification system required by 3 V.S.A. § 2826.

~~2.14~~2.15 **Fact sheet** means a document that briefly sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing a draft decision.

~~2.15~~2.16 **Facultative Wetland Species** means plant species that sometimes occur in wetlands, but which may also be found in uplands.

~~2.16~~2.17 **Fen** means a peat-accumulating wetland that receives mineral-rich groundwater, that is weakly acidic to slightly basic. Acidic ("poor") fens are dominated by Sphagnum, and basic ("rich") fens are dominated by brown mosses. Sedges and grasses are abundant in these open peatlands.

~~2.17~~2.18 **Fill** includes the placing of any material that raises, either temporarily or permanently, the surface elevation of any area.

~~2.18~~2.19 **Headwater Wetland** means a naturally occurring wetland that is above 2,500 feet in elevation and contributes to a stream.

~~2.19~~2.20 **Hydric soils** means soils that are saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part (U.S.D.A. Soil Conservation Service 1987). For the purpose of these rules, hydric soils shall be synonymous with the terms saturated soils and seasonally saturated soils as used in 10 V.S.A. § 902(5).

~~2.20~~ **Hydrophytic Vegetation** means vegetation, including obligate wetland species, and facultative wetland species, growing in water, soil or on a substrate that is at least

~~2.1~~2.21 periodically deficient in oxygen as a result of excessive water content. For the purposes of

these rules, hydrophytic vegetation shall be synonymous with the term significant vegetation as used in 10 V.S.A. § 902(5).

~~2.21~~2.22 **Impaired Waters** means surface waters which have been identified by the Secretary as impaired pursuant to Section 303(d) of the federal Clean Water Act and which have been listed on the most recent Vermont 303(d) list, approved by the federal Environmental Protection Agency, as waters which may need a Total Maximum Daily Load (TMDL).

~~2.22~~2.23 **Impervious Surface[s]** means manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates. See 10 V.S.A. § 1264(b)(6).

2.24 **Linear Utility Servicing Residential Housing** means corridor-type utility infrastructure constructed in a narrow alignment to provide utility service necessary for the construction or use of the residential function of a residential housing project. The term shall include sewer laterals, septic force mains, electric, gas, water, and communications lines.

~~2.23~~2.25 **Marsh** means any wetland that is seasonally or continually inundated and is dominated by herbaceous vegetation. Hydric mineral or organic soils may be present. Typical species include common cattail, bluejoint grass, tussock sedge, broad-leaved arrowhead, wild rice, and bulrush.

~~2.24~~2.26 **Mitigation** means a comprehensive effort to lessen impacts on wetlands through the application of a sequence of avoidance and minimization efforts, and when appropriate, compensation.

2.27 **Mixed Use Project** means a project that includes both residential uses and nonresidential uses provided that the nonresidential uses are limited to retail, office, services, artisan, and recreational or community facilities, do not include industrial uses, and not less than 40 percent of the total gross floor area of all buildings within the project is designated for dwelling units.

~~2.25~~2.28 **Obligate Wetland Species** means plant species that are almost always found in wetlands under natural conditions.

~~2.26~~2.29 **Panel** means the former Water Resources Panel of the Natural Resources Board.

~~2.27~~2.30 **Person** means any individual; partnership; company; corporation; association; joint venture; trust; municipality; agency, department or subdivision of the state or federal government, or any other legal or commercial entity.

~~2.28~~2.31 **Practicable or practicably** means available and capable of being done after taking into consideration logistics, existing technology, and cost in light of the overall project purpose.

~~2.29~~2.32 **Prevalence of Vegetation** means plants which are the dominant

species comprising more than 50 percent of the plant community or communities. This is determined by aerial cover.

~~2.30~~2.33 **Protected functions** means those functions identified in 10 V.S.A. § 905b(18)(A) and Section 5 of these rules that make a wetland so significant that it merits protection under these rules.

2.34 **Residential Housing Project** means a project located on a single tract or multiple contiguous tracts of land for the construction of one or more dwelling units and includes access and utility infrastructure necessary for construction or use of the residential function of the project. The term includes duplexes, emergency shelters, multiunit or multifamily dwellings; and mixed use projects.

~~2.31~~2.35 **Secretary** means the Secretary of the Agency of Natural Resources or their authorized representative.

~~2.32~~2.36 **Seep** means a naturally occurring common, small wetland type occurring on slopes or at the base of slopes in upland forests. It is fed by groundwater discharge and is typically the headwaters of a perennial stream. This narrow wetland type is often shaded by the adjacent upland forest. Typical species may include rough-stemmed sedge, slender mannagrass, golden saxifrage, and spotted touch-me-not.

~~2.33~~ **Significant Wetland** means any Class I or Class II wetland that merits protection under these rules, either alone or in conjunction with other wetlands, based upon an evaluation of the extent to which it serves one or more of the functions and values pursuant to 10 2.37 V.S.A. § 905b(18)(A) and section 5 these rules. In making this determination, consideration shall be given to the number of or the extent to which protected functions and values are provided by a wetland or wetland complex.

~~2.34~~2.38 **Silvicultural activities** means those activities associated with the sustained management of land for silvicultural purposes including the planting, harvesting, and removal of trees.

~~2.35~~2.39 **Source Protection Area** means a surface and subsurface area from or through which contaminants are reasonably likely to reach a public water source as designated by the Secretary pursuant to the Wastewater System and Water Supply Rules.

~~2.36~~2.40 **Surface Vegetation** means plants with vegetative parts principally on the water surface, including water lily and spatterdock, and is synonymous with floating-leaved vegetation.

~~2.37~~2.41 **Swamp** means any of the many wetland types that are dominated by woody vegetation, either trees or shrubs. Hydric mineral or organic soils may be present. Typical species include red maple, black ash, northern white cedar, hemlock, red or black spruce, tamarack, speckled alder, willow, sweet gale, and buttonbush.

~~2.38~~2.42 **Upland** means land that is not wetland.

~~2.39~~2.43 **Vernal Pool** means a small wetland in a shallow natural depression that typically fills with water during the spring and/or fall and may dry during the summer. Vernal pools have no permanent inlet stream and no viable populations of fish. Vernal pools are typically sparsely vegetated with herbaceous plants and are shaded by trees from the surrounding upland forest. Many vernal pools provide critical breeding habitat for amphibians.

~~2.40~~2.44 **Waterfowl** means all ducks, geese and swans.

~~2.41~~ **Wetlands** means those areas of the state that are inundated by surface or ground water with a frequency sufficient to support significant vegetation or aquatic life that depend on saturated or seasonally saturated soil conditions for growth and reproduction. Such areas include but are not limited to marshes, swamps, sloughs, potholes, fens, river and lake overflows, mud flats, bogs, and ponds, but excluding such areas as grow food or crops in connection with farming activities. See 10 V.S.A. § 902(5).

~~2.42~~2.45 **Wetland Hydrology** means the sum total of wetness characteristics in areas that are inundated by water or which have hydric soils that are saturated or seasonally saturated for a sufficient duration to support significant vegetation or aquatic life. Wetness characteristics shall include the hydrologic cycle, water table levels, water chemistry, hydrologic budget, and ground water flow patterns. Typical indicators include: evidence of inundation, drift lines, sediment deposits, and morphological plant adaptations.

SECTION 3: EXEMPTIONS; IDENTIFICATION OF WETLANDS

3.1 Exemptions

The following shall not be regulated as wetlands under the Vermont Wetland Rules, but may be subject to regulation under federal law:

a. Farming Exemption

(1) Statutory guidance

Section 902(5) of 10 V.S.A. defines wetlands to exclude "such areas as grow food or crops in connection with farming activities." Section 905b(18)(C) of 10 V.S.A. requires that any rules "that restrain agricultural activities" must have the consent of the Secretary of the Agency of Agriculture, Food and Markets.

(2) Definition

Farming activities means the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; and the growing of food and crops in connection with the raising, feeding, or management of livestock, poultry, equines, fish farms, or bees for profit.

(3) Limitation on Exemption.

The farming exemption shall apply to all areas used to grow food or crops in connection with farming activities including areas in ordinary rotation, as of the effective date of these rules. The exemption will expire whenever the area is no longer used to grow food or crops or in ordinary rotation.

b. Existing Constructed Features

The following man-made features, which when constructed in uplands may exhibit wetland characteristics:

(1) Stormwater conveyance, treatment and/or control systems.
(2) Wastewater treatment ponds and sludge lagoons.
(3) Manure storage and treatment ponds.
(4) Irrigation and active farming-related ponds.
(5) Snowmaking ponds.
(6) Other similar constructed ponds created in uplands.

c. Permitted Public Highway Projects

All public highway projects which have received an Act 250 permit prior to February 23, 1990 shall be exempt from the Vermont Wetland Rules.

3.2 Methodology for Identifying Wetlands

a. Wetland/Upland Boundary Delineation

The presence of a wetland and the boundary between a wetland and upland shall be delineated by the methodology set forth in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, as amended, and supplemental guidance documents issued by the U.S. Army Corps of Engineers. This methodology employs three parameters: vegetation, soils and hydrology. The National List of Plant Species That Occur in Wetlands: Vermont, as amended by the U.S. Army Corps of Engineers, shall be used to determine the frequency of hydrophytic vegetation occurrence in wetlands.

b. Map Interpretation

The Vermont Significant Wetland Inventory (VSWI) maps denote the approximate location and configuration of significant wetlands. The actual boundaries of wetlands shown on the VSWI maps shall be determined in the field in accordance with the methodology provided for in Section 3.2(a) and, where applicable, the following provisions:

(1) Lakes, Ponds and Reservoirs

When adjacent to any lake, pond or reservoir that is a public water a wetland's

boundary shall extend to the maximum extent of a prevalence of surface, emergent, or woody vegetation at any time during the growing season. For all other lakes, ponds or reservoirs, a wetland's boundary shall extend to a depth of two meters at mean water level.

(2) Rivers or Streams

For wetlands adjacent to a river or stream, the wetland shall extend to either the edge of the river or stream channel or to the maximum extent of a prevalence of surface, emergent or woody vegetation at any time during the growing season, whichever is greater.

