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WETLANDS FACT SHEET

Department of Environmental Conservation
Water Quality Division, Wetland Office
103 South Main St., Waterbury, VT 05671-0408
(802) 241-3770



Topic: Conditional Use Determinations

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Vermont Wetland Rules

The Legislature adopted an act in 1986 (10 V.S.A., Chapter 37, Section (a)(7-9)) mandating that the Water Resources Board (the Board) adopt rules to identify and protect Vermont's "significant wetlands". These rules, known as the Vermont Wetland Rules, became effective on February 23, 1990. Amendments to the rules were adopted in December 2001 and became effective on January 1, 2002.

In these rules, the Board has established a three-tier classification system of wetlands. Class One and Class Two wetlands are considered "significant wetlands" and are protected by the Vermont Wetland Rules. Class Three wetlands are not protected by the Vermont Wetland Rules but may be protected by other federal, state, or local regulations. The rules contain a list of activities that are allowed within significant wetlands and their adjacent buffer zones without review under the rules, provided there is no draining, dredging, filling, grading or alteration of the water flow, with some noted exceptions. Examples of allowed uses include: routine repair and maintenance of existing structures, recreational activities, and fish and wildlife management activities.

Section 6.3 of the rules states that all uses which are not allowed uses are conditional uses. Conditional uses are only allowed in significant wetlands or in their adjacent buffer zones upon receiving a Conditional Use Determination (CUD).

When are CUDs required?

CUDs are required for activities that are not allowed activities in a significant wetland or its adjacent buffer zone. If a conditional use occurs outside of a significant wetland and its buffer zone, a CUD is not required. If there is doubt regarding where the edge of a wetland or its buffer zone is, the Vermont Wetlands Office should be contacted to arrange a site visit.

Is there a fee for a CUD?

In general, yes. There is a \$50 application fee, and an application review fee of 0.07 and 0.05 cents per square foot of the proposed wetland and wetland buffer zone impact, respectively. There are certain exemptions for municipal projects and road projects. Wetlands Office staff can meet with you before you submit your application to help you plan your project to avoid the need for a CUD, whenever possible.

When are CUDs approved?

CUDs are issued by the Secretary of the Agency of Natural Resources only when it is determined that the proposed conditional use will not have undue adverse effects on the functions of the significant wetland. In making this determination, the potential effects of the proposed conditional use are assessed on the basis of direct and immediate effects, as well as any cumulative or ongoing effects on the significant wetland. Adverse effects on wetland functions, other than minimal impacts, are presumed to be an undue adverse effect unless they are mitigated.

How can impacts to wetlands be mitigated?

Mitigation is a comprehensive effort to achieve no undue adverse effects to the functions of a significant wetland through a series of steps. The applicant must show that each step has been met before proceeding to the next step. The first step is avoidance of the wetland and its buffer zone. This can be done through relocation of the project to another site or through modifying the project through site re-design and/ or reducing the scale of the project. Once an applicant has demonstrated that avoidance is not possible, the second step is minimization of impacts. This can be done by redesigning a project to have the least possible impact. Those projects that avoid and minimize impacts, and do not result in adverse impacts, qualify for CUDs. Finally, if avoidance of adverse effects on protected functions cannot be practicably achieved, and the project has been planned to minimize adverse impacts on protected functions, a compensation plan must be developed for the prompt restoration of any adverse impacts on protected functions.

Compensation is the replacement of impacted wetland functions through the creation of a new wetland or the expansion of an existing wetland. Compensation is presumed possible for only certain wetland functions, and an applicant must show that the compensation will be successful in achieving no net loss in any protected function. Because compensation has a high level of risk and uncertainty, it is rarely used.

How do I obtain a CUD?

You can contact the Vermont Wetlands Office to arrange a site visit with a Wetlands Ecologist. The wetland ecologist can review your proposal, provide feedback on whether a project is likely to be approved, and provide you with an application form. The Wetlands Office will inform you in writing if your application is considered complete and if not, what additional information is needed. Once the application has been deemed complete, copies of the application must be sent to the town clerk and to the regional planning commission. Copies of the location map, a description of the proposed conditional use, any supporting narrative, and a listing of where complete copies of the request have been filed must be sent to the municipal planning commission, the conservation commission (if there is one), and all adjacent property owners. The Secretary will notify all of the above persons about the 15 day public comment period before making a decision. Notice of the decision will be sent to all of the above persons. It will generally take from 1 to 2 months to process a CUD application.

Do I need to hire a consultant to obtain a CUD?

For small projects a wetland consultant should not be necessary. You can arrange a site visit with the Wetlands Office staff for a determination of whether a significant wetland is present, and, if so, whether it is likely that a CUD could be approved for your project. For larger, complex projects, it may be helpful to hire a wetland consultant.

Can the CUD decision be appealed?

Yes, any decision made by the Secretary can be appealed within 30 days to the Board. Decisions made by the Board may be appealed within 30 days to the Superior Court for the county in which the wetland is located. The rules also contain a provision for requesting reconsideration of a CUD decision to the Secretary.

*For more information on the Vermont Wetland program visit our website at:
www.vtwaterquality.org/wetlands.htm*