



Vermont Agency of Natural Resources  
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# **Vermont Wetland Rules**

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[http://dec.vermont.gov/sites/dec/files/documents/WSMD\\_VermontWetlandRules\\_2010\\_7\\_16.p  
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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**

**Contents**

	<b>Page</b>
Section 1. General	
1.1 Purpose and Applicability	4
1.2 Enforcement	4
Section 2. Definitions	4
Section 3. Exemptions; Identification of Wetlands	
3.1 Exemptions	9
3.2 Methodology for Identifying Wetlands	10
Section 4. Classification of Significant Wetlands and Designation of Buffer Zones	
4.1 Classification of Wetlands	11
4.2 Buffer Zones	11
4.3 Designations	11
4.4 Vermont Significant Wetland Inventory Maps	12
4.5 Delineation of Wetland Boundaries	12
4.6 Presumptions	12
Section 5. Functional Criteria for Evaluating a Wetland's Significance	
5.1 Water Storage for Flood Water and Storm Runoff	13
5.2 Surface and Ground Water Protection	14
5.3 Fish Habitat	14
5.4 Wildlife Habitat	15
5.5 Exemplary Wetland Natural Community	17
5.6 Rare, Threatened, and Endangered Species Habitat	18
5.7 Education and Research in Natural Sciences	18
5.8 Recreational Value and Economic Benefits	18
5.9 Open Space and Aesthetics	19
5.10 Erosion Control through Binding and Stabilizing the Soil	19
Section 6. Allowed Uses	19

Section 7. Rulemaking Petitions	
7.1 General	22
7.2 Content of Petitions	22
7.3 Petition Distribution	23
7.4 Rulemaking Process	23
7.5 Emergency Rulemaking	24
Section 8. Wetlands Determinations by Secretary	
8.1 General	24
8.2 Contents of Petitions	24
8.3 Notification Requirements	25
8.4 Reconsideration of Wetland Determinations	25
8.5 Mapping Corrections	25
Section 9. Permits	
9.1 General	26
9.2 Individual Permit Application; Distribution	27
9.3 Notice of Request for Public Comment on Individual Permit Application	28
9.4 Notice of Decision	29
9.5 Individual Permit Review Standards	29
9.6 Reconsideration of Individual Wetland Permit Decisions	30
9.7 Amending Individual Wetland Permit Decisions	31
9.8 General Permits	32
9.9 Application for Authorization under a General Permit	34
Section 10. Appeals	36
Appendix A - Class I Wetlands	37

## **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.

- 2.1 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.
- 2.2 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.
- 2.3 Board** means the Natural Resources Board.
- 2.4 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.
- 2.5 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.
- 2.6 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).
- 2.7 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).
- 2.8 Class III wetland** is a wetland that is neither a Class I nor a Class II wetland. See 10 V.S.A. § 902(8).

- 2.9 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.
- 2.10 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.
- 2.11 Dredge** means lowering the bottom elevation or any cleaning, deepening, widening, or excavating, either temporarily or permanently.
- 2.12 Emergent Vegetation** means erect, rooted herbaceous (nonwoody) plants that may be flooded at the base but do not tolerate prolonged inundation of the entire plant. Typical species include cattails, sedges, and bulrushes.
- 2.13 Environmental notice bulletin** means the website and e-mail notification system required by 3 V.S.A. § 2826.
- 2.14 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.
- 2.15 Facultative Wetland Species** means plant species that sometimes occur in wetlands, but which may also be found in uplands.
- 2.16 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.
- 2.17 Fill** includes the placing of any material that raises, either temporarily or permanently, the surface elevation of any area.
- 2.18 Headwater Wetland** means a naturally occurring wetland that is above 2,500 feet in elevation and contributes to a stream.
- 2.19 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).
- 2.20 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).

- 2.21 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).
- 2.22 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).
- 2.23 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.
- 2.24 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.
- 2.25 Obligate Wetland Species** means plant species that are almost always found in wetlands under natural conditions.
- 2.26 Panel** means the former Water Resources Panel of the Natural Resources Board.
- 2.27 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.
- 2.28 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.
- 2.29 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 aerial cover.
- 2.30 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.
- 2.31 Secretary** means the Secretary of the Agency of Natural Resources or his or



her authorized representative.

- 2.32 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.
- 2.33 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.
- 2.34 Silvicultural activities** means those activities associated with the sustained management of land for silvicultural purposes including the planting, harvesting, and removal of trees.
- 2.35 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.
- 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.
- 2.37 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.
- 2.38 Upland** means land that is not wetland.
- 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.
- 2.40 Waterfowl** means all ducks, geese and swans.
- 2.41 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).

**2.42 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.

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.

### **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 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 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**

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. The Secretary shall revise the VSWI maps to reflect wetland determinations issued pursuant to 10 V.S.A. §§ 914 and 915. 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.

#### **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**

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. In addition, each of the following wetlands shall be presumed to be Class II wetlands unless determined otherwise by the Secretary or Panel:

- 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; or greater than 0.5 acres.
- b. The wetland contains woody vegetation and is adjacent to a stream, river or open body of water.
- c. The wetland contains dense, persistent non-woody vegetation and is adjacent to a stream, river or open body of water.
- d. The wetland is a vernal pool that provides amphibian breeding habitat.
- e. The wetland is a headwater wetland.
- f. The wetland is adjacent to impaired waters and the impairment is related to wetland water quality functions.

- g. 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.
- h. The wetland has been previously designated as a significant wetland.
- i. 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.

## **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 ribbonsnake, 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.

- 6.8** 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.
- 6.9** Hunting, birdwatching, hiking, boating, trapping, fishing, horseback riding, swimming, snowshoeing, skiing, and similar outdoor recreational activities.
- 6.10** Snowmobiling on trails designated by the Vermont Association of Snow Travelers.
- 6.11** Scientific research and educational activities.
- 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.
- 6.14** 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.
- 6.15** 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.
- 6.16** 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.
- 6.17** 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.
- 6.18** 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.

- 6.19** Activities within existing lawns, including mowing, the placement of barbecue pits, sand boxes, bird houses, and other similar activities incidental to ordinary residential use.
- 6.20** The use of pesticides or other biological agents to control mosquitoes when applied according to all applicable state law.
- 6.21** 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.
- 6.22** 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
- 6.23** Wetland restoration or stream restoration projects, including dam removals, in accordance with a plan approved by the Secretary.
- 6.24** 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.
- 6.25** 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 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**

- a. The 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 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 Mapping Corrections**

The Secretary shall have the authority to make the following mapping corrections, which are not wetland determinations pursuant to 10 V.S.A. § 914. 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 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.
- 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. 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.
  - ii. 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.
  - iii. 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.

## **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 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 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 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

NONE

### 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

NONE

### 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.

### 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.

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