VERMONT DEPARTMENT OF ENVIRONMENTAL CONSERVATION
WATERSHED MANAGEMENT DIVISION
WETLANDS PROGRAM

Vermont Wetlands Program Guidance #1:

Appication and Petition Review Guidance

Introduction:

The 2017 DEC Permit Application Review Guidance (PARG) is applied to all DEC programs, including the Wetlands Program. This procedure works within the DEC protocol but provides additional process standards for wetland permit technical reviewers and incorporates important database steps and interaction with administrative staff. Database steps are essential for recordkeeping, but also important for their interface with the public. All permit dates and clock stops are included online for the public and will be accessed by applicants to view the stage of review. Detailed administrative staff steps are not included in this procedure. This procedure is currently a working document which will change as process improvements are realized. The general flow is outlined in a graphic at the end of this document.

District Wetlands Ecologists can keep track of the status of their assigned permit applications and wetland petitions using the Ecologist Dashboard and add application and petition milestone dates using the Wetlands Database. The Administrative Technician keeps track of permit applications and petitions using the Wetlands Administrative Dashboard.

A. Review for technical completeness.

Administrative staff sends an email to the applicant and updates the database with an administratively complete date once the application has been deemed administratively complete. If the application or petition includes a classification determination of a presumptive Class II wetland, the District Wetlands Ecologist (DWE) will also need to follow the VSWI Edits Guidance Document. An administratively complete permit applicant does not include the completion of a map edit by the Administrative Technician but will be complete when the determination/edit is given an administratively complete date. All of the administratively complete application package materials will be placed in the decisions folder, in a separate folder titled YEAR-NUM_Application_Admin_Complete. This version of the application will be placed on the Environmental Notice Bulletin (ENB) for the public to view. If an older version of the application was deemed Administratively incomplete, the Technician will place the incomplete materials in a folder titled YEAR-NUM_SupersededApplicationDATE.

Fatal Flaw Analysis

The fatal flaw analysis of assigned applications should be completed within 1.5 weeks of the application becoming administratively complete. District Wetlands Ecologists are expected to meet the 1.5 week goal with 90% of their assigned applications. Technical staff should first give the application a basic review for any fatal flaws: site plans without required items, incorrect wetland classifications, simple avoidance opportunities, vague project purpose, project does not qualify for a GP. This is the time to also check to see if the applicant correctly identified if the wetland is presumptive. If the presumption piece is incorrect, coordinate a correction with the Administrative Technician. If there is a fatal flaw in the application, the ecologist will contact the applicant and application preparer with a technically incomplete letter in an email to request additional materials (feedback loop 1 in graphic and described below) or may discuss error by phone and correspondence entered in database. In this correspondence with the applicant, the technical reviewer should indicate that the technical review is not finished and additional items may be requested. Enter "clock stop" date within the database.

Comprehensive Technical Review and Correspondence

The DWE should complete technical review of an administratively complete application in 30 days. The 30-day goal is expected to be achieved with 75% of all applications. If there is no fatal flaw, technical staff shall continue through the technical review, begin a draft of the permit from the "permit template folder", and mark up the application accordingly. It is the best practice, when there are no fatal flaws, to submit all requests to the applicant in one technically incomplete letter which may be an email. Use the template technically incomplete letter in the "application templates" folder to craft the response or use the email template. The technically incomplete letter should include the fact that the Secretary may dismiss the application if materials are not provided within 60 days. The letter should include a request for a new application form complete with signatures if the project design changes, or a request for a new application form if items in the form need to be changed/updated. If project design changes reduce impact numbers, we *cannot* provide a refund of any of the technical review fee which was based on the original impact numbers. If the change that is needed only improves the description of the project or wetland resource, a new signature is not needed. Technically incomplete letters must be sent to the application preparer and the applicant. Enter "clock stop" date within the database.