SECTION 4: CLASSIFICATION OF SIGNIFICANT WETLANDS AND DESIGNATION OF BUFFER ZONES

4.1 Classification of Wetlands

For purposes of these rules wetlands in Vermont are classified as Class I, Class II, or Class III wetlands, as defined at 10 V.S.A. § 902 and Section 2 of these rules. The Secretary has the authority to reclassify wetlands, in general or on a case-by-case basis, based on an evaluation of the functions and values that the wetland serves.

Class I wetlands when designated pursuant to Section 7 shall be identified in Appendix A. All wetlands shown on the Vermont Significant Wetland Inventory maps are Class I or Class II wetlands, unless determined otherwise by the Secretary. Wetlands demonstrating the characteristics of a Categorical Class II wetland as identified by the Secretary pursuant to Section 4.6 of this Rule shall be protected as Class II wetlands, unless determined to be Class III through an individual wetland determination issued by the Secretary.

4.2 Buffer Zones

The purpose of a buffer zone is to protect those functions that make a wetland significant. The Secretary may designate a buffer zone contiguous to any Class I wetland and the Secretary may designate a buffer zone contiguous to any Class II wetland. Until otherwise designated by the Secretary, a one hundred (100) foot buffer zone is established contiguous to the boundaries of a Class I wetland. Until otherwise designated by the Secretary, a fifty (50) foot buffer zone is established contiguous to the boundaries of a Class II wetland.

4.3 Designations

a Class I Wetlands

The Secretary on their own motion or acting on a rulemaking petition filed in accordance with Section 7, shall determine whether to classify any wetland as a Class I wetland or to reclassify a Class I wetland pursuant to 10 V.S.A. § 915.

b Other Wetlands

The Secretary on their own motion or upon petition may, pursuant to 10 V.S.A. § 914:

1. Determine whether a wetland is a Class II or Class III wetland.

2. Determine which functions and values make a wetland significant.
3. Determine whether the size or configuration of a buffer zone adjacent to a Class II wetland should be increased or decreased.
4. Determine the boundaries of a significant wetland.
5. Determine whether an area shown as a wetland on the VSWI maps is not a wetland.

4.4 Vermont Significant Wetland Inventory Maps

All wetlands shown on the Vermont Significant Wetland Inventory (VSWI) maps or contiguous to wetlands shown on the VSWI maps are Class II wetlands, unless identified as Class I or Class III by the Secretary pursuant to Section 8 of this Rule. The VSWI maps should not be relied upon to provide precise information regarding the location or configuration of wetlands (see Section 3.2). The VSWI maps are intended to denote the approximate location and configuration of wetlands. It is critical to note that wetland characteristics and boundaries are not static; wetland boundaries may change as a result of landscape and climatic changes. The Secretary shall revise the VSWI maps to reflect wetland determinations issued pursuant to 10 V.S.A. §§ 914 and 915, and mapping corrections pursuant to Section 8 of this Rule. The Secretary may also adjust the boundaries of wetlands shown on the VSWI maps to more accurately depict the location of a wetland, as determined by aerial photos, field visits, field delineations and other relevant information. The VSWI map layer is located on the Agency of Natural Resources Atlas and available for download through the Vermont Center for Geographic Information (VCGI).

4.5 Delineation of Wetland Boundaries

a. The methodology for delineating the boundaries of any wetland is described in Section 3.2.

b. Wetland boundaries shall be delineated in accordance with the provisions of these rules.

c. Formal determinations of wetland boundaries are made by the Secretary pursuant to 10 V.S.A. §§ 914 and 915.

4.6 Categorical Class II Wetlands

All wetlands contiguous to wetlands shown on the Vermont Significant Wetland Inventory maps are presumed to be Class II wetlands, unless identified as Class I or III wetlands, or unless determined otherwise by the Secretary pursuant to Section 8. Likewise, any wetland that was determined to be Class II in a prior permitting action shall be considered Class II unless determined otherwise by the Secretary. In addition, the Secretary may determine that a general category of wetlands with certain defined characteristics is significant, based on an evaluation of the functions and values exhibited by this category of wetlands, pursuant to 10 V.S.A. §905b(18)(B). Notice of a proposed categorical wetland determination shall be provided according to Section 8.3 of this Rule.

Wetlands with the following characteristics have been determined by the Secretary to be

significant for one or more of the functions and values listed in Section 5 of these Rules, and have been determined to be categorical Class II wetlands. These categories of wetlands shall be regulated as Class II wetlands unless determined otherwise by the Secretary on a case-by-case basis:

a. The wetland is of the same type and threshold size as those mapped on the VSWI maps: i.e.; open water (pond); emergent marsh; shrub swamp; forested swamp; wet meadow; beaver pond or beaver meadow; bog or fen; and is greater than 0.5 acres in size.

b. The wetland contains dense, persistent non-woody vegetation or a prevalence of woody vegetation; is adjacent to a stream, river, or open body of water; and is over 2,500 square feet in size.

c. The wetland is a vernal pool that provides amphibian breeding habitat.

d. The wetland is a headwater wetland.

e. The wetland contains a species that appears in the Vermont Natural Heritage Inventory (VNHI) database as rare, threatened, endangered or uncommon; or is an exemplary natural community as mapped by VNHI.

Vegetated wetlands adjacent to streams, rivers, or any open body of water that do not meet the 2,500 square foot size threshold in subparagraph b above are often significant, and should be evaluated for significance by a wetland ecologist before work is done that would impact the wetland.

SECTION 5: FUNCTIONAL CRITERIA FOR EVALUATING A WETLAND'S SIGNIFICANCE

In evaluating whether any wetland is a Class II or a Class I wetland, the Secretary shall evaluate the functions that the wetland serves both as a discrete wetland and in conjunction with other wetlands by considering the following functional criteria. Consideration shall be given to the number of and/or extent to which protected functions and values are provided by a wetland or wetland complex.

5.1 Water Storage for Flood Water and Storm Runoff

Wetlands that provide for the temporary storage of floodwater or stormwater runoff to the extent that they make an important contribution to: reducing risks to public safety, reducing damage to public or private property reducing downstream erosion or enhancing the stability of habitat for aquatic life, are significant wetlands. Examples of wetlands that provide storage for floodwaters or stormwater runoff may include those that are located in the upper portion of the watershed, have a constricted outlet, are located in a relatively flat area with storage potential, densely vegetated, or are located in a watershed with a large amount of impervious surfaces.

In determining whether a wetland is significant for this function, the Secretary or Panel shall,

at a minimum, consider the extent to which it:

a. Reduces either the magnitude or frequency of risks to public safety or of damage to public or private property due to flood water or stormwater runoff after considering:

(1) Its significance relative to other water storage capacity in its own watershed or in the watershed of any watercourse to which it is tributary. In particular, available water storage capacity upstream of the wetland should be considered.

(2) Whether it is contiguous to a lake or pond which would provide storage benefits independent of the wetland.

(3) The extent of development and impervious surface in the watershed.

(4) The history of damage to public and private property and economic loss due to flooding within the watershed downstream of the wetland.

(5) The characteristics of development and resources in or near the floodplain downstream of the wetland.

(6) The extent to which the wetland's water storage capacity is created by beaver dams and similar temporary conditions

b. Attenuates flood peaks and reduces water velocities, thereby reducing scouring and erosion.

c. Maintains the geomorphic stability of important habitat for aquatic life by attenuating peak flows of flood waters or stormwater runoff, or reducing the scouring and erosion of stream banks, or both.

Hydraulic and hydrologic analysis of the extent to which a wetland serves this function shall utilize average annual, 10-year, 50-year and 100-year storm frequencies in generating hydrographs for the wetland's inlet, outlet and at critical locations upstream and downstream.

5.2 Surface and Ground Water Protection

Wetlands that make an important contribution to the protection or enhancement of the quality of surface or of ground water are significant wetlands. In determining whether a wetland is significant for this function, the Secretary or Panel shall, at a minimum, consider the extent to which it:

a. Recharges a drinking water source, such as a well head or source protection area.

b. Reduces levels of contaminants in surface waters which recharge underlying or adjacent groundwaters.

c. Contributes to the flows of Class A surface waters.

d. Enhances or protects water quality through chemical action, by the removal of nutrients, by the retention or removal of sediments or organic matter, or by moderating the adverse water quality effects of soil erosion or stormwater runoff.

e. Contributes to the protection or improvement of water quality of any impaired water.

f. Is adjacent to surface waters, especially impaired waters.

5.3 Fish Habitat

Wetlands that are used for spawning by northern pike or that are important for providing fish habitat are significant wetlands. In determining whether a wetland is significant for fish habitat the Secretary or Panel shall, at a minimum, consider the extent to which it:

a. Provides spawning, nursery, feeding or cover habitat for fish.

b. Lowers or moderates the temperature of surface waters due to the discharge of cold springs, the provision of shade or for other reasons.

5.4 Wildlife Habitat

Wetlands that support a significant number of breeding waterfowl, including all species of ducks, geese and swans, or broods of waterfowl or that provide important habitat for other wildlife and migratory birds are significant wetlands. Wetlands that provide wildlife habitat are extremely diverse and range from small isolated wetlands to large forested swamps. In determining whether a wetland is significant for wildlife habitat, the Secretary or Panel shall, at a minimum, consider the extent to which it:

a. Birds

(1) Supports or provides the habitat to support one or more breeding pairs of waterfowl or one or more broods of waterfowl.

(2) Supports or provides the resting, feeding, staging or roosting habitat to support waterfowl migration.

(3) Supports a nest site, provides a buffer for a nest site, or is used as feeding habitat for wading birds, including: Great blue heron, black-crowned night-heron, snowy egret, cattle egret, or green heron.

(4) Supports or has the habitat to support one or more breeding pairs of any migratory bird that requires wetland habitat for breeding, nesting, rearing of young, feeding, staging, roosting, or migration, including: Virginia rail, common snipe, marsh wren, American bittern, northern water thrush, northern harrier, spruce grouse, Cerulean warbler, and common loon.

b. Mammals

(a) Supports winter habitat for white-tailed deer, based on an assessment of winter use. Typical indicators include browsing, bark stripping, worn trails, pellet piles, and softwood tree cover.

