



Vermont Wetlands Program Guidance #3:

Buffer Zone Adjustments

Introduction:

The purpose of the buffer zone is to protect those functions that make a wetland significant. Vermont Wetland Rules (VWR) §4.2. Studies have shown that certain buffer widths are advantageous for maintaining wetland function, protective widths are commonly larger than fifty feet. While there is a default jurisdictional buffer zone width for Class I (100ft) and Class II (50ft) wetlands, the Secretary may change the jurisdictional width through rulemaking in the case of Class I wetlands, and through a formal VWR Section 8 determination for Class II wetlands. While the Statute and Rule make clear that wetland classification determinations are based on an analysis of the ten functions and values, the buffer zone determination basis needs further interpretation.

This document describes the Program's process for determining buffer zone widths in accordance with 10 VSA §914(b), which states: *The Secretary may establish the necessary width of the buffer zone of any Class II wetland as part of any wetland determination pursuant to the rules of the Department.* This document also describes the Program's process for buffer width recommendations for Class I rulemaking, which includes the Rule review standards §7.4b: *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.*

Practice:

While buffer zone widths do not change without a formal determination, the buffer zone location may change over time as the wetland boundaries shrink or expand, as the buffer is always measured from the delineated boundary of the wetland. See Guidance #2, [Expiration of Wetland Evaluations](#), for information on when a wetland boundary must be reevaluated. Buffer zones may also be impacted without a permit when the activity qualifies as an allowed use in VWR Section 6.

Class I and II buffer width adjustment recommendations for rulemaking (Class I) and adjustment determinations (Class II) shall be based on an evaluation of the necessary width to protect the wetland's significant functions and values. The evaluation includes an assessment of the current quality and configuration of the buffer zone (cover type, disturbance, encroachments, physical attributes), an evaluation of functions and values of the wetland and the role of the buffer in

contributing to and/or protecting those functions. The evaluation does not include a review of the environmental harm of a specific proposed project. Evaluations of specific proposed projects are appropriate for permit applications.

The Program does not generally initiate Class II buffer width changes from the fifty-foot standard. When the Program has initiated a buffer width change, it was to protect a rare natural community type by increasing the buffer zone to include the wetland's watershed (Project # 2006-144) which included variable widths. Staff must consult with the program manager before initiating Class II buffer width changes where there is no petition.

Class II determination petitions are submitted concurrently with permit applications for presumptive Class II wetlands which the Program has preliminarily designated as Class II. The Program does not evaluate whether to adjust buffer zone widths as part of these Class II determinations unless: 1) the petitioner specifically requests an adjustment, or 2) program staff have communicated the possible width change to the applicant prior to the petition submittal and the staff have received permission to do so from the program manager.

Class I petitions are submitted with the Class I designation requests for rule changes in accordance with §7 of the VWR. The Program recommends to the Commissioner whether a petition should move to rule making and whether the petition should be adjusted. The Agency also has the authority to initiate rule making for a Class I wetland, where the program would recommend buffer widths as well.

In the instance where the petitioner specifically requests an adjustment, the petitioner must provide an assessment of the current buffer zone quality, an evaluation of the wetland's functions and values, the current buffer's ability to protect those functions, and proposal's potential benefits to the wetland.

The Rules allow for petitioners to request a buffer expansion or reduction for Class I or II wetlands. The Wetlands Program shall only contemplate a buffer width reduction based on whether the wetland's significant functions and values would not be harmed by deregulation of the portion of buffer being considered. In most instances, a decrease in the regulatory review areas would allow any activity to occur closer to the wetland, causing potential to harm functions and values. To date the *Program* has not approved a reduction in buffer zone width.

While reviewing a buffer width reduction, the District Ecologist shall first consider whether the petitioners project would qualify as an exemption or allowed use. If the activity is an allowed use or exemption, the Ecologist must mention this to the petitioner so that they have the option to withdraw the petition and move forward with their project.

The Program will only consider the adjustment in the direction for which the adjustment is sought. For example, if an adjustment is requested to increase the buffer zone to 75ft, the resulting buffer width determination could be between 50 and 75 feet.