

Vermont Wetland Regulations



Overview

- Vermont Wetland Rules
- Determining Jurisdiction
- Permit Process
 - Avoidance and Minimization



Who Regulates Wetlands in Vermont?

- State of Vermont
- United States Army Corps of Engineers
- Possibly local government

State Programs that Pertain to Wetlands

- Vermont Wetland Rules
- Vermont Water Quality Standards
- Act 250 and Act 248
- Stream Alteration Program
- Lakes and Ponds Encroachment Program
- Dam Safety Program
- Stormwater Program

How do the Vermont Wetland Rules Differ from the Federal Wetland Regulations?

- Classification
- Buffers
- Minimum size for impacts
- Different exemptions
- Evaluating impacts by functions vs. acreage
- Other ways

Vermont Wetland Rules



Purpose of the Vermont Wetland Rules

It is the policy of the State of Vermont to identify and protect significant wetlands and the values and functions which they serve in such a manner that the goal of no net loss of such wetlands and their functions is achieved.

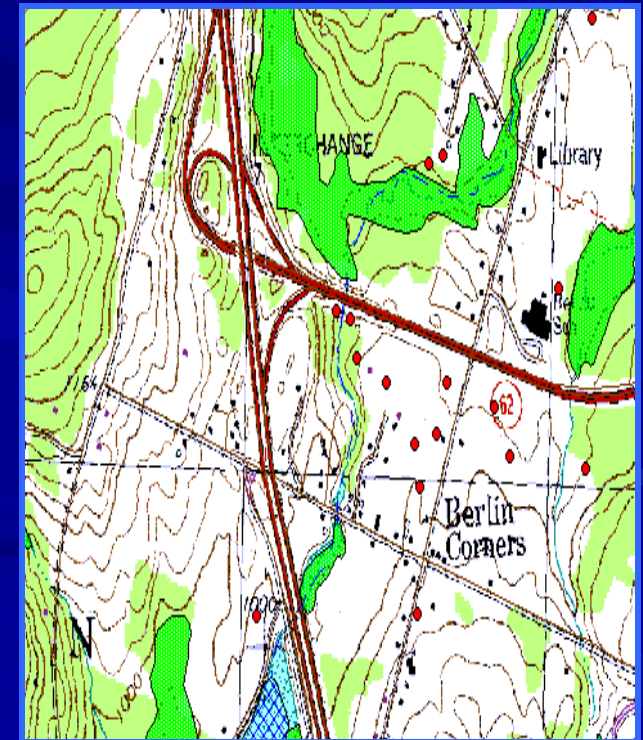


Which Wetlands are Regulated by the Vermont Wetland Rules?

Those wetlands deemed significant enough to be protected based on their function and value are regulated by the Vermont Wetland Rules (Class I and Class II Wetlands).

Means of Determining Jurisdiction

- VSWI Maps
- Section 4.6 Presumptions
- Section 8 Wetland Determinations



Wetland Classification

Based on an evaluation of the extent to which the wetland provides functions and values:

- **Class I Wetland:** Exceptional or irreplaceable in its contribution to Vermont's natural heritage and therefore, merits the highest level of protection (NRB Water Resources Panel determines via rulemaking)
- **Class II Wetland:** Merits protection, either taken alone or in conjunction with other wetlands
- **Class III Wetland:** Neither Class One or Class Two wetland

Buffer Zones

- Definition: Area of upland around a wetland
- Functions: Protects wetland from disturbance, water quality protection, wildlife, others
- Width changes with classification:

