

Guidance for Determining Wetland Jurisdiction



Purpose: To provide acceptable protocol for wetland consultants to follow while conducting wetland investigations to independently determine which wetlands are considered protected under the Vermont Wetland Rules (VWR).

Extent of Third-Party Determinations: Wetland consultants may determine if a wetland is Class II if it is Vermont Significant Wetlands Inventory mapped, contiguous to VSWI mapping, or if the wetland meets a presumption of significance in section 4.6 of the VWR. If the consultant believes the wetland does not provide significant function, they may request that the Program review the classification. A consultant should not label or designate a wetland meeting a presumption (§4.6) as Class III without first receiving concurrence by the Wetlands Program.

Wetland Identification Methodology: 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 (VWR§3.2).

Investigation Area: Consultants should receive a clearly defined investigation area from their client. It is best practice to investigate the entire parcel so that changes in the project footprint can be accomplished while avoiding wetland resources. At a minimum, area within 50 feet of the proposed project footprint (which includes the limits of disturbance for construction) must be reviewed for wetlands. Any area outside of the property or easement must also be investigated when it is within 50 feet of the project area. Investigation outside of the property or easement may be accomplished by receiving permission to access the additional land, or conservatively approximating wetland areas through viewing from the client's property/easement and conducting a desktop review. If the extent of the wetland is unclear outside of the growing season and wetland classification is questionable, the consultant must review the area during the growing season (typically May-Oct.) to confirm extent and classification.

Vermont Significant Wetlands Inventory Mapping: Wetlands which are mapped on the VSWI or contiguous to VSWI maps are jurisdictional wetlands (either Class I or Class II). Consultants may use the [Contiguous Wetland Procedure](#) (2017) when determining if a wetland is contiguous to mapping. If the consultant disagrees with the map's classification of Class II they can petition for a formal wetland classification determination of Class III or a rulechange petition to make it Class I. To request a §8 formal determination of wetland classification, one needs to fill out and submit the [petition form](#) located on the Vermont Wetlands Program's website "Permit Information" page. Formal determinations are appealable pursuant to 10 V.S.A. § 917. Areas which are mapped VSWI but are not found to be wetland per the Federal Manual (VWR§3.2a) should be documented with evidence during the growing season.

Presumptions of Significance: The Vermont Wetland Rules list wetland types which may not be mapped but are presumed to be significant and considered jurisdictional Class II wetlands (VWR

§4.6). If a consultant believes a wetland meets a presumption but is not providing significant function, they may request that the Wetlands Program review the wetland classification. A consultant should not label or designate a wetland meeting a presumption as Class III without first receiving confirmation by the program. Below is a list of those wetlands and guidance for determining whether a wetland meets a category:

- 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.**

To determine if a wetland meets this presumption, measure the size of the entire wetland both within and outside of the field investigation area. This may be completed by conducting a desktop review.

- b. **The wetland contains woody vegetation and is adjacent to a stream, river or open body of water.**

To determine whether a wetland meets this presumption, evaluate if the wetland is contiguous to a stream, river or open body of water using the [Contiguous Wetland Procedure](#) (2017). The wetland does not need to be connected to a body of water by hundreds of feet, any connection would make the wetland meet this presumption so long as the wetland also contains woody vegetation.

- c. **The wetland contains dense, persistent non-woody vegetation and is adjacent to a stream, river or open body of water.**

To determine whether a wetland meets this presumption, evaluate if the wetland is contiguous to a stream, river or open body of water using the [Contiguous Wetland Procedure](#) (2017). The wetland does not need to be touching a body of water by hundreds of feet; any connection would make the wetland meet this presumption so long as the wetland also contains dense persistent non-woody vegetation. When the wetland is sparsely vegetated, or vegetated primarily by non-persistent herbaceous vegetation such as jewelweed, the wetland does not meet this presumption.

- d. **The wetland is a vernal pool that provides amphibian breeding habitat.**

Vernal pools are defined as “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” (VWR§2.39). Consultants should use the [Recommendations for Pool-breeding Amphibian Surveys and Habitat Assessments](#) document to determine whether a wetland meets this presumption. This involves reviewing the wetland area during the pool breeding season in the months of April and May.