(2) Provides important feeding habitat for black bear, bobcat, or moose, based on an assessment of use.

(3) Supports or has the habitat to support muskrats, otter, or mink.

(4) Supports an active beaver dam, one or more beaver lodges, or evidence of an adult population of beaver which have used the site in two or more consecutive years.

c. Amphibians

(1) Supports or provides habitat to support the reproduction of uncommon Vermont amphibian species including: Jefferson salamander, blue-spotted salamander, spotted salamander, which are associated with vernal pools for breeding habitat; the Northern dusky salamander and the spring salamander, which are associated with headwater seeps, springs and streams; the four-toed salamander; Fowler's toad, Western chorus frog, and other amphibians found in Vermont of similar significance.

(2) Supports or provides the habitat to support significant breeding populations of Vermont amphibian species including the species listed in subsection (c)(1); and pickerel frog, northern leopard frog, mink frog, and others found in Vermont of similar significance.

d. Reptiles

(1) Provides habitat that supports or has the habitat to support uncommon Vermont reptile species, including: wood turtle, northern map turtle, eastern musk turtle, stinkpot turtle, spotted turtle, spiny softshell turtle, eastern ribbon snake, northern water snake, and others found in Vermont of similar significance.

(2) Supports or provides the habitat to support significant populations of Vermont reptile species, including the species listed in subsection (d)(1), smooth green snake, DeKay's brown snake, and other more common wetland-associated species.

e. Landscape Considerations

(1) Meets four or more of the following conditions indicative of wildlife habitat diversity:

(a) Three or more wetland vegetation classes (1/2 acre or greater in size) are present including: open water contiguous to but not necessarily part of the wetland, deep marsh, shallow marsh, shrub swamp, forested swamp, fen, or bog;

(b) The dominant wetland vegetation class is one of the following types: deep marsh, shallow marsh, shrub swamp, or forested swamp;

(c) The wetland is located contiguous to a lake, pond, river, or stream;

(d) Fifty percent or more of the surrounding habitat types are any combination of one or more of the following types: forest, agricultural land, old field, or open land;

(e) Emergent or woody vegetation occupies 26 to 75 percent of the wetland area and open water occupies the remainder of the wetland area;

(f) The wetland falls into one of the following:

1. Hydrologically connected to other wetlands of different dominant vegetation classes or open water bodies within 1 mile; or

2. Hydrologically connected to other wetlands of the same dominant vegetation class within 1/2 mile; or

3. Within 1/4 mile of other wetlands of different dominant vegetation classes or within 1/4 mile of open water bodies; but not hydrologically connected.

(2) Is owned by the state or federal government in fee or through easement and managed for purposes of wildlife and habitat conservation as evidenced by a management plan filed and approved by the Secretary or other appropriate governing official;

(3) Contains evidence that it is used by wetland-dependent wildlife species.

5.5 Exemplary Wetland Natural Community

Wetlands that make an important contribution to Vermont's natural heritage are significant wetlands. These include wetlands that are identified as high-quality examples of one of Vermont's recognized natural community types. There are over forty wetland natural community types recognized in Vermont by the Nongame and Natural Heritage Inventory of the Vermont Fish and Wildlife Department. These include rare types such as dwarf shrub bog, rich fen, alpine peatland, and red maple-black gum swamp, and more common types such as deep bulrush marsh, cattail marsh, northern white cedar swamp, spruce-fir-tamarack swamp, and red maple-black ash seepage swamp. In determining whether a wetland is significant for this function the Secretary or Panel shall, at a minimum, consider the extent to which it:

a. Is an example of a wetland natural community type that has been identified and mapped by or meets the ranking and mapping standards of the Natural Heritage Inventory of the Vermont Fish and Wildlife Department. When evaluating a wetland of a particular natural community type, the rarity of the type is a primary consideration in determining its importance to this function. More generally, larger wetlands in undisturbed condition and in unfragmented landscapes are ranked as the better examples.

b. Contains ecological features that contribute to Vermont's natural heritage, including deep peat accumulations reflecting thousands of years of history of wetland formation, forested wetlands displaying very old trees and other old growth characteristics, a wetland natural community that is at the edge of the normal range for that type, a wetland mosaic containing examples of several to many wetland community types, or a large wetland complex containing examples of several wetland community types.

5.6 Rare, Threatened, and Endangered Species Habitat

Wetlands that contain rare, threatened, or endangered species of plants or animals are significant wetlands. In determining whether a wetland is significant for this function the Secretary or Panel shall consider whether:

a. There is creditable documentation that the wetland provides important habitat for any species on the federal or state threatened or endangered species list of animals or plants.

b. There is creditable documentation that the wetland has contained one or more threatened or endangered species on the federal or state list in the past 10 years.

c. There is creditable documentation that the wetland provides important habitat for any species listed as rare in Vermont (S1 or S2 ranks), state historic (SH rank), or rare to uncommon globally (G1, G2, or G3 ranks), by the Natural Heritage Inventory of the Vermont Fish and Wildlife Department.

d. There is creditable documentation that the wetland provides habitat for multiple uncommon species of species of plants or animals (S3 rank).

5.7 Education and Research in Natural Sciences

Wetlands that provide, or are likely to provide valuable resources for education or scientific research are significant wetlands. In determining whether a wetland is significant for this function the Secretary ~~or the Panel~~ shall, at a minimum, consider whether the wetland:

a. is owned by a public entity dedicated to education or research or an easement for education or research has been conferred to a public entity.

b. has a history of use for education or research.

c. has one or more characteristics which make it unique or valuable for education or scientific research purposes.

5.8 Recreational Value and Economic Benefits

Wetlands that provide substantial recreational values or economic benefits are significant wetlands. In determining whether a wetland is significant for this function, the Secretary or Panel shall, at a minimum, consider the extent to which it:

a. Is used for, or contributes to, recreational activities.

b. Provides economic benefits.

c. Provides important habitat for fish or wildlife which can be fished, hunted or trapped under applicable state law.

d. Is used for the harvesting of wild foods.

5.9 Open Space and Aesthetics

Wetlands that contribute substantially to the open-space and aesthetic character of the landscape are significant wetlands. The aesthetic contribution must be specific to the wetland itself, and not attributable to an upland area. In determining whether a wetland is significant for this function, the Secretary or Panel shall, at a minimum, consider the extent to which it:

a. Can be readily observed by the public.

b. Possesses special or unique aesthetic qualities.

c. Has prominence as a distinct feature in the surrounding landscape.

d. Has been identified as important open space in a municipal, regional or state plan.

5.10 Erosion Control through Binding and Stabilizing the Soil

Wetlands that are important for erosion control are significant wetlands. Such wetlands are typically located along stream, river, pond or lake shorelines, where erosive forces are present. In determining whether a wetland is significant for this function, the Secretary shall, at a minimum, consider the extent to which it:

a. Protects a shoreline, riverbank or streambank from excessive erosion by dissipation of wave and current energy or by binding and stabilizing the soil.

b. Prevents erosion by binding or stabilizing the soil.

c. Has been identified through fluvial geomorphic assessment using methods approved by the Secretary to be important in maintaining the natural condition of the stream or river corridor.

SECTION 6: ALLOWED USES

The following uses shall be allowed in a Class I or Class II wetland and in its buffer zone without a permit, provided that the configuration of the wetland's outlet or the flow of water into or out of the wetland is not altered and that no draining, dredging, filling, or grading occurs except as may be provided for in subsections 6.01, 6.02, 6.03, 6.04, 6.07, 6.08, 6.12, 6.13, 6.14, 6.15, 6.16, ~~and~~ 6.22, and 6.26 below. Designation of allowed uses in these rules

shall not provide relief from liability for violations that commenced prior to the effective date of such
allowed use.

6.1 Silvicultural activities which:

a. Comply with Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont adopted pursuant to 10 V.S.A. § 1259;

b. Comply with silvicultural standards for deer wintering yards, established jointly by the Departments of Fish and Wildlife and Forests, Parks and Recreation, when occurring in significant wetlands or adjacent buffer zones containing deer wintering yards mapped by the Fish and Wildlife Department; and

c. Restrict equipment maintenance and the storing or changing of oil, grease, or other petroleum products to log landings; and

d. Restrict log landings to uplands or buffer zones except that landings not requiring the placement of fill may be located within the wetland when the ground is frozen.

6.2 The restoration, reconstruction, rehabilitation, or upgrading of existing roads used solely for silvicultural purposes provided that such roads are not increased in width by more than 20%.

6.3 The construction of new roads used solely for silvicultural purposes in buffer zones.

6.4 The removal of beaver dams to the extent necessary to prevent impairment of the use of existing logging roads or ongoing silvicultural management practices.

6.5 Silvicultural activities including the uses allowed by subsections b, c and d above, when occurring in any Class I wetland, the buffer zone for any Class I wetland and in any Class II wetland specifically designated by the Secretary or Panel to protect habitat for any species on the state or federal list of threatened or endangered species, that comply with a plan approved in writing by the Commissioner of the Department of Forests, Parks and Recreation.

6.6. The growing of food or crops in connection with farming activities when
a. Threatened or endangered species are protected; and

b. No clearing of existing vegetation occurs in deer wintering yards mapped by the Vermont Fish and Wildlife Department; and

c. In compliance with the most recent Required Agricultural Practices adopted by the Agency of Agriculture, Food and Markets.

67 The operation of existing hydroelectric facilities in accordance with all applicable requirements established by federal and state agencies. This use may involve dredging, draining and/or altering the flow of water into or out of a wetland.

6.8 The routine repair and maintenance of utility poles, lines and corridors in a manner which minimizes adverse impacts and is accordance with Best Management Practices developed by the Secretary.

6.9 Hunting, birdwatching, hiking, boating, trapping, fishing, horseback riding, swimming, snowshoeing, skiing, and similar outdoor recreational activities.

