

Sec. 1 FINDINGS AND PURPOSE

(a). Findings. The General Assembly finds:

(1) Wetlands are known to comprise less than 4% of Vermont's landscape;

(2) Wetlands provide critical ecosystem services including flood resiliency, water quality protection, important wildlife and aquatic vegetation habitat, groundwater recharge, erosion control, and recreational opportunities.

(3) Alterations to wetlands may disturb their natural ability to reduce flood damage and adversely affect flood resiliency and the public health and welfare;

(4) Loss of wetland acreage reduces the capacity of those wetlands to absorb silt and nutrients and thus adversely affects the quality of Vermont's lakes and stream; and

(5) Loss or despoliation of wetland acreage adversely affects the habitats of plants and animals of significant economic and ecological value.

(b) Purpose. The purpose of this act:

(1) Protect wetland functions to ensure protection of Vermont's surface and groundwater, wildlife habitat, and ecological health.

(2) When wetland loss cannot be avoided, ensure that wetlands be managed to maximize protection, minimize impact, and facilitate restoration of wetlands to the greatest extent practicable.

Sec. 2. 10 V.S.A. § 902 is amended to read:

§ 902. DEFINITIONS

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(5) “Wetlands” means those areas of the State that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. significant vegetation or aquatic life that depend on saturated or seasonally saturated soil conditions for growth and reproduction. Such areas include 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.

(6) “Class I wetland” means:

(A) a wetland that the Secretary, based upon an evaluation of the extent to which the wetland serves the functions and values set forth in subdivision ~~905b(18)(A)~~ 913(b) of this title, determines is exceptional or irreplaceable in its contribution to Vermont’s natural heritage and, therefore, merits the highest level of protection. Class I wetlands shall be designated by rule.

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

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

(7) “Class II wetland” means a wetland other than a Class I or Class III wetland that exhibits one or more of the following physical characteristics:

- (A) The wetland is equal to or greater than 0.5 acres (21,780 square feet) in size;
- (B) The wetland is greater than 5,000 square feet in size and contiguous with a stream, or open body of surface water, or the wetland is within a river corridor or flood hazard area;
- (C) The wetland is over 2,500 feet in elevation and contiguous with a stream;
- (D) The wetland is greater than 2,000 square feet and contiguous with an impaired surface water, or the wetland itself is an impaired surface water;
- (E) The wetland is or contains peatland;
- (F) The wetland is greater than 5,000 square feet in size and is a natural hillside seep;
- (G) The wetland is a vernal pool;
- (H) The wetland has a known occurrence of a wetland-dependent rare, threatened, or endangered species;
- (I) The wetland has a known occurrence of a state-significant natural community; or
- (J) The wetland was determined to be Class II after the effective date of this statute, and a permit was issued authorizing impacts to that wetland.

~~(A) is a wetland identified on the Vermont significant wetlands inventory maps; or~~
~~(B) the Secretary determines to merit protection, pursuant to [section 914](#) of this title, based upon an evaluation of the extent to which it serves the functions and values set forth in subdivision 905b(18)(A) of this title and the rules of the Department.~~

- (8) “Class III wetland” means a wetland that is neither a Class I wetland nor a Class II wetland.
- (9) “Buffer zone” means an area contiguous to a ~~significant~~ Class I or II wetland ~~that protects the wetland’s functions and values~~. 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 under section 915 of this title. 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 ~~913~~ 914 of this title.

~~(10) “Panel” means the Water Resources Panel of the Agency of Natural Resources.~~

~~(11) “Significant wetland” means any Class I or Class II wetland.~~

~~(10)~~ “Secretary” means the Secretary of Natural Resources or the Secretary’s authorized representative.

(11) “Water Quality Improvement Project” means the following projects, specifically designed and implemented to reduce pollutant loading in accordance with the requirements of a Total Maximum Daily Load (TMDL) Implementation Plan or Water Quality Remediation Plan (WQRP), or pursuant to a plan for reducing pollutant loading to a waterbody:

(A) The retrofit of impervious surfaces in existence as of January 1, 2019, for the purpose of addressing stormwater runoff;

(B) The replacement of stream-crossing structures necessary to improve aquatic organism passage, stream flow or flood capacity;

(C) Construction of the following conservation practices on farms, when constructed and maintained in accordance with Natural Resources Conservation Service (NRCS) Conservation Practice Standards for Vermont:

(i) Construction of stream crossings;

(ii) Construction of animal trails and walkways;

(iii) Construction of access roads;

(iv) Designation and construction of a heavy use protection area; and

(v) Construction of artificial wetlands.

