

Final Proposed Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the "Rule on Rulemaking" adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of "Proposed Rule Postings" online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Vermont Wetland Rules

_____/s/Julie Moore_____, on 12/12/2022
(signature) (date)

Printed Name and Title:

Julie Moore, Secretary
Agency of Natural Resources

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Vermont Wetland Rules

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

22P 024

3. ADOPTING AGENCY:

Agency of Natural Resources

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Laura Lapierre, DEC Wetlands Program Manager

Agency: Agency of Natural Resources

Mailing Address: 1 National Life Drive, Davis 3,
Montpelier, VT 05620-3522

Telephone: (802) 490-6177 Fax: (802) 828-1544

E-Mail: laura.lapierre@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://dec.vermont.gov/watershed/wetlands/rulemaking>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Hannah Smith, DEC Associate General Counsel

Agency: Agency of Natural Resources

Mailing Address: 1 National Life Drive, Davis 2,
Montpelier, VT 05620-3522

Telephone: (802) 461-8187 Fax: (802) 828-1544

E-Mail: hannah.smith@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

None.

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

None.

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

10 V.S.A. 905b(18); 10 V.S.A. 905b(17)

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

The Department of Environmental Conservation, within the Agency of Natural Resources, is granted explicit authority in 10 V.S.A. 905b(18) to adopt rules to address the identification, classification, and protection of wetlands in the state.

9. THE FILING HAS NOT CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS NOT INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

The proposed amendments are intended to clarify the Agency's authority to reclassify wetlands in general, and clarify the Agency's jurisdiction over certain significant wetland types. The proposed amendments rearticulate the Agency's statutory authority, as stated in 10 V.S.A. 905b(18)(B), to reclassify categories of wetlands in general, and list wetland types that have been categorically determined to be Class II based on an evaluation of their functions and values. Proposed amendments to Section 8 clarify how public notice is provided for categorical wetland determinations. Appendix A is also amended to reclassify Ward's Marsh and Eshqua Bog as Class I wetlands.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

Pursuant to 10 V.S.A. 905b(18), the Agency has clear authority to determine that a wetland is a significant Class II wetland pursuant to an evaluation of its functions and values, and reclassify wetlands as Class II or III either in general, or on a case by case basis. The current Rule language identifies wetland types that are presumed to be Class II. There has been confusion over whether these wetland types have been formally determined to be Class II, and whether the Agency has permitting jurisdiction over these "presumptive" wetlands. This confusion has resulted in wetland violations.

The proposed amendments strike the "presumptive wetland" language and replace it with categories of wetlands that have been formally determined by the Secretary to be Class II, and are therefore subject to the Agency's wetland permitting jurisdiction. This amendment is necessary to clarify the Agency's jurisdiction over significant wetlands that provide critical habitat and water quality protection.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The proposed Rule amendments are not arbitrary because they are supported by both the Agency's enabling authority, and data collected by Agency staff and wetland professionals. 10 V.S.A. 905b(18)(B) authorizes the Agency to reclassify wetlands in general, and the proposed amendments emphasize this authority and clarify the process for issuing "general" reclassification determinations. The wetland types that have been included as Categorical Class II Wetlands were determined to be Class II based on an assessment of the significant functions and values identified in over 400 individual wetland determinations. The proposed rule updates reflect the Agency's clear authority to reclassify wetlands in general, in order to protect significant wetland types. z

Additionally, the designation of Class I wetlands is a statutorily-authorized function of the Agency of Natural Resources. Ward's Marsh and Eshqua Bog are

determined to be irreplaceable in their contributions to Vermont's natural heritage.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Landowners, including individuals, organizations, and state agencies, with wetlands on their property that have been determined to be Class II, or with property adjacent to the proposed Class I wetlands.

Engineers, consultants, designers, developers, and contractors hired to evaluate develop, construct on, or otherwise conduct activities on properties with wetlands, or properties adjacent to the proposed Class I wetlands.

Wetland consultants working in Vermont.

The public at large, with an interest in wetland integrity, water quality, Vermont natural communities, and outdoor educational and recreational opportunities.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

The proposed rule amendments are intended to clarify existing jurisdiction, and are not anticipated to have a significant economic impact. Under the current rule, landowners must seek permit coverage to impact significant wetlands, regardless of whether those wetlands appear on the VSWI map. The proposed rule does not change the standards used to determine significance, rather it more clearly defines the wetland types that have been determined to be significant, so that those wetlands can more easily be added to the VSWI. Developers and landowners with Class II wetlands on their property will still be required to seek wetland permit coverage, and pay associated permit fees as defined in 3 V.S.A. 2822. The clarification of jurisdiction and clear determination of categories of Class II wetlands is intended to reduce instances of accidental Wetland Rule violations, and reduce related costs including costly project removals and after-the-fact permit fees, which are twice the standard permit fee cost.

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 10/31/2022

Time: 05:00 PM

Street Address: St. Johnsbury Welcome Center, St. Johnsbury, Vermont

Zip Code: 05819

Date: 11/1/2022

Time: 05:00 PM

Street Address: 1 Quechee Road, Hartland, Vermont

Zip Code: 05048

Date: 11/2/2022

Time: 05:30 PM

Street Address: 67 Merchant's Row, Rutland, Vermont

Zip Code:

Date: 11/4/2022

Time: 5:00 PM

Street Address: 120 1st Street, Swanton, Vermont

Zip Code: 05488

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

11/24/2022

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Wetlands

Wetland rules

Presumptive wetlands

Class I wetlands

Wetland determinations

Vermont Significant Wetland Inventory

Class II wetlands

Flood control

Water quality

Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Vermont Wetland Rules

2. ADOPTING AGENCY:

Agency of Natural Resources

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

SOS Log #: 10-027

The Vermont Wetland Rules were adopted on February 7, 1990, and amendments were most recently adopted on January 6, 2020.



State of Vermont
Agency of Administration
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Montpelier, VT 05609-0201
www.aa.vermont.gov

[phone] 802-828-3322
[fax] 802-828-2428

Kristin L. Clouser, Secretary

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: September 12, 2022, virtually via Microsoft Teams

Members Present: Chair Douglas Farnham, Brendan Atwood, Diane Bothfeld, Jared Adler, Jennifer Mojo, John Kessler, Diane Sherman, Michael Obuchowski and Donna Russo-Savage

Minutes By: Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the August 8, 2022 meeting
- Agenda approved as drafted with the following changes:
 - Added: Note: An emergency rule titled 'Emergency Administrative Rules for Notaries Public and Remote Notarization' from the Secretary of State, Office of Professional Regulation, was supported by ICAR Chair Farnham on September 9, 2022.
 - These Emergency Rules define the "personal appearance" requirement for remote notarial acts conducted through a secure audio-visual communication link.
 - Removed: HazMat Transportation & Motor Carrier Safety Standards, Agency of Transportation, Department of Motor Vehicles
 - Rules 55-001 & 50-036 provide authority to enforce Federal Regulations through state law for commercial vehicles & transportation of hazardous materials.
- No public comments.
- Presentation of Proposed Rules on pages 2-4 to follow.
 1. Rule on Alternative Preparatory Paths for Funeral Directors and Embalmers, Secretary of State, Office of Professional Regulation, page 2
 2. Administrative Rules for Notary Public Continuing Education, Secretary of State, Office of Professional Regulation, page 3
 3. Vermont Wetland Rules, Agency of Natural Resources, page 4
- Note: Diane Sherman left at 3:30 PM.
- Process Improvement discussion delayed due to in-house considerations, including the potential for a future change in the role of ICAR Chair.
- Next scheduled meeting is Monday, October 10, 2022 at 2:00 p.m.
- 3:59 p.m. meeting adjourned.



Proposed Rule: Vermont Wetland Rules, Agency of Natural Resources

Presented By: Hannah Smith and Laura Lapierre

Motion made to accept the rule by Brendan Atwood, seconded by Jared Adler, and passed unanimously except for Jen Mojo who abstained, with the following recommendations:

1. Proposed Rule Coversheet, #6: Include 10 V.S.A. 905b (17) if relevant.
2. Proposed Rule Coversheet, #9 and #10: Clarify to tie the two answers together. Perhaps use some language provided in #10 in #9.
3. Proposed Rule Coversheet, #11, and Economic Impact Analysis #3: Remove duplicate 'designers'.
4. Proposed Rule Coversheet, #12: Clarify the economic impact, particularly for landowners, and associated fees. Reference the actual rates.
5. Economic Impact Analysis and Public Input Maximization Plan: Include all ways in which the public could find out how the map was updated.
6. Economic Impact Analysis, #3: Include estimated costs and benefits anticipated and reference the relevant statute.
7. Economic Impact Analysis, #8 and #9: Clarify.
8. Public Input Maximization Plan, #3: Quantify the estimated number of people reached through the professional organizations via outreach. Host a public hearing in the Northeast Kingdom area.
9. Public Input Maximization Plan, #4: Indicate the change in affiliation for 'Jennifer Hollar, AAFM' as they recently retired from AAFM and was with the Vermont Housing and Conservation Board.
10. Scientific Information Statement, #5: Provide specific contact information.

DRAFT

Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Vermont Wetland Rules

2. ADOPTING AGENCY:

Agency of Natural Resources

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Landowners, including individuals, organizations, and state agencies, with wetlands on their property that have been determined to be Class II, or with property adjacent to the proposed Class I wetlands, may be affected by the adoption of the proposed amendments. The estimated costs to landowners is not expected to change as a result of the proposed rule; these

landowners will continue to be required to seek permit coverage for any impacts to Class II wetlands and their buffers. The proposed rule language does not change the wetlands over which the Agency exercises permitting jurisdiction; Class II wetlands are still determined based on an evaluation of the functions and values listed in 10 V.S.A. 905b(18)(A). The proposed language is intended to clarify which wetland types have been determined by the Secretary to be Class II, so that those wetlands can ultimately be added to the VSWI, making them easy to identify for landowners and potential landowners. The fees associated with wetland permits are determined in statute, and remain at \$0.75 per square foot of impact to Class I and II wetlands, and \$0.25 per square foot of impact to wetland buffers. Permit fees associated with certain project types may be lower, pursuant to 3 V.S.A. 2822(j)(26). The proposed clarification of the wetland types determined to be Class II, and associated VSWI map updates, will likely benefit landowners economically by helping them avoid unintentional violations of the Wetland Rules. Wetland Rule violations typically result in costly remediation or require after-the-fact permitting. Fees associated with after-the-fact wetland permits are set at \$1.50 per square foot of impact.

Engineers, consultants, designers, developers, and contractors hired to evaluate develop, construct on, or otherwise conduct activities on properties with wetlands, or properties adjacent to the proposed Class II wetlands, may be affected. As described above, the costs to these groups associated with the proposed rule language is estimated to be nominal, but these wetland professionals are likely to benefit from the clearer articulation of significant wetland types, and the updated VSWI maps.

Wetland consultants working in Vermont.

The public at large, with an interest in wetland integrity, water quality, Vermont natural communities, and outdoor educational and recreational opportunities. The public stands to benefit from the proposed rule language in that it will make it easier to identify significant wetlands on the landscape. The identification and protection of significant wetlands and wetland floodplains provides water quality benefits and flood control benefits that prevent costly property damage as a result of flooding. For example, it is estimated that wetlands and floodplains protected Middlebury from \$1.8 million in property damage resulting from Tropical Storm Irene (<https://www.uvm.edu/news/gund/floodplains-saved-middlebury-18m-damage>).

4. **IMPACT ON SCHOOLS:**

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

The proposed rule amendments are not expected to have an economic impact on public schools or school districts. Public schools are currently subject to Wetland permitting requirements should they conduct construction activities within Class II wetlands or their buffers. Updated wetland mapping is intended to help the public more easily identify significant wetlands on the landscape. There are currently no public schools with property adjacent to the proposed Class I wetlands.

5. **ALTERNATIVES: CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.**

The proposed rule change is not expected to have an economic impact on local school districts. The proposed amendments were narrowly tailored to increase clarity regarding the type and location of significant wetlands without modifying the Agency's jurisdiction in a way that would impose hardship on landowners. Alternatives, including not amending the Rule, would

make it difficult for the Agency to update the VSWI maps, creating uncertainty for the regulated community.

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

The proposed rule amendments are not expected to have an economic impact on small businesses. Small businesses are currently subject to Wetland permitting requirements should they conduct construction activities within Class II wetlands or their buffers. Updated wetland mapping is intended to help landowners and developers more easily identify significant wetlands on or near their properties.

7. SMALL BUSINESS COMPLIANCE: EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.

Small businesses can reduce costs associated with wetland permitting and compliance with the Wetland Rules by reviewing the VSWI maps as part of the project-planning process to identify Class II wetlands, and consulting with ecologists with the Vermont Wetlands Program early in the process to determine how to avoid and minimize impacts to wetlands and buffers that may require permitting.

8. COMPARISON:

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

The proposed rule change is not expected to have an economic impact on the regulated public. The proposed amendments were narrowly tailored to increase clarity regarding the type and location of significant wetlands without modifying the Agency's jurisdiction in a way that would impose hardship on landowners.

Alternatives, including not amending the Rule, would make it more difficult for the Agency to update the VSWI maps, creating uncertainty for the regulated community. With regard to the proposed Class I wetlands, both are currently identified as Class II

wetlands and are thus subject to the Agency's wetlands permitting jurisdiction. Without a rule change, future development may be allowed in these wetlands, but both wetland complexes are currently located primarily on land owned either by the State, or the Nature Conservancy, reducing the likelihood that development would be permitted in these areas. Additionally, the proposed rule providing Class I protection to the two wetlands will guarantee that the wetlands continue to provide their irreplaceable functions and values into the future, including water storage for flood protection, surface and groundwater protection, critical wildlife habitat, and educational opportunities.

9. *SUFFICIENCY: DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

This economic impact analysis compared the language in the current rule, requiring review of all presumptive Class II wetland types for significance on a project-by-project basis, with the proposed narrowly tailored rule amendments that clearly identify significant wetland types in rule, and allow the Agency to update the VSWI maps to identify the location of significant wetlands statewide. The significant wetland types identified in the proposed rule have been determined by the Secretary to be significant based on analysis of more than 400 site-specific wetland determinations. The increased clarity provided by the proposed amendments should reduce the risk of Wetland Rule violations and related costs associated with site-remediation and after-the-fact permitting.

Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify "No impact anticipated" in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

Vermont Wetland Rules

2. ADOPTING AGENCY:

Agency of Natural Resources

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

The proposed rule changes are not expected to impact the emission of greenhouse gasses in the State. The designation of Eshqua Bog and Ward's Marsh as Class I wetlands will protect them in perpetuity from development, including the construction of new transportation infrastructure not otherwise necessary to meet a compelling need to protect public health and safety.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

The ongoing protection and preservation of significant wetlands in Vermont provides substantial public benefit through surface and groundwater protection. The wetland types identified as Class II in Section 4.6 of the proposed rule have been found to be significant for flood storage and water quality protection (in addition to their other functions) at least 86% of the time. The proposed rule changes will increase clarity around the type and location of those significant wetlands, insuring that impacts to those wetlands will be evaluated before adverse impacts are permitted. Additionally, the designation of Eshqua Bog and Ward's Marsh as Class I wetlands will insure that the flood storage and water-quality protection provided by those wetlands will be protected into the future. Both of the proposed Class I wetlands were found to provide water storage for flood water and stormwater runoff, and surface and groundwater protection.

