

Responsiveness Summary for Comments Received on *January 2005 Riparian Buffer Guidance*

On January 20, 2005 the *Agency of Natural Resources Riparian Buffer Guidance* was signed by then-Secretary McLain. A number of informal comments were received by the Agency after release of the Guidance. As a result Secretary Torti decided seek additional public input, while allowing the January 2005 Guidance to remain in-place. Secretary Torti emphasized that all comments, whether written or verbal, would be duly considered and incorporated, as appropriate, into a revised Guidance.

Between mid-May and mid-July public comment was received on the ANR *Riparian Buffer Guidance*. Comments were solicited through direct mailings to interested persons; a public meeting; several small focused meetings; and the Agency and Department's websites. In the summary that follows, comments have been paraphrased in order to group with other like-comments and then organized by Guidance section. The numbers after the summarized comments refer to which organization(s) or individual(s) made the comment. This Responsiveness Summary documents and provides outcomes for all submitted comments. The list of those submitting comments includes:

1. VTRANS (written, meeting notes)
2. Patrick O'Brien
3. Lake Champlain Regional GBIC
4. VFPA (Ed Larson)
5. VNRC
6. Todd Menees, consultant
7. VSAA (written, meeting notes)
8. ACEC (Peter Boemig)
9. CVR Planning Commission (Ed Larson)
10. Manchester Planning Director Lee Krohn
11. Enman Engineering
12. Vermont League of Cities and Towns (meeting notes)
13. Notes take during the May 18th public meeting

Overarching Comments or Issues

A. Guidance documents in general remain obscure to the regulated community, so as with others - this one should be abandoned. If ANR wants a similar document ...it should be a rule. [8][11][13]

Response: It is the Agency's responsibility to assure that guidance and other policy documents are available to the regulated community as needed. The Agency needs to do a better job of marketing these documents. We will look to increase the use of web sites both as a place to post documents and as an information source. We hope this will assist in increasing awareness. Agency programs have developed and will continue to develop guidance documents to provide specificity to state and federal statutes and regulations with a goal of clarifying these programs for the users and the general public. Statutes require rulemakings under certain circumstances, which do not apply here. Agencies may also adopt rules as a policy decision. The Agency decided against rulemaking for

two main reasons: first, the Guidance, as clarified in the revised draft, is for use only in developing Act 250 comments by Agency staff and as advice for developers and the general public planning Act 250 projects; second, a rule has the force of law, and the Guidance is not intended to be authoritative in the manner of a rule or statute. The Guidance is intended to provide consistency and predictability for Agency staff developing recommendations in Act 250 and to give Act 250 applicants and potential applicants access to the same science and standards Agency will use, as an aid to project planning. Further this Guidance also serves as an educational tool for those entities looking to maintain and enhance effective buffers.

Proposed action: No change to the Guidance or rulemaking activity is proposed as a result of these comments. ANR will look to promote awareness of the Guidance.

B. It would be better for the guidance to be rescinded and have the Agency start again.
[4]

Response: After considering several options regarding the disposition of the adopted Guidance, Secretary Torti decided to keep the Guidance in place and seek additional public input. The Guidance documents the review process and resultant recommendations currently used in the Act 250 process by Agency staff. Consequently, rescinding the Guidance would only eliminate the written guidance available for staff and the regulated community...it would not change the process or outcome of developing buffer recommendations.

Proposed action: The adopted Guidance will remain in effect until a revised version is adopted.

C. There are concerns regarding the process that has implemented this guidance. We don't believe the public participation process conducted for the aborted 2001 draft procedure bears much relevance to the 2005 guidance. Consequently the fullest consideration, attention and time should be given to comments received during this process. [9]

Response: At the same time Secretary Torti opened a comment period on the Guidance, he emphasized that all comments, whether written or verbal, would be duly considered and incorporated as appropriate into a revised Guidance. This Response Summary documents and provides the outcomes for all submitted comments.

Proposed action: A number of changes will be proposed to the Guidance as a result of this review process. These changes are detailed throughout this response.

D. ANR lacks adequate resources to fully implement this document. [7][11]. The specific responsibilities of ANR personnel in working with applicants need to be more clearly defined. We are concerned that as currently stated in the FAQ document that accompanies the Guidance that "regionally based Fish & Wildlife Staff will be developing buffer recommendations", that broader policy issues will not receive appropriate weight in making such decisions [7].

