

1 Sec. 1. 10 V.S.A. § 913 is amended to read:

2 § 913. PROHIBITION

3 (a) Except for allowed uses ~~adopted by the Department by rule~~ authorized  
4 under section 913a of this title, no person shall conduct or allow to be  
5 conducted an activity in a significant wetland or buffer zone of a significant  
6 wetland except in compliance with a permit, conditional use determination, or  
7 order issued by the Secretary.

8 (b) A permit shall not be required under this section for:

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

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

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

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

17 (2) any construction within a wetland that is identified on the Vermont  
18 significant wetlands inventory maps or within the buffer zone of such a  
19 wetland, provided that the construction was completed prior to February 23,  
20 1992, and no action for which a permit is required under the rules of the  
21 Department was taken or caused to be taken on or after February 23, 1992.

1 Sec. 2. 10 V.S.A. § 913 a is added to read:

2 **§ 913a. ALLOWED USES; EXEMPTION**

3 The following uses shall be allowed in a Class I or Class II wetland and in  
4 the buffer zone of Class I or Class II wetland without a permit under section  
5 913 of this title, provided that the configuration of the wetland's outlet or the  
6 flow of water into or out of the wetland is not altered and that no draining,  
7 dredging, filling, or grading occurs in the wetland or its buffer zone except as  
8 authorized in one or more of the following uses:

9 (1) Silvicultural activities that:

10 (A) comply with Acceptable Management Practices for Maintaining  
11 Water Quality on Logging Jobs in Vermont adopted pursuant to section 1259  
12 of this title;

13 (B) comply with silvicultural standards for deer wintering yards,  
14 established jointly by the Department of Fish and Wildlife and the Department  
15 of Forests, Parks and Recreation, when occurring in significant wetlands or  
16 adjacent buffer zones containing deer wintering yards mapped by the  
17 Department of Fish and Wildlife;

18 (C) restrict equipment maintenance and the storing or changing of  
19 oil, grease, or other petroleum products to log landings; and

1                   (D) restrict log landings to uplands or buffer zones except that  
2                   landings not requiring the placement of fill may be located within the wetland  
3                   when the ground is frozen.

4                   (2) The restoration, reconstruction, rehabilitation, or upgrading of  
5                   existing roads used solely for silvicultural purposes provided that such roads  
6                   are not increased in width by more than 20 percent.

7                   (3) The construction of new roads used solely for silvicultural purposes  
8                   in buffer zones.

9                   (4) The removal of beaver dams to the extent necessary to prevent  
10                   impairment of the use of existing logging roads or ongoing silvicultural  
11                   management practices.

12                   (5) Silvicultural activities including the uses allowed by subdivisions  
13                   (1)—(4) of this subsection, when occurring in any Class I wetland, the buffer  
14                   zone for any Class I wetland and in any Class II wetland specifically  
15                   designated by the Secretary to protect habitat for any species on the State or  
16                   federal list of threatened or endangered species, that comply with a plan  
17                   approved in writing by the Commissioner of Forests, Parks and Recreation.

18                   (6) The growing of food or crops in connection with farming activities  
19                   when:

20                   (A) threatened or endangered species are protected;

1                   (B) no clearing of existing vegetation occurs in deer wintering yards

2                   mapped by the Department of Fish and Wildlife; and

3                   (C) in compliance with the most recent Required Agricultural  
4                   Practices adopted by the Agency of Agriculture, Food and Markets.

5                   (7) The operation of existing hydroelectric facilities in accordance with  
6                   all applicable requirements established by federal and State agencies. This use  
7                   may involve dredging, draining, or altering the flow of water into or out of a  
8                   wetland.

9                   (8) The routine repair and maintenance of utility poles, lines, and  
10                   corridors in a manner which minimizes adverse impacts and is accordance with  
11                   best management practices developed by the Secretary.

12                   (9) Hunting, birdwatching, hiking, boating, trapping, fishing, horseback  
13                   riding, swimming, snowshoeing, skiing, and similar outdoor recreational  
14                   activities.

15                   (10) Snowmobiling on trails designated by the Vermont Association of  
16                   Snow Travelers.

17                   (11) Scientific research and educational activities.