5. *LAND: EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

The proposed rule amendments are not expected to impact land use outside of the areas being designated as Class I wetlands. Wetlands with significant function and value are currently subject to the Agency's permitting jurisdiction; the proposed rule changes are intended to clarify the location and characteristics of significant wetlands. Forestry and agricultural activities may still be allowed in Class II wetlands as long as they comply with the existing requirements in the Wetland Rules. Regarding the proposed Class I wetlands, the proposed rule will maintain and protect those existing functional wetland complexes, and promote the ecological systems those wetlands support. The proposed reclassification will prevent additional development in the Class I wetlands. The Class I designation will allow all existing structures to remain in place, and to be maintained. Forestry and silviculture activities may occur in the Class I wetlands as long as they are conducted in accordance with a plan approved by the Commissioner of Forests, Parks, and Recreation. The Rule will prevent the conversion of any protected Class I wetland into

farmland. The protected wetland complexes both also provide carbon sequestration in their deep organic soils.

6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

Both proposed Class I wetlands provide significant recreational opportunities. Ward's Marsh is owned and managed as a State Wildlife Management Area (WMA) with surrounding land owned by The Nature Conservancy (TNC). The wetland is significant for the fish and wildlife habitat it provides and the species it supports. This includes multiple furbearers which can be trapped, waterfowl for hunting, and numerous species of fish which are sought by fishermen. Both the State and TNC allow for public access to the wetland. As the VTFWD states in the WMA Factsheet, "Recreation within the WMA is dominated by dispersed fish and wildlife-based pursuits including hunting, fishing, trapping, wildlife viewing, walking and hiking." Eshqua Bog is available year-round for various outdoor pursuits including botanizing, birding (69 bird species have been documented), wildlife viewing (deer and bear have been observed), photography, hiking the half mile trail as well as the boardwalk, hunting, snowshoeing and cross-country skiing creating great economic value for the area year-round.

7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

The proposed rule is not expected to impact climate in the State, although the preservation of intact wetland complexes, including the two proposed Class I wetlands, provides significant carbon sequestration.

8. OTHER: *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

In addition to the functions described above, Eshqua Bog also provides the following exemplary or irreplaceable attributes: exemplary wetland natural community; rare, threatened and endangered species habitat; education and research in natural science; and open space and aesthetics. Ward's Marsh provides exemplary or irreplaceable: fisheries habitat; wildlife and migratory bird habitat; exemplary wetland natural

community; rare, threatened, and endangered species habitat; and open space and aesthetics.

9. SUFFICIENCY: *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The environmental analysis is based on all available materials related to identification of significant wetlands in the state, as well as review of the Class I Determination documents for both Ward's Marsh and Eshqua Bog, and the petition materials on which those determinations are based. The analysis is also based on an analysis of over 400 wetland determinations of significance conducted over the last decade.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

Vermont Wetland Rules

2. ADOPTING AGENCY:

Agency of Natural Resources

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The proposed rule changes, as well as accompanying VSWI map updates, have been posted publicly on the Agency's website since May of 2022. Notice of the proposed changes were explicitly sent to a group of stakeholders who have been working with the Wetlands Program on revisions to the Wetland Rules. The Agency created and implemented an outreach plan to encourage public engagement with the proposed rule amendments, which included targeted mailings, a website, factsheets, and an interactive map. The Program has been accepting public comment on the proposed rule changes since May of 2022. Additionally, public meetings were held to discuss the proposed Class I wetland determinations. A virtual public meeting was held on January 20, 2021 to discuss reclassification of Eshqua Bog, and a hybrid virtual/in-person public meeting was held on November 1, 2021 in West Haven, Vermont, to discuss the reclassification of Ward's Marsh.

Public Input

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Hartland Conservation Commission

Town of West Haven

Members of the Wetlands Stakeholder Group, including:

Art Gilman, Wetland Consultant;

Beth Alafat, USEPA;

Brian Trembeck, Wetland Consultant;

Charlie Baker, Chittenden County Regional Planning Commission;

David White, White & Burke Real Estate Advisors;

Derek Moretz, Encore Renewables;

Dori Barton, Wetland Consultant;

David Wilcox, Department of Forests, Parks, and Recreation;

Eric Sorenson & John Austin, Department of Fish and Wildlife;

Glenn Gingras, Department of Transportation;

Phil Huffman, The Nature Conservancy;

Jeff Nelson & Tim Upton, VHB Consultant;

Ryan Patch & Laura Dipietro, Agency of Agriculture, Foods and Markets;

Jon Groveman, VNRC;

Karen Horn, League of Cities and Towns;

Mark Delany, Smugglers Notch;

Mike Adams, ACOE;

Paul O'Leary, Engineer;

Zack Porter, Conservation Law Foundation;

Seth Clifford, Burlington Electric;

Tim Follensbee, VELCO;

Tom DiPietro, South Burlington;

Public Input

Brian Kemp, Farmer;

Jared Carpenter, Lake Champlain Committee;

Jennifer Hollar, VHCB (now retired);

Joe Tisbert, Vermont Farm Bureau;

Liz Thompson, The Land Trust;

Molly Mahar, Vermont Ski Areas Association;

Larry Gervais, Farmer.

Scientific Information Statement

THIS FORM IS ONLY REQUIRED IF THE RULE RELIES ON SCIENTIFIC INFORMATION FOR ITS VALIDITY.

PLEASE REMOVE THIS FORM PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the Scientific Information Statement, an agency shall provide a summary of the scientific information including reference to any scientific studies upon which the proposed rule is based, for the purpose of validity.

1. TITLE OF RULE FILING:

Vermont Wetland Rules

2. ADOPTING AGENCY:

Agency of Natural Resources

3. BRIEF EXPLANATION OF SCIENTIFIC INFORMATION:

The scientific information that supports the proposed rule change is primarily data related to the identification of significant Class II wetlands compiled into a Categorical Class II Determination, as well as data supporting the findings that Ward's Marsh and Eshqua Bog are exceptional or irreplaceable in their contribution to Vermont's natural heritage.

4. CITATION OF SOURCE DOCUMENTATION OF SCIENTIFIC INFORMATION:

<https://anrweb.vt.gov/ANR/vtANR/DocBrowser.aspx?Directory=DEC%2fWSMD%2fWetlands%2f2022VWR>

5. INSTRUCTIONS ON HOW TO OBTAIN COPIES OF THE SOURCE DOCUMENTS OF THE SCIENTIFIC INFORMATION FROM THE AGENCY OR OTHER PUBLISHING ENTITY:

Copies of scientific information can be accessed at the link above, or by contacting the Vermont Wetlands Program. Wetlands Program contact information can be

found at
<https://dec.vermont.gov/watershed/wetlands/contact>.

Responsiveness Summary for Vermont Wetland Rules Revision 2022

The Secretary of State placed the draft Vermont Wetland Rule revision on public notice on September 28, 2022 and the public comment period remained open until November 24, 2022. In anticipation of public interest, DEC held the following public meetings:

St Johnsbury Welcome Center with virtual option on October 31, 2022 at 5:00pm

Damon Hall, Hartland with virtual option on November 1, 2022 at 5:00pm

67 Merchants Row, Rutland with virtual option on November 2, 2022 at 5:30pm

Swanton Town Hall with virtual option on November 4, 2022 at 5:00pm

MS Teams virtual meeting on November 16, 2022 at 10:00am

The following people were in attendance at the public meetings: Chanin Hill, Emma Shouldice, Keith Sprague, Barbra Noyes-Pulling, Amanda St. Pierre, Jeffery Grembowicz, Grace Glyn, Johnathon Gibson, Ryan Scott of VHB, Josh Poulin, Bridget Bower, Steve Bromley, Rob Anderegg, Mari Caduto, Laura Dipietro, Marli Rupe, Arthur Gilman, Sharon Kay Clasper, Sara Nathan Pasquenelli, Randy Brock, Robert Norris, Harais Houaigan, Bobby Starr, Rolland Rainville, Julia Callan, Jacob Bourden, Bill Rowell, Jeff Sanders, Dwight Boddi, Mark W. Morgan, Travis Longway, Cody L'Esperance, Heather F. Shouldice, Kelcie Bean, Brian Carpenter, Lynn Parades, Luke Hughes, Jeremy Russo, Jay Buermann, Thomas Kirby, John Roberts, Mary Beth Poli, Phillip Wilson, Sarah Costin, Tim Follensbee, Brock Freyer, Karina Dailey, Tucker Purchase, Patti Kallfelz-Werts, Joe Tisbert, Brittney Cole, Mary Montour, Lyn Des Marais, John Dupras, Kiersten Bourgeois, Ben Gabos, Diane, Leach, Lynn Coale, Chris Page, and approximately 10 anonymous participants. DEC received written comments from the following people and entities: Longway Farms Real Estate LLC, Longway Farms LLC, Brian Carpenter of Champlain Valley Equipment, Allison Slaney and Adam Crary of VHB, Glenn Rogers, Jonathan Gibson, Amanda St. Pierre of Pleasant Valley Farms, Chanin Hill of Four Hills Farm, Sam Lincoln of Lincoln AgriSource LLC, Jackie Folsom of the Vermont Farm Bureau, Shane Keady, Farmers Watershed Alliance, The following is a summary of the written and verbal public comments received on the draft Vermont Wetland Rule edits and DEC's responses to those comments. Where appropriate, comments have been paraphrased, consolidated, and categorized for clarity.

A. Comments Regarding Vermont Significant Wetlands Inventory (VSWI) Map Update

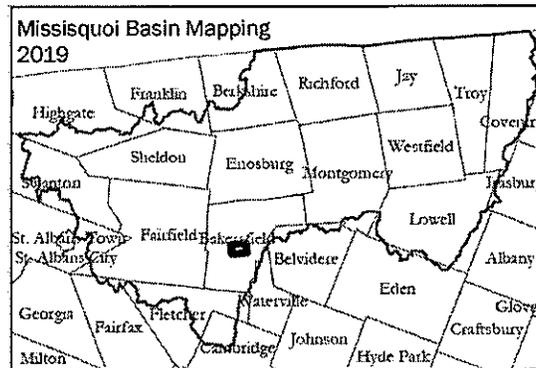
Comment A-1: Did you ground truth and consult with landowners about drawing maps on their land?

Response A-1: To an extent, yes. The Wetlands Program did ground truth a subset of the polygons. Where permission was granted, parcels were accessed for sampling. In other instances, wetlands were viewed from public roads. See response B-6 to learn more about the outreach effort.

Comment A-2: How many acres has the VSWI increased by with the new mapping? How many towns in Franklin county are affected by the map update?

Response A-2: The edit will add a net 5,100 acres of wetland to the VSWI. The edits are within 13 towns in Franklin County. The Missisquoi Basin includes the entirety of Richford, Bakersfield, Sheldon and Enosburg the majority of Montgomery and Fairfield, and less than half of Berkshire, Franklin, Highgate,

Swanton, St. Albans Town and Fletcher. The below map shows the area revised in relation to Vermont Towns:



Comment A-3: The new process to add polygons is less stringent not more stringent. If mapping isn't ground-truthed and wetlands are over mapped that can affect the value of someone's land and you won't find out that the mapping is not accurate until it's too late. The most stringent process possible when it comes to telling people what they can or cannot do with their private land is what will work best for the citizen. Something being inconvenient to the Agency should not be justification for government overreach.

Response A-3: The Agency disagrees with the comment that the proposed changes to the VSWI revision process will burden landowners. Many protected wetlands are not on the current VSWI and a landowner is disadvantaged when they own or purchase an unmapped wetland, because they are at risk of unintentional violations and subsequent enforcement actions. The major driver in initiating the edit to the VSWI was to provide landowners with more clarity on location of jurisdictional wetlands. The Vermont Significant Wetland Inventory (VSWI) maps denote the approximate location and configuration of significant wetlands, and is intended to notify landowners of the presence of significant wetland, not provide a precise wetland delineation. 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) of the Vermont Wetland Rules (VWR). The administrative burden of contacting individual landowners to notify them of map edits on their property makes large-scale improvements to wetland mapping impossible with the current program capacity. Funding needs to improve maps at the scale and timeline proposed while contacting each landowner would not be a feasible, and this process would prevent the Agency from updating and maintain accurate maps. Accurate VSWI mapping provides a significant benefit to landowners; for example, the proposed change will remove over 1,300 acres of wetland features that are currently on the VSWI but have been found to not be wetland.

Comment A-4: There are errors to the Franklin County maps and we believe that VT ANR cannot accurately depict whether it is or is not a wetland. We respectfully ask that, at a minimum, no additional wetlands are added to the regulatory maps without physically identifying them. Once the map is updated, we ask that the map become "advisory" for 36 months and after ANR notifies landowners of the change of use.

Response A-4: The Agency disagrees that ground-truthing is necessary to accurately identify wetlands. The Agency used a combination of on-the-ground fieldwork and hand-digitized aerial interpretation to identify the wetlands on the VSWI. It is commonly understood among wetland professionals that aerial interpretation can depict wetland presence. The U.S. Fish & Wildlife Service's (USFWS) National Wetlands Inventory (NWI) has been in use for over 50 years and primarily relies on aerial interpretation.

The USFWS requires wetland mapping feature accuracy at 98%, meaning 98% of the time a wetland is on the map there is a wetland factually in the field. The USFWS reviewed the Missisquoi mapping and added it to the National Wetland Inventory (NWI) because it met their accuracy standard. The Agency does not intend to treat the updated map as an advisory layer. The Missisquoi map update has been on the wetland advisory layer and available through the ANR Atlas for viewing since 2019. The Draft VSWI edit has been available for viewing and comment since May 2022. See response B-6 for more information about the Agency's outreach effort.

Comment A-5: Are hydric soils a prerequisite for finding wetlands or would it be common to find wetlands not on hydric soils? Has the new mapping been overlaid on the hydric soil mapping? How much do they overlap? Would a quick and dirty check be to just overlay a hydric soil layer with your new polygons to see where they overlie and where they don't overlie and if there's a big discrepancy would that lead people to think that there was overmapping - if you have a lot of mapped wetlands on not hydric soils?

Response A-5: Wetland area is defined by its prevalence of water loving plants, hydric soil and presence of water. Around 63% of the newly mapped area intersects with the NRCS hydric soil units compared with 67% of the current VSWI map. Hydric soils do occur outside of mapped hydric soil units, just like there are sometimes upland soils that are included in hydric soils mapping. See the following link for more information:

https://dec.vermont.gov/sites/dec/files/wsm/wetlands/docs/2021_MappingGuidance_HydricSoil.pdf

Comment A-6: Additions of wetland, in areas that are truly not a wetland, is an economic hardship to agriculture. In those cases, you add another 50 feet for the buffer zones. We support buffer zones but cannot support and it feels like "taking" the land for agricultural use when there is no wetland.