6.10 Snowmobiling on trails designated by the Vermont Association of Snow Travelers.

6.11 Scientific research and educational activities.

6.12 The maintenance, reconstruction, or routine repair of structures and facilities (including ski trails, public transportation facilities, bulkheads, docks, piers, pilings, paved areas, houses, or other buildings) in compliance with the Vermont Wetland Rules in existence as of the date of their construction or in existence as of February 23, 1990 or additions to such structures or facilities which do not involve substantial expansion or modification in a wetland or buffer.

6.13 Emergency repair, cleanup, or maintenance of structures and facilities (including utility poles and lines, public transportation facilities, bulkheads, docks, piers, pilings, paved areas, houses, or other buildings), or emergency actions required to provide for public health, safety and welfare for disaster relief in connection with a federal or state-designated disaster.

6.14 The routine maintenance and upkeep, including the removal of vegetation from, or maintenance dredging of constructed ponds in compliance with Best Management Practices developed by the Secretary. This use may involve dredging, temporary draining, and/or temporarily altering the flow of water into or out of a wetland.

6.15 Wildlife or fisheries management activities, including the removal of beaver dams which pose a significant hazard to public health or safety or to public or private property, conducted in accordance with a written plan or procedure adopted by the Secretary. This use may involve draining and/ or altering the flow of water into or out of a wetland.

6.16 The placement, maintenance or removal of duck blinds, ice fishing shanties, fences, catwalks, footbridges, observation decks, docks exempt similar structures, in compliance with Best Management Practices developed by the Secretary.

6.17 The harvesting of wild foods and the collecting of scientific specimens, not on the state or federal threatened or endangered species lists, for noncommercial purposes.

6.18 The control of non-native species of nuisance plants including Eurasian milfoil, water chestnut, purple loosestrife (*Lythrum salicaria*) and reed grass (*Phragmites australis*), where such control is by hand pulling of plants or according to a written plan approved by the Secretary and under any applicable state law.

6.19 Activities within existing lawns, including mowing, the placement of barbecue pits, sand

boxes, bird houses, and other similar activities incidental to ordinary residential use.

620 The use of pesticides or other biological agents to control mosquitoes when applied according to all applicable state law.

621 The operation of dams in accordance with the surface level rules for lakes and ponds adopted under 10 V.S.A. § 1424, provided that prior to the adoption the Panel finds in writing that the surface level rules will not result in any undue adverse effect on the protected wetland functions. This use may involve draining or altering the flow of water into or out of a wetland.

622 The installation of a new overhead utility line that does not involve extensive tree clearing, with three poles or fewer in the wetland or buffer zone, in compliance with Best Management Practices developed by the Secretary

623 Wetland restoration or stream restoration projects, including dam removals, in accordance with a plan approved by the Secretary.

624 Dry hydrants installed in constructed ponds, where the disturbance is limited to the pond and previously disturbed or managed areas, such as lawns and mowed fields.

~~6.76.~~25 Cleanup activities for spills of oil or hazardous materials.

6.26 Construction of residential housing projects and related required utilities, including draining, dredging, filling, grading, or vegetation clearing that meet the requirements of this subsection.

a. The residential housing project is located within an area:

1) Designated under 24 V.S.A. chapter 76A as a Downtown Development District, Village Center, New Town Center, Growth Center, or Neighborhood Development Area;

2) ~~Outside~~ Within one half mile of an area described in subdivision (a)(1) of this subsection, and served by public sewer or water services or soils tht are adequate for waste water disposal ~~located along the extension or terminus of a public sewer or water line available for connection that serves the designated area~~, and at least 51 percent of the parcel shall be located within one half mile of the designated center boundary; or

3) Designated by the Land Use Review Board as Tier 1A or Tier 1B in accordance with 10 V.S.A §§ 6033-6034.

b. The residential housing project is served by public sewer infrastructure or located on soils adequate for wastewater disposal and capable of supporting one or more wastewater systems to serve all proposed residential connections.

c. No draining, dredging, filling, grading, or vegetation clearing will occur nor will the residential housing project be located:

1) Within a Class I wetland or its buffer zone; or

2) Within, or within 25 feet of, ~~the mapped area of~~ a Class II wetland delineated within the past ten years, provided that the delineation is or was approved by the Secretary ~~shown on the Vermont Significant Wetlands Inventory at the time of the residential housing project's registration under subdivision (e) of this subsection~~.

d. Notwithstanding subdivision (c)(2) of this subsection, a linear utility or access infrastructure servicing residential housing may cross ~~the mapped area of~~ a Class II wetland or within 25 feet of ~~the mapped area of~~ a Class II wetland provided:

(i) The crossing is practicably unavoidable;

(ii) The linear utility or access infrastructure would result in less than 5,000 square feet in permanent impact cumulatively, or, before project construction commences, offset credits have been purchased through the In Lieu Fee Program at a ratio following the U.S. Army Corps of Engineers' New England District Compensatory Mitigation Standard Operating Procedures (April 26, 2024); and

(iii) The linear utility or access infrastructure is designed, constructed, and maintained in compliance with the Best Management Practices for Installation of Linear Utilities and Access Infrastructure Servicing Residential Housing (Appendix B).

e. The residential housing project is registered with the Secretary on or before January 1, 2030. The registrant shall notify the Secretary in writing at least 30 days prior to the commencement of construction ~~within 30 days after construction commences~~.

f. For the purposes of this subsection, development activities in pursuit of a common plan of development shall be considered a single residential housing project. A common plan of development means development that is completed in phases or stages when such phases or stages share a common state or local permit related to the regulation of land use, the discharge of wastewater or a discharge to surface waters or groundwater, or a development designed with shared common infrastructure.

g. Notwithstanding Section 11 of this rule, a residential housing project registered with the Secretary in accordance with subdivision (e) of this subsection shall remain eligible to proceed as an allowed use after January 1, 2030, provided substantial construction of the project has commenced on or before September 1, 2030. All construction on a project under this subsection shall be completed and the site shall be stabilized no later than December 1, 2031. For the purposes of subdivision, substantial construction has commenced when:

(i) All required State, local, and federal permits and authorizations for project construction have been issued; and

(ii) On-site physical construction of the residential housing project has begun and is proceeding in good faith, including construction of permanent project improvements, such as building foundations, necessary utility infrastructure, or

access roads required to serve the project.

SECTION 7: RULEMAKING PETITIONS

7.1 General

Any person may petition the Secretary to classify any wetland as a Class I wetland, or to reclassify any Class I wetland to a lower classification, in accordance with the Vermont Administrative Procedures Act, 3 V.S.A. §§ 800-849 and these rules.

7.2 Content of Petitions

Any petition shall be in writing and must contain the following information unless waived in writing by the Secretary.

a. The nature and purpose of the petition.

b. A narrative providing a detailed summary of the circumstances prompting the petition and describing the specific action sought.

c. A description of the specific location of the subject wetland or buffer zone and the location on a USGS topographic map or the relevant portion of the VSWI map.

d. A detailed narrative of why the petitioner believes the action(s) sought by the petition is consistent with state and federal statute and these rules, including a discussion of each wetland function (see Section 5) at issue.

e. Copies of all documents which the petitioner intends to rely upon in support of the petition;

f. The names and complete mailing addresses of all persons owning property within or adjacent to the wetland and the existing and proposed buffer zone.

g. The signature, printed name, and complete mailing address of each person signing the petition.

h. The name, address, and telephone number of a designated representative.

i. All determinations or decisions, if any, issued by the Secretary, Panel, or former Water Resources Board pertaining to the wetland or wetlands in question.

j. Such other information as the Secretary may require.

7.3 Petition Distribution

The Petitioner shall file the petition with the Department of Environmental Conservation, Watershed Management Division. The Petitioner shall file a copy of the petition, as well as all supporting documents and exhibits. The petition and all supporting documents and exhibits, including any documents or exhibits filed to complete or supplement a petition, shall be accompanied by a certificate of service signed by the petitioner or a representative. Unless waived in writing by the Secretary, the petitioner shall also serve the petition upon each person owning property within or adjacent to the wetland and the existing and

proposed buffer zone.

7.4 Rulemaking Process

a. Notice

The Secretary shall consider petitions in accordance with the Administrative Procedure Act, 3 V.S.A. § 806. If the Secretary grants the petition, the Secretary shall commence rulemaking within 30 days of receiving the petition, pursuant to 3 V.S.A. Chapter 25.

b. Review Standards

The Secretary shall determine whether a wetland is a Class I wetland, on the basis of the criteria set forth in Section 5. The Secretary shall decide whether to modify the size or configuration of any buffer zone associated with any Class I wetland on the basis of the need to protect those values and functions sought to be preserved by the designation.

7.5 Emergency Rulemaking

Where the Secretary believes that there exists an imminent peril to public health, safety or welfare, it may adopt an emergency rule pursuant to 3 V.S.A. §844.

SECTION 8: WETLANDS DETERMINATIONS BY THE SECRETARY

8.1 General

The Secretary may, upon a petition or on their own motion, determine whether any wetland is a Class II Wetland or a Class III wetland, pursuant to 10 V.S.A. § 914 and these rules. Such determinations shall be based on an evaluation of the functions and values set forth in statute and these rules. The Secretary may establish the necessary width of a buffer zone of any Class II wetland as part of any wetland determination pursuant to these rules.
Any wetland proposed by the Secretary to be designated as a Class II wetland shall be presumed to be a significant wetland until the Secretary determines otherwise. This presumption shall become effective upon receipt by the landowner of a registered letter from the Secretary giving notice of a preliminary wetland determination, and shall last sixty (60) days thereafter.

8.2 Contents of Petitions

Any request by a person for the Secretary to make a determination pursuant to Section 8.1 shall be in writing and must contain the following:

~~a.~~(a) a description of the specific location of the subject wetland or buffer zone

and the location on a USGS topographic map or the relevant portion of the VSWI map;

~~b.~~(b) a detailed narrative of the action(s) sought by the petitioner and why the action(s) are consistent with these rules, including a description of the wetland and each wetland function and value (Section 5) at issue;

~~c.~~(c) copies of all documents which the petitioner intends to rely upon in support of the request;

~~d.~~(d) the names and complete mailing addresses of all persons owning property within or adjacent to the wetland area and buffer zone in question.

