

PANEL REVIEWS WETLANDS RULES

Last April, the Natural Resources Board's Water Resources Panel launched an investigation of strategies for amending Vermont's Wetlands Rules.

(The Water Resources Panel is looking into the Wetlands rules because permit reform legislation that became effective early in 2005 transferred the rule-making functions of the Water Resources Board to the Water Resources Panel.)

As anyone who has undertaken any development or regulated development in recent years knows, if a proposed project is likely to impact a "significant" (Class 1 or Class 2) wetland, then a "conditional use determination" must be requested from the Agency of Natural Resources. Establishment of Class 1 and Class 2 wetlands is initially established by their appearance on the National Wetlands Inventory Maps that were published by the U.S. Fish and Wildlife Service in the late 1970s and revised to conform with the wetlands rules. These maps, known as the Vermont Significant Wetland Inventory Maps (VSWI), denote approximate location and configuration of significant wetlands, *except that they are frequently wrong*. According to current rules, actual boundaries of wetlands on the VSWI maps shall be determined in the field.

In opening the investigation, former Water Resources Panel Chair Pat Moulton-Powden wrote that several considerations led the panel to investigate amending the Vermont Wetland Rules.

- *Experience has shown that the state wetland inventory maps omit approximately thirty percent or more of the significant wetlands in Vermont."*
- *"Approximately seven percent of the wetlands depicted on the state wetland inventory maps may not be wetlands at all or may not be significant wetlands."*
- *"Additional complications associated with the use of the state wetland inventory maps to protect significant wetlands in Vermont involve protecting unmapped wetlands that are contiguous to mapped wetlands and coordinating the Vermont Wetland Rules with other wetland regulations at the local, state, and federal levels."*
- *"Recent developments in the law have raised questions about the process for reclassifying wetlands and for more accurately depicting wetland boundaries on the state wetland inventory maps."*

In all but two states, New York and Vermont, state wetlands maps are advisory. In New York and here, state wetlands maps establish jurisdiction in the regulatory process. Complicating the problems with using the maps to establish jurisdiction are the facts that Vermont's maps are out of date and that wetlands themselves are dynamic systems. Additionally, there are questions about the jurisdiction of the state program relative to the federal program, who makes state decisions about jurisdiction, and how well either state or federal programs are coordinated with local land use regulations. Is Vermont protecting the right wetlands with its current rule? Is it achieving state and federal policies of no net loss of wetlands? And, of particular interest to local governments, is the current regulatory program efficient, easy to use, and effective?

The investigation includes parties from all potentially interested groups, including local governments. The first couple of meetings were laden with background information. Now, as the group begins to work with the assistance of a facilitator, three subcommittees have been established: Map Improvement Workgroup, Technical Issues, and Federal/State Coordination Workgroups.

Should readers have comments or questions about this process or what needs to change to improve the wetlands permit process for municipalities, please contact Karen Horn, VLCT Director, Public Policy and Advocacy, at khorn@vlct.org.

- Karen Horn, VLCT Director, Public Policy and Advocacy

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