Response A-6: The Agency estimates that only 2% of the newly mapped polygons could be entirely upland. This represents improved accuracy compared to the current VSWI. Areas used to grow food and crop in connection with farming activities may be mapped as wetland but are not regulated as wetland unless the area no longer grows food or crop. There is no fee for site visits with the Wetlands Program staff to discuss a project and jurisdiction. There is no fee to petition for a map edit. If an agricultural project does need a wetlands permit, there are reduced or capped fees: Non-reporting permit for certain water quality projects (free), Cropland conversion or Manure pipeline (\$440 max), Waste storage facility or bunker silo (\$440 max), and Permanent structure for farming (\$5,240 max).

Comment A-7: Commenter believes that there is no Class II wetland in an area of his property in Essex Jct. and does not want his heirs to be stuck with the mistake costing them lots of money.

Response A-7: The VSWI in Essex Junction is not being updated as part of the rule change, and is therefore outside of the scope of review. Anyone may contact the Wetlands Program or petition the Agency at any time to have a mapped wetland evaluated and removed when appropriate. The map is intended as a planning tool and will always be superseded by the presence/absence of wetland as observed in the field.

Comment A-8: The VSWI is a terrific resource for the general public as well. It can be a source of information about this natural resource that has so many important ecological functions. Municipal Planning Commissions, Development Review Boards, and Conservation Commissions all need the highest quality wetland information to perform their planning, regulatory, and educational roles. In addition, landowners and citizens such as myself, our friends and neighbors appreciate knowing about and visiting wetlands for bird, amphibian, or other observation and can assist in identifying, monitoring, and conducting "citizen science" work that helps all of us to understand and safeguard these wetlands. So please continue

to improve the Map by outreach for public input and by arranging site visits to the extent that your Program's budget and staff time allow.

Response A-8: The Agency agrees that the map is an important resource to many people and will continue to improve the maps.

Comment A-9: Received various comments regarding wetland polygons outside of the Missisquoi basin.

Response A-9: See response A-7.

Comment A-8: Concerned that map inaccuracy is costly and the changes to maps will increase permit costs.

Response A-8: The intent of the bulk map update and future bulk updates is to decrease the administrative burden of map corrections. Permit fees are not being changed as part of the rule update. Regardless of whether a significant Class II wetland is or is not mapped, a permit is still required for activities in significant wetlands and their buffers if the activity is not an allowed use.

Comment A-9: The proposed parcels have been mapped incorrectly and the navigation of the mapping system is complex and difficult. We feel Federal guidelines for wetlands serve Vermont efficiently and should be used.

Response A-9: Commenter did not provide specific examples where they found the map is incorrect. The Wetlands Program staff are available to assist landowners in navigating the maps and may edit maps. The map is intended as a planning tool and will always be superseded by the presence/absence of wetland as observed in the field. The adoption of federal requirements and standards for identifying jurisdictional wetlands has been discussed in the Wetland Stakeholder Group and the group has not recommended adoption of federal law.

Comment A-10: Though we are aware that these maps need to be updated the method being used has little or no scientific basis.

Response A-10: The Agency disagrees. To learn about the scientific basis see the Quality Assurance Project Plan on our website (https://anrweb.vt.gov/PubDocs/DEC/WSMD/Wetlands/2022VWR/2020-263_WetlandMapMethodology.pdf) and the Federal data standards which were followed for this map project (<https://www.fws.gov/program/national-wetlands-inventory/data-standards>). These methods are more rigorous than the standards that were applied to the original VSWI maps.

Comment A-11: Changes to the maps should continue to provide specific notice to the landowners and adjacent landowners. The map changes could immediately put many landowners at risk for violation.

Response A-11: The Agency believes accurate and up-to-date maps benefit landowners and declines the request. Many Class II wetlands are not included on the map today and landowners are currently responsible for complying with wetland regulations regardless of mapping. Landowners are already at risk of violation if they perform activities in the unmapped wetlands. The original VSWI mapping was not noticed to each landowner nor was the 2010 map update that was set in statute. The Agency finds that bulk edits with a statewide noticing process will provide greater clarity on jurisdictional areas. Regardless of whether a significant Class II wetland is or is not mapped, a permit is still required for activities in significant wetlands which are not an allowed use.

Comment A-12: Manure pits and farm ponds are proposed to be added as wetland.

Response A-12: The Agency has reviewed the map edits and removed areas of farm ponds and manure pits which have been wholly created in upland. Manure pits and farm ponds that are contiguous with wetlands remain on the maps so that the landowner knows to contact the Wetlands Program before expanding the structures. The maintenance and upkeep of existing structures and facilities is an allowed use (VWR 6.12). Commenter was encouraged to provide Agency with specific polygons of concern but no follow up was provided.

Comment A-13: Areas less than 0.25 acres are shown as map additions. The Rulechange states that wetlands under a half-acre are not subject to this rule.

Response A-13: The proposed Rule change includes wetland types under half an acre that are Class II. See section 4.6. The map includes wetlands under a half an acre when they meet one of the following parameters: adjacent to a stream (NHD) or waterbody, overlapping a confirmed vernal pool, over 2,500 feet in elevation, overlapping a significant natural community or rare, threatened or endangered species habitat. This was done to reflect the general determination decision 2020-263 which provides the types of wetlands under a half an acre that provide significant function or value.

Comment A-14: Mapping and/or designating additional areas of private property as Class II wetlands - without clarifying and/or establishing a clear, predictable, and timely permitting process for farm buildings, farm structures, and access to those facilities and land used for farming, that is universally understood between ANR and AAFM staff - will only increase the instances of confusion and conflict in the regulated community with a reduced benefit to the protection of wetlands. The permit process (and when and where it applies) should be improved before increasing the occurrences where a permit is necessary.

Response A-14: The intention of the additional mapped areas is to increase clarity around where Class II wetlands are located on the landscape. The maps are not creating new Class II wetlands; they are providing more accurate information about the location of existing Class II wetlands. The Agency has ongoing conversations with AAFM staff to improve constituent-understanding of the Vermont Wetland Rule authority. Changes to the Vermont Wetland Rules in regards to agriculture may be proposed in a subsequent rule change.

Comment A-15: Statewide computer modeling of natural resource features to apply a land use regulatory program – with the burden to disprove it placed on the newly affected private property owners - is not accurate enough to justify the impact to private property rights. I understand that the procedure for adding wetlands to the maps may be time consuming (per comments made in the presentation), but I think the verification achieved through boots-on-the-ground work is too important of a step to bypass, and a missed opportunity to collaborate with landowners and private sector businesses that work the land.

Response A-15: The edits to the Missisquoi basin VSWI was not produced with computer modeling. It was created by hand-digitizing aerially interpreted wetland areas with ground-truthing in places. See references in response A-10 for more information.

Comment A-16: This map change would add 4,097 additional Class II wetland acres to the VSWI. Of those acres, 77% are added to non-hydric soils, so there is a possibility those areas are not actually wetland. 47% of the additional wetlands are located on prime agricultural soils which are also not typically identified as being “wetland”. The changes will affect 14,337 acres of agricultural land in the county, or 17%. ANR should follow existing rules and not modify them to save time, money or effort.

Response A-16: The update to the map is made pursuant to and consistent with the Agency’s statutory and regulatory obligations. 10 V.S.A. §905b(18)B states that the Agency should “reclassify wetlands, in

general, or on a case-by-case basis” and §916 requires that the Agency revise the Vermont Significant Wetlands Inventory maps to reflect wetland determinations.

The commenter did not provide supporting data of stated statistics or methods for how calculations were made. An earlier shapefile of the draft edits was provided to the Agency of Agriculture, but no other entity had requested a draft.

The VSWI edit will add nearly 5,100 acres of wetland to the inventory. These are wetlands that are currently protected as Class II but are not currently mapped. The Agency believes 98% of the polygons contain actual wetland area because the map was considered to meet the federal data standard by the USFWS.

Approximately 63% of the newly mapped area intersects with the NRCS hydric soil units; see response A-5 regarding Hydric soil overlap.

The VSWI edit intersects over 9,000 acres of prime agricultural soils defined in Act 250, Vermont’s Land Use Development Law, which include soil units mapped by the NRCS with a rating of prime, statewide or local importance. AAFM and the Wetlands Program have developed guidance for areas of prime agricultural soil mapping and wetland mapping intersection because there have been Act 250 projects which have delineated wetland within mapped prime agricultural soils. The presence of a Class II wetland does not prevent the use of land for agricultural purposes.

Comment A-17: There were eight comments specific to individual wetland polygons on the draft edit.

Response A17: The Agency will make the appropriate edits and follow up with the commenters individually.

Comment A-18: You stated that you've done 400 determinations in 12 years - that's not very fast. How long is it going to take if I need a determination and need to have you come to my property and do it?

Response A-18: Landowners considering development or construction in or near a wetland are generally satisfied with a preliminary determination, of which several hundred are made in one year. Typical turn around for answering jurisdictional questions is two weeks to one month during the growing season.

Comment A-19: This change to the VSWI puts more onus on the landowner to prove there is no wetland if the map is wrong.

Response A-19: The landowner, permittee, or project manager has always had the responsibility to review a construction site for wetlands, since federal and then state wetland protections were set in place, regardless of mapping. The change to the VSWI allows for a more accurate depiction of locations of significant wetlands than the previous version. The update to the map also reduces the number of “false positives” where an area is mapped but not wetland; this will reduce the burden on landowners whose property was incorrectly mapped.

Comment A-20: How many acres in Franklin are wetland?

Response A-20: According to our analysis of wetland area from our 2011-2015 status and trends report, it is estimated that 7% of Franklin County is wetland. The VSWI edit in the Missisquoi basin includes a total of 26,362 acres of wetland (see response A-2 for Basin relation to Franklin County).

Comment A-21: How permanent are these maps?

Response A-21: An individual may request changes to the map at any time. The Agency is committed to updating the maps to improve accuracy when new data is provided. The Agency will revisit mapping at a watershed scale on a 10 year timeline. The Agency will update the map to reflect wetland determinations made during individual permitting processes. Those updates will include a public notice process.

Comment A-22: How do I contest the map?

Response A-22: Anyone can request a site visit with Wetlands Program Staff free of charge to discuss the type or location of a particular wetland identified on the map. If the staff agree that a change is necessary based on a site visit, they may make an edit to the map or may request a petition form be filled out to provide the justification. A formal petition to reclassify a wetland may be filed with the Agency by any person at any time. Pursuant to Section 7 of the Wetland Rules, a petition must contain certain information about the location and functions and values of the wetland at issue. There is no Agency-cost associated with filing a petition. If the petition is denied, any commenters may appeal the decision with the Environmental Court. There have been less than 5 cases where a determination has been appealed to the court since 2010.

Comment A-23: Which map shows the VSWI edits? I have links to two maps and they are different.

Response A-23: This map shows the proposed VSWI in teal and the existing VSWI in red outline: <https://vtanr.maps.arcgis.com/apps/instant/nearby/index.html?appid=f862dbe013c54fc9be6fa7d26b8e1f2d>.

B. Procedural Comments

Comment B-1: 5pm on a Friday is a bad time and day for farmers to be able to show up. Still finishing chores. A meeting starting at 10am or 1-1:30pm would be better for farmers.

Response B-1: In response to this comment, the Agency provided an additional virtual meeting at 10am. The 10am meeting had more participants than the four hybrid meetings. The Agency appreciates this feedback and will consider holding future public meetings earlier in the day.

Comment B-2: The Teams link to join the meeting wasn't working for some people who tried to attend the virtual meetings on November 1 and November 4.

Response B-2: The Agency was made aware that some members of the public had difficulty accessing the meetings virtually. In response to this comment, the Agency provided a fifth virtual only public meeting so those who could not attend the November 1st or 4th had an additional opportunity. The Agency also reached out to all stakeholder contacts to offer assistance with accessing virtual meetings. The presentation was also posted on the Rulemaking website for viewing by those who could not attend a meeting due to their schedule. Comments were accepted both at meetings and in writing.

Comment B-3: If the rulechange is only changing mapping in the Missisquoi Basin, than why are there so many meetings outside of the Missisquoi Basin and why is there only one meeting in the basin? Outreach is essential.

Response B-3: The Rule change holds statewide effect. Although only the Missisquoi Basin VSWI is being updated this time, the proposed rule amendments provide greater clarity on the Agency process for conducting large-scale map updates in the future anywhere in the state. Meetings were held in Rutland and Hartland due to their proximity to the proposed Class I wetland additions and a meeting was held in St. Johnsbury at the recommendation of AAFM.

Comment B-4: You talked to USFWS and got their blessing - who else did you talk to and ask for their blessing?

Response B-4: The USFWS was required to review the Missisquoi Basin map update before adopting it as part of the National Wetlands Inventory map. In accordance with the Administrative Procedures Act, the draft Rule change was reviewed and approved by the Interagency Committee on Administrative Rules (ICAR) which includes a representative from state administrative Agencies, including the Agency of Agriculture, Food and Markets (AAFM). The minutes from the September 12, 2022 ICAR meeting at which this rule amendment was presented can be found here: https://aoa.vermont.gov/sites/aoa/files/ICAR/2022-09-12_ICAR_Minutes.pdf

Comment B-5: What is the timeline for this update? What's the next step in the process? When will the draft rule be done and go into effect?

Response B-5: Once all comments are collected, a responsiveness summary will be drafted, distributed to commenters, and added to the Rulemaking package. The Rulemaking package will be submitted to the Legislative Committee of Administrative Rule in December for a hearing with the Committee in December or January. If the Committee approves the rule change, the Agency will adopt the Rule change and VSWI edit before the next growing season.

Comment B-6: Landowners did not know that maps were being updated in Franklin County. There needs to be a public process for input. The process has not been transparent. A lot of people probably don't even know that this map change is going on and are going to get caught up in a situation where they're going to have to have the wetland delineated.

Response B-6: The Missisquoi mapping has been on the ANR Atlas Wetland Advisory Layer since 2019. The Agency has been providing outreach about the map changes since May of 2022. Outreach included emails to mailing lists of consultants who work with landowners, emails to other stakeholders including environmental and agriculture advocacy organizations, emails to Town Clerks statewide, follow-up phone calls with towns located in the Missisquoi watershed, notices in newsletters including the Agriculture Water Quality Partnership, social media posts, a press release, and notice on the Secretary of State website. The Agency make concerted efforts to provide notice to the public both before and during the rulemaking process. The Agency finds that bulk edits will provide greater clarity on jurisdictional areas. Regardless of whether a significant Class II wetland is or is not mapped, a permit is still required for activities which are not an allowed use, and a delineation must typically be conducted to determine the extent of wetland impacts associated with a proposed project. The updated maps do not add any greater responsibility for landowners to have their wetlands delineated.

Comment B-7: We ask that a clearer appeal process within agencies be developed to dispute the inaccuracy of the mapping of wetlands.