Response: This Guidance was designed to provide sufficient background and detail so that the majority of Act 250 project applicants – specifically those whose application will be processed as minors - could determine an appropriate buffer themselves and

consequently not require special Agency staff consultation. The incorporation of appropriate buffers in project designs, therefore, will reduce the number of Agency staff initiated site visits. This should allow staff time to address large and complex developments that have historically and will continue to require staff consultations.

At this time it is the Agency's intent to have district fish and wildlife biologists be the first stop for applicants that require general buffer related consultations. Other programs that represent special resource areas, such as the River Management program and the Lakes and Ponds program are referenced in the Guidance.

While there is a direct relationship between water quality issues and fish and wildlife issues, the F&W staff are not water quality experts. The Agency agrees that ideally there would be Water Quality specialists specifically available to evaluate the water quality protection functions of buffers. The Agency is aware that this could impact our ability to provide excellent customer service and is looking for a long-term solution.

Proposed action: none.

E. Work with "Local Roads" to extend buffer education to Towns and Town road crews. [12]

Response: The Department of Environmental Conservation's Municipal Compliance Assistance Program (MCAP) works primarily with Towns and often Town Road maintenance staff to assure compliance with a variety of state and federal regulations. A large component of the work is outreach assuring that Towns are generally aware of these regulations and other BMP type practices. The proper management of riparian buffer areas is another area for this outreach. MCAP has already worked with the Vermont Local Roads Program and VLCT on a variety of projects and will continue to do so.

Proposed action: none.

F. VNRC supports the Guidance as written. [5]

Response: The Agency does intend to modify the Guidance to provide what we believe to be additional clarity. We do not intend to change the scope of the guidance or generally how buffer recommendations are developed.

Proposed action: none.

G. Application of Guidance should not be limited to Act 250 – why are agricultural and forestry exempt? [13]

Response: This Guidance only applies to projects that trigger Act 250 or Section 248 jurisdiction. If an agricultural or forestry based project activates these jurisdictions, the Guidance will apply. Otherwise, as stated in the Guidance, the agricultural AAPs and forestry AMPs still apply to these types of non-Act 250 projects.

Proposed action: none.

H. What constitutes an "on-stream" project in Act 250, so that this guidance would apply? [13]

Response: Where Act 250 or Section 248 jurisdiction is triggered by a project that contains or adjoins streams or lakes then this Guidance will be used by Agency staff to comment on any buffer issues that are present on the project. Section III of the Guidance discusses the site characteristics that influence how the guidance is applied to the projects that do trigger Act 250.

Proposed action: none.

Guidance Specific

Section I: Introduction and Summary

A. The recommendations in the Guidance document are not science-based; there is a need for Vermont-specific information to support the Guidance [4][7][13]. Strong support for the science that the Agency has used to develop this Guidance [5].

Response: The Agency believes that the recommendations in this Guidance are based on the best available science. Further, one of the primary objectives that the technical staff workgroup had in the development of this Guidance was to ensure that it was science based. Staff resource limitations would not allow the Agency to conduct a Vermont-based scientific study to comprehensively evaluate how successful recommended buffers have been in protecting riparian areas. In part, an extensive literature search was completed to achieve this goal. Relative to the idea that this should be Vermont specific information... the Guidance also documents the actions, processes and significant experience of technical staff applying these standards over the years. So in fact the scope of the recommendations is based on this Vermont experience.

Proposed action: none.

B. Concerns were expressed about mission creep. Even in Act 250, Commission laypersons will be inclined to enforce these minimums without due consideration of site-specific characteristics. [3, 7, 13, 8] Although the Agency intends this for use in Act 250 only, others, especially municipalities, will use it. These other entities may not understand the circumstances to apply site-specific review and simply and erroneously use the minimum recommendations or defaults.

Response: The Agency did not intend to suggest that any entity use the Guidance or buffers developed through application of the Guidance as default mandates for any projects. Rather that the site characteristics must be evaluated to determine an appropriate buffer width that meets the primary goal of protecting the functions and values of that particular riparian area. Agency staff are available both to the Act 250 commissioners and others to provide assistance in evaluating site characteristics and determining appropriate buffer widths.

