



# Vermont Wetlands Program



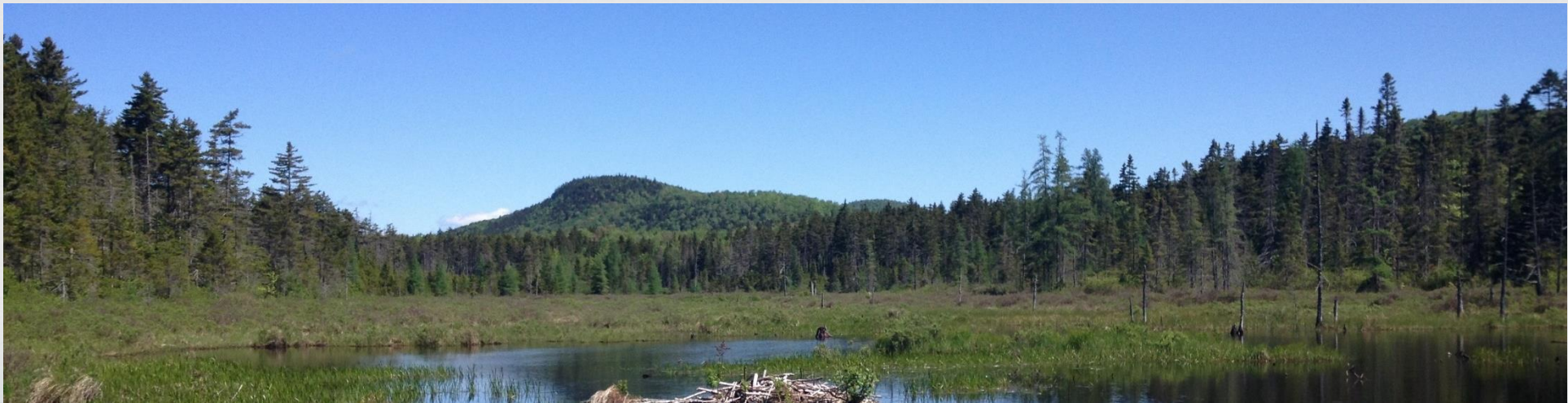
January 2017 Stakeholder Meeting

# Introductions

1 Minute Max

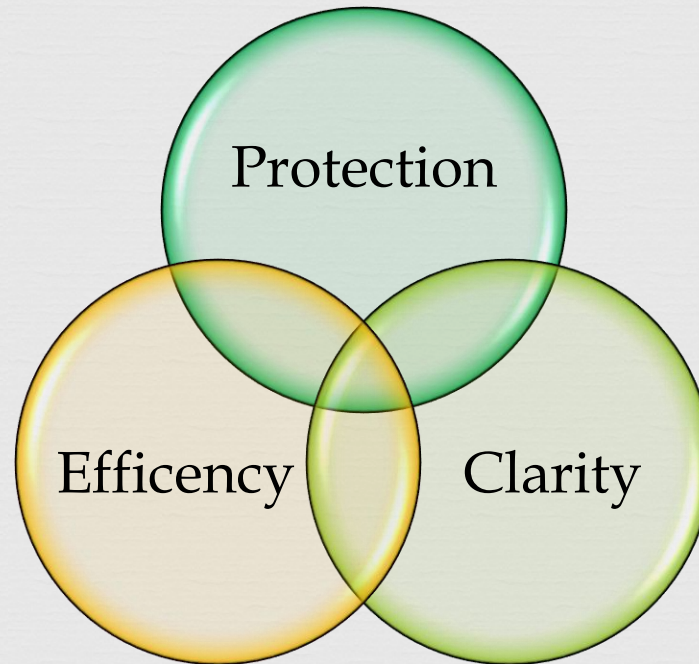


- ☞ Name
- ☞ Organization/Group
- ☞ (Please fill out sign-in sheet)





# Rule Revision Goal



To revise the Vermont Wetland Rules for improved clarity, efficiency, and wetland protection.

# Previous Discussions



- ☞ General thoughts on current Rules
- ☞ Preliminary Survey Results
- ☞ Federal Jurisdiction
- ☞ Wetland Mapping Jurisdiction
- ☞ Wetland Jurisdiction (continued today)



# Today

Objective: Gathering feedback on which wetlands should be protected and what activities need review by the State.



