

State of Vermont
Agency of Natural Resources
Department of Environmental Conservation
Watershed Management Division

Vermont Wetland Rules Applicability to Roads Procedure

August 2017

I. Introduction

The purpose of this document is to provide the Agency of Natural Resources' (ANR) interpretation of how the Vermont Wetland Rules (VWR) apply to the construction, repair, maintenance or improvements of roads that are in protected wetlands or wetland buffer zones. This document applies to private roads, municipal roads and state highways, regardless of whether the road is constructed in a designated state or municipal right of way. In some instances, road upgrades and repair may qualify as an "allowed use" under Section 6 of the Vermont Wetland Rules and not require a wetlands permit. In other cases, due to the nature of the activity or the existing condition of the road, a permit may be required. Permit applicants should assume that the construction of a new road through a wetland or buffer requires a permit.

II. Road Types – Definitions

In interpreting the Wetland Rules, the Vermont Wetlands Program applies the following definitions:

Class 4 Roads: All town highways that are not class 1, 2, or 3 town highways or unidentified corridors, as defined in 19 V.S.A. § 302. The town selectboard determines which highways are class 4 town highways. 19 V.S.A. §302(4). Class 4 roads are not required by statute to be maintained as negotiable under normal conditions all seasons of the year. Class 4 roads may become naturalized.

Naturalized Roads: A road is considered naturalized if the road surface cannot be easily distinguished from the adjacent area (e.g., is the same or similar to the native ground) or if 4-foot-tall woody vegetation is growing within the route, or it is impassable. There are many naturalized roads in Vermont, some of which were naturalized as a result of flooding and sinking of the road base, because they were historically constructed in wetland.

Rights of Way: The road right of way is the legal delimitation within which a public road may be constructed and maintained. The right of way for each state and town highway and trail is three rods wide, unless otherwise recorded. 19 V.S.A. § 702. Road rights of way in and of themselves are not considered transportation structures or facilities. The constructed road prism within a right of way would be considered a transportation structure or facility. The Wetland Rules apply to all activities within road rights of way.

Road: A road is a linear facility with a surface constructed from imported fill, used primarily for vehicular travel and access. A road structure is measured from the filled toe of slope to the toe of slope of either road shoulder, which is commonly called the **road prism**. For the purposes of this guidance document, a road includes state and town highways, State Forest highways, Management roads, and privately-owned roads. Examples of roads include logging haul roads, paved town roads, and interstate highways. Roads need regular maintenance of their culverts, shoulders and surface in order for them to continue to be traveled upon. For the purposes of this guidance document, a road does not include a travel-way, skid trail, or town trail.

Travel-Ways: Travel-ways are not constructed features but simply areas that have been traditionally traveled upon. Common travel-ways include trails, woods roads and tractor paths where the surface of the travel-way is the same as the native material (not previously filled), although possibly compacted with tire ruts. Travel-ways do not qualify as roads under the Vermont Wetland Rules. A Vermont Wetland Permit is required before doing any upgrade, maintenance, or repair, including the clearing of vegetation or adding of fill, to a travel-way in a buffer or wetland. The creation of a new travel way in a wetland or buffer requires a wetlands permit.

III. Allowed Uses from the VT Wetland Rules

The Vermont Wetland Rules define certain road-related activities as allowed uses in Sections 6.02, 6.03, 6.12, and 6.13 that do not require a wetlands permit.

“6.02 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%.”

“6.03 The construction of new roads used solely for silvicultural purposes in buffer zones.”

“6.12 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.”

“6.13 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.”

IV. Application of Allowed Uses

The Wetlands Program interprets and applies the allowed uses provisions in the Rules as follows:

A) Section 6.02 and 6.03

Sections 6.02 and 6.03 apply to roads, commonly called “haul roads” by the logging industry, that are solely used for silviculture. This means that if a road was originally built for logging, and then restored and upgraded to be used as a driveway, that road would no longer be used solely for silviculture and thus that upgrade would not be allowed without a wetlands permit. Likewise, a new haul road in a wetland requires a permit. See the 2015 [Vermont Silvicultural Guidance](#) document for more information about silviculture allowed uses.