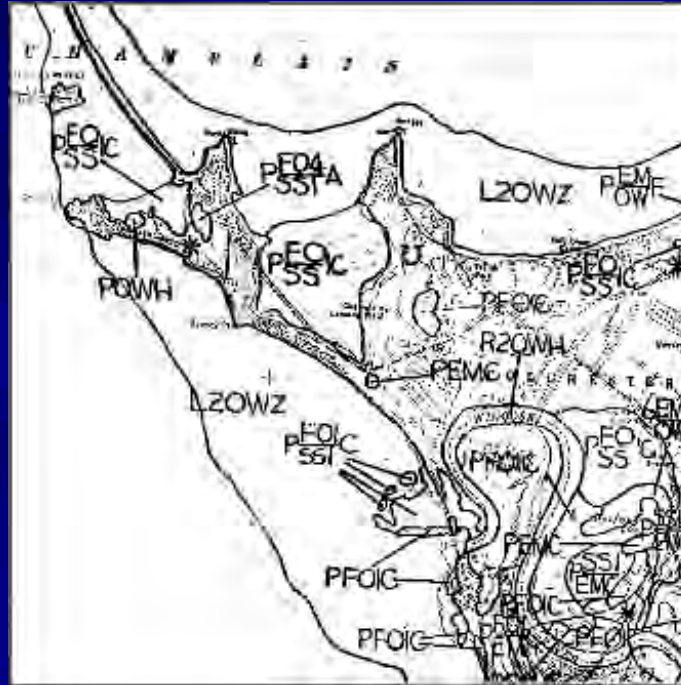
Class One Wetland = 100 foot buffer

Class Two Wetland = 50 foot buffer

Vermont Significant Wetland Inventory Maps



Aerial Photos



National Wetland Inventory Maps



GIS Map of VT Significant Wetlands

VSWI Map Interpretation

VSWI maps are a STARTING PLACE:

- Boundaries are not exact
- A wetland contiguous to a VSWI map is also Class II
- Unmapped wetlands can also be Class II

Use map products to help determine possible wetlands:

- USGS topo maps
- Aerial photos
- NRCS soil information and hydric soil layers
- Hydrography layers for streams, ponds and lakes

Agency of Natural Resources Atlas

Find Feature | Find Address | Add Graphic | Add Label | Draw Shape | Print

- VT ANR Disclaimer**
- Results**
- Map Contents**
- GraphicsResource
 - Environmental Items
 - ANR - GeoTICKS
 - ACT250
 - Boundaries
 - Buildings
 - Emergency Management
 - Fish and Wildlife
 - Fresh Water Resources
 - Invasive Plant Atlas
 - Soils
 - Stormwater
 - Waste Management
 - Water Supply
 - Wetlands



Agency of Natural Resources Atlas

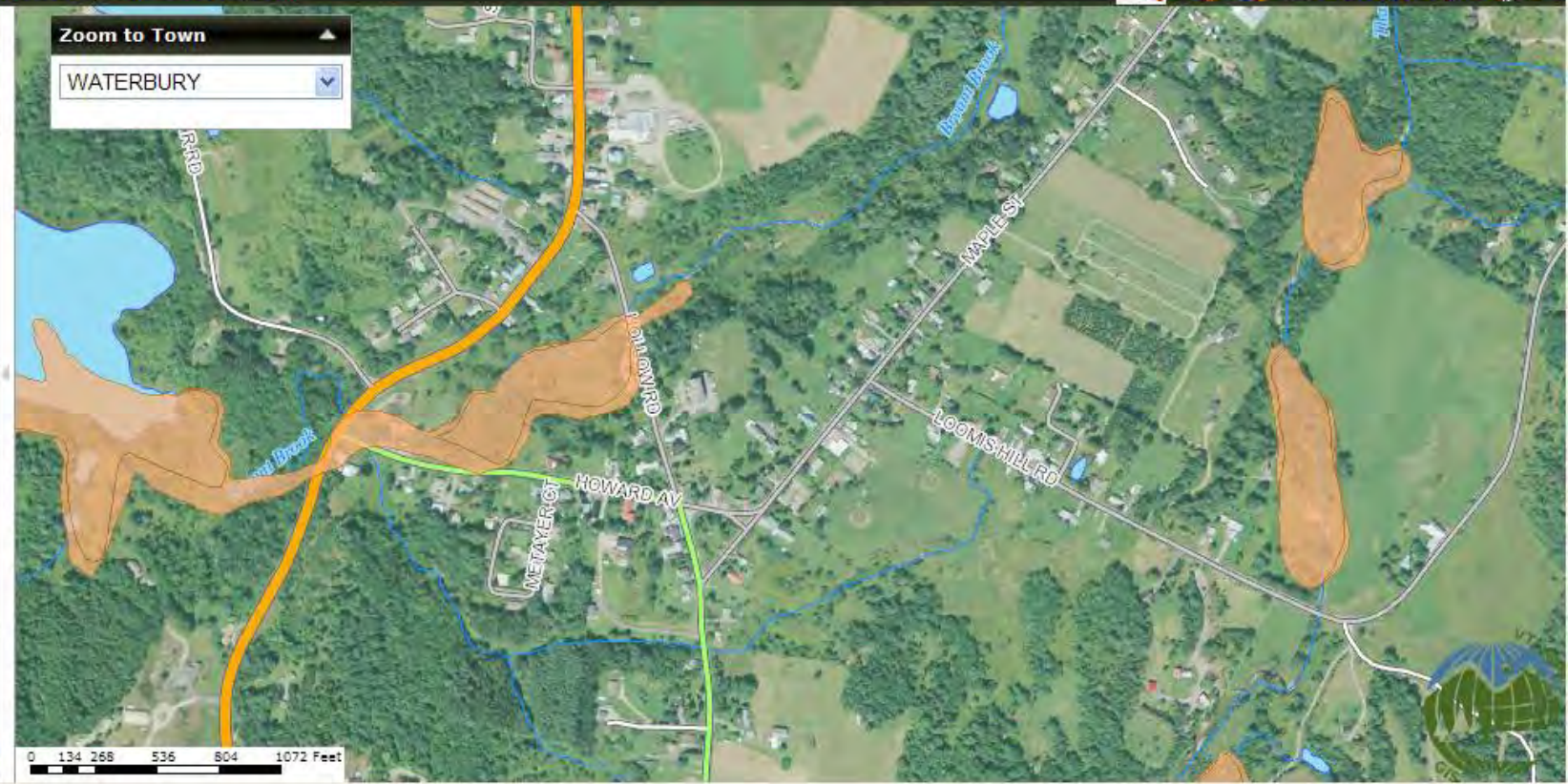
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VT ANR Disclaimer