## Goals:

- Continue discussion on if there is interest in a simpler jurisdictional determination process for wetlands.
- Discuss the appropriate level of review for various types of activities.



# Community Agreements



- ❧ Hear each other out
- ❧ Open to change/open minded
- ❧ Active listening
- ❧ Clear decision-making process
- ❧ Step-up, step-back: allow everyone's voice to be heard
- ❧ Stay on schedule
- ❧ Trust: in the process, in each other, in the scientific information we are relying on
- ❧ Respect for each other
- ❧ Belief in common goals- clarity, efficiency, and wetland protection

# Wetland Protection vs. Project Type Exemption

---

☞ Permits are needed for activities:

☞ 1: occurring within protected wetlands (Class II & I) or their buffers

AND

☞ 2: which are not called out in the Rule as exempt or an allowed use.

Focus for today: Part 1 before break, Part 2 after.



# Jurisdiction Options



- ☞ Status Quo – Keep jurisdiction based on review of functions and values, seek improvements.
- ☞ All Wetlands - Any area that meets the definition of a wetland is jurisdictional. Determine function and value in the permit process.
- ☞ Characteristics - classify Class II on specific characteristics – refine list of “presumptions” of a significant wetland. Determine function and value in the permit process.



# SWOT Analysis



	<b>Helpful</b> to achieving the objectives	<b>Harmful</b> to achieving the objectives
<b>Internal Origin</b> (Attribute of the Program)	Strengths	Weaknesses
<b>External Origin</b> (Attribute of the Environment)	Opportunities	Threats



# Exemptions and Allowed Uses

Vermont Wetland Rules Stakeholder Group 2017



# Outline

- Current State of VWR
  - Exemptions
  - Allowed Uses
  - General Permits
- Categories of Allowed Uses
- “Regulatory Lite” Tools
  - Existing Allowed Use (BMP, AMP, Plans by Secretary, MOU)
  - Potential (Non-reporting GP, Registration GP)

# Exemptions

Summarized as:

- Pre-existing structures, projects and activities
- Man-made structures that could develop wetland characteristics

Regulatory Characteristics:

- Non-jurisdictional
- No oversight



# Allowed Uses

Summarized as:

- Land management activities with oversight by other entities (farming, silviculture, hydroelectric dams, wildlife management)
- Management of existing structure and facilities (roads, pond cleanout, powerlines)
- Minimal impacts (boardwalks, overhead lines, fences)
- Beneficial impacts (emergency repair, restoration, cleanup)
- Use, passive use (birdwatching, hunting, fishing, hiking, snowmobiles)

Regulatory Characteristics:

- Conditions that there is no dredging, draining, filling, grading, changes in hydrology, cutting woody veg unless specifically noted.
- Some Allowed Uses have Best Management Practices (BMPs) Acceptable Management Practices (AMPs), or approval by Secretary

# General Permit

Summarized as:

- Projects under a certain threshold, that meet certain wetland and project criteria

Regulatory Characteristics:

- Very general, not sector or activity specific. Issued for the entire state for all activities that meet the thresholds and conditions
- Must be able to demonstrate “no undue adverse impacts”
- Conditions the activities to meet this standard
- Notification requirements