B) Section 6.12

Road upgrades and improvements for non-silvicultural roads may be allowed without a permit if they qualify as maintenance, reconstruction, or routine repair as stated in Section 6.12. A built road prism is considered a “**structure**” under 6.12. “**Maintenance and repair**” includes resurfacing, grading, clearing shoulders, replacing culverts, and patching potholes.

“**Reconstruction**” constitutes the rebuilding of existing and functional roads, but does not include the rebuilding of naturalized roads. The rebuilding of a road that has been destroyed or damaged by an event is considered reconstruction.

Section 6.12 allows for additions to structures as long as those additions do not involve substantial expansion or modification in a wetland or buffer. In determining what constitutes “**substantial**” under 6.12, the Program evaluates the functions and values of the wetland, any change in use of the structure, and the expansion footprint. Any one-time addition to a road involving less than 250 square feet of new impact to a wetland or buffer does not constitute a substantial expansion, and qualifies as an allowed use under this section.

Naturalized roads do not qualify as transportation structures under Section 6.12, and therefore any activity on a naturalized road that impacts a wetland required a wetland permit. Naturalization involves non-use of a road such that it changes or reconverts to forest, shrub-swamp, wet meadow or marsh, and is no longer usable as a means of transportation for a standard manufactured pleasure vehicle. Work on a naturalized road is not considered maintenance or routine repair of a structure because the area has not been used for vehicular travel for years. Maintenance or routine repair implies regularly scheduled repair and maintenance customary for the type of structure; this is not the case for naturalized roads and have grown in with woody vegetation or are barely or no longer recognizable.

Common practices of road maintenance and routine repair that typically qualify as allowed use include:

- 1) In-kind culvert replacement set at existing invert elevations (or upgrade to culverts meeting Aquatic Organism Passage standards).

- 2) Headwall construction and replacement from the roadway that falls under the 250 square foot threshold for expansion of the road.
- 3) Repaving, grading, or adding additional impervious material to an impervious road where the footprint does not expand.
- 4) Ditch maintenance so long as the ditches are not made wider or deeper than originally constructed and the ditches are readily identifiable.
- 5) Clearing of woody vegetation along the filled and maintained road shoulder.
- 6) Repairing washouts within the previous road footprint. (not naturalized road)
- 7) Removing debris from the roadway and removing downed trees. (source: Vermont Local Roads Model Ordinance)

Common practices of road maintenance and routine repair that typically **do not** qualify as an allowed use include:

- 8) Construction of an access road or clearing outside of the road prism to reach a construction site for culvert replacement or riprap.
- 9) Road expansion or improvements outside of the road prism that constitute more than 250 square feet of impact within wetland and buffer zone.
- 10) Deeping or widening adjacent ditches beyond the original size.

C) Section 6.13

A road may be repaired without a permit under 6.13 when there is an immediate need to do so for public health or safety.

V. Class 4 Roads

Many class 4 roads in the State of Vermont, although appearing on town plans and Town Highway Maps, have become naturalized and the rehabilitation of these roads does not qualify as an allowed use under the Vermont Wetland Rules. The same situation exists for numerous private easements and ROWs.

The reclamation of a naturalized class 4 road through a Class I or II wetland or within the buffer zone (50ft for Class II wetland) requires a VT Wetlands Permit. In order to receive a permit to rebuild a class 4 road through a protected wetland or buffer zone, the applicant needs to demonstrate per the Wetland Rules that the construction will not cause an undue adverse impact to the functions or values of the wetland or, after taking all practicable measures to avoid and minimize impacts, compensation is provided to prevent any net loss of wetland function and value. Some avoidance alternatives to rebuilding a class 4 road may include relocating the road outside of the wetland, or using an existing road to reach the desired destination. Applications without a clear project purpose, cannot be processed and therefore there needs to be a demonstrated need to build in a wetland or buffer (i.e. road extends to another road or ends at a proposed development) before a permit can be issued.

Signed this 9th of August 2017

By  _____
Emily Boedecker, Commissioner
Department of Environmental Conservation