

Responsiveness Summary for General Determination, Draft Vermont Wetland Rule, and Vermont Significant Wetlands Inventory Updates #2020-263

The Department of Environmental Conservation (DEC) placed the general determination #2020-263, Vermont Significant Wetlands Inventory (VSWI) updates and Draft revisions to the Vermont Wetland Rule on public notice on May 17, 2022 and the public comment period remained open until July 1, 2022. The materials were made available on the Wetlands Program website and the following groups were specifically reached out to: Wetland Updates Mailing list, Wetland Stakeholder Group, Association of Vermont Conservation Commissions, Licensed Wastewater Designers, Licensed Realtors, Regional Planning Commissions, Municipalities, and Vermont Agricultural Water Quality Partnership. The General Public was reached with social media posts on Facebook and Instagram. DEC followed up with the 14 towns with the most map changes to ensure they were aware of the acres of changes.

DEC received written comments from the following people and entities: Ronda Moore, Christina Haskins of Dufresne Group, Sue Greenall of Ottaquechee RCD, David P. Dethier of Prospect Mountain Association, Katherine Kelly, Gary Draper, Kelcey Houl, Simon Myles of Town of Williston, Jim Heller of Town of Fair Haven, Elanor Mesler, Duncan Keir, Emily Ruff of Town of Orange Selectboard, Cindy S. Sanville of Sanville Real Estate, Marie L. Caduto of Vermont Department of Environmental Conservation, Janet Hurley of Town of Manchester, Paul Harsch of Harsch Associates Real Estate and Member of Vermont Real Estate Commission, Justin Holmes, VTrans, R. Lambert of Winooski, M. Richards, Brian Jewett, Karen Bates, C. Sawyer of St. Albans, and Al Bunten. The following is a summary of the public comments received and DEC's responses to those comments. Where appropriate, comments have been paraphrased, consolidated, and categorized for clarity.

Comment 1: Multiple comments pertained to wetland mapping outside of the Missisquoi basin (Northwestern Vermont).

Response 1: Areas outside of the Missisquoi basin are no longer proposed to be included in this update to the VSWI.

Comment 2: Why are Shelburne and Charlotte excluded from wetland mapping?

Response 2: The Wetlands Program has not had a comprehensive update created for these towns, so is not currently proposing to update the maps in those areas at this time. The Program will be and has been adding wetlands to the maps within these towns when wetlands that are not yet mapped are proposed for permitting impacts. Those map updates are noticed separately from this effort.

Comment 3: We worked with the vpatlas this spring and found a considerable variation between the varies views of the same map. When a vp seemed to be in the wrong location on the road map

it was correct on the infrared map. In fact most of the map views had the vp in a slightly different location but some were way off.

Response 3: This comment is outside of the scope of review as it pertains to the VPAtlas and not the VSWI draft edits.

Comment 4: I appreciate improvements to mapping, especially of including vernal pools. However, I'd encourage better mapping of these resources, by consulting with local conservation commissions and others to note areas that are not shown on current or proposed maps - e.g. vernal pools that aren't currently mapped, or wetlands that are not shown. Additionally, the 50-foot buffer on vernal pools is fairly inadequate when it comes to protecting amphibian populations that use the surrounding uplands for overwintering; I'd recommend increase this buffer.

Response 4: The Wetlands Program is committed to working with the VT Department of Fish and Wildlife to include significant vernal pools to the VSWI. The buffer zone for Class II wetlands, including vernal pools, is established in Sections 2 and 4 of the Wetland Rules and is not proposed to be amended at this time; Comments pertaining to the buffer zone of individual vernal pools are outside the scope of review.

Comment 5: Enosburg Falls, Tyler Branch Road, approximately 3345 Tyler Branch Road. It appears these boundaries are buffered too wide, they encompass a house and some other areas that are not wetlands. We would like to request that these boundaries are ground-truthed and amended.

Response 5: The VSWI is intended to be used for planning purposes and is not expected to be precisely accurate by a matter of feet on the ground. The Program has reviewed this area and removed the portion of VSWI over a house as that area is clearly not wetland.

Comment 6: The Williston Conservation Commission would like to know if historic wetland delineations were used for this map update.