Sec. 3 10 V.S.A. § 905b is amended to read:

§ 905b. DUTIES; POWERS

The Department shall protect and manage the water resources of the State in accordance with the provisions of this subchapter and shall:

* * *

(18) Manage wetlands to maximize protection, minimize impact, and facilitate restoration of wetlands to the greatest extent practicable. Study and investigate the wetlands of the State and cooperate with municipalities, the general public, and other agencies, ~~and the Board~~ in collecting and compiling data relating to wetlands, share information with the public regarding the wetlands of the State, propose ~~to the Board~~ specific wetlands to be designated as Class I wetlands, issue or deny permits pursuant to section 913 of this title and the rules authorized by this subdivision, ~~issue wetland determinations pursuant to section 914 of this title,~~ issue orders pursuant to [section 1272](#) of this title, and in accordance with 3 V.S.A. chapter 25, adopt rules to implement the requirements of this chapter. The Department shall not adopt rules that restrain agricultural activities without the consent of the Secretary of Agriculture, Food and Markets and shall not adopt rules that restrain forestry operations without the consent of the Commissioner of Forests, Parks and Recreation. address the following:

~~(A) The identification of wetlands that are so significant they merit protection. Any determination that a particular wetland is significant will result from an evaluation of at least the following functions and values which a wetland serves:~~

~~(i) provides temporary water storage for flood water and storm runoff;~~

~~(ii) contributes to the quality of surface and groundwater through chemical action;~~

~~(iii) naturally controls the effects of erosion and runoff, filtering silt, and organic matter;~~

~~(iv) contributes to the viability of fisheries by providing spawning, feeding, and general habitat for freshwater fish;~~

~~(v) provides habitat for breeding, feeding, resting, and shelter to both game and nongame species of wildlife;~~

~~(vi) provides stopover habitat for migratory birds;~~

~~(vii) contributes to an exemplary wetland natural community, in accordance with the rules of the Secretary;~~

~~(viii) provides for threatened and endangered species habitat;~~

~~(ix) provides valuable resources for education and research in natural sciences;~~

~~(x) provides direct and indirect recreational value and substantial economic benefits; and~~

~~(xi) contributes to the open space character and overall beauty of the landscape.~~

~~(B) The ability to reclassify wetlands, in general, or on a case by case basis.~~

~~(C) The protection of wetlands that have been determined under subdivision (A) or (B) of this subdivision (18) to be significant, including rules that provide for the issuance or denial of permits and the issuance of wetland determinations by the Department under this chapter; provided, however, that the rules may only protect the values and functions sought to be preserved by the designation. The Department shall not adopt rules that restrain agricultural activities without the consent consultation of the Secretary of Agriculture, Food and Markets and shall not adopt rules that restrain silvicultural~~

~~activities without the consent consultation of the Commissioner of Forests, Parks and Recreation.~~

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Sec. 4 10 V.S.A. § 913 is amended to read:

~~(a) Except for allowed uses adopted by the Department by rule, no person shall conduct or allow to be conducted an activity in a significant wetland or buffer zone of a significant wetland except in compliance with a permit, conditional use determination, Except as provided in subsection (e) below, the following alterations within a Class I or Class II wetland or its buffer zone are prohibited without an individual permit, authorization under a general permit, or an order, issued by the Secretary:~~

- ~~(1) Dredging or removing soil or other material;~~
- ~~(2) Draining, dewatering, or otherwise altering the hydrology of the wetland;~~
- ~~(3) Filling, and~~
- ~~(4) cutting or removal of vegetation.~~

~~(b) Before issuing a permit or authorization, the Secretary must consider the extent to which a wetland serves the following functions and values, and the extent to which the proposed alteration adversely affects the functions and values served by the wetland:~~

- ~~(1) provides water storage for flood water and storm runoff;~~
- ~~(2) Contributes to the protection of surface and ground water;~~
- ~~(3) Provides or contributes to fish habitat;~~
- ~~(4) Provides or contributes to wildlife habitat, including resting, feeding, staging, or roosting habitat for migratory birds~~

(5) Is a wetland Natural Community Type, as recognized by the Nongame and Natural Heritage Inventory of the Vermont Fish and Wildlife Department;

(6) provides habitat for rare, threatened and endangered species;

(7) provides or is likely to provide resources for education or scientific resource;

(8) provides recreational value and economic benefits;

(9) contributes to the open-space and aesthetic character of the landscape; and

(10) provides erosion control through binding and stabilizing the soil.