Response B-7: See response A-22. The Agency finds that the current process is clear and the appeal process is provided to people who request jurisdictional determinations. The Agency will take this comment into consideration for future improvements to the website and outreach materials so that the process is more easily accessed.

Comment B-8: Does the Wetlands Program have the capacity to review requests for map changes?

Response B-8: The Wetlands Program has seven staff who conduct site visits two days a week during the growing season to evaluate wetland locations and boundaries in response to landowner requests.

Comment B-9: There is a lot of good information in the presentation that I'd like our members to be able to view. Will the presentation or this recording be available?

Response B-9: The Agency has placed a recording of the presentation on the Rulemaking website. All public meetings are being recorded and may be requested as public records.

Comment B-10: Where does the Agency of Agriculture stand on this Rule edit? Was there any outreach to AAFM?

Response B-10: The Agency of Agriculture was provided the draft rule language and the proposed VSWI updates prior to initiation of the formal rulemaking process. AAFM participated in review of the rule during the ICAR review process, and voted to allow the Rules to move forward to Rulemaking. Staff from AAFM first learned about the Rule edit effort in May of 2022 and have reached out with questions and comments, to which ANR has responded.

Comment B-11: What happens when you've finished the National Wetland Inventory map in Addison County? How will we know if you are adding it to the VSWI?

Response B-11: The Agency anticipates the completion of the Otter Creek Basin (most of Addison County) NWI in 2023. The data will be submitted and accepted by the US Fish and Wildlife Service and added to the National map. The Agency will then filter the wetland polygons to capture those that meet the general determination criteria and create a draft VSWI edit. The edit will be placed on another interactive map, there will be a statewide notice of the edits, and we will contact affected towns and provide similar outreach as described in response B-6 above. There will be a period for public comments, Agency response and then adoption of the changes that remain after comment. The edit would not need another rule change because the Rule in this edit outlines a clear process for noticing bulk map edits for wetlands that meet the criteria for Class II significant wetlands under the general determination.

Comment B-12: How much has the mapping process cost and is it being done in a way to reduce the number of staff? Is the change going to increase the number of staff you have?

Response B-12: The cost to create the Missisquoi map was \$100,000. The project was primarily funded by an US EPA Wetland Program Development Grant. The mapping will not result in a reduction in Wetland Program staff. The mapping is a planning tool and wetland delineations will still need to be conducted and reviewed by Program staff. New map funding has been used to hire a temporary staff member this year to review and edit draft NWI and advisory wetland maps. Most of the map efforts going forward are completed by contractors.

C. Comments on Rule Language and Rule Filing

Comment C-1: The Agency of Agriculture, Food and Markets (AAFM) regulates agricultural activity and through the Required Agricultural Practices, regulates tile drainage as a conservation practice used to grow crops. Regulation should remain with AAFM rather than be parsed out to different Agencies. The proposed wetland rules changes are unclear as to how they affect agriculture. Farming requires maintenance and installation of ditches in crop areas to allow conservation practices to work correctly and grow crops. We believe this should be under the AAFM guidance and direction, not ANR.

Response C-1: The Agency of Natural Resources has jurisdiction over wetland regulation in the State. The Agency has been discussing wetland permitting jurisdiction with AAFM and the Wetlands Stakeholder

group for several years. That discussion is ongoing, and this rule update does not include changes to the regulation of wetlands on agricultural lands.

Comment C-2: No economic impact was included with the rule filing. The impact to VT ANR may be zero but the land that will be incorrectly identified as a wetland will take away use of perfectly good parcels. VT ANR needs to understand the impacts that these changes will have, in addition to the confusion and economic hardship to Vermonters.

Response C-2: A summary of economic impact is provided on page five of the Rule filing forms, and an extensive evaluation of economic impact is provided beginning on page nine of the filing forms. Per the summary: “The proposed rule amendments are intended to clarify existing jurisdiction, and are not anticipated to have a significant economic impact. Under the current rule, landowners must seek permit coverage to impact significant wetlands, regardless of whether those wetlands appear on the VSWI map. The proposed rule does not change the standards used to determine significance, rather it more clearly defines the wetland types that have been determined to be significant, so that those wetlands can more easily be added to the VSWI. Developers and landowners with Class II wetlands on their property will still be required to seek wetland permit coverage, and pay associated permit fees as defined in 3 V.S.A. 2822. The clarification of jurisdiction and clear determination of categories of Class II wetlands is intended to reduce instances of accidental Wetland Rule violations, and reduce related costs including costly project removals and after-the-fact permit fees, which are twice the standard permit fee cost..”

Comment C-3: Requests to define stream and surface water consistent with riparian buffer guidance, revise the vernal pool definition, adding a “wet meadow” definition, and definition for “prevalence of persistent vegetation”.

Response C-3: The Wetland Stakeholder Group had many conversations about the above-mentioned definitions and definition additions and revisions are anticipated for a future rule change. The current rule edit is narrow in scope to allow for map improvements while discussions about additional rule edits continue.

Comment C-4: Add defining language of the current practice that wetlands with “high” or “present” level function and value, are considered significant, and wetlands with “low” function and value are Class III, under the 4.6 Categorical Class II Wetlands section.

Response C-4: The Agency declines the request. The classification of wetlands is based on the statutory directive in 10 V.S.A. § 905b(18) that determinations of significance be based on an evaluation of the specific functions and values identified in statute. The intention of the categorical classification is to provide clear categories of wetlands which have been found to provide significant function and value. Additional details of functions and values analysis should be included in section 5 of the Rule. The current rule edit is narrow in scope to allow for map improvements.

Comment C-5: VHB suggests recognizing U.S. Army Corps of Engineers (“USACE”) also has jurisdiction in Vermont to make formal wetland boundary determinations. May be helpful to clarify or acknowledge the USACE versus Secretary jurisdiction, as it can commonly be understood that the USACE, through application of their delineation manual, would be the wetland boundary authority.

Response C-5: The Vermont Wetland Rules are administered by the Agency of Natural Resources; the Agency and USACE have concurrent jurisdiction over wetland regulation in the State. Although the Agency has worked with ACOE technical staff in the past to identify wetland boundaries, authority over wetland boundary determinations for State purposes belongs to the Agency of Natural Resources.

Comment C-6: Requested edits to the categories of Class II wetlands in section 4.6.

Response C-6: The language in the Rule mirrors the findings in the General Determination issued in September. There were no comments filed during the General Determination notice period requesting these changes.

Comment C-7: Move the following statement as a categorical Class II wetland: *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.*

Response C-7: The Categorical Class II wetlands are based on a General Determination issued in September 2022. The Agency cannot add additional wetlands as Class II into the Rule without first conducting a formal determination. The paragraph cited in the comment is intended to identify another type of wetland which, although not always Class II, is often found to be significant and should be evaluated and not assumed to be Class III.

Comment C-8: The increased buffer is not backed on any scientific evidence of increased value to proposed wetland.

Response C-8: The rule amendments do not propose increased wetland buffers for Class II wetlands; the 100ft default buffer zone for Class I wetlands has been part of the rule for many years. The only increased buffers associated with this rule change are for Wards Marsh and Eshqua Bog, both of which went through a determination process for Class I designation. The determination review required robust scientific evidence that the wetlands were exemplary or irreplaceable in one or more functions or values. To review the analysis see the following website: <https://anrweb.vt.gov/ANR/vtANR/DocBrowser.aspx?Directory=DEC%2fWSMD%2fWetlands%2f2022VWR>

Comment C-9: The collection of sap for making maple syrup is not listed in the exemption for “cultivation or the use of land for growing food”, and it should be.

Response C-9: The definition of “growing food or crop” is not being changed in this rule edit. The exemption stems from State statute (V.S.A.10 §902(5)). Sap collection is listed in the current rule under the definition of farming activities (VWR 3.1a(2)).

Comment C-10: The Vermont Farm Bureau recently added the following policy to their wetlands section: Vermont Farm Bureau opposes the general determination by the Secretary of Natural Resources to classify existing Class III wetlands as Class II wetlands without full in-person analysis attesting to the reclassification. Furthermore, we support keeping Class III as an advisory layer.

Response C-10: The wetlands that are being added to the maps are Class II wetlands. Those wetlands have been listed as presumptively Class II in the rules since 2010, so have been regulated since 2010 even when they were not on the map. The Program has gone through the formal determination process required by statute so these wetlands can be added to the Vermont Significant Wetlands Inventory (VSWI) for greater clarity.

The VSWI is a planning tool to ID the general location of a regulated wetland and not intended to be used as the definitive regulatory area. Those areas identified as Class II can be edited by program staff without an appeal, a landowner can petition for a wetland to be made Class III, or petition a map edit without a fee.

The Wetland Advisory Layer is not a map of Class III wetlands but simply a map of where there are wetlands regardless of classification.

Comment C-11: The general determination is statewide, not just the Missisquoi Basin? Right now you are only updating the VSWI for the Missisquoi Basin and will have updates in other areas later?

Response C-11: Commenter is correct. The General determination, which was issued in September, identifies certain categories of previously presumptive Class II wetlands as *Determined* Class II wetlands so that they can be added to the VSWI. Right now we only have a comprehensive map update for the Missisquoi area. Once we complete mapping for other watersheds, we will be able to bulk notice and update the VSWI in those watersheds.

Comment C-12: The Agency received various comments in support of the two Class I additions: Eshqua Bog and Wards Marsh.

Response C-12: The Agency acknowledges the comment in support of the two Class I additions.

Comment C-13: We ask that the application fees of \$240 and the \$0.75/sq. ft. wetland impact \$0.25/sq. ft. buffer for an appeal be reconsidered. This is a substantial cost.

Response C-13: The costs cited in the comment are the application costs for a permit, not the cost of an appeal. This comment is beyond the scope of review as fees are established in 3 V.S.A. § 2822 of statute, and cannot be amended by rule.

D. Other Comments

Comment D-1: How does the rule update effect the rest of the state (besides Missisquoi Basin)?

Response D-1: The edits add two Class I wetlands, provide process for updating maps statewide, and includes those wetland types that have been categorically determined to be Class II, in Section 4.6 of the rule.

Comment D-2: NRCD staff received a comment from a farmer that DEC staff sent misleading language.

Response D-2: The Wetlands Program will investigate the matter further if the commenter could provide more specific information. The Agency strives to provide complete and accurate information to farmers and regulated entities.

Comment D-3: So many rule changes are hard to keep up with. Why are so many agencies involved? "Too many people making too many rules".

Response D-3: Regulatory and rulemaking authority is determined in Statute and state statute has authorized different agencies authority over different regulatory programs.

Comment D-4: What's the time period for the statistic that Vermont has lost 35% of our wetlands? Thinks that going back to 1780 for that number is misleading - should quote wetlands lost since 1950 or something. Where did those wetlands we lost go? How many acres have been added since 1980?

Response D-4: The time period was 1780 to 1980 to get a sense of losses since colonization and is from a reputable source: Dahl, T.E. 1990. *Report to Congress: Wetlands Losses in the United States 1780's to 1980's*. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. 13pp. (<https://www.fws.gov/wetlands/documents/wetlands-losses-in-the-united-states-1780s-to-1980s.pdf>) The Report to Congress and was used as justification by the George Bush administration to initiate a federal no

net loss policy. Much of the wetland loss was the result of draining for agriculture. Ditching removed the water from the land so that those areas no longer contained wetland habitat. The Agency is not aware of wetland analysis which started in 1950. The Agency has only recently started consistently tracking wetland gains. Between 2016-2018 there was an average permitted loss of 1.59 acres of wetland per year, and an average of 5.39 acres of wetland restored, enhanced, or conserved through permitting. Wetland area restored by NRCS during the 2011-2015 timeline is approximately 1,990 acres or 398 acres per year.

Comment D-5: How will this affect sugaring and sugar shack which are often built at the low point of property for gravity feed?

Response D-5: The building of new farming structures in wetland or wetland buffer requires a permit. The draft rule edit does not make changes to this requirement.

Comment D-6: Deceptive information was provided in the public meeting presentation. It was stated that wetlands have been reduced by 35% between 1780 and 1980 and failed to mention that it increased by 36% between 1980 and 2019. Furthermore the state has far more wetlands than are currently mapped as the state has over 1 million acres of soil that are hydric. Using the loss of wetland for the justification for reducing the standards of adding the wetlands to the advisory layer is unfounded.

Response D-6: The Agency used a nationally recognized study to cite the historical loss of wetlands. See response D-4. The purpose of providing the statistic in the presentation was to demonstrate how wetland regulations are necessary. The Agency is not aware of any data or analysis supporting the statement that wetland acreage increased by 36% between 1980-2019. A published 1994 report by the Agency¹ found that wetland losses and impairments were still occurring in 1990 and 1991 (58 acres of loss, 91.7 acres impaired). A national report showed slight wetland gain across the nation between 1998 and 2004 (0.3% gain²). In 2007, a study found that there was over 86,000 acres of land with potential to restore back to wetland in the Lake Champlain basin of Vermont alone³. See response A-4 for more information about hydric soil unit maps.

Comment D-7: Various comments received regarding chem-trails and groundwater pollution.

Response D7: Those comments are beyond the scope of the rule.

Comment D-8: Individuals expressed appreciation for what the Wetlands Program does to identify and protect wetlands.

Response D-8: The Agency acknowledges the appreciation.

Comment D-9: Various questions and comments were received regarding confusion around the exemption for growing food and crop and the allowed use for maintaining existing structures and facilities.

¹ Sorensen, E.R. 1994. *Vermont Wetlands Conservation Strategy, 1993*. Vermont Agency of Natural Resources, Department of Environmental Conservation. Waterbury, Vermont.

² Dahl, D.E. 2005. Status and Trends of Wetlands in the Conterminous United States 1998 to 2004. U.S. Fish & Wildlife Service. Washington, D.C. <https://fws.gov/media/status-and-trends-wetlands-conterminous-united-states-1998-2004>

³ Pioneer Environmental Associates, LLC. et al. 2007. *Lake Champlain Basin Wetland Restoration Plan*. Vermont Agency of Natural Resources. Waterbury, Vermont. <https://dec.vermont.gov/sites/dec/files/wsm/wetlands/docs/2007ChamplainRestorationPlan.pdf>

Response D-9: The exemption for growing food and crop and allowed uses are not changing in this Rule edit. The Agency provided responses to the individual commenters.

Comment D-10: We notice that when properties are sold and bought in Vermont, there is not information as to whether there are wetlands on the property. Is this a goal so that landowners know what they are buying and selling?

Response D-10: Yes, the maps are an important tool to help with planning, including building or purchasing land. The Wetlands Program provides an accredited training to Realtors on how to research wetland presence on a parcel so Realtors can better inform their clients.



November 7, 2022

Laura Lapierre
Vermont DEC – Watershed Management Division
1 National Life Drive, Main 2
Montpelier, VT 05620-3522
[Via email]

Re: VHB Comments on 2022 VWR Draft, dated August 30, 2022, via Public Notice Comment for Proposed Rules of the Office of the Secretary of State, dated September 28, 2022.