Proposed action: The following language has been added in **Section I** of the Guidance: *In the companion Technical Papers, the Agency endeavors to assist others (private, municipal, regional, state, and federal entities) in understanding the functions and values of riparian buffers, the importance of sustaining and enhancing buffers, and in developing appropriate science-based guidelines or policies. This Guidance is not a substitute for guidelines or policies that will meet a specific entity's individualized needs.*

C. Relative to the issue of municipalities taking up the guidance, VLCT suggests ANR and VLCT work together to develop a model bylaw or ordinance for riparian areas. [12].

Response: The Agency would support a VLCT initiative to develop model bylaws or ordinances. This would be a supporting or review role.

Proposed action: none.

D. The guidance states that staff will use the guidance to develop recommendations for Agency programs “associated” with Act 250. What existing practices and procedures do not apply to Act 250 [11]

Response: The Agency has many practices and procedures associated with numerous programs that are not related to Act 250. Programs that provide presumptions of compliance with Act 250 are listed in Act 250 Rule 19; even fewer relate to riparian areas. For example, Air Pollution Control permits are a presumption of compliance in Act 250, but obviously have no relationship to riparian areas. Specific programs and their associated practices, procedures or rules that relate both to Act 250 and potentially riparian areas include: wetlands; stream alteration, construction of water distribution or water lines dams and stormwater. The intent of the original Guidance language was to ensure consistency and minimize conflicts between the program permits and actions and related conditions in Act 250.

Proposed action: The Guidance will be modified to clarify the intent. The specific reference to associated programs has been deleted from **Section I**.

E. Provide clarification regarding how the guidance will be coordinated with other ANR permitting and planning programs. Specifically, a request is made to inventory all water quality, wildlife habitat and fisheries regulatory and planning programs that the guidance may affect and make sure these are coordinated and do not conflict [1].

Response: The response above provides a partial list of programs that relate to this Guidance and Act 250. The Agency is very interested in ensuring consistency and minimizing conflicts between Agency programs related to Act 250 and Act 250 itself. Affected Agency program managers are aware of both this Guidance and the Agency’s goal in this area. The Agency is currently looking at all of its programs and statutory requirements in its ReThinking process for conflicts and inconsistencies and is including riparian buffer guidance in that review.

Proposed action: none.

F. If these are recommendations, the words “require” and “allowed” should not be used in this document. The non-compulsory nature of the document needs to be restored. [7][13][11]

Response: The Agency agrees with this comment. The use of these words was not intended to raise the level of this document to a more compulsory level.

Proposed action: Language throughout the Guidance will be modified to use words consistent with the Agency’s intent. Generally, compulsory phrasing such as “required” have been deleted from the Guidance.

G. The third paragraph should be rewritten to reflect the content of the document and discussions with ANR staff that indicate that the intent with this document was to provide two equally preferable alternative methods for buffer recommendations to the 50 and 100-foot minimums. It should be rewritten. [7]

Response: The Agency agrees with this comment.

Proposed action: The Guidance has been revised to include discussion of alternative methods for determining appropriate buffers, including riparian management plans. See revisions to **Section III.B.4 – Agency Consultation**.

H. Add the following sentence to the end of the 3rd paragraph on page 1: “Preservation, maintenance, expansion, and redevelopment of existing transportation infrastructure within riparian buffer zones are not subject to the 50 and 100 foot minimum buffer widths. These activities require consultation with the Agency to determine how the riparian functions will be maintained or enhanced at the project site.” [1]

Response: The Agency agrees that clarification is needed relative to existing development and the project types that may routinely require and individual evaluation. Further, we agree that many downtown, VTrans and ski area based project are likely to warrant a specific review. However, the Agency prefers to generalize the suggested language to not specifically reference VTrans projects.

Proposed action: Appropriate changes will be made in the Guidance, primarily in **Section III.B.4 – Agency Consultation**., to clarify how existing development will be reviewed and types of projects that will require individual review processes.