If a request for technical information has not been received within a month, or if the response to the initial technical incomplete letter is insufficient to satisfy requests (e.g. applicant gives a three-word response to a request to elaborate), the reviewer should send an additional letter which reminds the applicant of the 60 day provision and give the date where the application may be dismissed. There is a template technically incomplete follow-up letter in the "applications templates" folder for this use and a template email. Technical staff may choose to also speak with the applicant over the phone or in a meeting as direct contact will sometimes help identify any misunderstanding.

If an application has been pending for more information over three months (Clock stop 90 days), the District Ecologist shall notify the Program Manager to initiate dismissal. Once the application contains all the information for a decision and the permit decision has been drafted, the application may be considered technically complete. All technically incomplete and complete letters/emails are a part of the decision and should be placed in the decisions file.

The Ecologist must recommence technical review when in receipt of a response to a technically incomplete letter. This review should occur within 30 days of receipt of the response and the Ecologist should remain mindful of the 90 day PEP time.

Revised application materials will need to be placed on the ENB with the draft permit. Any revised application materials shall be placed in the decisions folder in a folder titled YEAR_NUM_Application_RevisedDATE. The Ecologist shall notify applicants when special conditions (e.g. planting reports, preconstruction meetings) are being added to the permit. The Ecologist shall notify the Manager of the pending draft before it is placed on notice when the project involves more than 10,000sqft of wetland impacts, and when compensation or unique conditions (not contained in permit shell) are requested. Unique conditions need to be reviewed by the Manager before use.

Applications with “Presumptive” Wetlands and Map Edits

If the application indicates that one or more wetlands are considered Class II because they are presumptive, technical staff must draft a determination concurrently with the permit or authorization. Determination templates may be found in the “determination templates” folder. If it is an individual permit, use the permit template with the determination rather than creating a separate determination decision draft. <u>The Ecologist shall evaluate whether the wetland is in fact presumptive and not contiguous before drafting the permit.</u> If the wetland is found contiguous, no determination is needed and the facts of the permit shall state that the wetland is contiguous to mapped wetland. The Ecologist must inform Administrative staff of any application discrepancy so that they can adjust the database and mapping accordingly.

Administrative staff shall draft a map of the Class II wetland to be added to the VSWI layer. The draft determination and draft permit/authorization are ideally be placed on notice concurrently. This means that the Ecologist needs to review and approve the mapping at the same time as the application is deemed technically complete. Authorizations may be issued before the determination goes off notice. If issued, determination mapping shall be sent to Ryan Knox in quarterly batches to upload to the official VSWI layer. Adding additional area to existing VSWI wetlands is discretionary. DWE will follow the VSWI Edits Guidance Document for reviewing and noticing wetland determinations and map edits.

Permit Amendments

A permittee may request an amendment, transfer or time extension of an active permit. The details about noticing, payment and types of amendments are available in the Wetland Permit Amendment Guidance. Administrative amendments and transfers are wholly processed between the Technician and the Manager. Minor amendments, major amendments, and permit extensions need technical review by the District Wetlands Ecologist. Whenever a permittee requests multiple changes to a permit, the amendments, transfers, and extensions will be processed with one decision document.

Review of permit extensions includes the verification of the reevaluation of wetland boundaries. The Ecologist may review the delineation documents submitted with the application or request a site visit at their discretion. When extensions are submitted in the winter and have no boundary reevaluation materials, the application is deemed technically incomplete and the applicant is provided until June of the following spring to submit the remaining information. Use the template technical incomplete letter for extensions. If the extension delineation reevaluation reveals that additional area of wetland or buffer zone will be impacted, the applicant will need to submit a major amendment application. No accompanying amendment application is needed if the redelineation causes the project to impact less wetland area.

Intent to Deny

If there is a large "fatal flaw" in the project purpose (e.g. a road to nowhere), in mitigation sequence (e.g. avoidance possible), or resource impacts (e.g. filling of a fen) than it may be best to send an intent to deny letter. You should never send this letter without consulting with the Manager. There is a template intent to deny letter in the "applications templates" folder and template email document. This should never be the first attempt at encouraging the redesign of a project but rather reserved for those projects where it appears a stronger suggestion is warranted. In other words, use this strategy sparingly.