~~e.~~(e) all determinations and decisions, if any, issued by the Secretary, Panel or former Water Resources Board, pertaining to the wetland or buffer at issue; and

~~f.~~(f) such other information as the Secretary may require.

8.3 Petition and Determination Notice Requirements

~~a.~~(a) A Petitioner shall provide written notice of a petition for a determination under this section to the owner of each parcel of land within or adjacent to the wetland area or buffer zone being considered, and shall certify to the Secretary in writing that such notice has been provided, and shall state in the written certification the name and address of each person notified and the date and manner that notice was provided.

~~b.~~(b) The Secretary shall provide notice of a proposed wetland determination according to the provisions of 10 V.S.A. § 914(c).

~~c.~~(c) The Secretary shall provide notice of a proposed categorical wetland determination through the Environmental Notice Bulletin, according to the requirements of 10 V.S.A. § 7714.

~~d.~~(d) The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the final decision to the bulletin. When the Secretary issues the final decision, the Secretary shall provide a response to comments.

~~**8.4 Reconsideration of Wetland Determinations**~~

~~Within 15 days of the date of the decision, the applicant, any person entitled to notice under Section 8.3(a), or any person who filed written comments regarding the permit application may request in writing reconsideration by the Secretary. Such a request shall specify all action(s) for which reconsideration is sought and shall provide an explanation of the reason(s) why the request is filed. Where a request for reconsideration has been properly~~

~~filed, additional evidence may be submitted concerning the functions and values of the wetland, and any other material issue as deemed appropriate by the Secretary. The Secretary may appoint a designee who shall be at the Division Director level or higher to render a decision on the request for reconsideration. The Secretary's written reconsideration decision shall be issued as expeditiously as possible under the circumstances, and shall be distributed in accordance with Section 8.3(c). The Secretary's written reconsideration decision shall constitute a final act or decision of the Secretary, subject to appeal pursuant to 10 V.S.A. § 8504 and Section 10 of these Rules.~~

~~No request for reconsideration may be filed concerning or resulting from a request for reconsideration. If the Secretary fails to act on a request for reconsideration within 20 days of its filing, the request shall be deemed to be denied.~~

~~Filing a timely request for reconsideration with the Secretary tolls the 30-day period for filing an appeal with the Environmental Court. The full time for appeal shall commence to run and shall be computed from the date of the issuance of the Secretary's decision on the reconsideration request.~~

~~8.5 VSWI Mapping Corrections and Revisions~~
8.4 VSWI Mapping Corrections and Revisions

The Secretary shall have the authority to make the following mapping corrections, which are not wetland determinations pursuant to 10 V.S.A. § 914. The Secretary shall provide notice of such map corrections on the Environmental Notice Bulletin according to the requirements of 10 V.S.A. § 7714. The VSWI map layer is located on the Agency of Natural Resources Atlas and available for download through the Vermont Center for Geographic Information (VCGI).

a. The Secretary may, upon request or on their own motion, determine whether a polygon on the VSWI map is not a wetland. Such determinations shall be based on the methodology for identifying wetlands in Section 3.2.a of these rules. ~~Section 8.3 notification requirements do not apply to such map corrections. The Secretary shall provide notice of such map corrections according to the requirements of 10 V.S.A. § 7714.~~

~~a.~~

b. The Secretary may determine that a polygon on the VSWI map is inaccurate and may change the configuration of the polygon to more accurately reflect the location of a wetland, as determined from aerial photos, field visits, field delineations and other relevant information. Section 8.3 notification requirements shall not apply to such changes. These types of changes do not alter the classification of the wetland, but enhance the accuracy of the VSWI maps. ~~The Secretary shall provide notice of such map corrections according to the requirements of 10 VSA §7714. These map corrections generally fall into the following three categories:~~

~~i. Registration errors: Wetland polygons that do not line up with the underlying base layers. The most common error in this category are small ponds that do not line up with visible ponds on ortho-photos. A notice of map changes made based on these determinations will be sent to Town Clerk offices on a~~

~~periodic basis and to a list of interested parties, if any.~~

~~i. Corrections based on field verified contiguity: This type of mapping correction is based on field verified information of the general size and location of the wetland, and adjusts the wetland boundary of an already designated Class Two wetland. Wetland delineations that are not part of a permitting action are included in this category. A notice of map changes based on these determinations will be sent to Town Clerk offices, to the affected landowners and to a list of interested parties, if any.~~

~~i. Corrections based on wetland delineation associated with a permit action. This type of mapping correction is based on a field delineated wetland boundary location of an already designated Class Two wetland. The notice of map change will be included in notifications required under Sections 9.2, 9.3 and 9.8.~~

c. The Secretary shall provide notice of map revisions associated with an individual wetland determination concurrently with the wetland determination, according to the provisions of 10 V.S.A. § 914(c).

d. The Secretary may determine that a general category of wetlands is significant for one or more functions and values and therefore meets the definition of a Class II wetland according to Sections 4.1 and 4.6 of this rule. The Secretary shall revise the VSWI to identify those wetlands that have been categorically determined to be Class II, as determined from aerial photos, field visits, field delineations and other relevant information. ~~The Secretary shall provide notice of such statewide map revisions in accordance with 10 VSA §7714.~~

SECTION 9: PERMITS

9.1 General

Activity in a Class I or Class II wetland or its associated buffer zone is prohibited unless it is an allowed use or authorized by a permit, conditional use determination or order issued by the Secretary. The Secretary may impose any conditions in such a permit that are deemed necessary to achieve the purposes of these rules. The Secretary may issue a permit authorizing an activity occurring within a Class I wetland only to meet a compelling public need to protect public health or safety. A permit issued under these rules shall not relieve any person of the responsibility to comply with all other applicable federal, state or local laws. An individual wetland permit shall remain valid for one year from the date of issuance unless the Secretary specifies a longer period not to exceed five years.

The Secretary may extend a permit for up to a total of ten years beyond the date of issuance of the original permit if the permittee re-evaluates and re-delineates the wetland resources impacted by the authorized activity and the Secretary determines there will be no impact to Class I or Class II wetland or buffer beyond those impacts permitted under the original permit. If any additional wetland or buffer will be impacted, an amendment must be applied for, concurrent with a permit extension. An application for a permit extension is subject to

the same notice and comment requirements listed in Section 9.3 of these rules.

A permit shall not be required for:

1. Any activity that occurred before the effective date of 10 V.S.A. § 913 unless the activity occurred within:

   ~~a.~~(a) an area identified as a wetland on the VSWI maps as they existed on the date the activity commenced;

   ~~b.~~(b) a wetland that was contiguous to an area identified as a wetland on the VSWI maps; or

   ~~c.~~(c) the buffer zone of a wetland referred to in a. or b. above.

2. Any construction within a wetland that is identified on the VSWI maps as they existed on the date the activity commenced, or within the buffer zone of such a wetland, provided that the construction was completed prior to February 23, 1992, and no action for which a permit or conditional use determination was required under these rules was taken or caused to be taken on or after February 23, 1992.

9.2 Individual Permit Application; Distribution

a. The applicant shall, in addition to filing an original copy with the Secretary, file a complete copy of the application for an individual permit with the following:

   1. the clerk of each Vermont municipality in which the wetland or buffer zone is located,

   2. each regional planning commission serving the geographical area in which the wetland or buffer zone is located.

b. In addition, copies of the location map, the description of the specific action(s) for which a permit is sought, the supporting narrative and a listing of where complete copies of the request have been filed shall be provided to the municipal planning commission and/or conservation commission and to all persons owning property within or adjacent to the affected wetland area or buffer zone in question.

c. The Secretary may require an applicant to submit any additional information that the Secretary considers necessary in order to make a decision on the issuance or denial of a permit. The Secretary may deny the application without prejudice if the requested information is not provided to the Secretary within sixty (60) days of the Secretary's request. Denials of an application shall be issued in writing, stating the reasons for the denial. If an application is denied for lack of technical or other information, the Secretary will provide appropriate information to help the applicant correct the deficiencies and re-apply for a permit.

d. Revocation of an Individual Permit: The Secretary may, after notice and opportunity for a hearing, revoke or suspend, in whole or in part, an individual permit for cause, including:

1. violation of the terms or conditions of the individual permit;

2. obtaining a permit by misrepresentation or failure to fully disclose all relevant facts;

3. a change in any condition that requires either a temporary or permanent reduction or elimination of the authorized activity.

9.3 Notice of Request for Public Comment on Individual Permit Application

a) The applicant shall provide notice of their permit application to adjoining property owners. Adjoining property owner means a person who owns land in fee simple, if that land:

1. Shares a property boundary with a tract of land where proposed or actual activity regulated by the Department is located; or

2. Is adjacent to a tract of land where such activity is located and the two properties are separated only by a river, stream, or public highway.

b) The Secretary shall provide notice of an administratively complete application through the environmental notice bulletin.

c) The Secretary shall provide notice of a draft decision through the environmental notice bulletin and shall post the draft decision and a fact sheet to the bulletin.

d) The Secretary shall provide a public comment period of no less than 30 days.

e) Any person may request a public meeting on the draft decision issued under this section within 14 days of the issuance of the draft decision. The Secretary shall hold a public meeting whenever any person files a written request for such a meeting. The Secretary otherwise may hold a public meeting at their discretion.

f) The Secretary shall provide at least 14 days' notice of the public meeting through the environmental notice bulletin. If the notice of the public meeting is not issued at the same time as the draft decision or draft general permit, the Secretary also shall provide notice of the public meeting in the same manner as required for the draft decision or permit.

9.4 Notice of Decision

The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the final decision or permit to the bulletin. When the Secretary issues the final decision, the Secretary shall provide a response to comments.