Section II.A Measuring Buffer Zone Widths

A. The guidance describes the measurement of buffers between water features and “allowed project activity”. There must be some distinction made between the types of adjacent project activity, which results in differing buffer needs. Suggested categories, and percentages of full buffer width recommendations are as follows:

- Impervious surface with no stormwater controls: 100 percent
- Impervious surface with stormwater controls: 90 percent
- Managed pervious areas (e.g., ski trails, golf courses): 75 percent
- Landscaped areas temporarily impacted during construction: 60 percent
- Restored areas (currently lacking buffers): 50 percent [7]

Response: Determining the appropriate buffer width at a particular site involves consideration of all of the functions and values of the riparian area. The type of project activity proposed for a particular site will obviously influence buffer requirements, but is not the only factor that the Agency will consider in recommending appropriate buffers. The intent of this Guidance was to describe the qualitative assessment process employed by Agency staff in determining appropriate riparian buffer widths, as opposed developing a more quantitative approach akin to that described by the commenter. The Agency is

willing to consider this type of quantitative approach, however, for projects where the applicant develops a site-specific riparian management plan.

Proposed action: See revisions to **Section III.B.4 – Agency Consultation**, which details the Agency’s vision for site-specific buffer determination which can take into account, among other things, the type of adjacent project activity.

B. The variable buffer width should start at the high water elevation of the bankfull, channel-forming stage and not at the grade break at the top of the bank. Measurement should be from the edge of water unless the embankment is steep. The use of top of bank and top of slope is problematic as a measuring start point. [6][11][4] Clarity regarding where buffers are measured from, that is, top of bank or top of slope is a necessary improvement from the 1996 Procedure. [5]

Response: The Agency reaffirms its belief that top of bank and top of slope are the appropriate locations from which to measure riparian buffers.

Proposed action: none

C. In areas of slopes greater than 10% (which includes much of Vermont) it may not be clear where the top of slope is and where a 100’ buffer begins. This should be made clear and be a reasonable (average annual high water) point to measure the 100’ buffer. [8]

Response: The Agency reaffirms its belief that top of bank and top of slope are the appropriate locations from which to measure riparian buffers. The Agency acknowledges that it is not always easy to identify the exact location of the top of slope. In Appendix C of the Guidance, the Agency provides a more detailed explanation, accompanied by illustrations, explaining techniques for measuring buffers from top of slope. It is particularly important to measure buffers for channels contained in a narrow V-shaped valley from the top of slope as the sides of the channel are often too steep to provide many of the water quality protections that will be afforded by a wider buffer measured from top of slope.

Proposed action: none

Section II.B.1 Recommended Minimum Buffer Zone Widths – Lakes

A. For lakes, ANR is now proposing to widen the previously proposed 100-foot buffer to go to the “top of slope” in areas where slopes are greater than 10 percent. This change should be eliminated. [7]

Response: The Agency has revised this portion of the text in response to the public comments. The Agency believes that the proposed changes address the concerns raised by this commenter.

Proposed action: See text revisions in **Section II.B.1.**

Section II.B.2 Recommended Minimum Buffer Zone Widths – Streams

A. [7][4] Table 1 does not provide any meaningful guidance. All of the decision criteria are subjective; we recommend it be eliminated and replaced with a more specific table that includes the following:

- “Steep” is not the same as “erodible”. Set steep slope threshold at 25 percent not 10 percent. [11][13]
- Include reduced buffer requirements for intermittent streams, and base determination of buffer width on upslope drainage area: Suggested default values would be 15 feet for streams with 10-50 acre upslope drainage area and 25 feet for intermittent streams with 50 to 100 acre upslope drainage area.
- Small riparian wetlands (less than ½ acre) should have a default buffer width of 25 feet.
- The default buffer width for streams below the steep slope threshold, large wetlands, and lakes, ponds and instream impoundments should be 50 feet.
- For perennial streams, wetlands, and lakes, ponds and instream impoundments in areas of steeper slopes, the default buffer width would be 100 feet from top of bank, or 50 to 100 feet from top of slope, depending on whether all slopes within the buffer corridor exceeded the threshold.
- For redevelopment and restoration sites, default buffer widths of 25 feet should apply for slopes less than 25 percent and 50 feet for slopes greater than 25 percent.
- Include the concept of a tiered buffer zone, with an inner zone not being subject to soil disturbance, and an outer zone eligible for short term construction disturbance, followed by revegetation, with no permanent impervious surface or channelized flow to be established.