(c) If the proposed alteration would result in an undue adverse impact to any of the functions and values listed in subsection (b), the Secretary shall not issue a permit under this section unless the applicant demonstrates that they have met the requirements of the wetland mitigation sequence, as set forth in rule.

(d) The Secretary may establish the necessary width of the buffer zone of any Class II wetland, pursuant to the rules of the Department. The buffer zone of any Class II wetland shall be 50 feet, unless otherwise determined by the Secretary.

~~(b)~~(e) A permit shall not be required under this section for

(1) The growing of food or crops in connection with farming, consistent with the following requirements:

(A) The growing of food or crops and all activities ancillary to the growing of food or crops, when conducted in connection with farming, on land that has been growing food or crops in ordinary rotation since February 7, 1990.

(B) The growing of food or crops and all activities ancillary to the growing of food or crops, when conducted in connection with farming, on land converted for the purpose of

growing food or crops after February 7, 1990, not including activities that result in the draining of the wetland, or the alteration of the flow of water into or out of the wetland.

(C) Exempt activities under this section include:

- (i) Cultivating;
- (ii) Harvesting;
- (iii) Plowing;
- (iv) Grazing;
- (v) Seeding;
- (vi) Fence installation;
- (vii) Construction or maintenance of trails and walkways up to 16 feet wide;
- (viii) Maintenance of existing trails, ditches and walkways;
- (ix) Maintenance of existing buildings and structures;
- (x) Existing roads in wetlands may be maintained, restored, reconstructed, rehabilitated, or upgraded, provided that work on existing roads results in an overall net increase in road width of no more than 20 percent beyond the original road width.

~~(x)~~(xi) Temporary impacts that do not result in any change to the original grade of the wetland, and allow for the impacted area to revert back to wetland, including the reestablishment of the existing wetland vegetation, within one year.

Temporary impacts include trenching and filling.

(D) The following activities, when conducted in a wetland or buffer, shall not be exempt and shall require a permit:

- (i) Conversion of natural wetland and buffer to areas growing food or crop or production areas;
- (ii) Alterations ancillary to the growing of food or crops within natural wetland or buffer;
- (iii) The reestablishment of pasture or cropland, when it has laid fallow for more than 5 years and requires mechanized land clearing or alteration to the hydrology for reestablishment;
- (iv) The construction of new ditches or extension of existing ditches.
- (v) The construction of waste storage facilities;
- (vi) The construction, placement, or expansion of any permanent outbuildings or structures that involve foundations, footings, or fill. This includes barns, silos, sugar houses, farm stands, and greenhouses;
- (vii) The construction of new parking lots, loading areas, roads, or driveways;
- (viii) The construction of heavy use protection areas and feedlots;
- (ix) The construction, upgrade or expansion of animal trails and walkways with a total foot print exceeding 16 feet wide;
- (x) The construction or expansion of stormwater management practices;
- (xi) The construction or expansion of ponds.

(2) Forestry operations conducted in Class I or II wetlands and their buffer zones, consistent with the following requirements:

(A) Conducted in accordance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs (AMPs) as adopted by the Department of Forests, Parks and Recreation. The removal of trees for other land uses, including commercial or

residential development or conversion to agricultural production, is not exempt and may require a wetlands permit.

(B) Conducted in compliance with the Management Guidelines for Deer Wintering Areas in Vermont, established jointly by the Departments of Fish and Wildlife and Forests, Parks and Recreation, when occurring in wetlands or buffer zones containing deer wintering areas mapped by the Fish and Wildlife Department;

(C) Log landings must be restricted to upland or buffer zones, except that landings not requiring the placement of fill may be located within Class II wetlands when the ground is frozen;

(D) Equipment maintenance and the storing or changing of oil, grease, or other petroleum products must be restricted to log landings;

(E) The construction of new truck roads in buffer zones when necessary, and the maintenance, restoration, reconstruction, rehabilitation, or upgrade of existing truck roads in buffer zones, when used solely for forestry operations;

(F) Existing truck roads in wetlands may be maintained, restored, reconstructed, rehabilitated, or upgraded, provided that work on existing truck roads results in an overall net increase in road width of no more than 20 percent beyond the original road width, that includes the combined total width of the shoulders, roadbed and ditches;

(G) The construction of permanent buildings in Class I or II wetlands and buffer zones, and the construction of new truck roads in Class I or II wetlands, is not exempt and requires a wetlands permit.