Filing Permit

The draft permit shall be placed in the decisions folder, within a folder titled PublicNotice using the naming convention of: YEAR-NUM_IndivPermit_DRAFT, or YEAR_NUM_FinalAuthorization_DRAFT. Either the Ecologist or the Technician will convert the Word version to a pdf. The Word version will be retained for the life of the permit. If the technically complete application is different from the administratively complete application, the technically complete application folder will be moved by the Ecologist to the Public Notice folder. If a determination is associated with the permit, the Ecologist approved determination map will be placed in the Public Notice folder as well. The draft and any revised application and maps shall be placed on public notice by the Technician. The draft should be ready to issue if there are no comments received.

Database Entries for Administrative and Technical Review

1. Initial receipt and administrative review of application, dates entered into database by Technician. Any associated determination shall be added to the database in the determinations tab and given an application and admin complete date by the Technician.

2. Technical Staff will enter date for technical complete once review is final, permit is drafted and tech complete letter is sent to applicant, follow Step B below. If a determination is needed, Technical staff shall review the map created by the Technician and provide feedback or approve. A permit document with a determination should not be called technically complete until the determination map is ready for notice. The Ecologist will add a technically complete date to the determination tab to indicate to the Technician that the map has been reviewed and is ready for notice. Technical staff may add map edits in the database too. See VSWI Edits procedure for more information.

3. If application is technically incomplete:

- Technical staff will set a "clock stop" date within the database once a technically incomplete letter has been sent to the applicant.
- Once the applicant provides the additional information, technical staff will set a "clock on" date in the database and continue review.
- If there are no changes to the impact numbers, continue reviewing the application with the checklist, drafting the permit, and reviewing for section 9.5 of the Vermont Wetland Rules.
- If there are changes to the application to the extent which changes the impact numbers, the application will go back to administrative review (feedback loop 2 and described below).
- When the application goes back for administrative review, the technical staff will set a "clock stop" in the database.

4. Administrative staff review the revised application using the administrative checklist, process any additional fees, send an administratively incomplete letter with 60-day provision language, and send back to the technical reviewer when administratively complete. Administrative staff will set a "clock on" date in the database when complete.

B. Application is technically complete.

Once the application is deemed technically complete, if not already present, the technical staff will create a folder in the decisions folder called "Public Notice" and populate the folder with all of the latest application materials and draft permit for the administrative staff to place on notice. Do not duplicate the files from the "Decisions" folder, just move them over. Duplicate files eat up folder space and can be confusing for non-technical staff to navigate. The "Public Notice" is necessary to ensure the correct application and draft is placed on notice when there are many versions in the "Decisions" folder. Technical staff will then enter the technically complete date into the database. In all cases, the distribution date should be left blank. Because the ENB notices applicants when an application goes on notice, Technical staff do not need to send a technically complete letter. From there the administrative staff is notified through their dashboard that the draft is ready and places the application and draft on public notice.

There are many instances where it helps to clarify which site plan is the one to be approved for the final permit. The permit typically includes a condition that a specific site plan is followed. To further clarify the correct site plans, the Ecologist may save a pdf of the plans in the decisions folder titled YEAR_NUM_TechCompSitePlan. Once the permit is off notice the manager will review this plan and stamp it with the permit number and date for distribution with the final permit.

Note: The distribution date in the database is antiquated from when the Program was required to send notice to adjacent landowners, which was handed over to the applicant in 2017.

C. Review comments.

Technical staff should begin review and response to comments within a week of receipt. Extensive public comments can require much effort to respond to and Technical staff may take longer to complete this task, remaining cognizant to the 90 day PEP time.