9.5 Individual Permit Review Standards

a. Burden of Proof

Applicants for an individual wetland permit shall have the burden to show that a proposed activity in any Class I or Class II wetland or its buffer zone complies with these rules and will have no undue adverse effect on protected functions and values. In determining whether this burden has been met, the potential effect of any proposed activity shall be evaluated on the basis of both its direct and immediate effects as well as on the basis of any cumulative or on-going effects on the significant wetland.

b. Mitigation Sequencing

An adverse effect on any protected function, other than a minimal impact, shall be presumed to constitute an undue adverse effect unless the Applicant can demonstrate each of the following, sequentially:

(1) The proposed activity cannot practicably be located outside the wetland or on another site owned or controlled by the applicant or reasonably available to satisfy the basic project purpose; and

(2) If the proposed activity cannot practicably be located outside the wetland, all practicable measures have been taken to avoid adverse impacts on protected functions; and

(3) If avoidance of adverse effects on protected functions cannot be practically achieved, the proposed activity has been planned to minimize adverse impacts on the protected functions and a plan has been developed for the prompt restoration of any adverse impacts on protected functions.

c. Compensation

~~Compensation may be considered only when full compliance with the requirements of subsection b (1-3) is insufficient to achieve no net undue adverse effect on any protected function.~~ If the applicant has demonstrated compliance with Sections 9.2(b)(1)-(3) and the proposed project would result in unavoidable adverse impacts on the protected functions and values of a significant wetland, a permit shall not be issued unless the applicant also demonstrates that such unavoidable impacts will be compensated for in accordance with this subdivision.

(1) Compensation shall be required under the following circumstances:

(a) When a proposed project would result in more than 5,000 square feet of adverse impacts to significant wetlands;

(b) When a proposed project would result in adverse impacts to a wetland buffer that significantly affects the functions and values of the adjacent wetland, as determined by the Secretary; and

(c) When a proposed project would result in adverse impacts to a significant wetland of 5,000 square feet or less and the Secretary

determines that compensation is necessary to avoid a loss of protected wetland functions and values.

Compensation will be allowed for impacts to either Class I or Class II wetlands only to reduce adverse impacts on those protected functions that are compensable. Such compensation measures may include establishing new wetlands or enlarging the boundaries of an existing wetland to compensate for the adverse impact of the proposed activity. The compensation may also include payment of fees to ~~a federal~~an "in-lieu fee" program or mitigation bank approved by the Secretary.

(2) Compensation ~~to avoid for~~ undue adverse impacts on protected functions in Class I wetlands or their buffer zones may only be considered upon the showing that the adverse impacts are necessary in the course of meeting a compelling public need to protect public health or safety.

(3) When assessing the appropriate type and scale of compensatory mitigation for permittee-designed compensation projects, the Secretary shall consider the following factors:

(e) The existing level of wetland functions and values currently provided at both the proposed project site and the compensation site, prior to any mitigation or restoration activities;

(f) The amount of wetland acreage and function that would be lost as a result of a proposed project;

(g) The method of wetland restoration at the proposed compensation site for lost acreage and functions;

(h) The length of time necessary for the compensation site to be fully functional;

(i) The likelihood that the compensation project may fail to achieve its intended objectives; and

(j) The differences in location between the adversely impacted wetland and the compensation site, and how those differences may affect the ecological services and values provided.

(4) Compensation for permanent fill or drainage of significant wetlands shall be provided at a minimum 2:1 ratio of compensation acreage to wetland area lost when compensation is required under subdivision 9.5(c)(1)(a). Compensation for other wetland impacts shall be based on the factors listed under Section 9.5(c)(2) and the compensation ratios set forth in the U.S. Army Corps of Engineers' New England District Compensatory Mitigation Standard Operating Procedures (April 26, 2024). The establishment of wetland buffer zones shall not substitute for restoration, enhancement, or creation of wetlands for compensation purposes.

(5) Where compensation for wetland buffer impacts is required, the Secretary shall determine the appropriate scale of compensation based on the factors identified under subdivision. The Secretary may develop and consider guidance identifying appropriate compensation ratios for categories of wetland buffer impacts.

~~Compensation will be allowed for impacts to either Class I or Class II wetlands only to reduce adverse impacts on those protected functions that are compensable.~~

(6) Compensation is presumed to be possible for adverse impacts on the functions specified in Sections 5.1, 5.2(d), 5.4(a)(1 and 2), and 5.9. For any of the remaining functions and values specified in Section 5, the applicant must show that compensation will be successful in ~~achieving no net loss incompensating for~~ adverse impacts to any protected function. Any compensation plan must demonstrate that:

~~(1)~~(a) there will be no net loss of the protected functions or acreage of significant wetlands, and that the compensation provided will achieve a net gain of wetlands acreage and protected functions to the extent required by 10 V.S.A. § 918 and this rule;

~~(2)~~(b) the compensation measures will be fully implemented prior to, or concurrently with, the proposed activity;

~~(3)~~(c) the compensation measures shall be monitored and managed for a period necessary to insure full replacement of the protected functions in question and any additional period that may be required by subsequent remedial measures but in no event for less than five years;

~~(4)~~(d) measures shall be designed to be self-sustaining following the period for which monitoring or management is required;

~~(5)~~(e) adequate financial surety is provided to carry out the proposed compensation including any necessary remedial measures; and

~~(6)~~(f) any replacement wetland will be permanently preserved by a conservation easement or deed restriction conveyed to a suitable party or by other appropriate means.

~~**9.6 Reconsideration of Individual Wetland Permit Decisions**~~

~~Within 15 days of the date of the decision, the applicant, any person entitled to notice under Section 9.2, or any person who filed written comments regarding the permit application may request in writing reconsideration by the Secretary. Such a request shall specify all action(s) for which reconsideration is sought and shall provide an explanation of the reason(s) why the request is filed. Where a request for reconsideration has been properly filed, additional evidence may be submitted concerning the adequacy of the permit application, the adequacy of mitigation measures, and any other material issue as deemed appropriate by the Secretary. The Secretary may appoint a designee who shall be at the Division Director level or higher to render a decision on the request for reconsideration. The Secretary's written reconsideration decision shall be issued as expeditiously as possible under the circumstances, and shall be distributed in accordance with Section 9.4. The Secretary's~~

~~written reconsideration decision shall constitute a final act or decision of the Secretary, subject to appeal pursuant to 10 V.S.A.§ 8504 and Section 10 of these Rules.~~

~~No request for reconsideration may be filed concerning or resulting from a request for reconsideration. If the Secretary fails to act on a request for reconsideration within 20 days of its filing, the request shall be deemed to be denied.~~

~~Filing a timely request for reconsideration with the Secretary tolls the 30-day period for filing an appeal with the Environmental Court. The full time for appeal shall commence to run and shall be computed from the date of the issuance of the Secretary's decision on the reconsideration request.~~

~~9.7~~9.6 Amending an Individual Wetland Permit Decision

A permittee shall notify the Secretary of any changes to the permitted project. The Secretary may authorize a major, minor, or administrative amendment to an individual wetland permit when the proposed amendment:

(a) Does not involve a change to the overall project purpose
(b) Does not impact any additional properties, unless the applicant is applying for a major amendment, in which case impacts to additional properties may be permitted.

(1) An administrative amendment may be granted for any proposed change to an individual permit that corrects typographical errors, changes the name or mailing address of a permittee, or makes other similar changes to a permit that do not require technical review of the permitted activity or any changes to conditions or requirements. The transfer of an individual wetland permit constitutes an administrative amendment. No notice and comment is required for an administrative amendment.

(2) A minor amendment may be granted for any change to a proposed individual permit that entails a change to a condition or requirement, does not necessitate technical review, and is not an administrative amendment. Changes that meet all of the following criteria may constitute minor amendments to a permit:

(a) Involve the same delineated wetland area
(b) Are within the same property
(c) Consist of no more additional impact
(d) Are within the same or lesser cover type in wetland or buffer
(e) Activity does not move from a managed area to a natural area
(f) Activity does not move to areas with rare, threatened or endangered species habitat or an exemplary wetland natural community
(g) Have no further encroachment into wildlife habitat, and
(h) Are no closer to surface water bodies

Before a minor amendment can be granted, the Secretary shall:

1. provide notice of an administratively complete minor amendment application through the environmental notice bulletin,
2. provide notice of the draft decision through the environmental notice bulletin and

shall post the draft decision to the bulletin,
3. provide a public comment period of at least 14 days on the draft decision,
4. provide notice of the final decision through the environmental notice bulletin and shall post the decision to the bulletin, and
5. provide a response to all comments.

(3) A major amendment may be granted for any proposed change to an individual permit that necessitates technical review. A major amendment shall be subject to the same individual permit review standards and public notice and comment requirements applicable to the original permit application.

To secure an amendment to a valid permit, the Permittee must submit to the Secretary an amendment application that includes a description of the proposed change, a site plan that depicts the amended project, any other information as required by the Secretary, and the Permittee must pay any applicable application fees, including fees covering any additional proposed impacts to wetlands or wetland buffer, according to the fee schedule established in 3 V.S.A. § 2822.

An amendment or modification to a project that does not meet the conditions described above requires the submittal of a new wetland permit application for all of the project activities.

~~9.8~~9.7 General Permits

The Secretary may issue general permits for discrete categories of Class II wetlands and for discrete categories of activities or uses in accordance with the provisions of this section. A general permit shall be issued for a specified period of time not to exceed five (5) years from the date of issuance. Authorizations issued by the Secretary pursuant to a general permit shall be valid for a specified period of time not to exceed five (5) years.

a. Proposed General Permits

Any proposed general permit shall include the following information:

(1) A detailed description of the activities or uses to be authorized.

(2) Any conditions or limitations on the activities or uses authorized.

(3) The expiration date of the general permit.