Response: In developing this Guidance, the Agency sought to provide a tool that would both standardize Agency approach to establishing riparian buffers and be available for applicants to use in assessing the functions and values of riparian areas on their project site in order to make informed proposals for riparian buffers in Act 250 applications. The Agency intentionally established a broad definition for “stream,” as well as general, qualitative descriptions of the criteria used to categorize site features in order allow lay-people to conduct simplified buffer assessments. The comments received suggested that there was general support for the providing applicants with a buffer assessment tool, but that Table 1 would benefit from additional refinement. In developing the revised Guidance the Agency considered developing a process that involved more quantitative measures of buffer function, but ultimately decided that a qualitative approach was most appropriate and best able to consider the multi-faceted resource issues often involved in establishing appropriate riparian buffers. Alternatively, the Agency is willing to consider more quantitative approaches to buffer assessment for projects where the applicant develops a site-specific riparian management plan.

Proposed action: See revisions to **Section III.B** of the Guidance which has been reworked in order to improve its clarity and include additional discussion on the use of riparian management plans.

B. It appears that the Guidance calls for a 100-foot buffer on streams and wetlands [2][11].

Response: This was not the Agency’s intent. .

Proposed action: The Agency will clarify language related to minimum buffer requirements for streams and wetlands.

C. Extending the strip to 50 feet or more, when 25 feet is more than adequate is a problem [4]. There needs to be some flexibility provided in the application of the guidance [3].

Response: The Agency agrees that, in limited circumstances, a buffer less than 50 feet may be adequate to protect the functions and values of the riparian area.

Proposed action: Language has been moved from what was previously Table 1 and modified to provide greater clarification; see **Section III.B.3 – Agency**

Recommendations for Wider or Narrower Buffers.

D. VNRC is concerned that the Agency will be pressured to recommend buffers of less than 50 feet when there is no scientific basis for deviating from this minimal level of riparian protection [5].

Response: The Agency will continue to rely on the same science used to develop the Guidance and associated technical papers in making recommendations for appropriate buffers.

Proposed action: none

E. Consideration should be given to areas where land is already disturbed. [10] The guidance needs to be clearer on how existing development or growth centers will be treated. It appears the guidance would significantly limit the future development in existing settlements. [1][2][8][10][13] Suggestion is made that the Guidance state that the minimum recommended buffers not apply to transportation infrastructure; that consultations be used for these project types. [1][2][13]. A second suggestion is made to add a provision: 1) Avoids land development in buffers where possible; 2) Minimizes development in buffers; and 3) Allows mitigation for any adverse impacts on buffers' functions and values. [8]

Response: The Agency recognizes that there are locations where it will be challenging to provide the “default” buffer width recommended by the Guidance. It is anticipated that this challenge will be most common in projects involving development, or redevelopment, with existing encroachments. The intent of this Guidance is not to place unreasonable restrictions on these projects; however, it is also true that the functions and values of riparian areas within growth centers deserve no less protection than elsewhere in the state. The Agency therefore encourages applicants with projects in areas with existing encroachments to apply the Guidance and give full consideration to the recommended buffers. In the end, if the applicant feels that buffer recommendations developed through application of this Guidance are impractical, the Agency encourages the applicant to seek Agency consultation as would be expected for any project where the applicant wishes to propose a buffer narrower than that recommended by the Guidance.

Proposed action: See revisions to **Section III.B.4 – Agency Consultation**, which includes discussion of establishing buffers in areas with existing encroachments.

F. Determination of variable buffer widths should be based on site conditions and location rather than a recommended or prescribed fixed minimum width. This should reflect stream size, watershed size; stream energy (erosion potential); soil conditions and bank material. [13] USEPA’s DRAFT *National Management Measures to Control Nonpoint Source Pollution from Forestry* issued in April 2005 provides specific guidance on this [6].

Response: In developing this Guidance, the Agency sought to provide a tool that would both standardize Agency approach to establishing riparian buffers and be available for applicants to use in assessing the functions and values of riparian areas on their project site in order to make informed proposals for riparian buffers in Act 250 applications. The Agency intentionally established a broad definition for “stream,” as well as general, qualitative descriptions of the criteria used to categorize site features in order allow lay-people to conduct simplified buffer assessments. In developing the revised Guidance the Agency expanded its discussion of the role of site-specific riparian management plans. Specifically, as envisioned by the Agency, a riparian management plan also affords applicants an opportunity to propose non-standard buffer protection measures in order to accommodate unique features of a particular site.