Passive  
Use

Minimal  
impact  
activities

Land  
Management

Exemption



General  
Permit

Beneficial  
activities

Manage  
existing  
structures

Allowed Uses

Passive Use	Beneficial activities	Minimal impact activities	Manage existing structures	Land Management
<p>6.09 hunting/birdwatching etc</p> <p>6.10 snowmobile VAST</p> <p>6.11 Scientific research and education</p> <p>6.17 Harvesting of wild food</p> <p>6.19 Activities within existing lawns</p> <p><i>6.07,6.08, 6.12, 6.13 (use and repair same footprint)</i></p>	<p>6.13 Emergency repair</p> <p>6.18 control of non-natives <b>plan by Secretary</b></p> <p>6.23 Wetland and stream restoration with <b>plan by Secretary</b></p> <p>6.25 Cleanup Activity for spill of oil or hazardous materials <b>procedure approved by solid waste</b></p>	<p>6.16 duckblinds/boardwalks etc <b>bmp</b></p> <p>6.22 Installation of new overhead lines <b>bmp</b></p> <p>6.24 Dry Hydrants installed in constructed ponds</p> <p><i>6.11 Scientific research and education (some need conditions)</i></p>	<p>6.07 operation/maintenance of hydroelectric</p> <p>6.08 utility repair/maintenance <b>bmp</b></p> <p>6.12 maintenance existing structures non-substantial modification <b>MOU</b></p> <p>6.14 Pond maintenance w/<b>bmp</b></p> <p><i>6.13 Emergency repair (some need conditions or parameters)</i></p>	<p>6.01-6.05 Silviculture (<b>AMP</b>)</p> <p>6.06 Farming (<b>AMP</b>)</p> <p>6.15 Wildlife/Fisheries management <b>bmp</b> or <b>plan by Secretary</b></p> <p>6.20 Use of Pesticides for mosquito control (<b>other laws</b>)</p> <p>6.21 operation of dams with <b>surface level rules</b></p>





# Existing Tools

Making sense of the junk drawer that is the allowed use section

# Best Management Practices

What are they?

- Created as a response to trying to explain the scope of an allowed use
- Explains what parts of the activity qualify as an allowed and what does not
- Gives recommendations of the “best way” to do it

Problems:

- Enforceability of conditions and limitations vs. GP
- No place for public process
- Mashup of guidance and conditions

# Acceptable Management Practices

What are they?

- Created by other Departments (FPR) or Agencies (Agriculture now RMPs)
- Focus on water quality

Problems:

- Do not reference wetlands specifically
- Non-compliance with AMPs mean automatic non-compliance with Rules
- Sole reliance on AMPs without checking in with the wetlands program can lead to violations



# Approvals by Secretary

What are they?

- Approval may be by other Departments (FPR and FW)
- Focus on resource management
- No formal permitting

Problems:

- Participation by VWP may not be guaranteed, wetland protection may not always be well represented

# Memorandum of Understanding

What are they?

- Used to help understand nuances of allowed uses for VTrans and for VELCO
- Agreed on list of activities that qualify as allowed uses vs. those that need permits

Problems:

- No means of public participation
- In fairness, can these be extrapolated to other user groups, such as interpretation of threshold for “substantial modification?” Should some user groups be treated differently?

Requires no special treatment for wetlands

Passive Use

Ongoing use of existing facilities

Maintain and repair existing facilities no footprint modification

Requires identification of wetland and AMPs, BMPs, Approval by Secretary, approval under other state laws, special conditions, and/or more clarification

Beneficial activities

Minimal impact activities

Manage existing structures

Land Management





# Potential Tools

Taking things out of the junk drawer, and finding a better home for them

# Expanded Exemptions

What are they?

- Those parts of the allowed uses that require no different treatment to wetlands than in uplands
- No potential for impacts beyond the existing use

Benefits:

- Could tease out sections of more complicated allowed uses that are benign

# Non-reporting GP

What are they?

- Do not exist yet, but is allowed in the Rules
- Could be for projects that are currently considered allowed uses, but rely on BMPs, conditions and include “non-substantial modification”

Benefits:

- Would not require rule changes to add activities (unlike allowed use)
- Conditions could be changed through the reissuance of the General Permit if they are not working
- More clarity regarding conditions and thresholds

# Registration GP

What are they?

- Do not exist yet for the Vermont Wetland Program, but Lakes is implementing
- Short reporting form to verify activity meets GP, no notice (?)

Benefits:

- For projects that will have minimal impacts that by nature require some oversight and some impacts
- Keeps track of project/impacts



# Questions

These are the reasons we have our current set of allowed uses. What criteria should be used going forward?

- Potential to impact the resource
- Protection of working landscapes
- Overlap with other regulatory programs
- Standardization of the activity
- History of activity
- Potential benefits to the resource
- Public health and safety concerns
- Strong lobbies
- “common sense”

How should the following factors be considered?

- Whether the use/activity should be conditioned
- Public participation/comment
- Fairness and consistency across user groups
- Need to identify and quantify the resource
- Need to identify and quantify impacts