(4) A detailed narrative explaining the rationale for the proposed general permit and the basis on which the Secretary has determined that activities eligible for authorization pursuant to the general permit will comply with these rules and will have no undue adverse effect on protected functions and values. In making this determination, the Secretary shall evaluate both the direct and immediate effects of any proposed activity as well as the cumulative or ongoing effects on the significant wetland. An adverse effect on protected functions, other than a minimal impact, shall be presumed to constitute an undue adverse effect unless:

(a) The proposed activity cannot practicably be located outside the wetland or on another site owned, controlled or available to satisfy the basic project purpose; and

(b) If the proposed activity cannot practicably be located outside the wetland, all practicable measures have been taken to avoid adverse impacts on protected functions; and

(c) If avoidance of adverse effects on protected functions cannot be practically achieved, the proposed activity has been planned to minimize adverse impacts on the protected functions and a plan has been developed for the prompt restoration of any adverse impacts on protected functions.

b. Copies of any documents which the Secretary has relied upon in the preparation of the proposed general permits shall be available to the public upon request unless exempt from public inspection and copying pursuant to 1 V.S.A. § 317(c).

c. Notice

The Secretary shall provide notice of a draft general permit through the environmental notice bulletin and shall post the draft decision or permit to the bulletin. The notice shall:

(1) accurately summarize the proposed general permit(s);

(2) indicate where copies can be obtained; and

(3) provide at least 30 days in which to file written comments and/or to file a written request that the Secretary hold a public meeting.

d. Public Meeting Requests

Within 14 days of issuance of the draft general permit, any person may request a public meeting on the draft general permit issued under this section. The Secretary shall hold a public meeting whenever any person files a written request for such a meeting. The Secretary otherwise may hold a public meeting at their discretion. The Secretary shall provide at least 14 days' notice of the public meeting through the environmental notice bulletin. If the notice of the public meeting is not issued at the same time as the draft general permit, the Secretary also shall provide notice of the public meeting in the same manner as required for the draft decision or permit under subsection (c) of this section.

e. Decision

The Secretary shall provide notice of the final decision or final general permit through the environmental notice bulletin and shall post the final decision or permit to the bulletin. When the Secretary issues the final decision or final general permit, the Secretary shall provide a response to comments.

f. Modification of General Permit

The Secretary may modify a general permit after providing an opportunity for public participation in the same manner as described in Section 9.8(c) and (d).

~~9.9~~9.8 Application for Authorization Under a General Permit

a. Application.

An applicant for authorization under a general permit shall submit a completed Notice of Intent (NOI) form with all necessary attachments and fees, if any, and all other application information required by the general permit and the Secretary.

The Secretary may require an applicant to submit any additional information that the Secretary considers necessary in order to make a decision on the issuance or denial of an authorization under the general permit. The Secretary may deny coverage if the requested information is not provided within sixty (60) days of the Secretary's request.

b. Public Notice of Application

Once the Secretary determines that an application for authorization under a general permit is complete, the Secretary shall provide public notice through the Environmental Notice Bulletin.

For a period of fourteen (14) days following the Secretary's completion of the public notice requirements specified above, the Secretary shall provide an opportunity to the public to provide written comment regarding whether the application complies with the terms and conditions of the general permit.

The period for public comment may be extended at the sole discretion of the Secretary.

The applicant shall comply with any additional notice requirements specified in the general permit.

c. Issuance or Denial of Authorizations

If the Secretary determines that an application is complete and that the proposed activity meets the terms and conditions of the general permit, the Secretary shall issue an authorization unless the Secretary determines that an individual permit is required pursuant to Section 9.~~9~~8(e). The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the decision to the bulletin. The Secretary shall provide a response to comments.

Denials of an authorization shall be issued in writing, stating the reasons for the denial. If an application is denied for lack of technical or other information, the Secretary will provide appropriate information to help the applicant correct the deficiencies and re-apply for an authorization.

d. Revocation of an Authorization

The Secretary may, after notice and opportunity for a hearing, revoke or suspend, in whole or in part, an authorization under a general permit for cause, including:

1. violation of the terms or conditions of the general permit;

2. obtaining authorization by misrepresentation or failure to fully disclose all relevant facts;

3. a change in any condition that requires either a temporary or permanent reduction or elimination of the authorized activity.

e. Requiring Coverage under an Individual Permit

The Secretary may require a person applying for an authorization under a general permit to apply for an individual permit. Cases where an individual permit may be required include the following:

1. the applicant is not in compliance with the terms and conditions of the general permit;

2. the activity does not qualify for authorization under a general permit taking into account the location of the activity, the size of the activity, or the impact of the activity on the functions of the wetland or buffer zone in question.

f. Requiring Authorization under a General Permit

The Secretary may require a person applying for an individual permit to apply for authorization under a general permit provided the Secretary finds that the activity complies with all conditions of the general permit and the activity is more appropriately covered under the general permit.

g. Nonreporting General Permit. The Secretary may, at their discretion, issue a nonreporting general permit.

SECTION 10: APPEALS

Appeals from any act or decision of the Secretary under these rules are governed by 10 V.S.A. § 8504.

SECTION 11: REPEAL OF TEMPORARY PROVISIONS

Sections 2.1, ~~2.23, 2.26, 2.33~~ 2.24, 2.27, 2.34, and 6.26 of these rules are repealed effective January 1, 2030.

APPENDIX A - Class One Wetlands

This appendix lists those wetlands that have been designated as Class I wetlands as provided for in Section 7 of the Vermont Wetland Rules. The relative locations of these wetlands are depicted on the Vermont Significant Wetlands Inventory maps.

Addison County
Beaver Meadows, Ripton, (44.041609, -73.057337). Established 2019, Wetland file 2017-396. The wetland buffer extends 400 feet from the delineated wetland boundary.

Bennington County
Dorset Marsh, Dorset, (43.23793, -73.09057), Established April 22, 1992, Wetland file1990-03. The wetland buffer extends 100 feet from the delineated wetland boundary.

Caledonia County
Peacham Bog, Peacham, (44.297015, -72.239732), Wetland file 2017-009. The wetland buffer extends 500 feet from the delineated wetland boundary.

Chittenden County
Northshore Wetland, Burlington, (44.52465, -73.27132) Established September 18, 2009, Wetland file 2000-03. The wetland buffer extends 300 feet from the delineated wetland boundary except where the easterly side of such buffer would encroach upon the City of Burlington recreational path, in which areas the buffer shall extend from the delineated boundary parallel to, and 25 feet westerly from, the centerline of the City of Burlington recreational path as it existed September 18, 2000.

Sandbar Wetlands, Colchester and Milton, (44.61165, -73.23203 and; 44.62095, -73.23306). Established in 2017, Wetland file 2016-346. The wetland buffer extends 100 feet from the delineated wetland boundary.

LaPlatte River Wetlands, Shelburne, (44.396131, -73.232501), Wetland file 2016-699. The Class I wetland's extent is defined by the Class I map. The wetland buffer extends 100 feet from the mapped Class I area.

Essex County
Dennis Pond Wetlands, Brunswick, (44.73288, -71.66231). Established in 2017, Wetland file 2016-351. The wetland buffer extends 300 feet from the delineated wetland boundary.

Franklin
County NONE

Grand Isle County
NONE

Lamoille County

NONE

Orleans County
NONE

Rutland County
Tinmouth Channel Wetland, Tinmouth, (43.45911, -73.03860), Established December 13, 2001, Wetland file 2001-07, The wetland buffer extends 100 feet from the delineated wetland boundary except in the portion of the wetland which is north of route 140 where a 300 foot buffer is designated.

Wards Marsh, West Haven, (43.5767492, -73.3882424), Established in 2022, Wetland File 2018-787. The wetland buffer extends 100 feet from the delineated wetland boundary.

Washington County
Chickering Fen, Calais, (44.32453, -72.48114). Established in 2017, Wetland file 2016-209. The wetland buffer extends 300 feet from the delineated wetland boundary except where 300 feet extends past the watershed at a ridgeline to the northwest of the wetland.

Windham County
NONE

Windsor County
Eshqua Bog, Hartland (43.5961439, -72.4874471). Established in 2022, Wetland File 2020-214. The wetland buffer extends 200 feet from the delineated wetland boundary.

APPENDIX B - Best Management Practices for the Installation of Linear Utilities and Access Infrastructure Servicing Residential Housing

(a) **General Practices.** The following general practices are applicable to all activities eligible under subdivision (d) of subsection 6.26 of the Vermont Wetland Rules:

(1) The crossing shall be in the least impactful location of ~~the mapped area of~~ Class II wetland and 25' buffer zone practicable. Please refer to section (c) of these best management practices for recommended avoidance and minimization practices that may assist in selecting an appropriate crossing location.

(2) A continuous line of orange snow fence or flagging tape shall be installed along the limits of disturbance within the ~~mapped area of~~ Class II wetland and 25' buffer zone prior to the start of construction.

(3) If a stormwater construction permit is required for the activity, the activity shall comply with the erosion prevention and control requirements of that permit. If no stormwater construction permit is required, the activity shall comply with the following minimum erosion prevention and sediment control requirements:

(A) Prior to commencement of construction, a continuous line of silt fence shall be properly installed immediately upgradient of the snow fence or tape and shall be regularly maintained. Silt fence shall be installed on the contour and shall not be installed in areas of concentrated flow, including stream channels or ditches.

(B) Accumulated sediment shall be removed from the silt fence before and after any significant storm event or whenever sediment reaches one-half of the height of the fence. Removed sediments shall be disposed of in a stable upland area outside the 50-foot buffer zone and at least 100 feet from waters of the State, as defined under 10 V.S.A. § 1251, and shall, at a minimum, be immediately stabilized with seed and mulch.

(C) All other disturbed soils shall be seeded and mulched within 48 hours after final grading.

(D) All sediment barriers and construction fencing shall be removed following the successful establishment of vegetation.

(4) If a stream alteration permit is required for activity, the activity shall comply with the requirements of that permit. If no stream alteration permit is required, the activity comply with the minimum following requirements:

(A) In-stream work shall be conducted using the method that results in the least disturbance of stream flow and prevents any discharge of sediment downstream. Stream flow shall be diverted from the work area at all times.

(B) All equipment used in or adjacent to a stream shall be clean, properly maintained, and free from fuel, hydraulic fluid, and gear oil leaks. There shall be no discharge of uncured concrete to the stream flow.

(C) Pumping from excavation areas shall be discharged to an overland area or settling basin such that the effluent shall be essentially clarified before reentering the stream flow.

(D) All areas of stream bank disturbed during construction shall be suitably reshaped and stabilized using stone fill or a vegetative planting prior to completion of the project. The extent of stream bank disturbance shall be strictly limited, and all existing vegetation shall be maintained to the greatest degree practicable. Stream work shall be limited to the period from June 1 through October 1.

(E) Culvert invert elevations shall be installed six inches below the stream bed level.

(5) All equipment shall be cleaned prior to work in wetlands and buffer zones so that it contains no observable soil or vegetation, in order to prevent the spread of invasive species.

(6) At the edge of any access road or driveway, where it crosses a ~~mapped area of~~ Class II wetland or its 25' buffer zone, markers consisting of split-rail fence, large boulders, or comparable alternative shall be installed at regular intervals no more than 30 feet apart. These markers shall be installed prior to sale or occupancy of any residential dwellings.

(7) If the impact is temporary in nature, stockpiling of material shall be done on filter fabric or an equivalent barrier within the wetland and buffer zone. Temporarily removed wetland soils shall be returned in the reverse order that they were removed and restored to their prior condition to match the original soil profile.

(8) Except as provided in subsection (7) of this section, removed and stockpiled materials shall be located outside of the wetlands and buffer zones and at least 50 feet from surface waters. Appropriate erosion controls measures described in subsection (3) of this section shall be used.

(9) Impacts from equipment access to the site shall be minimized by using existing or other low impact routes. Equipment access methods shall be used in the following order of preference:

(A) Accessing wetland areas with construction mats or during frozen or dry conditions. Winter construction under frozen conditions may minimize ground disturbance and reduce impacts to wildlife;

(B) Delineating the limits of disturbance using a combination of silt fence, flagging, or snow fence;

(C) Using low-ground pressure or tracked vehicles in wetlands to minimize compaction and rutting;

(D) Minimizing equipment use in wetlands and limiting vehicle trips; and,

(E) Restoring the project site to reverse soil compaction and stabilize the soil on the site and replanting the site if vegetation has been destroyed.

(10) Activities shall maintain or mimic pre-existing drainage to avoid unnecessary ditching or concentration of flow. Crossings in low-lying or seasonally saturated areas shall be designed to accommodate subsurface drainage, including utilizing measures such as French mattresses or underdrains.

(11) Where roadside ditches are required for new or upgraded roads, they shall be sized to accommodate anticipated runoff volumes and shall use vegetated swales and buffer strips whenever practicable.

(12) Where culverts are needed, they shall be installed in a number and size sufficient to equalize hydrology, avoiding lowering waters on one side of the crossing. Culverts shall also be designed and installed to allow for aquatic organism passage.

(13) Final earthwork shall restore wetlands and buffer zones to their original grade and vegetative cover utilizing native seed sources, except where earthwork establishes a permanent access feature.

(b) **Activity-Specific Practices.** The following practices apply to the corresponding activities identified below that are eligible under subdivision (d) of subsection 6.26 of the Vermont Wetland Rules:

(1) Placement, relocation, removal, or upgrade of overhead utility lines in wetland or buffer zone:

(A) Poles and wires shall be located to minimize clearing of vegetation to the extent practicable.

(B) Removal of woody vegetation in the wetland and buffer zone shall occur only within an existing or designated right-of-way ("ROW") for the utility, or for removal of danger trees outside the maintained ROW.

(C) Vegetation management shall be limited to clearing necessary to maintain the line in a safe and efficient manner:

(i) If cutting of wetland vegetation cannot be avoided, the work shall be performed by hand (e.g., chain or hand saw) rather than with heavy equipment to preserve wetland soils; and

(ii) Vegetation shall be cut at ground level, leaving root systems intact.

(2) Installation of underground utilities:

(A) Where feasible, trenchless construction methods shall be used to reduce or eliminate surface disturbance.

(B) Excavation trenches shall be limited in width, using the smallest feasible bucket or trenching equipment.

(C) Trenches shall be filled, mulched, and seeded immediately or upon final inspection of the line.

(D) If directional boring is used, the bore depth beneath the wetland shall not puncture any confining layer necessary to maintain wetland hydrology.

(E) If drilling or boring is utilized, drilling fluid shall be composed of bentonite clay, clean water, and any biodegradable drill soaps or polymers. No diesel fuel shall be used as an additive.

(3) Access roads and driveways:

(A) Access shall be limited to upland areas or existing maintained roads to the extent practicable.

(B) Where access cannot be limited to upland areas or existing roads, access may be conducted on other existing primitive roads or existing managed areas in wetlands or buffer zones where practicable.

(C) Where existing roads are unavailable for access, access shall be conducted in a manner that minimizes rutting and earth disturbing activities by meeting the practices under subsection (a)(9) of these best management practices.

(c) **Avoidance and Minimization Recommendations.** The following planning, pre-construction, post-construction, restoration, and maintenance practices are recommended where practicable to avoid and minimize wetland impacts.

(1) Project Planning:

- Site infrastructure away from low-lying and poorly drained areas.
- Minimize the width of typical access roads through wetlands or utilize existing crossings.
- Avoid both above- and below-ground wetland crossing impacts.
- Design with the grade of the land to avoid earthwork as much as possible and to maintain existing drainage characteristics.
- Target existing corridors or developed areas, such as easements, roads, roadway shoulders, bridges or old railroad beds, as the first alternative preference.
- Avoid disturbing stream beds; if they must be disturbed, utilize a straight and narrow section with low banks.
- Avoid construction access or work in organic soils.
- Consider spanning a wetland by locating utility poles on either side of the wetland, instead of disturbing the interior.
- If attaching utility lines to a bridge or other structure, be aware of possible floodplain constraints.
- If underground piping cannot be avoided, install it in a crack-proof casing so that the area above the piping can be replanted with vegetation.
- Co-locate all utilities and use trenchless methods when practicable
- Share driveways to limit wetland crossings in subdivisions or neighborhoods.
- Use boulders, gabions, or retaining walls where appropriate to reduce the amount of filling needed for slopes.
- Keep the size of cleared maintenance areas above and around utility lines to a minimum.
- For electric lines, consider suspending the wires above any wetland tree canopy or place over a lower cover type (shrubs or emergent marsh).
- Avoid diversion of surface water and groundwater sources, which could affect nearby wetlands. Sub- draining effects from trench installation must be guarded against.
- Use the Vermont Natural Heritage Inventory database to evaluate whether any Rare, Threatened, or Endangered Species wetland habitat exists or exemplary wetland natural communities exist on the site and avoid impacts to those areas.

(2) Before Construction:

- Administer pre-job briefings to ensure everyone is conducting work according to these best management practices.
- Ensure that soil erosion and sediment controls are properly installed and maintained, including silt fences, sediment basins, and other erosion controls to prevent sediment from leaving the work area.
- Have all necessary materials on hand before beginning work.
- Designate construction staging and vehicle access routes to avoid sensitive sites and minimize disturbance.

(3) During Construction within wetland and buffer:

- Limit construction to outside the breeding and migratory seasons of wetland wildlife.
- Limit construction activities to the low-flow periods, the appropriate time-of-year restrictions, or to when the soil is frozen.
- Preserve all low-growing varieties of vegetation adjacent to wetlands to the fullest extent possible in order to minimize erosion potential.
- Limit tree removal to only those trees necessary.
- During trenching and temporary earth disturbance, preserve and stockpile the top 6–12 inches of topsoil separately, then replace it after backfilling to support rapid restoration and reduce ecological impact.
- Use structures or devices to prevent sub-draining or groundwater movement along pipelines, such as anti- seepage collars, intermittent clay barriers, trench plugs or clay saddles.
- Conduct work manually, whenever feasible.
- For underground utilities through wetlands, install pipe sleeves that wires or smaller pipes can be placed within to allow for easy access for future utility maintenance and repair.
- If dewatering of trenches is necessary, pump water into an acceptable, properly designed dewatering basin.
- Stabilize disturbed soils as soon as possible through seeding, mulching, or planting—especially on banks and slopes.

(4) Site Restoration and Maintenance

- Begin site restoration (grading, erosion control, topsoil replacement) immediately following construction, aiming to stabilize the site within three days of completing work.
- Plan for restoration to be completed before the end of the growing season and as soon as possible after installing the utility or access.
- Remove all construction-related features from restoration areas and restore affected locations to their former condition.
- Stabilize all disturbed areas outside of the cleared maintenance zone with grasses and vegetation.

- Utilize a seed mix comprised of native species that is appropriate to the pre-construction site conditions, such as site-appropriate woody species, in all temporary wetland impact areas.
- Restore wetland soils and hydrology to existing conditions or grades, avoiding compaction.
- Restore disturbed stream channels to original width and substrate.
- Maintain the road shoulder by hand cutting or mowing.
- Include the maintenance schedule for standard utility projects and the entity responsible for post- construction stabilization and restoration.
- Include methods for completing regular and emergency repairs to utility lines.

(d) **Recommendations for Residential Housing Projects.** For all other components of a residential housing project qualifying as an allowed use under subsection 6.26 of the Vermont Wetland Rules, the following practices are recommended to help avoid and minimize impacts to affected wetlands and buffer zones, limit future disturbances, and support the protection of wetland functions and values. These recommendations may also assist in project planning where federal permitting is applicable.

(1) Please be aware that federal Clean Water Act (section 404) regulations may apply to your project. Federal review would require a delineation of wetlands using the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, as amended, and supplemental guidance documents issued by the U.S. Army Corps of Engineers.

(2) Evaluate whether practicable alternatives exist and document steps taken to avoid impacts entirely whenever possible. If not practicable, minimize the footprint and degree of impact. This often involves adjusting alignments, project scale, construction methods, or timing to limit disruptions.

(3) Configure lots to completely avoid wetland encroachment. This includes providing adequate yard space for future homeowners to add a deck, shed or pool to their property without impacts to adjacent wetlands.

(4) Site structures at least 10 feet from any buffer zone for maintenance and construction.

(5) To reduce future homeowner encroachment, where residential areas are within 25' of the wetland buffer, include durable markers, such as split-rail fence, large boulders, or equivalent alternative, at regular intervals (30' or less) at the 50-foot buffer zone of the adjacent wetland or at the edge of wetland/buffer impacts.

(6)(5) Plan snow storage areas in uplands or parking lot areas that avoid wetland impacts. If space is limited, snow may need to be removed from the property to avoid pushing it into wetlands and surface waters.