Results

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 - Soils
 - Soils - DEC On Site Sewage
 - Soils - Hydric
 - Soils - Prime Agricultural
 - Stormwater
 - Waste Management
 - Water Supply
 - SurfaceWaterSPA
 - GroundWaterSPA



VSWI Mapping Resources

- Wetlands Office in Waterbury
- Environmental Interest Locator on ANR website is interactive map viewing with includes many helpful program layers:

http://www.vtwaterquality.org/wetlands/html/wl_vermontsigwetinvmaps.htm

- Vermont Center for Geographic Information has downloadable GIS layers:

<http://www.vcgi.org/>

Significant Wetlands

As of September 15, 2010, ANR was given the authority to determine the classification of wetlands for Class II and Class III.

NOT ALL WETLANDS REGULATED BY THE VERMONT WETLAND RULES ARE SHOWN ON THE VSWI MAPS

Sec. 4.6. Presumptions

- Presumes wetlands similar in type and size to those already mapped are Class II wetlands
- Contains a list of wetland types and characteristics that contribute to significant wetland functions

§4.6a Presumption

- a. *The wetland is of the same type and threshold size as those mapped on the VSWI maps: i.e.; open water (pond); emergent marsh; shrub swamp; forested swamp; wet meadow; beaver pond or beaver meadow; bog or fen; or greater than 0.5 acres.*
- The types listed in §4.6a are examples of what is commonly found on the VSWI maps
 - The list of types is inclusive, and any combination of these types that meets the threshold size should also be presumed to be significant
 - Threshold size is 0.5 acre or larger for 4.6a only

§4.6b and §4.6c Presumption

- b. The wetland contains woody vegetation and is adjacent to a stream, river or open body of water.*
- c. The wetland contains dense, persistent non-woody vegetation and is adjacent to a stream, river or open body of water.*
- Wetlands adjacent to these aquatic resources provide water quality protection, a nexus between groundwater and surface water, erosion protection, flood storage and/or wildlife habitat

§4.6d-f Presumptions

- d. The wetland is a vernal pool that provides amphibian breeding habitat.*
 - e. The wetland is a headwater wetland.*
 - f. The wetland is adjacent to impaired waters and the impairment is related to wetland water quality functions.*
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- The wetlands in these presumptions must meet the definitions in the VWR for vernal pool (§2.36), headwater wetland (§2.16), and impaired waters (§2.19)

§4.6g-i Presumptions

- g. The wetland contains a species that appears in the NNHP database as rare, threatened, endangered or uncommon; or is a natural community type that is rare or uncommon.*
- h. The wetland has been previously designated as a significant wetland.*
- i. It is within sixty (60) days after the landowner has received notice of a preliminary wetland determination pursuant to Section 8.1 of these rules.*

Section 8: Wetland Determinations

- ANR determines whether a wetland is Class II or Class III
- Petition information is required
- 30 day notice for the determination
- Also addresses:
 - Non-wetlands
 - More minor changes to the VSWI maps
 - Buffer zone adjustments

Exemptions

- The Vermont Wetland Rules exclude such areas as grow food or crops in connection with farming activities.
- Farming exemption applies to all areas used to grow food or crops in connection with farming activities, including areas in ordinary rotation, as of the effective date of the rules.
- The farming exemption expires whenever the area is no longer used to grow food or crops or is no longer in ordinary rotation.
- Existing constructed features erroneously mapped as wetlands; i.e. snowmaking ponds, sewage lagoons, etc. are also exempt