Dear Laura:

Thank you for the opportunity to comment on the above-referenced 2022 Vermont Wetland Rules (“VWR”) draft document. Draft VWR language contained below as italicized text, followed by VHB’s responses.

Section 2: Definitions:

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

In this definition, it would be helpful to define a stream or surface water. Definition should be consistent with ANR definitions in the 2005 Riparian Buffer Guidelines to avoid misapplication and/or conflicting guidance between the programs.

*2.39 **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.*

VHB suggests refining the definition of vernal pool to require the demonstration of breeding use in order to be consistent with other vernal pool definitions used in other resource identification and regulatory application.

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4.3 Designations:

b. Other Wetlands

2. Determine which functions and values make a wetland significant.

VHB suggests defining the current practice that wetlands with "high" or "present" level function and value, are considered significant, and wetlands with "low" function and value are Class III, under the 4.6 Categorical Class II Wetlands section.

4.5 Delineation of Wetland Boundaries

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

VHB suggests recognizing U.S. Army Corps of Engineers ("USACE") also has jurisdiction in Vermont to make formal wetland boundary determinations. May be helpful to clarify or acknowledge the USACE versus Secretary jurisdiction, as it can commonly be understood that the USACE, through application of their delineation manual, would be the wetland boundary authority.

4.6 Categorical Class II Wetlands:

- 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.*

VHB suggests adding wet meadow to Section 2: Definitions, as it is mentioned several times within the proposed draft rules, and VHB recommends a definition clarifying situations where wet hay and agricultural fields are, or are not, intended to be included.

- 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.*

VHB, again, suggests including a stream definition consistent to the ANR 2005 Riparian Buffer Guidelines. A percent cover to define dense or prevalent persistent vegetation would be helpful.

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

It would be most appropriate to remove *amphibian breeding ground habitat* as this should be a requirement for a depression, inundated area to be considered a vernal pool (see comment above).

- 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.*



VHB suggests: The wetland contains a wetland habitat dependent species that appears in the Vermont Natural Heritage Inventory (VNHI) database as rare, threatened, endangered or uncommon; or is a significant 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.

VHB suggest moving this statement to 4.6 Categorical Class II Wetlands.

We note that the current draft does not propose the nature and extent of revisions that we understood were being discussed with the VWR stakeholder group last we were involved in September 2021, including significant concept changes being contemplated such as possibly removing Allowed Uses, shifting to impact instead of activity-based permitting, and codifying certain activities that would be permitted under specific general permits/BMPs. As such, VHB's review acknowledges this draft does not go so far as to propose those concept changes, and VHB has reserved providing further or duplicative comment on those concepts.

Thank you in advance for your time and considerations of our collective comments on these technical aspects of the current draft revisions. Please feel free to reach out to either of the undersigned if you would like to further discuss or request clarification on any comments.

Sincerely,

A handwritten signature in cursive script that reads "Allison L. Slaney".

Allison L. Slaney, PWS
Environmental Scientist

A handwritten signature in cursive script that reads "Adam Crary".

Adam Crary, PWS, PWD
Director of Natural Sciences Vermont

DATE: October 31, 2022

TO: Agency of Natural Resources
Department of Environmental Conservation
Watershed Management Division
1 National Life Drive, Davis 3
Montpelier, Vermont

FROM: Longway Farms Real Estate LLC / Longway Farms LLC
281 County Road
Swanton, Vermont 05488

RE: Proposed Wetland Rules Amendment

On September 8, 2021, VT ANR stated they intend to move forward with the draft Wetland Rules as proposed. The rule will be presented at public hearings, and we hope that submitted comments, written or verbal, will modify the rule as written. There are errors in the Franklin County maps and we believe that VT ANR cannot accurately depict whether it is or is not a wetland. For this primary reason, Longway Farms Real Estate LLC / Longway Farms LLC will object to the rule as filed and does not support this rule moving forward. VT ANR should not move forward with their plan to map all of Vermont until the Franklin County maps are corrected.

Longway Farms Real Estate LLC / Longway Farms LLC understands that the maps are outdated and need to be updated. However, an incorrect map does more harm than utilizing existing maps. We respectfully ask that, at a minimum, no additional wetlands are added to the regulatory maps without physically identifying them. Once the map is updated, we ask that the map become "advisory" for 36 months and after ANR notifies landowners of the change of use. Landowners should not be trapped in an "after-the-fact" decision which will require a parcel to be delineated by ANR. This may be efficient for ANR, but it is farcical for a landowner to be paid for a consultant to appeal to an inaccurate map or worse, be faced with a violation.

According to the Federal guidelines from the U.S. Fish and Wildlife Service definition, wetlands have one or more of the following three characteristics:

- The land supports predominantly hydrophytes (aquatic plants)
- The land is composed predominantly of undrained hydric soil
- The land is saturated with water or covered by shallow water at some time during the growing season of each year

Additions to the map should not be included until the soil characteristics are accurately depicted. The mapping should be adjusted by using field visits, field delineations and other relevant information, and not depend on aerial photography.

Our areas of concern have not changed in the past year, which is based on the mapping of Franklin County. Therefore, Longway Farms Real Estate LLC / Longway Farms LLC opposes ANR regulation for the following reasons:

- The Agency of Agriculture, Food and Markets (AAFM) regulates agricultural activity and through the Required Agricultural Practices, regulates tile drainage as a conservation practice used to grow crops. Regulation should remain with AAFM rather than be parsed out to different Agencies.
- Ditches in fields: the proposed wetland rules changes are unclear as to how they affect agriculture. Farming requires maintenance and installation of ditches in crop areas to allow conservation practices to work correctly and grow crops. We believe this should be under the AAFM guidance and direction, not ANR.
- Production areas: Comments previously have questioned the use of mapping that ANR is using. Manure pits and field ponds are currently depicted on the Franklin County map. Additions of wetland, in areas that are truly not a wetland, is an economic hardship to agriculture. In those cases, you add another 50 feet for the buffer zones. We support buffer zones but cannot support feels like “taking” the land for agricultural use when there is no wetland.

Longway Farms Real Estate LLC / Longway Farms LLC decided to conserve their parcels through the Land Trust because land conservation protects farmland permanently as well as our Agri-tourism sector. If this rule is adopted, the size of parcels and value of the conservation easement will be decreased.

Lastly, no economic impact was included with the rule filing. The impact to VT ANR may be zero but the land that will be incorrectly identified as a wetland will take away use of perfectly good parcels. VT ANR needs to understand the impacts that these changes will have, in addition to the confusion and economic hardship to Vermonters. Requiring the landowner to go back parcel by parcel and try to correct the map will be tedious, frustrating, and expensive to Vermonters.

Sincerely,
Julie A. Longway
Travis R. Longway
Adam P. Longway
Longway Farms Real Estate LLC / Longway Farms LLC



RECEIVED
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WSMD

Franklin and Grand Isle Farmer's Watershed Alliance
Working for Environmentally Positive Solutions for Farmers

Re: Proposed Amendment to the Wetland Rules of Vermont under the Agency of Natural Resources
From: Franklin and Grand Isle Farmer's Watershed Alliance
Date: November 21, 2022

To Whom It May Concern,

The Franklin and Grand Isle Watershed Alliance (FWA) is submitting the following comments on the record regarding the "Proposed Amendment to the Wetland Rules of Vermont under the Agency of Natural Resources."

The FWA is very focused on protecting the environment and promoting sound farming practices that will keep farming viable in Vermont. Our membership has brought forward several concerns regarding the proposed changes to the rules which direct the procedures related to modifying the Vermont Wetlands Inventory data layer. We welcome a better accounting of the wetlands in the state of Vermont. A clear and correct inventory of wetlands will benefit farmers and policy makers alike. The proposed rule changes puts this in jeopardy.

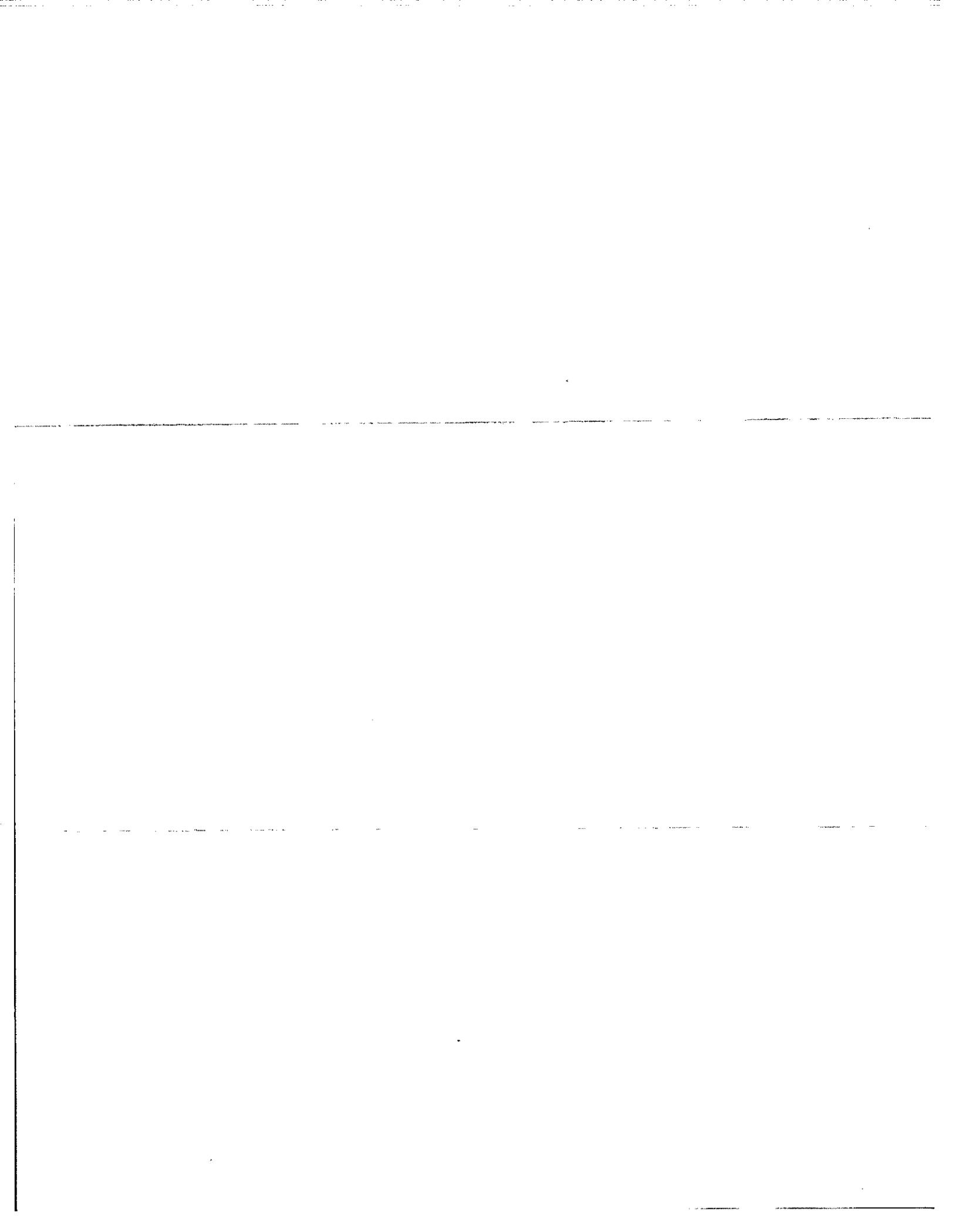
The first concern is the simplification of the rules which direct how the wetland map is updated. Historically, the map was ultimately controlled by the U.S. Fish and Wildlife Department who have strict standards to protect the land and the landowner from improper data being added to the map. It is our concern that these standards will be no longer followed by Agency of Natural Resources (ANR). It is important that only the actual wetlands are mapped without error. Before this proposed rule change, ANR staff had to actually verify each wetland as such before adding to the map. Under the current proposal as we understand it, ANR can use remotely sensed data and other data sources to estimate the likelihood that the proposed newly delineated wetland is an actual wetland but without verification. This will inevitably lead to mis-mapped wetlands which the private landowner will have to undergo a potentially time and money consuming process to resolve. It is our request that the process remain rigorous, and we feel the burden should fall solely on the state to properly identify wetlands before adding them to the existing inventory. Reducing the criteria ANR needs to address when proposing changes to that inventory will only lead to confusion and costly remediation process to the private landowner.

The second concern is that the buffer around certain wetlands is proposed to be extended to 100 feet from the current 50 feet. This additional buffer amounts to limiting the ability of the private landowner to use land that is not in a wetland and may likely have no effect on the wetland from being utilized. We would like ANR to demonstrate where and under what circumstances a 50-foot buffer was not adequate. There seems to be no justification for the doubling of the buffer other than bigger must be better. We

Farmer's Watershed Alliance

P.O. Box 298
St. Albans, VT 05478

(802) 363-7707



would like to be provided with the scientific evidence that this is needed.

The third concern is regarding the size of wetlands depicted in the proposed data layer. It is our understanding that the rule change states that wetlands under ½ acre are not subject to this rule. From article a. in the General Determination. However, the map contains wetland areas that are less than ½ acre. This is adding confusion about what is and is not considered a regulatory wetland. Furthermore, this is making the already confusing process of trying to tell if an area of your land is considered a wetland more confusing. Not only is the use of that area regulated by three different government agencies with three different sets of wetland rules but the language in the ANR proposal and map seem to be at odds with itself.

The fourth concern is the deceptive messaging put out by ANR staff to justify this proposal. In the meeting that FWA board members attended Laura Lapierre stated that wetlands have been reduced by 35% between 1780 and 1980. She fails to mention that it has increased by 36% between 1980 and 2019. Furthermore, the state has far more wetlands than are currently mapped. The state has over 1,000,000 acres of soils that are hydric. This would be an indication of many more acres of wetlands that are not accounted for and using the loss of wetlands for the justification for reducing the standards of adding wetlands to the advisory layer is unfounded.

The fifth concern is that for the Franklin County data set with the rule change ANR would add 4,097 additional class II wetland acres to the wetlands data layer. Of those acres, 77% of them are added to non-hydric soils. Hydric soils are a prerequisite to a wetland determination. If the wetland is mapped on non-hydric soils, there is a possibility that the area is not actually a wetland. The rules change makes checking the certainty of this optional. 47% of the additional wetlands are located on prime agricultural soils which are also not typically identified as being "wetlands". The changes to this data layer will affect 14,337 acres of agricultural land in the county or 17%. The FWA feels that with such a significant amount of the land base being potentially affected that ANR should follow existing rules and not modify them to save time, money, or effort.

The FWA is submitting these comments with the hope that Vermont's agricultural and environmental heritage will be stronger by not changing the existing rules that ANR are bound to follow in modifying the classification of wetlands.