(H) The removal of beaver dams may be allowed to the extent necessary to allow for the use of existing logging roads or ongoing forestry operations; and

(I) Forestry operations conducted in any Class I wetland or its buffer zones, or any Class II wetland specifically designated by the Secretary as providing habitat for any species on the state or federal list of threatened or endangered species, must comply with a plan approved in writing by the Commissioner of the Department of Forests, Parks and Recreation.

(3) Any activity exempted by the Department in rule, adopted according to the provisions of Chapter 25 of Title 3; or

~~(1)~~(4) Any construction within a wetland that is identified on the Vermont significant wetlands inventory maps 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 is required under the rules of the Department was taken or caused to be taken on or after February 23, 1992.

~~(1)~~(3) any activity that occurred before the effective date of this section unless the activity occurred within:

~~(A) an area identified as a wetland on the Vermont significant wetlands inventory maps;~~

~~(B) a wetland that was contiguous to an area identified as a wetland on the Vermont significant wetlands inventory maps;~~

~~(C) the buffer zone of a wetland referred to in subdivision (A) or (B) of this subdivision (1);~~

~~(2)~~

Sec. 5 10 V.S.A. § 914 is amended to read:

~~§ 914. WETLAND DETERMINATIONS~~

~~(a) The Secretary may, upon a petition or on his or her own motion, determine whether any wetland is a Class II or Class III wetland. Such determinations shall be based on an evaluation of the functions and values set forth in subdivision 905b(18)(A) of this title and the rules of the Department.~~

~~(b) The Secretary may establish the necessary width of the buffer zone of any Class II wetland as part of any wetland determination pursuant to the rules of the Department.~~

~~(c) The provisions of chapter 170 of this title shall apply to issuance of determinations under this section.~~

~~(d) Repealed by [2015, Adj. Sess., No. 150, § 9](#), eff. Jan. 1, 2018.~~

~~(e) The Secretary may recommend to the panel that a wetland be classified as a Class I wetland under [section 915](#) of this title.~~

Sec. 6 10 V.S.A. § 916 is amended to read:

~~§ 916. REVISION OF VERMONT SIGNIFICANT WETLANDS INVENTORY MAPS~~

~~The secretary shall revise the Vermont significant wetlands inventory maps to reflect wetland determinations issued under section 914 of this title and rulemaking by the Department panel under section 915 of this title.~~

[Sec. 7 3 V.S.A. § 2822\(j\) is amended to read:](#)

[\(j\) In accordance with subsection \(i\) of this section, the following fees are established for permits, licenses, certifications, approvals, registrations, orders, and other actions taken by the Agency of Natural Resources.](#)

[* * *](#)

(26) For individual conditional use determinations, for individual wetland permits, for general conditional use determinations issued under 10 V.S.A. § 1272, or for wetland authorizations issued under a general permit, an administrative processing fee assessed under subdivision (2) of this subsection and an application fee of:

* * *

(H) Maximum fee, for the construction of any Water Quality Improvement Project as defined in 10 V.S.A. § 902(12), in any Class II wetland or buffer, \$200 per application.

Sec. 8 REPEAL OF SUNSET OF FEE FOR PIPELINES IN WETLANDS

2018 Acts and Resolves No. 194, Sec. 8a(sunset of maximum fee for manure pipeline in wetland) is repealed.

Sec. 9 PREVIOUSLY ISSUED WETLAND CLASSIFICATION DECISIONS

- a. If a wetland was determined by the Secretary to be a Class II wetland prior to the effective date of this bill, and a formal determination issued pursuant to 10 V.S.A. § 914 was issued for the wetland less than five years prior to the effective date of this statute, that determination shall remain in effect and the wetland shall be considered a Class II wetland until five years from the effective date of issuance of the formal determination.
- b. If a wetland was determined by the Secretary to be Class III five years prior to the effective date of this bill, and that determination was documented either as a formal or preliminary determination, that determination decision shall remain in effect until five years from the date of that decision.

Sec. 10 WETLAND SCIENTIST LICENSURE REQUIREMENTS

The Agency of Natural Resources shall commence a study of potential approaches to licensing and certifying qualified wetlands scientists, including developing a set of standard qualifications required for all professional wetland scientists. Within five years of the adoption of this Act, the Agency shall submit a report to the Legislature summarizing its findings and providing recommendations for the development of a professional certification program for wetland scientists.

Sec. 11 EFFECTIVE DATE

This act shall take effect on October 1, 2020.

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