Allowed Uses

- Low impact activities and grandfathered uses (pre – 1990)

Subject to AMPs or BMPs:

- Silvicultural activities that follow AMPs
- Agricultural activities that follow AMPs
- Installation of docks, boardwalks, duckblinds that follow BMPs
- Maintenance of manmade ponds less than two acres in size using BMPs
- Removal of Beaver Dams that follow Beaver BMPs
- Maintenance and installation of overhead utility lines following BMPs

Vested Rights

- Projects involving unmapped wetlands are vested if all wetland and landuse permits were applied for prior to September 15, 2010
- After September 15 all sections of the new rules are in place

Grandfathering

- Existing structure or use in mapped wetland or buffer zone prior to 1990
- Existing structure or use in unmapped jurisdictional wetland or buffer zone prior to Sept. 15, 2010
- Replacement or repair of existing structure or system **ONLY** in its current footprint

Permits

- Any activity that occurs in the wetland or buffer zone, that is not considered an allowed use requires a permit, including:
 - Any grading, filling, ditching or dredging
 - Any removal of vegetation such as tree cutting
 - Any construction of buildings, roads or infrastructure

Vermont Wetland Permits

- Change from Conditional Use Determination to permits
- New Permit application form
 - More robust
 - More technical
 - More reliant on consultants
- 15-day notice period
- Appealable to Environmental Court
- General Permit under development