Response 6: Williston wetland areas will not be updated with this edit. The Wetlands Program has been updating the maps with delineations of unmapped wetlands associated with permit decisions consistently since 2018.

Comment 7: As part of the wetlands map review process, the Town of Fair Haven would like a review of the wetlands depicted at the old Fair Haven Airport site, located north of the Mud Brook crossing on Airport road in Fair Haven. In light of recent development at that location, and with the anticipation of future development taking place, we would like to assure that this wetland depiction is indeed accurate.

Response 7: Requests for on-site review of projects is outside of the scope of this draft decision. Fair Haven is encouraged to contact their District Wetlands Ecologist to discuss the project whenever they are ready.

Comment 8: I was told I have 3-4 acres of wetlands but I am unable to verify this information. Once this project is complete or before will I be able to state that I in fact do have wetlands as part of my property? If so will I be provided an accurate map with the location of the wetlands? Thank You and I appreciate you taking on this important project.

Response 8: The intent of the VSWI map is to provide general location of wetlands for planning purposes. Any property with mapped wetland has wetland but the boundaries are not accurate for permitting purposes. The commenter followed up with the District Wetlands Ecologist for more information. Project number 2022-0633.

Comment 9: Justin Holmes identified numerous polygons as manure pits or wastewater treatment facilities that should be removed from the map.

Response 9: The polygons that the commenter noted have been removed from the draft. The Program looked at additional areas that were coded a covertime that could be manure pit (PUBKx) and removed several more polygons.

Comment 10: Ditches near the Highgate airport shouldn't be included.

Response 10: The polygons the commenter noted have been removed from the draft. In addition, all polygons with the vegetation assemblage labeled "ditch" have been removed from the draft.

Comment 11: General Mapping update comment- when doing updates is it possible to exclude the infrastructure by putting the proposed wetlands parallel to a road, railroad, etc? There are many proposed wetlands that are over the interstates, other roads, or rail lines. This should be corrected prior to the update. I have made some comments in the mapping comment areas but there are too many to comment on.

Response 11: The Missisquoi Basin map area excludes infrastructure from wetland polygons in general. The areas outside of the Missisquoi will be comprehensively updated to exclude those areas at a later time. The Wetlands Program will not regulate non-wetland areas, such as roads, as wetland.

Comment 12: On Section 4.6, last paragraph: Why not just keep the 2500 sf and adjacent to a stream, river threshold? I believe this opens up individual interpretation on this significance determination and it may not be consistent across all staff members, consultants, etc. If you leave it at anything > 2500 sf it is clear and quantifiable. "should" be evaluated by a wetland ecologist is not a great choice of word when determining if a wetland meets significant. Again using the 2500 sf threshold would save ecologist time and be more clear for users of the Wetland Rules. To have the wetland rules clear I would remove this disclaimer.

Response 12: Currently the Rule considers all wetlands adjacent to a stream or river presumptive Class II. The draft rule also classifies any wetland adjacent to a stream or river and over 2,500 square feet as Class II; the proposed change is intended to clarify that these wetlands are always considered Class II. Although they have not been categorically determined to be Class II, many wetlands under 2,500 square feet in size that are adjacent to waters of the state are also significant for the functions and values identified in Section 5 of the Rule, and should be evaluated before activities are conducted in these wetlands or their buffers.

Comment 13: On section 9.7 pertaining to amending an individual permit: Permits should be able to be amended with a minor amendment if additional impacts to the wetland/buffer do not exceed 500 sf or some other sf of additional impact. Many times contractors submit revisions to plans

that have minor impacts and really do not change the overall purpose of the project. There means and methods are not always known at the time of permitting. If we are making changes to the Rules this should be included. Major amendments for minor additional impact cause substantial delays during a short construction season. The USCOE can issue amendments very quickly during the construction.

Response 13: The definition of “minor amendment” is not proposed to be amended at this time and this comment is outside of the scope of review. Major, minor, and administrative amendment are currently defined in Title 10, Chapter 170 of the Vermont statutes, and changing the amendment categories would require statutory change.

Comment 14: P. 30 - Sec. 8.5 a. The Secretary may, upon request or on his or her own motion,... Change his or her to their.

Response 14: "His or her" appears in the wetland rules 7 times. This phrase will be removed and replaced with “theirs.”