Proposed action: See revisions to **Section III.B.4 – Agency Consultation**, which includes more in-depth discussion of riparian management plans.

G. Many acres of forest are enrolled in the VT Use Value Appraisal program. Extending the buffer beyond the 25 feet required under the AMP requirement will be problematic for the landowner both relative to their enrollment status in the UVA program and the use of their land [4]

Response: This Guidance applies only to projects that trigger Act 250 or Section 248 jurisdiction. If an agricultural or forestry based project activates these jurisdictions, the Guidance will apply. Otherwise, as stated in the Guidance, the agricultural AAPs and forestry AMPs still apply to non-Act 250 projects.

Proposed action: none

H. “Credit” (i.e., reduced buffer width) should be given for stormwater systems. [13]

Response: The Guidance is intended to protect the numerous functions and values served by riparian areas including, but not limited to, water quality. The Agency believes it would therefore be inappropriate to give “credit” for installation of a stormwater system, designed to address potential water quality impacts, without full consideration of all of the functions and values served by the riparian area.

Proposed action: none

Section II.B.4 Agency Consultation

A. Should be rewritten to clearly and more strongly endorse and give equal preference to modified site specific defaults [7]

Response: The Agency agrees that the Guidance should include additional discussion on the development and application of riparian management plans.

Proposed action: See revisions to **Section III.B.4 – Agency Consultation**.

B. There should be more specific guidance guidance/method to determine appropriate buffer widths (narrower or wider) for project sites. [8]

Response: In developing this Guidance, the Agency sought to provide a tool that would both standardize Agency approach to establishing riparian buffers and be available for applicants to use in assessing the functions and values of riparian areas on their project site in order to make informed proposals for riparian buffers in Act 250 applications. The Agency intentionally established a broad definition for “stream,” as well as general, qualitative descriptions of the criteria used to categorize site features in order allow lay-people to conduct simplified buffer assessments. The approach described in what are now **Sections III.B.1 and III.B.2** of the guidance is not intended to replace site-specific Agency consultation for more complex projects, including master plan applications for residential and commercial subdivisions and large-scale transportation corridor projects. In developing the revised Guidance the Agency expanded its discussion of the role of site-specific riparian management plans. Specifically, as envisioned by the Agency, a riparian management plan also affords applicants an opportunity to propose non-standard buffer protection measures in order to accommodate unique features of a particular site.

Proposed action: See new/revised **Sections III.B.3 – Agency Recommendations for Wider or Narrower Buffers** and **III.B.4 – Agency Consultation**.

Section II.C Acceptable Activities in Buffer Zones

A. The list of “acceptable” activities within a buffer essentially consists of pedestrian access. The list of acceptable activities should be expanded to include roads, bridges, trails, storm drainage, stormwater management facilities, utilities, stream restoration projects, scientific studies (e.g., stream gauging structures), horticultural practices, and individual removal of selected trees which pose a safety risk, provided that a lesser impact alternative has not been identified, and disturbance is minimized. The design of such structures should require maximum erosion protection and least adverse impact on wildlife and aquatic habitat, hydrologic processes, and water quality. Anything else is subject to negotiation with ANR staff. [7][11] Doesn’t include proper timber management practices. [4]

Response: The Agency disagrees that, in general, all of these activities constitute acceptable uses of what should be an undisturbed, naturally-vegetated buffer. The Agency may be willing to consider limited encroachments within the buffer, however, depending on site-specific circumstances. In order to evaluate any proposed encroachments the Agency would expect the applicant to develop a comprehensive riparian management plan that details activity within the buffer area.

Proposed action: See revisions to **Section III.B.4 – Agency Consultation**, which includes more in-depth discussion of riparian management plans.

B. Guidance is needed on when and what mitigation measures could be used and in more detail. [8]

Response: The Guidance was designed to provide sufficient background and detail so that the majority of Act 250 project applicants – specifically those whose applications will be processed as minors - could determine an appropriate buffer themselves and consequently not require special Agency staff consultation. Mitigation measures are more likely to be applicable to larger and more complex projects, and it is likely than any project proposing mitigation will require Agency consultation. Mitigation measures would be a component of a comprehensive riparian management plan an applicant could propose for their project site, in lieu of evaluating buffer functions using the criteria presented in the Guidance.