Individual Wetland Permits Mitigation Sequence

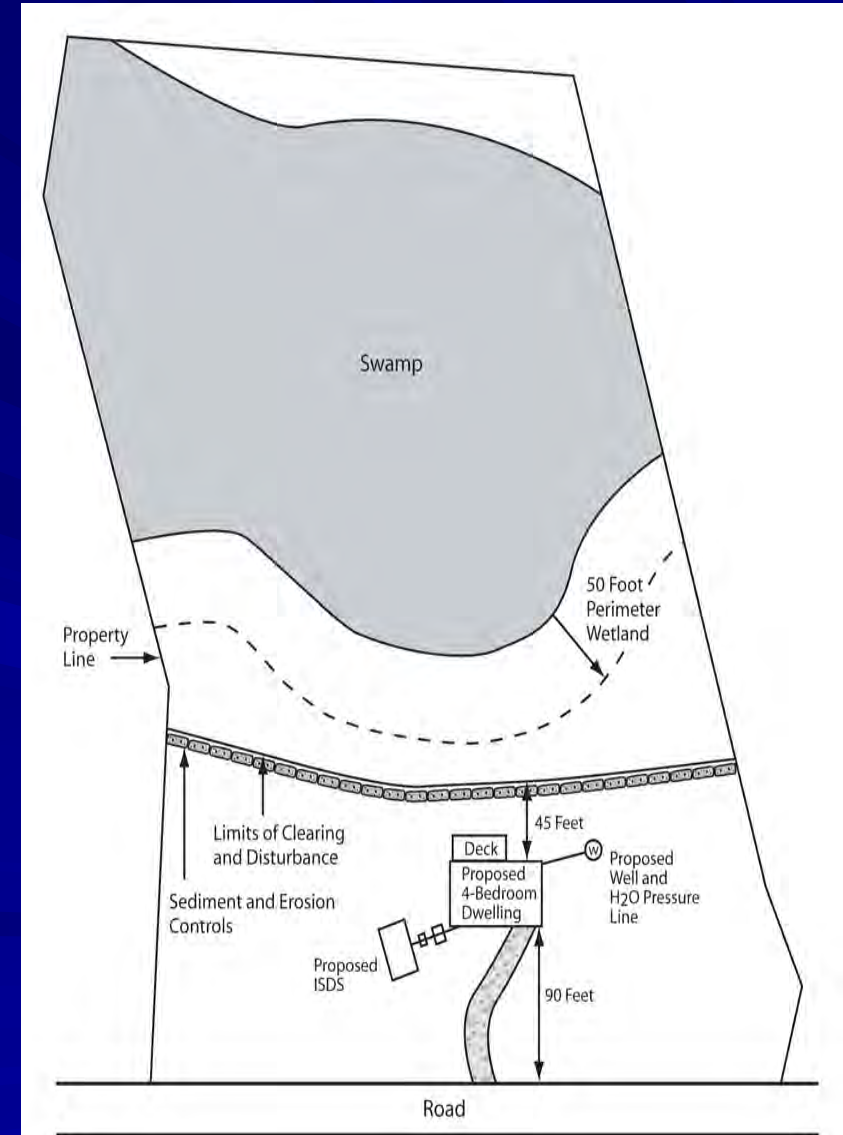
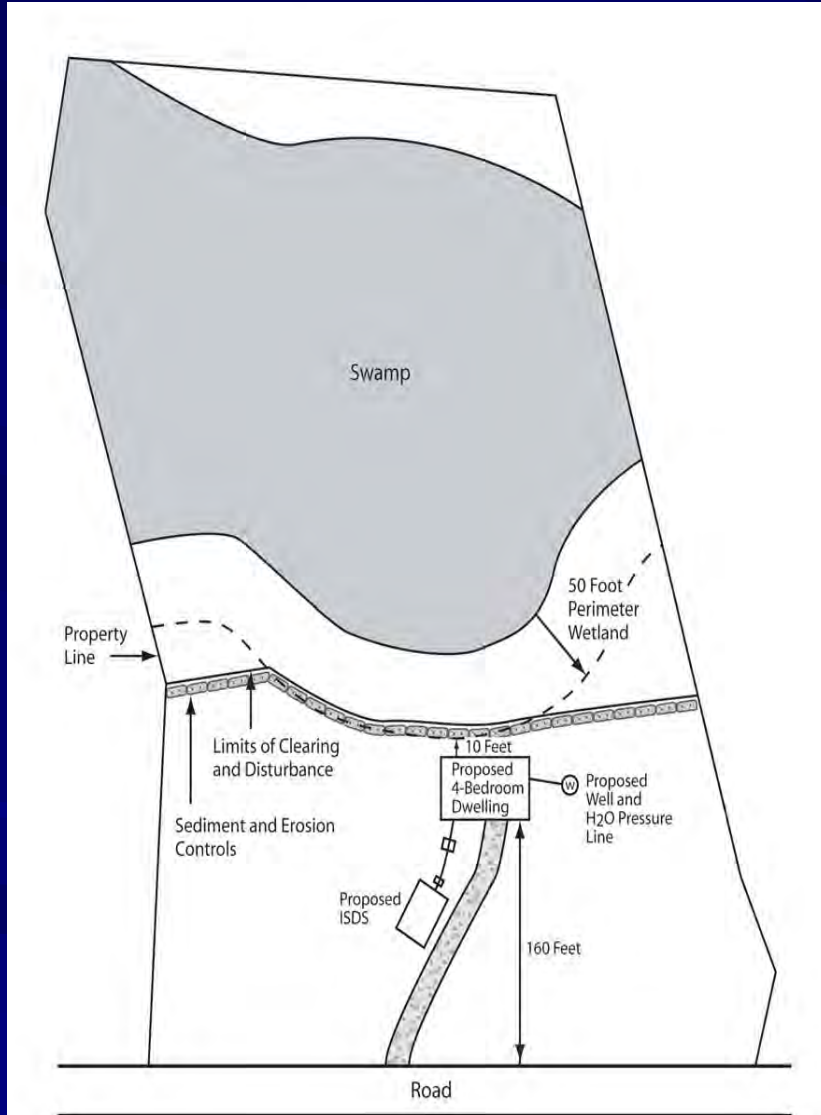
- Must demonstrate there is no other practicable alternative on property owned or available that avoids wetland and buffer impacts
- Must use project design to avoid impacts to wetlands, buffers and their functions and values to the greatest extent possible
- Must offset potential impacts if they are unavoidable through minimization or restoration

Avoidance and Minimization

- **Step 1:** Determine the boundaries of the wetland and buffer zone
- **Step 2:** Evaluate whether there is enough upland to fulfill the project purpose
- **Step 3:** Look for ways to avoid impacts:
 - Is there another access point?
 - Can the scale of the project be reduced?
 - Can structures and infrastructure be rearranged or reoriented?
 - Can easements be gained for other setbacks?

Avoidance and Minimization

From Rhode Island DEM: Wetland BMP Manual: Techniques for Avoidance and Minimization