Signed the FWA Board of Directors

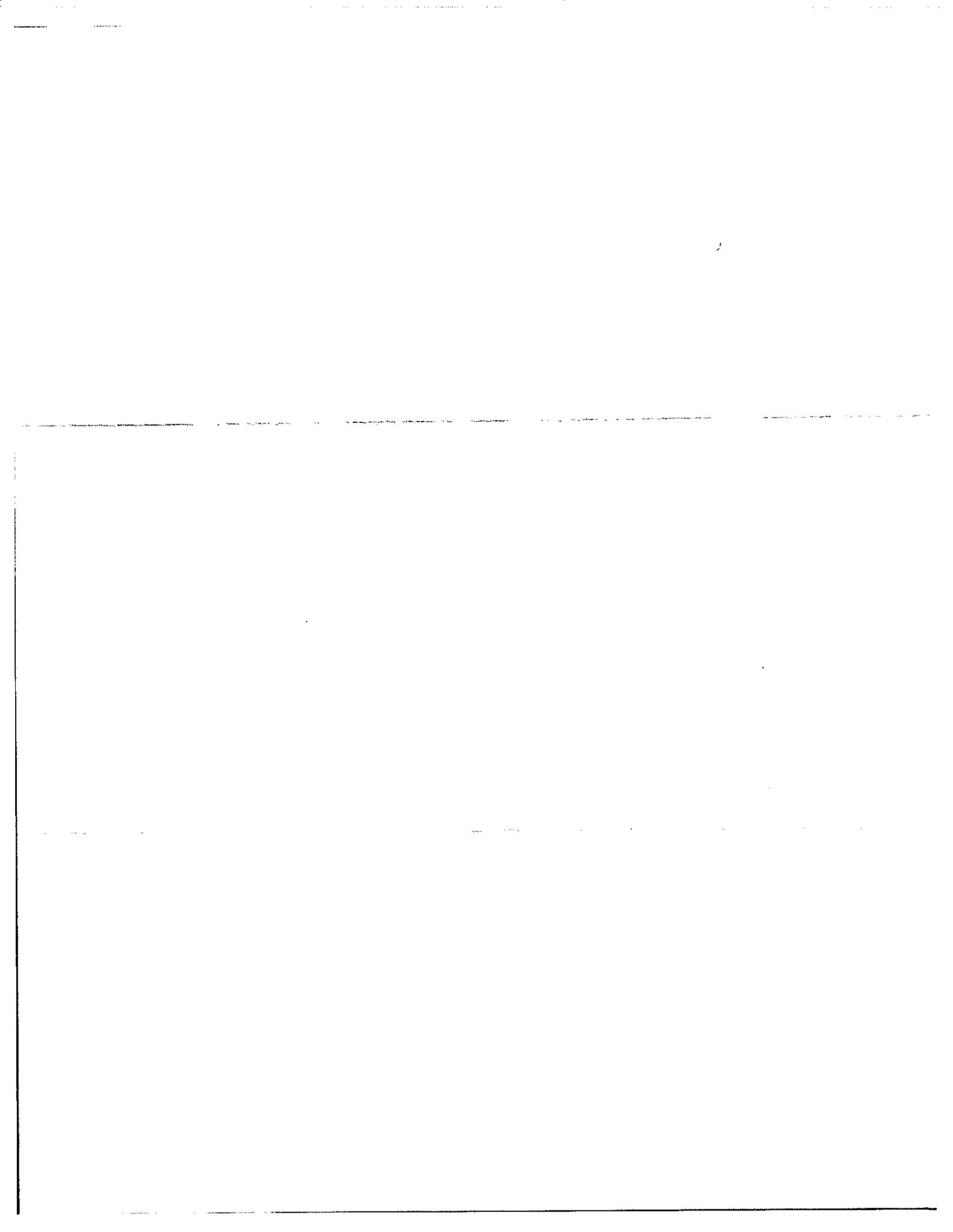
Sincerely,

Wayne Fisher
Daryl Farnell
Roland Russell
Amy Surin
Scott May
Nina Moore

Farmer's Watershed Alliance

P.O. Box 298
St. Albans, VT 05478

(802) 363-7707



From: Pamela Stefanek <pamelastefanek1@gmail.com>
Sent: Saturday, October 1, 2022 9:05 AM
To: Lapierre, Laura
Subject: Wetland maps comment

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Laura,

There is a hill that grows white oaks on my land that is incorrectly mapped a wetland.

And if the dam comes down in Orwell I won't have any wetland at all. So some consideration has to be made about these man made wetlands. On my land there is no deed restriction so my land is wet and I am not getting any benefit.

Vermont Fish and Wildlife won't take down dams. That's almost a conflict of interest.

Pamela Stefanek, Benson.

From: wod vt <donley7@gmail.com>
Sent: Saturday, October 1, 2022 2:25 PM
To: Lapierre, Laura
Subject: Wetlands

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Laura, beavers moved into my backyard in 2016 and have created a wetland. It's maybe only an acre in size, not sure if that is big enough for you to be interested in. You can see it on google earth at 31 Burnt Hill Rd. Ripton. Walter

Sent from [Mail](#) for Windows

From: Taylor Fabrega <taylorfabrega@gmail.com>
Sent: Wednesday, November 2, 2022 5:38 PM
To: Lapierre, Laura
Subject: wetland meeting

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi,

I was in attendance online for the Rutland tomorrow and would like to follow for updates. We had submitted a web form more than a month ago requesting a site visit to get some basics on land use on our property in Middlebury as much of it is on a (currently designated) Class II wetland but have not gotten any response. We also reached out to the Corps of Engineers but have not heard back from them either.

Thank you!

Ms. Taylor Fabrega
E: taylorfabrega@gmail.com
P: (850)766-7465
<https://www.linkedin.com/in/taylorfabrega/>

From: Brian Carpenter <brian@champlainvalleyequipment.com>
Sent: Friday, November 4, 2022 5:21 PM
To: Lapierre, Laura
Cc: Shouldice, Heather
Subject: Wetlands Rulemaking Hearing

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Laura,

I want to participate in one of the hearings but the link to pre-register this week has said the meetings were canceled. I am interested on numerous levels—agriculture, development, equity & fairness, and process to name a few. I heard the meetings were actually being held so this evening I decided to click on the 'click to join' link which has taken me to a waiting room. I've been waiting over 15 minutes and haven't been let in so I don't know what to think.

With this experience, I feel we need more opportunities to participate that aren't on Halloween or Friday afternoon and ensure that the links posted work for us remote users.

I appreciate your consideration that this impacts many Vermonters and they should have a chance to get educated and comment before rules are adopted.

Thank you,

Brian R. Carpenter
General Manager
Champlain Valley Equipment
brian@champlainvalleyequipment.com
Work (802)388-4967 ext 105
Cell (802)349-9588

From: Glenn Rogers <glenn.rogers@uvm.edu>
Sent: Wednesday, November 9, 2022 10:02 AM
To: Lapierre, Laura
Subject: Public Comment: Vermont Wetland Rules

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Laura: I'm really weak on this wetland stuff. So please excuse my ignorance.

I looked at some land that I have and noted that one area identified as a class II wetland is actually an old field that I once hayed, plowed and then seeded - and finally planted to Christmas trees some 42 years ago. I see that it is noted as a class II wetland. To the best of my knowledge the roughly 2 --3 acres is a loam, and possibly a sandy loam area. (its not a wetland - I haven't seen an alder, no moss, nor signs of water on the slope in my 70 + years. I've driven my tractor up and down the slope in every season and have barely left a track. (wet areas are in the vicinity but certainly not there...and the soils a pretty deep). I assume this is just an "inclusion" and that if one wanted to develop it, all one would have to do is to dig a couple of test pits (which I suspect they'd have to do it anyway for the septic system)

Its woodland, and not near a road so I'm not worried about it. Certainly not in my lifetime but should I even mention it??? I just don't want my heirs to get "stuck" with a mistake or an inclusion that would cause them a lot of money to straighten out. But I can assure you, water or any kind of wetland is NOT there. (its a slope and the uphill side drops off quickly forcing any water to go around the area entirely.)

The rest of the property is pretty accurate. - I could argue but its a acre or two here and there.

thanks Laura.

Glenn

--

Glenn Rogers
17 Fairview Dr.
Essex Jct, Vt. 05452
802-318-5387
Glenn.Rogers@uvm.edu

We do not own this world, we just borrow it from our children/grandchildren.

From: Jonathan Gibson <jgibson@vermontel.net>
Sent: Saturday, November 12, 2022 11:15 PM
To: Lapierre, Laura
Cc: Courage, Zapata
Subject: Comment on revision of Vermont Wetland Rules

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hello Laura,

You will recall that I attended and offered brief oral comments at the November 2, 2022 public hearing in Rutland. Time slips by but since it is still Nov. 12, I will summarize my comments in writing to help you to include them in the record. Best regards and thank you for your work as Wetlands Program Manager at ANR/DEC. See my comments below.

Jonathan Gibson
2202 Keifer Road
Shrewsbury, VT 05738

Thank you for the opportunity to provide comments on the Department of Environmental Conservation's proposal to update the Vermont Significant Wetlands Inventory, define certain types of wetlands as Class II, and revise the Wetland Rules. I am in support of all of the changes that are proposed to be made as part of this updating process, and I appreciate the work that the Wetlands Program staff has done in protecting our state's wetlands and in formulaing the proposed changes and putting them out for public comment.

My interest in the updates first arose when I learned that the Wetlands Inventory Map will be revised to take advantage of advances in wetland identification remote technology. After accessing the map on the ANR website, I was able to view my own property in Shrewsbury, as well as other localities and parcels in town with which I'm familiar and where wetlands exist and are shown, or could be shown, on the map. I'm particularly appreciative for the timely and helpful communication from Wetlands Program staff in Rutland who assisted me with information about using the online map and about how a site visits are arranged to confirm and update information on known or potential wetlands.

I realize that your field office staff's site visits focus on wetland identification and protection and that a principal use of the Wetlands Inventory Map is to inform property owners whether their proposed or contemplated construction or development will need to provide proper separation from wetlands. I hope that you also recognize what a terrific resource the Map is for the general public as well. It can be a source of information about this natural resource that has so many important ecological functions. Municipal Planning Commissions, Development Review Boards, and Conservation Commissions all need the highest quality wetland information to perform their planning, regulatory, and educational roles. In addition, landowners and citizens such as myself, our friends and neighbors appreciate knowing about and visiting wetlands for bird, amphibian, or other observation and can assist in identifying, monitoring, and conducting "citizen science" work that helps all of us to understand and safeguard these wetlands. So please continue to improve the Map by outreach for public input and by arranging site visits to the extent that your Program's budget and staff time allow.

One more item before I close with a few notes on specific wetland locations: the other comments during the Nov. 2 hearing I attended dealt with wetlands on agricultural or food-producing land - and I'm sure this issue is one that occupies much of your staff time. Again, I know agency resources are limited, but please try to give parity in your attention to forest wetlands, whether these be marshes, seeps, bogs, vernal pools, riparian zones along streams and headwaters, or other qualifying categories. These may be less visible or cause of impact conflicts, but they are no less important ecologically or in terms of flood resilience.

Notes of specific wetlands in Shrewsbury

1. 1357 Keiffer Road (our property): there may be a high elevation fen south of the Class II wetland east of Keiffer Rd. There is a stream from the Class II wetland on east boundary of property. A confirmed vernal pool is accurately shown on the Map. I've requested a site visit and hope this can be arranged in 2023 from Wetlands Program and/or Bioassessment staff.
2. 2165 Keiffer Road: this is shown both as a Class II wetland and as a "wetland project 2020-704". The pond has been drained so it may be useful to clarify the descriptions.

3. SPAN 594-187-10819 shows a "potential vernal pool". This is definitely a vernal pool.

4. 728 or 950 Button Hill Road: there is a vernal pool on one of these properties

5. Other "potential vernal pools" shown on the Map can be visited by Shrewsbury residents with reports provided to DEC staff if this is helpful for future site visits or Map updates.

From: Lynn Paradis <lparadis@swanton.net>
Sent: Wednesday, November 16, 2022 11:23 AM
To: Lapierre, Laura
Subject: Wetlands Map

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Laura,

I have a general question, if an area on the interactive map is outlined in red as a current wetland but is not marked in teal as a proposed, is it no longer classified as a wetland? I see some with both a red outline and marked in teal and then some that are just one or the other.

The manure pits that I noticed marked as wetlands are at approximately 892 State Park Rd in Sheldon, VT, 1705 State Park Rd in Franklin, VT and 275 Patterson Rd, Sheldon, VT.

Could I also be added to the email list to receive updates on the rulemaking process? My email address is lparadis@swanton.net

Thanks,

Lynn Paradis

Lynn M. Paradis

Lynn M. Paradis, CPA
Assistant Village Manager/Controller
Village of Swanton
120 First ST.
Swanton, VT 05488
Phone (802) 868-3397
Cell (802) 393-2529
Fax (802) 868-3930

Note: Any response or reply to this electronic message may be subject to the Vermont Public Records Act.

From: McGarry Dairy <dcm4323@gmail.com>
Sent: Wednesday, November 16, 2022 10:44 AM
To: Lapierre, Laura
Subject: follow up question

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Laura,

Had one last question we thought of after the meeting. I am curious if a landowner needs a separate wetland determination from your agency than NRCS or Army Corp of Engineers in order to tile an existing field? Was not sure if rules are the same from all agencies and approval from one is acceptable or if each one has its own slightly different rules.

Thanks,
Brian

From: lincolnfarmtimber@gmail.com
Sent: Monday, November 21, 2022 10:28 PM
To: Lapierre, Laura
Subject: VWR comments

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hello Laura,

I hope this finds you well. Please consider the comments below regarding the proposed revisions to the wetland rules.

While I support protection of wetlands in Vermont, and continuous improvement in practices and collaboration between regulators and the regulated community, I believe that mapping and/or designating additional areas of private property as Class 2 wetlands - without clarifying and/or establishing a clear, predictable, and timely permitting process for farm buildings, farm structures, and access to those facilities and land used for farming, that is universally understood between ANR and AAFM staff - will only increase the instances of confusion and conflict in the regulated community with a reduced benefit to the protection of wetlands. The permit process (and when and where it applies) should be improved before increasing the occurrences where a permit is necessary.

Regarding reclassifying wetlands "in general" vs. a "case-by-case basis." Using the Missisquoi Basin Plan as an example - phosphorus contributions to Lake Champlain were grossly overattributed to logging, forestland, and forest management activities - based on computer modeling, without ground truthing the model's outcomes - which led to an inaccurate value assigned to forestland and ultimately lessened the impact of the phosphorous reduction efforts by pointing people and resources in the wrong direction. Without more compelling evidence than what was presented in the public hearings for the VWR revisions about the quality or accuracy of remote sensing technology used to generate the new maps, I believe that statewide computer modeling of natural resource features to apply a land use regulatory program - with the burden to disprove it placed on the newly affected private property owners - is not accurate enough to justify the impact to private property rights. I understand that the procedure for adding wetlands to the maps may be time consuming (per comments made in the presentation), but I think the verification achieved through boots-on-the-ground work is too important of a step to bypass, and a missed opportunity to collaborate with landowners and private sector businesses that work the land.