Technical staff are responsible for reviewing the online Environmental Notice Bulletin (ENB) staff dashboard for public comments: http://anrintra.vt.gov/DEC/ENBV2/StaffDashboard.aspx. The Manager will email the assigned DWE when there are public comments in the ENB once the decision is off public notice. Official public comments are submitted to ENB but sometimes individuals email the technical staff directly. Technical staff should inform commenters that they need to place their comment on ENB, but may accept the comment in their inbox so long as they notify the Manager. Administrative staff are not responsible for notifying technical staff when a permit is off notice. Technical staff and the Manager may use the Wetlands Administrative Dashboard to get a snapshot of application status, see which of their permits are off notice, and which have received comments on ENB. If there are no comments, the Program Manager will review the draft permit for signature. If an applicant has indicated that the permit is needed immediately after the notice completes, the technical staff should notify the Manager. The Manager typically reviews and signs off-notice permits and determinations the morning after the notice period ends if there are no public comments.

If there are public comments received, technical staff will create and place them in a "public comment" folder under the decisions folder in the project folder. The draft response document shall be placed in this folder as well. Technical staff will then review the comments and respond according to the public comment response instructions. Comment response may entail contacting the applicant to request additional information (feedback loop 3 in graphic). Technical staff will set a "clock stop" date in the database when a request is sent to the applicant and create a "clock on" date once the additional information is provided. Comments for associated determinations shall be reviewed and responded to concurrently with permit comments for Individual permits so that the determination and permit decision may be signed and distributed together. Comments are filed separately in ENB for determinations and individual permits regardless of if the draft decisions are in the same document or not.

If there is more than one comment, or a lengthy comment the Ecologist shall create an Issuance folder in the decisions folder to clarify to the Technician which materials need to be placed on ENB with the final decision. The Issuance folder should include: a single pdf of all comments received, any response from the applicant, responses from inquiries from other ANR experts (e.g. Fish and Wildlife), and the responsiveness summary. The Manager will place the final signed permit and stamped site plan in the Issuance folder once it is reviewed and approved.

A response to public comments may include a change in the project design. Substantive changes to the final draft of the permit may require that the permit go back out on public notice. Additional wetland impacts or reductions in protections to the resource are changes which most commonly need to be re-noticed. Contact the Manager to confirm whether additional notice is warranted.

Public comments may also request a public meeting within the first 15 days of the public comment period. All requests for a public meeting must be honored. See the specific guidance on holding public meetings. A comment may also request a public comment period extension. If the reason is to provide more time to finish drafting comments, the request will most likely be granted. Contact the Manager to confirm the extension of a comment period.

D. Manager feedback and issuance.

If the permit review by the manager raises questions, the manager will contact the technical staff for more information. This may be substantive in nature or may be a simple request. Technical staff are expected to respond within a business day of the Manager's request. Technical staff may contact the manager at any point in the process where it appears that the application is not meeting the burden of proof and may constitute a denial. The sooner this is identified, the better. Once the permit is approved or denied, the manager saves a .pdf of the permit in the decisions folder with the same name as the draft, minus DRAFT at the end. The final site plans in the decisions folder will be stamped and dated by the Manager and renamed YEAR_NUM_ApprovedSitePlan in the decisions folder. The manager then adds the documents complete date, decision type, and expiration date into the database. If the permit decision includes a determination, the manager will review the map and add the document complete date and decision type into the determinations tab in the database.

Infrequently the Manger finds an issue with the concurrent noticing of a permit and determination. If a determination is not placed on notice concurrently with the permit/determination draft document, the permit will need to be revised to not include the determination decision and a new determination will need to be drafted and placed on notice for 30 days. It is very important that all are careful in placing the determination on notice with the permit to prevent inefficiencies and delays.

With the addition of the documents complete date, the Administrative dashboard will move the permit to the "permits ready for issuance" list and the Administrative staff will place the permit and the approved site plan on the ENB and add the issuance date. The administrative staff distributes the decision and any associated determination where applicable.

Wetland Permit Application Review Flow