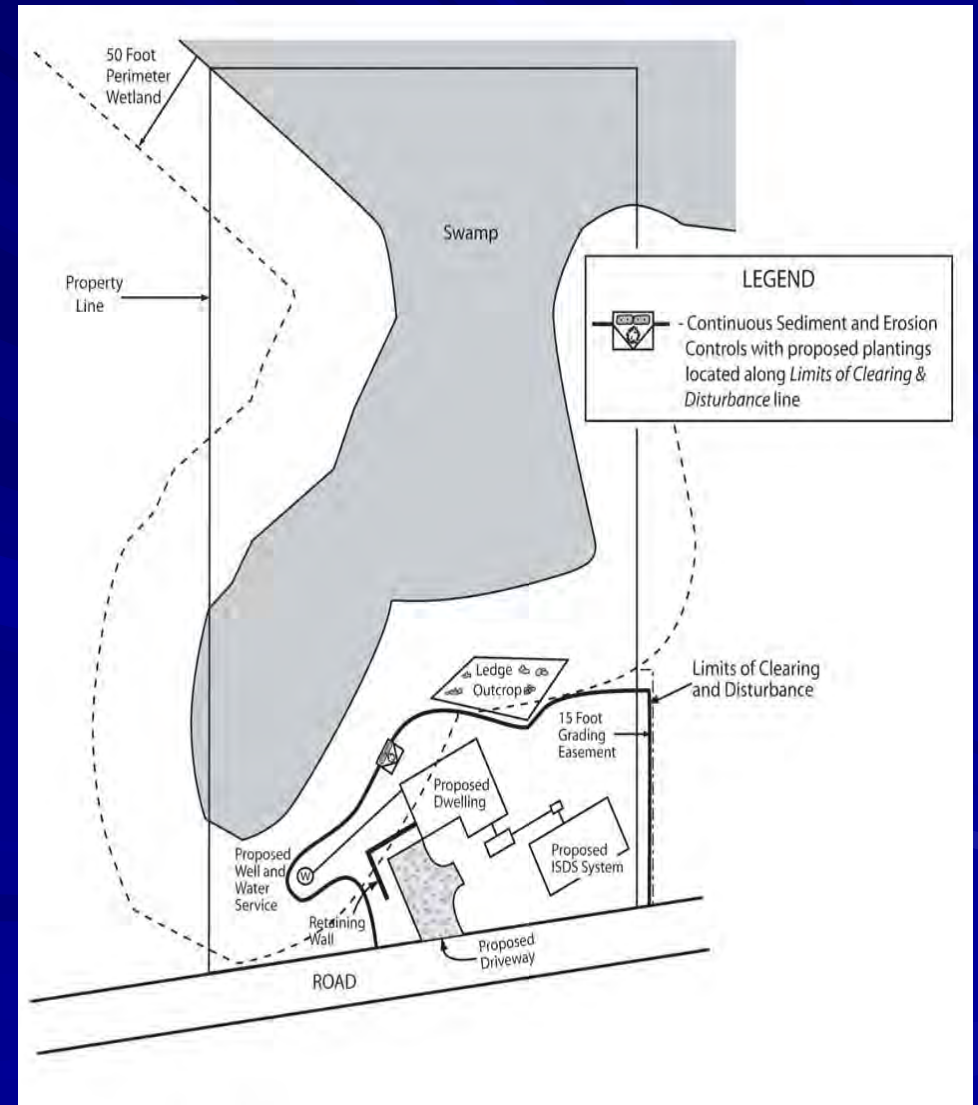
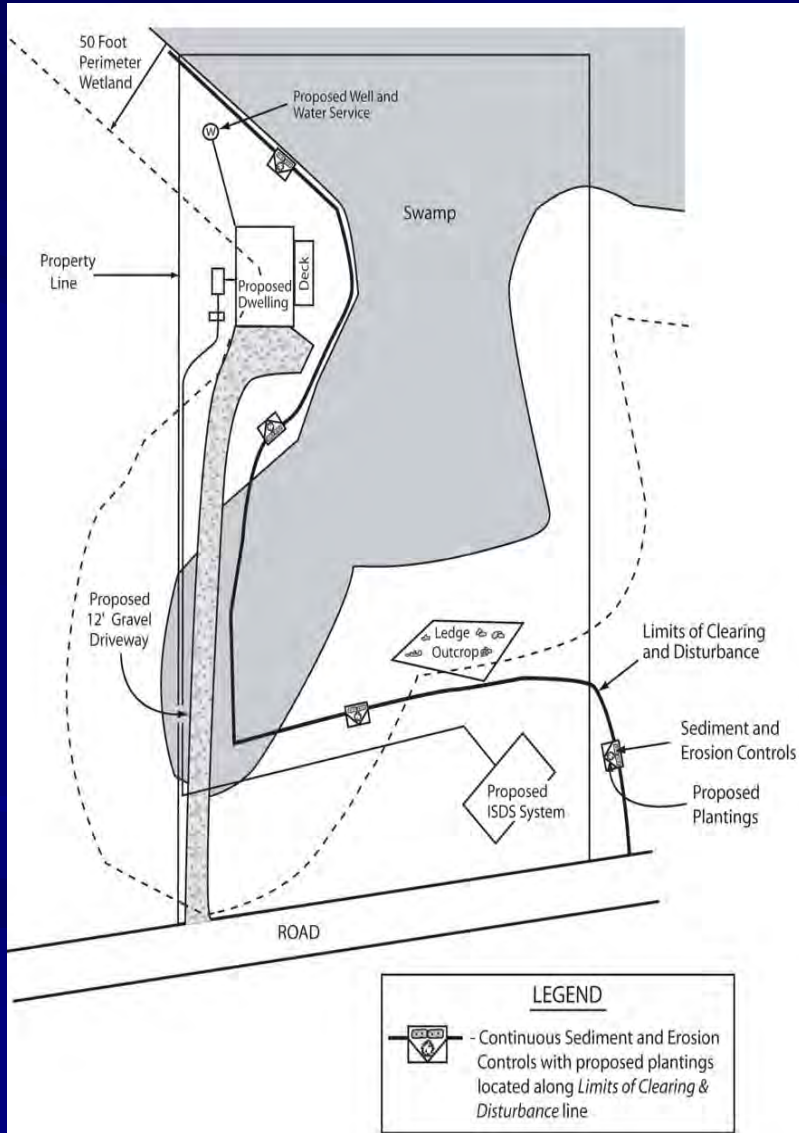