- e. **The wetland is a headwater wetland.**

Headwater wetlands are defined as “a naturally occurring wetland that is above 2,500 feet in elevation and contributes to a stream” (VWR §2.18). The wetland does not need to be contiguous to a stream to be considered a contributor to a stream.

f. The wetland is adjacent to impaired waters and the impairment is related to wetland water quality functions.

To determine whether a wetland meets this presumption, you will need to evaluate if the wetland is adjacent to an impaired using the [Contiguous Wetland Procedure](#) (2017) and finding out if the water is impaired on the [Vermont Atlas](#) or within the latest [305\(b\) report](#).

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.

Once you locate the wetland, use the [Vermont Atlas](#) to determine if any RTE or uncommon species were found within the wetland. If the species that is mapped within the wetland area is clearly an upland species, this presumption does not apply. Use the Vermont Atlas for a cursory review of whether the area may be a rare or uncommon wetland natural community. To determine if the wetland is a rare or uncommon wetland natural community, document the vegetation species, key out the community using Thompson and Sorensen's *Wetland, Woodland, Wildland*, and use the [VT Fish and Wildlife's Natural Community list](#) to learn if the type is considered very rare (S1), rare (S2) or uncommon (S3). This includes all peatlands (bogs and fens), buttonbush basin swamps, seepage forests, and calcareous riverside seeps.

h. The wetland has been previously designated as a significant wetland.

Use the [VSWI Map](#) to see if a wetland project file is present within the Wetlands Program using the "wetland project" layer with the green star symbol. If there is a project, contact the Wetlands Program to learn if the wetland was previously designated as significant within the project file. In most instances, the wetland which was previously designated also met one of the above presumptions of significance.

i. It is within sixty (60) days after the landowner has received notice of a preliminary wetland determination pursuant to Section 8.1 of the VWR.

Ask the landowner if they received any classification letters in the past 60 days.

Documentation: Wetland consultants are responsible for their designations and are expected to collect and maintain evidence of their decisions. At a minimum, the following information should be recorded:

- a. Name of wetland consultant
- b. Date(s) of field review
- c. Investigation area; best documented as a map with separate investigation boundaries for each field review.
- d. Wetland location(s)
- e. Wetland location(s) in proximity to VSWI maps and how it may be contiguous
- f. Evidence that a wetland does or does not meet a presumption

The Wetlands Program may ask for the above information when conducting preapplication review. Other helpful documentation includes Army Corps Delineation Forms, photographs, and formal delineations of wetland boundaries.

Wetland Classification Form



Full Name:

Relationship to Project/Land:

Phone Number:

Mailing Address (optional):

Location Description and Closest E911 Address (please include map):

Wetland _____(id) was assessed on _____(date). Attach a map of the investigation area.

Check one of the following:

- The entire wetland was assessed in the field.
- The wetland extends off the property and I have used imagery and mapping to complete my assessment.

The wetland was found to have the following characteristics (check all that apply):

- Wetland area assessed was within a Vermont Significant Wetlands Inventory (VSWI) mapping unit;
- Wetland area is contiguous with a VSWI mapping unit;
- §4.6(a) over half an acre in size;
- §4.6(b) contains woody vegetation and is adjacent to a stream, river, or open body of water;
- §4.6(c) contains dense, persistent non-woody vegetation and is adjacent to a stream, river, or open body of water;
- §4.6(d) is a vernal pool that provides amphibian breeding habitat;
- §4.6(e) is a headwater wetland;
- §4.6(f) adjacent to impaired waters and the impairment is related to wetland water quality functions;
- §4.6(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;
- §4.6(h) has been previously designated as a significant wetland.

Wetland Characteristic Notes:

Wetland Classification Form Continued for Wetland ID:

Check one of the following:

- The wetland is Class II based on the above observed characteristics and will be treated as Class II with a protected 50 foot buffer zone.
- The wetland is Class II based on the above observed characteristics. I request that the Agency consider it Class III due to a lack of significant functions or values. (attach a Functions and Values checklist)
- The wetland is Class III based on the lack of observation of any of the above. The wetland will be treated as Class III.
- The wetland is Class III based on the lack of observation of any of the above. I request that the Agency consider it Class II based on one or more observed significant functions or values. (attach a Functions and Values checklist)

Wetland Classification Notes or Sketch: