

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 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

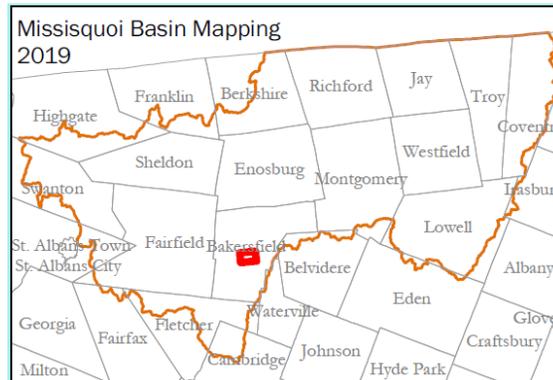
Comment A-1: Did you ground truth and consult with landowners about drawing maps on their land?

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.