Avoidance and Minimization

- **Step 4:** Design the project to minimize impacts to the square footage AND functions of the wetland:
 - Work with the ecologist to identify more critical/sensitive areas
 - Cross wetlands at their narrowest point only ONCE
 - Use bridges and oversized culverts to reduce impacts on wildlife
 - Use plantings for screening and to mark permanent limits of disturbance
 - Restore previously disturbed areas of wetland and buffer zone

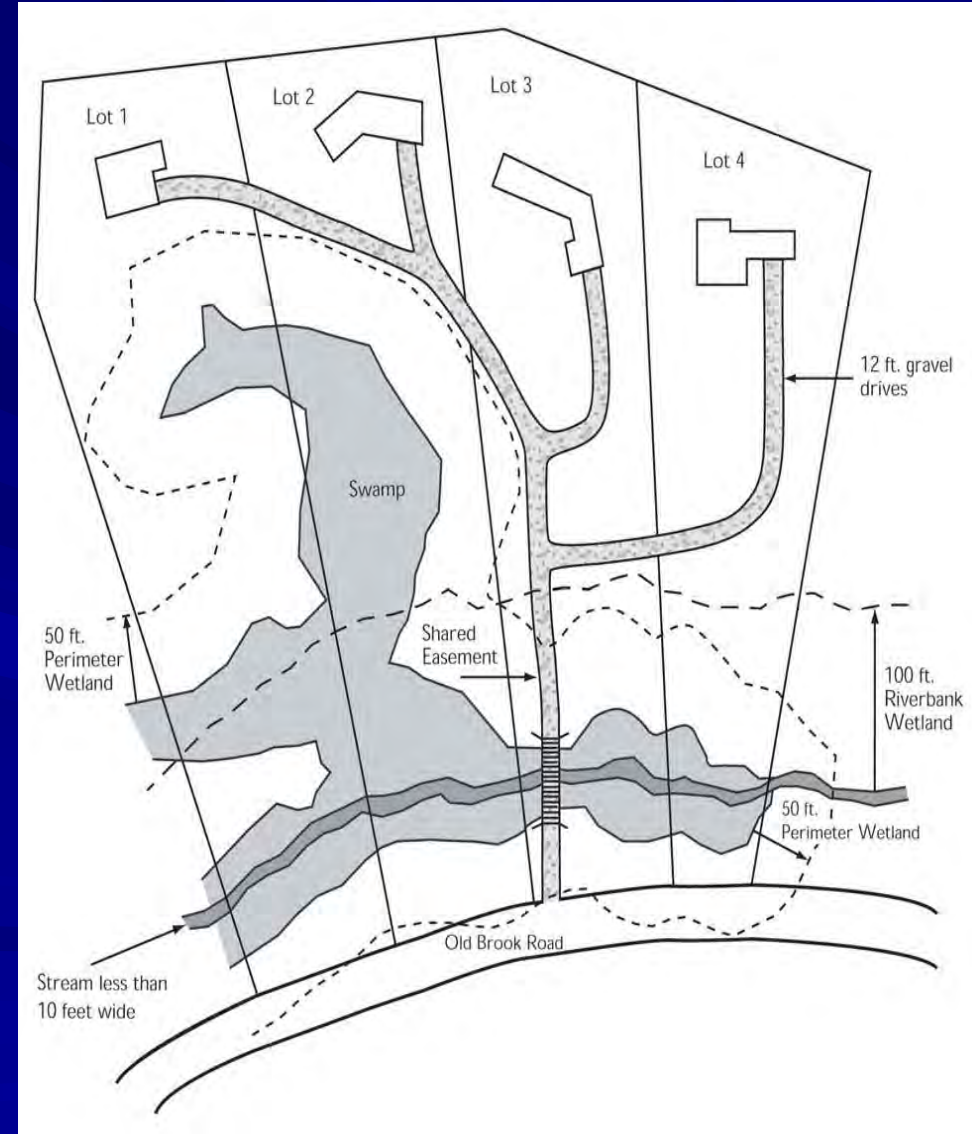
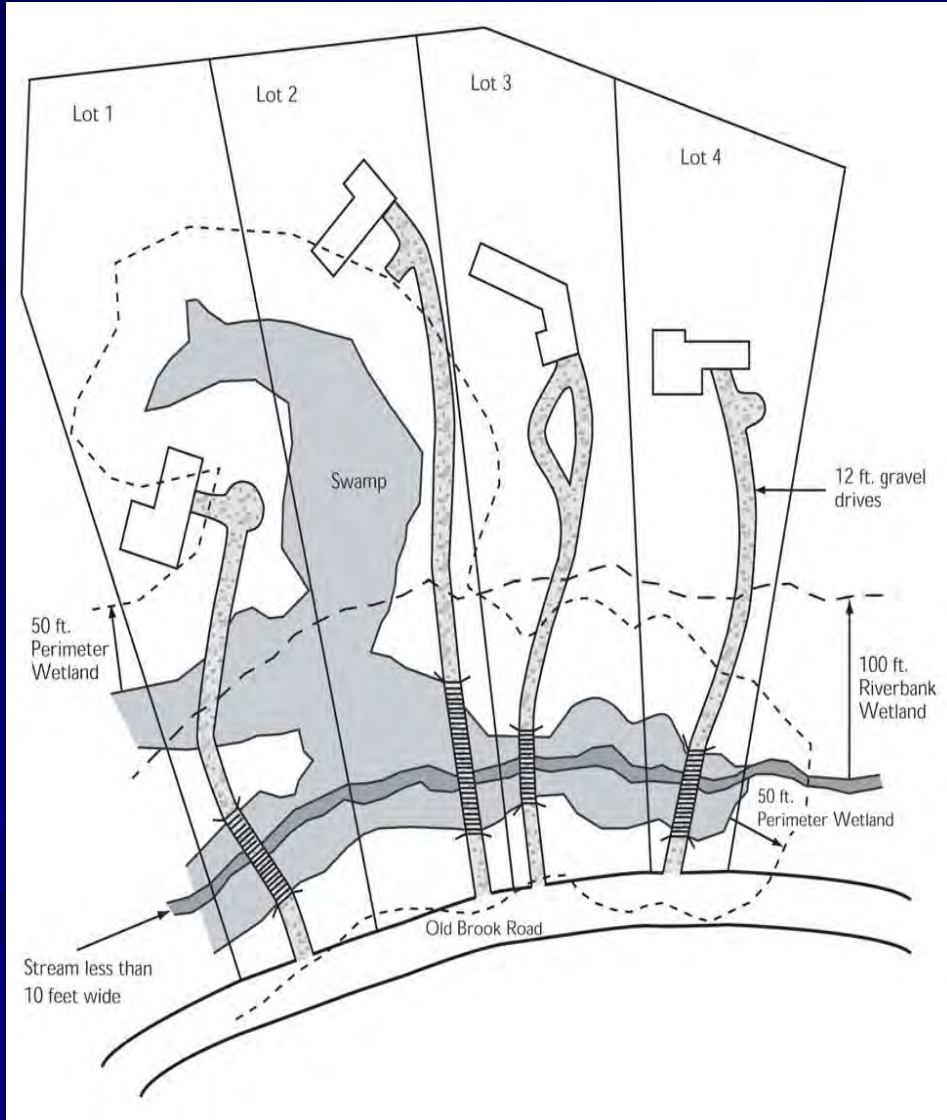
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Summary

- Vermont Wetland Rules
 - Protect Vermont's Significant Wetlands
- Jurisdiction
 - Not limited to VSWI maps (but good place to start)
 - Wetlands over ½ acre or next to waters
 - Wetland types of special Significance
- Permitting
 - Avoidance and Minimization is the key