Proposed action: See revisions to **Section III.B.4 – Agency Consultation**, which includes more in-depth discussion of riparian management plans.

C. Is there any sort of de minimis exemption for small projects (i.e., a deck) that might extend into the buffer? [13]

Response: The Guidance is not attempting to exclude all intrusions in buffer areas and, as discussed in **Section III.C**, the Guidance already provides a basic framework for considering acceptable activities within the buffer area. Further, the Agency is concerned that if it were to define a de minimis exemption, it would create unnecessary additional burden in evaluating whether proposed activities were within the bounds of the exemption. Rather the Agency would encourage applicants unable to provide the full recommended buffer width, regardless of the scope of the encroachment, to request Agency consultation.

Proposed action: none.

Guidance Definitions:

A. Belt width: It is unclear why this definition is provided in the Guidance, as it is not referenced in the prior sections. It would appear that this has been included as a future placeholder for further expansions of buffer requirements as specific cases are reviewed under this document. [7]

Response: This definition is included in the Guidance because the term appeared both in the previous version of the Guidance in Table 1 and is currently used in the *Summary of Key Stream Riparian Buffer Functions and Typical Recommended Widths* (page 4), in describing the channel stability functions provided by riparian buffers.

Proposed action: none

B. Contiguous wetland: This is a new requirement which ties into imposition of buffers of up to 100 feet (or greater) for Class III wetlands, which equals (or exceeds) protection provided to rare Class I wetlands by the Vermont Wetland Rules. [7]

Response: This definition does not represent a new requirement. Through the Act 250 process, the Agency has always had the ability to request buffers on contiguous wetlands, be they Class I, II, or III.

Proposed action: none

C. Lake: This definition should be revised to clearly exclude reservoirs constructed by ski resorts for snowmaking water storage, and by golf courses for irrigation water storage. Buffer requirements should not apply to these features. [7]

Response: The definition will be revised to clearly exclude reservoirs constructed by ski resorts for snowmaking water storage and by golf courses for irrigation water storage.

Proposed action:

Lake: A body of standing water, including bodies named lake, pond, and reservoir, that may have natural or artificial water level control. In general, off-stream reservoirs specifically constructed for the following purposes are not considered lakes: snowmaking water storage; golf course irrigation; stormwater management; and, fire suppression. Exceptions would include constructed reservoirs discharging to natural waterbodies where any attendant thermal impacts are of concern.

D. Stream: This is a new definition, which includes artificial channels (e.g. swales, ditches, water bars), and intermittent streams. The prior draft policy, which established different stream categories for perennial, intermittent, and ephemeral streams, has been eliminated, which is problematic. This Guidance could result in the same buffer width requirement for the Winooski River, as that for a water bar on a ski trail. The definitions of the 2001 draft should be restored, specifically eliminating the reference to artificial channels that could be interpreted to include swales, ditches, and water bars. [7, 13] The definition of stream strictly interpreted appears to include almost any channel that would carry water at any time. We could suggest that a stream be defined as at least one half square mile of drainage area. (8) This Guidance shouldn't be lessened to remove intermittent as part of the stream definition and applicability. [5]

Response: As written, the definition of the Guidance is actually less stringent than that provided by Act 250. Definition will be tweaked to address some of the issues of clarity raised by comments.

Proposed action:

Stream: The full length and width, including the bed and banks, of any moving watercourse, including bodies named creeks, brooks, rivers, branches, and kills. A stream has a channel, ~~whether natural or artificial~~, that periodically or continuously contains moving water, has a defined bed, and has banks that serve to confine water at low to moderate flows. Streams include intermittent streams that have a defined channel and evidence of sediment transport, even if such streams does not have surface water flow throughout the year and/or throughout the channel. For the purpose of this guidance, constructed drainageways including water bars, swales, and roadside ditches, are not considered streams.

E. Wetlands: This is a new definition provided which expands ANR jurisdiction. [7]

Response: The definition of "wetland" provided in the Guidance includes a minor modification to the definition included in the Wetland Rules. This was done to correct for a small technical error; specifically, the words "or saturated" have been added to reflect the fact that, strictly speaking, lands do not have to be inundated to be considered "wetlands".

Proposed action: none.