18                   (12) The maintenance, reconstruction, or routine repair of structures and  
19                   facilities, including ski trails, public transportation facilities, bulkheads, docks,  
20                   piers, pilings, paved areas, houses, or other buildings, in compliance with the  
21                   Vermont Wetland Rules in existence as of the date of their construction or in

1       existence as of February 23, 1990 or additions to such structures or facilities  
2       that do not involve substantial expansion or modification in a wetland or buffer  
3       zone.

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

9           (14) The routine maintenance and upkeep, including the removal of  
10       vegetation from, or maintenance dredging of constructed ponds in compliance  
11       with best management practices developed by the Secretary. This use may  
12       involve dredging, temporary draining, or temporarily altering the flow of water  
13       into or out of a wetland.

14           (15) Wildlife or fisheries management activities, including the removal  
15       of beaver dams that pose a significant hazard to public health or safety or to  
16       public or private property, conducted in accordance with a written plan or  
17       procedure adopted by the Secretary. This use may involve draining or altering  
18       the flow of water into or out of a wetland.

19           (16) The placement, maintenance, or removal of duck blinds, ice fishing  
20       shanties, fences, catwalks, footbridges, observation decks, docks, or exempt

1        similar structures, in compliance with best management practices developed by  
2        the Secretary.

3        (17) The harvesting of wild foods and the collecting of scientific  
4        specimens, not on the State or federal threatened or endangered species lists,  
5        for noncommercial purposes.

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

11        (19) Activities within existing lawns, including mowing, the placement  
12        of barbecue pits, sand boxes, bird houses, and other similar activities incidental  
13        to ordinary residential use.

14        (20) The use of pesticides or other biological agents to control  
15        mosquitoes when applied according to all applicable State law.

16        (21) The operation of dams in accordance with the surface level rules  
17        for lakes and ponds adopted under section 1424 of this title, provided that prior  
18        to the adoption the Secretary finds in writing that the surface level rules will  
19        not result in any undue adverse effect on the protected wetland functions. This  
20        use may involve draining or altering the flow of water into or out of a wetland.

1                   (22) The installation of a new overhead utility line that does not involve  
2                   extensive tree clearing, with three poles or fewer in the wetland or buffer zone,  
3                   in compliance with best management practices developed by the Secretary.

4                   (23) Wetland restoration or stream restoration projects, including dam  
5                   removals, in accordance with a plan approved by the Secretary.

6                   (24) Dry hydrants installed in constructed ponds, where the disturbance  
7                   is limited to the pond and previously disturbed or managed areas, such as  
8                   lawns and mowed fields.

9                   (25) Cleanup activities for spills of oil or hazardous materials.

10                  Sec. 3. REPEAL OF AGENCY OF NATURAL RESOURCES AUTHORITY  
11                   TO ADOPT ALLOWED USES BY RULE

12                  (a) Section 6 (allowed uses) of the Department of Environmental  
13                  Conservation's Vermont Wetland Rules, Vt. Code R. 12 004 056, is repealed.

14                  (b) The Secretary of Natural Resources or the Commissioner of  
15                  Environmental Conservation shall have no authority to adopt by rule allowed  
16                  uses that do not require a permit under 10 V.S.A. § 913.

17                  (c) The Secretary of Natural Resources or the Commissioner of  
18                  Environmental Conservation shall have no authority to adopt by rule  
19                  exemptions to the permitting requirement of 10 V.S.A. § 913, provided that the  
20                  permit exemptions in existence on the effective date of this act under Section 3

1       of the Department of Environmental Conservation's Vermont Wetland Rules,  
2       Vt. Code R. 12 004 056, shall remain in effect.

3       (d) The Secretary of Natural Resources or Commissioner of Environmental  
4       Conservation shall only establish or alter the width of a buffer zone for a Class  
5       II wetlands during a site specific wetlands determination conducted under 10  
6       V.S.A. § 914. Reduction of the buffer zone for Class II wetlands in any other  
7       way is prohibited, including through rulemaking by the Secretary of Natural  
8       Resources or the Commissioner of Environmental Conservation.

9       Sec. 4. EFFECTIVE DATE

10      Secs. 1—3 (repeal of DEC allowed use authority under rule) shall take  
11      effect on passage.