

VLCT TESTIMONY

89 Main Street, Montpelier, Vermont 05602

To: Members of the Legislative Study Committee on Wetlands
From: Karen Horn, Director, Public Policy and Advocacy, khorn@vlct.org
www.vlct.org
Date: October 23, 2019
Re: Wetlands Regulation

Thank you for the opportunity to testify regarding wetlands regulation and the impact on municipalities responsible for complying with environmental regulations generally as well as a host of mandates for municipalities, particularly those that undertake land use planning.

It has always been the case that staff managing specific state programs have difficulty sorting out differences with programs beyond their jurisdictional limits. Nor is it their responsibility to look holistically at the state's overarching goals for public health, general environmental sustainability, economic growth, housing, transportation, energy, education, water quality, public safety, farming or forestry viability, or a host of subsets of each of those considerations. Our experience is that each regulatory program in Vermont tends to operate as though it is the *only* regulatory program.

The result is that programs tend to conflict with each other. Staff are directed to maximize their program goals, even if they are within the same agency. Cities and towns, whose responsibilities for general government require compliance with any number of those programs must find ways to make projects work despite regulatory conflicts.

A case in point is the draft language at Section 2 of the Alternative Wetlands Language (4/23/19) which states at 10 VSA section 905b, "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."

The draft bill would expand the definition of Class II wetlands to include anything over "5000 square feet (0.114 acres) that is contiguous with a stream or open body of water, or in a river corridor or flood hazard area" ... or "more than 2000 square feet and contiguous with an impaired surface water". (10 VSA 902 (7) (B) (D)). The most problematic conflict

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with wetlands requirements is the difficulty they presents in complying with stormwater regulations for

- phosphorus control plans required under Municipal Separate Storm Sewer System (MS4) permits due to the Lake Champlain Phosphorus TMDL*
- flow restoration plans required by the MS4 permit
- Municipal Roads General Permit
- draft 3-9050 stormwater permit which contains new requirements for mitigation on properties containing three acres or more of impervious surface that were never permitted or permitted under an old permit and development or redevelopment of one-half acre of impervious surface by July 1, 2022.

Other legislative initiatives encourage development in designated areas and particularly residential development in areas that are compact, walkable, bikable and accommodating of all populations. Yet many of our designated growth centers, neighborhoods, downtowns and villages are severely limited in addressing those priorities because there is no tailoring of requirements such as wetlands rules to development in those places.

We urge the committee to work with the administration to assure that municipalities are authorized to implement stormwater control solutions in areas that include wetlands or wetland buffers where appropriate. We urge you to consider not only the protection of wetlands, but also to allow for pursuit of Vermont's priorities for water quality generally, housing and sustainable economic growth.

Thank you for the opportunity to testify.

*MS4 permits are issued for urbanized areas of Burlington, Colchester, Essex, Essex Junction, Milton, Shelburne, South Burlington, Williston, and Winooski, the University of Vermont, and the Burlington International Airport. Designated small MS4s, within stormwater impaired watersheds, are operated by the City of Rutland, the Town of Rutland, the City of St. Albans, the Town of St. Albans, and the Vermont Agency of Transportation within the geographic boundaries of the stormwater impaired watersheds in the municipalities listed above.