Sincerely,
Sam Lincoln

Lincoln AgriSource, LLC
4884 East Bethel Road
Randolph Center, VT 05061

From: Jackie Folsom <crkdbrks@aol.com>
Sent: Tuesday, November 22, 2022 1:42 PM
To: Lapierre, Laura
Cc: Amber Perry; Joseph Tisbert
Subject: comments on wetlands mapping and rules

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Good afternoon -

Vermont Farm Bureau recently added policy to our wetlands section after concerns from several members on the mapping and what appeared to be a re-classification of Class III to Class II wetlands without any input from landowners or members of the public.

Our policy reads as follows:

Vermont Farm Bureau opposes the general determination by the Secretary of Natural Resources to classify existing Class III wetlands as Class II wetlands without full in-person analysis attesting to the reclassification. Furthermore, we support keeping Class III as an advisory layer.

I understand after speaking with Laura LaPierre from DEC that we may have misinterpreted the process and appreciate her quick response in describing what DEC was doing with Class III and Class II changes. I also understand there have been no changes in the current status of farmland in wetlands.

I am sending this policy and comments along for the record. While I agree after reading Ms. LaPierre's comments that this policy may not have been necessary, Vermont Farm Bureau members wished to be on record for now and into the future as we discuss this important issue.

Thank you for extending the comment period.

Best, Jackie Folsom, VTFB Legislative Director

From: Shane Keady <shanekeadym@gmail.com>
Sent: Thursday, November 24, 2022 3:04 PM
To: Lapierre, Laura
Subject: Wetlands Rule Change

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

I oppose the general determination by the Secretary of Natural Resources to change existing class 3 Wetlands to class 2 Wetlands without a full in person analysis attesting to the reclassification. Furthermore I would like to keep the existing class 3 layer on the advisory map.

Based on your online presentation this looks as if the department is taking the shortcut to reclassification without having to actually do the work and ensure it is accurately classified correctly. You have verified some of these on the ground but not all. This effort to vastly expand jurisdiction on the land without going through the work necessary to prove that a class III wetland needs to be changed to a class II seems to be adding more confusion and regulation onto the people of Vermont. The process of appeals is burdensome to the average landowner as is, and the idea of expanding that area that would require an appeal will be onerous to the average landowner. DEC needs to provide more clarity and streamline the existing process before adding to it because at the end of the day we are here to protect wetlands but at the same time we all live off the land and as such we need to work together to mitigate our impact while still allowing people to live in Vermont.

Shane Keady

November 13, 2022

To: Agency of Natural Resources

DEC Watershed Management Division

1 National Life Drive, Davis 3

Montpelier, Vermont

From: Pleasant Valley Farms

1546 Richford Road, Richford VT 05476

Re: Proposed Wetland Rules Amendment

We are submitting our comments on the record regarding the "Proposed Amendment to the Wetland Rules of Vermont under the Agency of Natural Resources." Our concerns have been noted in previous meetings with the Agency of Natural Resources as well as in the hearings now taking place.

We do not feel that landowners across the state, and most specifically in Franklin County, knew that ANR is actively mapping their land for the purpose of recoding wetlands. We ask that more if additional mapping is done each county have the chance to understand the implications and be part of the public process prior to the change becoming effective. We feel that changes to the Vermont Significant Wetlands Inventory (VSWI) should be updated by coordinating work already done by various agencies and physically identifying each parcel.

Our concerns are:

- *Inaccuracy of mapping-time spent correcting the maps, and increased costs of permitting
- *Increased requested buffer is not backed on any scientific evidence of increased value to proposed wetland
- * The collection of sap for making maple syrup is not listed in the exemption for "cultivation or the use of land for growing food", and it should be.
- *We ask that the application fees of \$240 and the \$0.75/sq. ft. wetland impact \$0.25/sq. ft. buffer for an appeal be reconsidered. This is a substantial cost.
- *We ask that a clearer appeal process within agencies be developed to dispute the inaccuracy of the mapping of wetlands.

The proposed parcels have been mapped incorrectly and the navigation of the mapping system is complex and difficult. To preserve wetlands of importance and acknowledging the value land and the working landscape a more realistic and logical approach to evaluating the wetland criteria should be implemented. We feel Federal guidelines for wetlands serve Vermont efficiently and should be used.

Four Hills Farm

Date: November 14, 2022

To: Agency of Natural Resources
Department of Environmental Conservation
Watershed Management Division
1 National Life Drive, Davis 3
Montpelier, Vermont

Re: Proposed Wetland Rules Amendment

Our farm has been following the proposed changes to the rules and want to express our concerns with them and the process in which it is being done. First we understand that you have been using aerial photography to update the wetlands mapping in Franklin County. After viewing the map it is clear there are errors in the mapping and it has not been made clear how you will correct them before adopting said changes to the map. In many cases farm production areas, including manure pits are highlighted to be listed as wetlands when in fact they do not meet the standard currently in place. Whole fields where the soils don't meet the standard are also showing up. Also areas less than .25 acres are showing as well. Though we are aware that these maps need to be updated the method being used has little or no scientific basis. Chanin Hill inquired specifically about this during the November 2nd information meeting and no clear answer was given as to the method being used or how it was that this was that method being used came about.

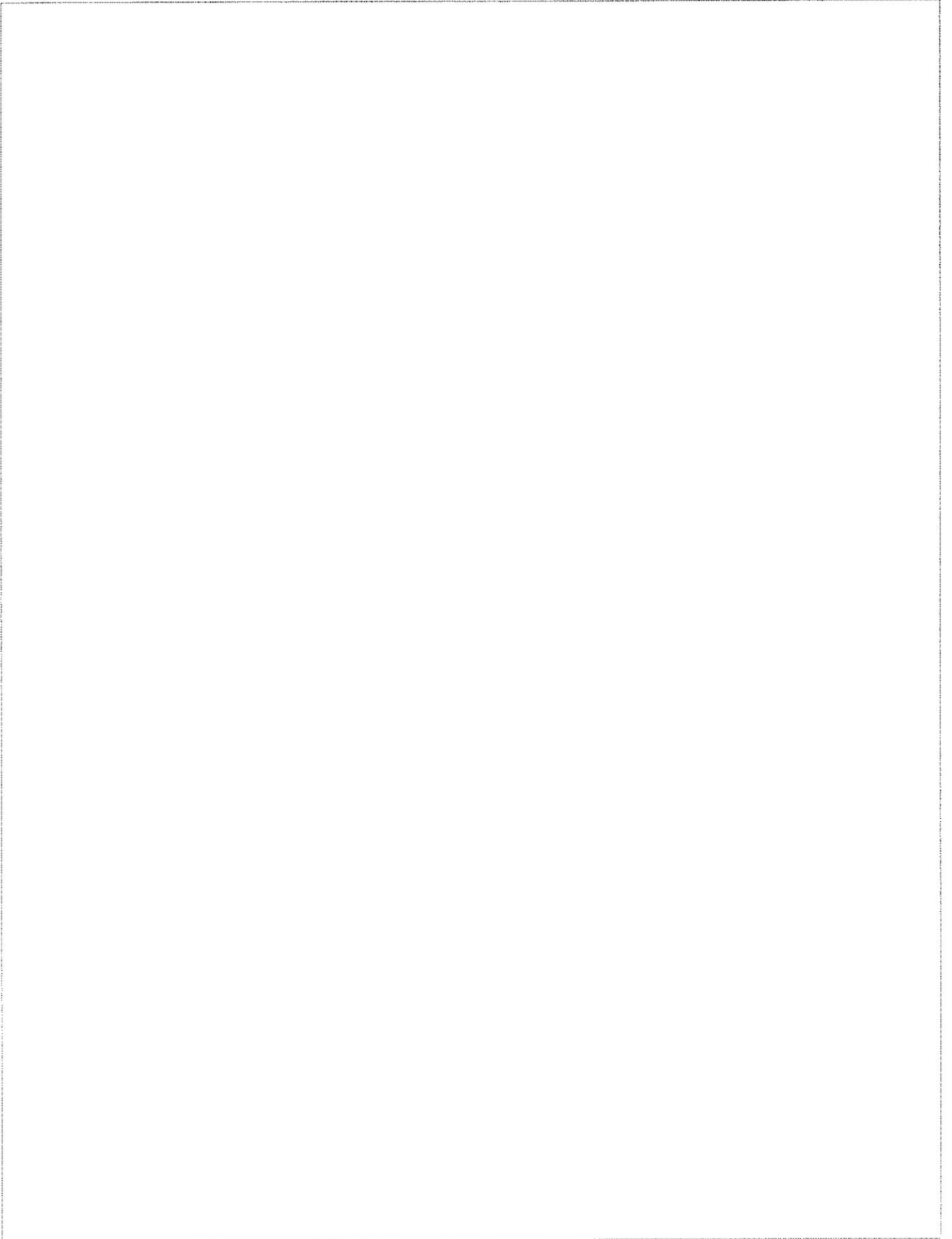
It is our belief that a more scientific method be used and that soil samples and actual inspection of those areas you wish to have listed as a wetland. I would also like to remind you that your own current rules state any changes to the maps require notice be given to the landowner and adjacent landowners. This rule change removes that requirement and we find that unacceptable for all land owners.

Second the proposed change could immediately put many landowners at risk for violation though your agency wouldn't have to give them notice of the change. That seems a backwards way to enact any rule and lends to the idea that trying to say this change has no economic impact is in fact not true. I.E. if a farmer is currently following the RAP rules for buffers and setbacks and your agency decides based on the above system of mapping that areas that were not previously considered wetlands are now, we could face severe and crippling fines and even lawyer costs to defend our actions with no way to recoup these costs even if taken to Environmental Court and we were to win.

We would like to go on record that we do not support these rules as written.

Regards,

Four Hills Farm
Brian & Chanin Hill, Ronald Hill, Joanne Hill, Kevin & Amy Hill, Megan Hill, Bradley Hill, John Hill and Britney Cyr



Annotated
Text



Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, Vermont 05620-3201

Vermont Wetland Rules

Vt. Code R. 12 004 056

Adopted February 7, 1990

(Amendments adopted ~~January 6, 2020~~XXX, Effective ~~January 21, 2020~~XXX)

<http://dec.vermont.gov/content/vermont-wetland-rules>

<http://dec.vermont.gov/>

Vermont Wetland Rules
CODE OF VERMONT RULES
AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
VERMONT WETLAND RULES
ENVIRONMENTAL PROTECTION RULES CHAPTER 30

Vermont Wetland Rules

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SECTION 1: GENERAL

1.1 Purpose and Applicability

It is the policy of the State of Vermont to identify and protect significant wetlands and the values and functions which they serve in such a manner that the goal of no net loss 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.

- 21 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.
- 22 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.
- 23 Board** means the Natural Resources Board.
- 24 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.
- 25 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.
- 26 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).
- 27 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).
- 28 Class III wetland** is a wetland that is neither a Class I nor a Class II wetland. See 10 V.S.A. § 902(8).

- 29 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 “in-lieu fee” program or mitigation bank that has been approved by the Secretary.
- 210 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.
- 211 Dredge** means lowering the bottom elevation or any cleaning, deepening, widening, or excavating, either temporarily or permanently.
- 212 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.
- 213 Environmental notice bulletin** means the website and e-mail notification system required by 3 V.S.A. § 2826.
- 214 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.
- 215 Facultative Wetland Species** means plant species that sometimes occur in wetlands, but which may also be found in uplands.
- 216 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.
- 217 Fill** includes the placing of any material that raises, either temporarily or permanently, the surface elevation of any area.
- 218 Headwater Wetland** means a naturally occurring wetland that is above 2,500 feet in elevation and contributes to a stream.
- 219 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).
- 220 Hydrophytic Vegetation** means vegetation, including obligate wetland species and facultative wetland species, growing in water, soil or on a substrate that is at least

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).

- 221 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).
- 222 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).
- 223 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.
- 224 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.
- 225 Obligate Wetland Species** means plant species that are almost always found in wetlands under natural conditions.
- 226 Panel** means the former Water Resources Panel of the Natural Resources Board.
- 227 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.
- 228 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.
- 229 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 aerialcover.
- 230 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.
- 231 Secretary** means the Secretary of the Agency of Natural Resources or their his or

her authorized representative.

- 232 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, slendermannagrass, golden saxifrage, and spotted touch-me-not.
- 233 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 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.
- 234 Silvicultural activities** means those activities associated with the sustained management of land for silvicultural purposes including the planting, harvesting, and removal of trees.
- 235 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.
- 236 Surface Vegetation** means plants with vegetative parts principally on the water surface, including water lily and spatterdock, and is synonymous with floating-leaved vegetation.
- 237 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.
- 238 Upland** means land that is not wetland.
- 239 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.
- 240 Waterfowl** means all ducks, geese and swans.
- 241 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).

242 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 ~~or Panel~~. 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 ~~his or her~~ 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 ~~his or her~~ 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 ~~Presumptions~~ 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, each of the following wetlands shall be presumed to be Class II wetlands unless determined otherwise by the Secretary or Panel:~~ 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.
- f. ~~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; or greater than 0.5 acres.~~
- g. ~~The wetland contains woody vegetation and is adjacent to a stream, river or open body of water.~~
- h. ~~The wetland contains dense, persistent non-woody vegetation and is adjacent to a stream, river or open body of water.~~
- i. ~~The wetland is a vernal pool that provides amphibian breeding habitat.~~
- j. ~~The wetland is a headwater wetland.~~
- k. ~~The wetland is adjacent to impaired waters and the impairment is related to wetland water quality functions.~~

- ~~l. The wetland contains a species that appears in the NNHP database as rare, threatened, endangered or uncommon; or is a natural community type that is rare or uncommon.~~
- ~~m. The wetland has been previously designated as a significant wetland.~~
- ~~n. It is within sixty (60) days after the landowner has received notice of a preliminary wetland determination pursuant to Section 8.1 of these rules.~~

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 watersnake, 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 greensnake, DeKay's brownsnake, 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 credible 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 credible 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 credible 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 credible 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 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.

6.7 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.

- 68** 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.
- 69** Hunting, birdwatching, hiking, boating, trapping, fishing, horseback riding, swimming, snowshoeing, skiing, and similar outdoor recreational activities.
- 610** Snowmobiling on trails designated by the Vermont Association of Snow Travelers.
- 611** Scientific research and educational activities.
- 612** 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.
- 613** 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.
- 614** 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.
- 615** 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.
- 616** 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.
- 617** 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.
- 618** 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.

- 619** 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.
- 625** Cleanup activities for spills of oil or hazardous materials.

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~~ ~~his~~ or ~~her~~ 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 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. 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. copies of all documents which the petitioner intends to rely upon in support of the request;
- 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. 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. such other information as the Secretary may require.

8.3 Notification Requirements Petition and Determination Notice Requirements

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

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). ~~VSWI map updates based on these determinations will be reflected on the VSWI map located on the Department of Environmental Conservation's Environmental Interest Locator website.~~

- a. The Secretary may, upon request or on their ~~his or her~~ 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 to Town Clerk offices on a periodic basis, and to a list of interested parties, if any.~~ The Secretary shall provide notice of such map corrections according to the requirements of 10 V.S.A. § 7714.
- 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. an area identified as a wetland on the VSWI maps as they existed on the date the activity commenced;
 - b. a wetland that was contiguous to an area identified as a wetland on the VSWI maps; or
 - 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 his or her 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. 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 "in-lieu fee" program or mitigation bank approved by the Secretary.

Compensation to avoid 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.

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.

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 in any protected function. Any compensation plan must demonstrate that:

- (1) there will be no net loss of the protected functions or acreage of significant wetlands;
- (2) the compensation measures will be fully implemented prior to, or concurrently with, the proposed activity;
- (3) 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) measures shall be designed to be self-sustaining following the period for which monitoring or management is required;
- (5) adequate financial surety is provided to carry out the proposed compensation including any necessary remedial measures; and

- (6) 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 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 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 ~~his or her~~ 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 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 9.98(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 ~~his or her~~ 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.

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 file 1990-03. 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.

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 10 : Conservation And Development

Chapter 037 : Wetlands Protection And Water Res. Management

Subchapter 003 : Department Of Environmental Conservation

(Cite as: 10 V.S.A. § 905b)

§ 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:

(1) Study and investigate the streams in the State and their basins, and cooperate with federal agencies in mapping them and in collecting and compiling data relating to run off and stream flow.

(2) Cooperate with natural resources conservation districts.

(3) Have supervision over and act as the State's agency in all matters affecting flood control, channel clearing, and river bank protection. To discharge this responsibility, the Department shall:

(A) Develop flood control policies and a flood control program that balances the need to protect the environment with the need to protect public and private property. The policy and program shall direct appropriate remedial measures following significant flooding events and shall define appropriate flood hazard mitigation measures. These measures may include:

(i) flood debris removal and streambed and stream bank maintenance and restoration practices;

(ii) identification of disaster-prone areas;

(iii) land use planning assistance to minimize future damage from flooding;

(iv) flood proofing measures for existing vulnerable private or public structures;

(v) acquisition and relocation of structures away from hazard-prone areas;

(vi) development of State standards to protect public infrastructure from disaster damage;

(vii) structural hazard control, such as debris basins or floodwalls to protect critical facilities;

(viii) educating the public regarding the availability of flood insurance and the advisability of obtaining flood insurance.

(B) Develop and implement steps to incorporate into other programs administered by the Department measures that decrease the likelihood and impact of future flooding incidents.

(4) Make studies and investigations or demonstrations of problems relating to water quality with respect to pollution and causes, prevention, control, and abatement thereof as it may deem advisable, and when appropriate propose remedies to the Legislature.

(5) Encourage the construction of sewage disposal plants by municipalities; and encourage the construction of septic tanks and other proper methods of waste and sewage disposal in rural and industrial areas.

(6) After the construction or major reconstruction of sewage disposal plants and attendant facilities, and at least once every three years, and once in any 12-month period upon petition by 10 or more people in interest from the municipality or an adjacent municipality, inspect the facilities so constructed, and similar facilities constructed for the purpose, to determine the efficiency of operation and maintenance, and submit a report to the appropriate municipal officials.

(7) Foster and encourage recreational uses of the waters of the State and for this and other purposes cooperate with municipalities of the State and with agencies of the State concerned.

(8) Accept and acquire in the name of the State by purchase, gift, or donation property rights in the waters of the State and facilities or improvements therein and for the purposes aforesaid improve and maintain the same.

(9) Administer loans, grants, and contracts from the federal, State, and local governments and from other sources, public and private, with the approval of the Governor, for furthering the water resources program of the State as embodied in the statutes.

(10), (11) [Repealed.]

(12) Make available to any municipality in the State, to the extent funds are available, assistance relating to surveys, studies, and plans for pollution abatement works.

(13) Undertake a continuing study and investigation of the groundwater in the State and cooperate with other governmental agencies in collecting and compiling data relating to the quantity, quality and location of groundwater.

(14) Subject to the approval of the Governor, enter into contracts and agreements with the United States as are considered necessary and advisable to provide, subject to legislative authority, assurances of State and local cooperation when those assurances

are required by the United States for the purpose of providing protection against floods under federal flood protection projects.

(15) In order to adequately protect the interests of the State in its water resources, and subject to limitations of duties otherwise provided by law, cooperate with the appropriate agencies of the federal and Canadian governments or of this or other states, or any interstate bureau, group, division, or agency with respect to the use of water from lakes and ponds, which are without or wholly or partially contained within this State, and to endeavor to harmonize any conflicting claims that might arise therefrom.

(16) Assist municipalities in the development of water supplies and in the construction of facilities for storage, distribution, and treatment of potable water supplies and approve all plans for the construction of such facilities, provided that plans shall also be approved by the State Board of Health prior to construction. The Department may provide planning and engineering assistance as requested in matters relating to preliminary surveys, studies and plans, if such assistance is not otherwise available, except that the Department's authority shall not infringe on the duties of the State Board of Health or local health officials with respect to quality of domestic water supplies.

(17) Adopt in accord with the Administrative Procedure Act those rules necessary for the proper administration of its duties.

(18) Study and investigate the wetlands of the State and cooperate with municipalities, the general public, other agencies, and the Board in collecting and compiling data relating to wetlands, 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 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 of the Secretary of Agriculture, Food and Markets and shall not adopt rules that restrain silvicultural activities without the consent of the Commissioner of Forests, Parks and Recreation.

(19) Cooperate with the agencies of the federal government and of the province of Quebec, adjoining states, and states through which water from Vermont streams flow in all matters relating to interstate streams.

(20) Cooperate with the State Board of Health in matters of stream pollution where public health is involved.

(21) Act as the Vermont Secretary of Natural Resources mentioned in the act of Congress, entitled "An act authorizing the construction of certain public works on rivers and harbors for flood control and for other purposes," approved December 22, 1944. In this connection, the Department shall carry out the policy of the State as defined by section 1100 of this title. (Added 1981, No. 222 (Adj. Sess.), § 11; amended 1983, No. 173 (Adj. Sess.), § 1; 1985, No. 188 (Adj. Sess.), § 3; 1987, No. 76, § 9; 1989, No. 88, § 1; 1997, No. 51, § 1; 1997, No. 137 (Adj. Sess.), § 2, eff. July 1, 1999; 2001, No. 143 (Adj. Sess.), § 55; 2003, No. 115 (Adj. Sess.), § 17, eff. Jan. 31, 2005; 2009, No. 31, §§ 4, 14(b); 2011, No. 138 (Adj. Sess.), § 20, eff. May 14, 2012.)



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Deadline For Public Comment

Deadline: Nov 12, 2022

Please submit comments to the agency or primary contact person listed below, before the deadline.

Rule Details

Rule Number:	22P024
Title:	Vermont Wetland Rules.
Type:	Standard
Status:	Proposed
Agency:	Department of Environmental Conservation, Agency of Natural Resources
Legal Authority:	10 V.S.A. § 905b(18); and 10 V.S.A. § 905b(17)
Summary:	The proposed amendments are intended to clarify the Agency's authority to reclassify wetlands in general, and clarify the Agency's jurisdiction over certain significant wetland types. The proposed amendments rearticulate the Agency's statutory authority to

reclassify categories of wetlands in general, and list wetland types that have been categorically determined to be Class II based on an evaluation of their functions and values. Proposed amendments to Section 8 clarify how public notice is provided for categorical wetland determinations. Appendix A is also amended to reclassify Ward's Marsh and Eshqua Bog as Class I wetlands.

Persons Affected:

Landowners, including individuals, organizations, and state agencies, with wetlands on their property that have been determined to be Class II, or with property adjacent to the proposed Class I wetlands. Engineers, consultants, designers, developers, and contractors hired to evaluate develop, construct on, or otherwise conduct activities on properties with wetlands, or properties adjacent to the proposed Class I wetlands. Wetland consultants working in Vermont. The public at large, with an interest in wetland integrity, water quality, Vermont natural communities, and outdoor educational and recreational opportunities.

Economic Impact:

The proposed rule amendments are intended to clarify existing jurisdiction, and are not anticipated to have a significant economic impact. Under the current rule, landowners must seek permit coverage to impact significant wetlands, regardless of whether those wetlands appear on the VSWI map. The proposed rule does not change the standards used to determine significance, rather it more clearly defines the wetland types that have been determined to be significant, so that those wetlands can more easily be added to the VSWI. Developers and landowners with Class II wetlands on their property will still be required to seek wetland permit coverage, and pay associated permit fees as defined in 3 V.S.A. 2822. The clarification of jurisdiction and clear determination of categories of Class II wetlands is intended to reduce instances of accidental Wetland Rule violations, and reduce related costs including costly project removals and after-the-fact permit fees, which are twice the standard permit fee cost.

Posting date:

Sep 28,2022

Hearing Information

Information for Hearing # 1

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10-28-2022 5:00 PM

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 City: Swanton
 State: VT
 Zip: 05488
 Hearing Notes:

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Website Address: <https://dec.vermont.gov/watershed/wetlands/rulemaking>

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Keyword Information

Keywords:

Wetlands

- Wetland rules
- Presumptive wetlands
- Class I wetlands
- Wetland determinations
- Vermont
- Significant Wetland Inventory
- Class II wetlands
- Flood control
- Water quality

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Vermont Wetland Rules.

Vermont Proposed Rule: 22P024

AGENCY: Agency of Natural Resources, Environmental Conservation

CONCISE SUMMARY: The proposed amendments are intended to clarify the Agency's authority to reclassify wetlands in general and clarify the Agency's jurisdiction over certain significant wetland types. The proposed amendments rearticulate the Agency's statutory authority to reclassify categories of wetlands in general, and list wetland types that have been categorically determined to be Class II based on an evaluation of their functions and values. Proposed amendments to Section 8 clarify how public notice is provided for categorical wetland determinations. Appendix A is also amended to reclassify Ward's Marsh and Eshqua Bog as Class I wetlands.

FOR FURTHER INFORMATION, CONTACT: Laura Lapierre, DEC Wetlands Program Manager, Agency of Natural Resources, 1 National Life Drive, Davis 2, Montpelier, VT 05620-3522, Tel: 802-461-8187 Fax: 802-828-1544 E-Mail: laura.lapierre@vermont.gov URL: <https://dec.vermont.gov/watershed/wetlands/rulemaking>.

FOR COPIES: Hannah Smith, DEC Associate General Counsel, Agency of Natural Resources 1 National Life Drive, Davis 2, Montpelier, VT 05620-3522 Tel: 802-461-8187 Fax: 802-828-1544 E-Mail: hannah.smith@vermont.gov.

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Vermont Wetland Rules

Vt. Code R. 12 004 056

Adopted February 7, 1990

(Amendments adopted XXX, Effective XXX)

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Vermont Wetland Rules
CODE OF VERMONT RULES
AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
VERMONT WETLAND RULES
ENVIRONMENTAL PROTECTION RULES CHAPTER 30

Vermont Wetland Rules

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SECTION 1: GENERAL

1.1 Purpose and Applicability

It is the policy of the State of Vermont to identify and protect significant wetlands and the values and functions which they serve in such a manner that the goal of no net loss 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.

- 21 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.
- 22 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.
- 23 Board** means the Natural Resources Board.
- 24 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.
- 25 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.
- 26 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).
- 27 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).
- 28 Class III wetland** is a wetland that is neither a Class I nor a Class II wetland. See 10 V.S.A. § 902(8).

- 29 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 "in-lieu fee" program or mitigation bank that has been approved by the Secretary.
- 210 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.
- 211 Dredge** means lowering the bottom elevation or any cleaning, deepening, widening, or excavating, either temporarily or permanently.
- 212 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.
- 213 Environmental notice bulletin** means the website and e-mail notification system required by 3 V.S.A. § 2826.
- 214 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.
- 215 Facultative Wetland Species** means plant species that sometimes occur in wetlands, but which may also be found in uplands.
- 216 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.
- 217 Fill** includes the placing of any material that raises, either temporarily or permanently, the surface elevation of any area.
- 218 Headwater Wetland** means a naturally occurring wetland that is above 2,500 feet in elevation and contributes to a stream.
- 219 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).
- 220 Hydrophytic Vegetation** means vegetation, including obligate wetland species and facultative wetland species, growing in water, soil or on a substrate that is at least

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).

- 221 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).
- 222 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).
- 223 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.
- 224 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.
- 225 Obligate Wetland Species** means plant species that are almost always found in wetlands under natural conditions.
- 226 Panel** means the former Water Resources Panel of the Natural Resources Board.
- 227 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.
- 228 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.
- 229 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 aerialcover.
- 230 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.
- 231 Secretary** means the Secretary of the Agency of Natural Resources or their ~~his~~ or

her authorized representative.

- 232 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.
- 233 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 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.
- 234 Silvicultural activities** means those activities associated with the sustained management of land for silvicultural purposes including the planting, harvesting, and removal of trees.
- 235 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.
- 236 Surface Vegetation** means plants with vegetative parts principally on the water surface, including water lily and spatterdock, and is synonymous with floating-leaved vegetation.
- 237 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.
- 238 Upland** means land that is not wetland.
- 239 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.
- 240 Waterfowl** means all ducks, geese and swans.
- 241 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).

242 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 watersnake, 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 greensnake, DeKay's brownsnake, 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 credible 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 credible 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 credible 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 credible 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 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.

6.7 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.

- 68 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.
- 69 Hunting, birdwatching, hiking, boating, trapping, fishing, horseback riding, swimming, snowshoeing, skiing, and similar outdoor recreational activities.
- 610 Snowmobiling on trails designated by the Vermont Association of Snow Travelers.
- 611 Scientific research and educational activities.
- 612 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.
- 613 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.
- 614 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.
- 615 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.
- 616 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.
- 617 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.
- 618 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.

- 619 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.
- 625 Cleanup activities for spills of oil or hazardous materials.

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 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. 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. copies of all documents which the petitioner intends to rely upon in support of the request;
- 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. 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. such other information as the Secretary may require.

8.3 Petition and Determination Notice Requirements

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

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.
- 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. an area identified as a wetland on the VSWI maps as they existed on the date the activity commenced;
 - b. a wetland that was contiguous to an area identified as a wetland on the VSWI maps; or
 - 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 ~~his or her~~ 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. 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 "in- lieu fee" program or mitigation bank approved by the Secretary.

Compensation to avoid 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.

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.

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 in any protected function. Any compensation plan must demonstrate that:

- (1) there will be no net loss of the protected functions or acreage of significant wetlands;
- (2) the compensation measures will be fully implemented prior to, or concurrently with, the proposed activity;
- (3) 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) measures shall be designed to be self-sustaining following the period for which monitoring or management is required;
- (5) adequate financial surety is provided to carry out the proposed compensation including any necessary remedial measures; and
- (6) 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 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 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 ~~his or her~~ 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 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 9.98(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 ~~his or her~~ 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.

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 file 1990-03. 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.