

SEN. SETH BONGARTZ, VICE CHAIR
SEN. SCOTT BECK
SEN. ROBERT PLUNKETT
SEN. DAVID WEEKS

REP. TREVOR SQUIRRELL, CHAIR
REP. MARK HIGLEY
REP. CAROL ODE
REP. LARRY SATCOWITZ



STATE OF VERMONT

Legislative Committee on Administrative Rules (LCAR)

August 6, 2026

The Honorable Sarah Copeland Hanzas
Secretary of State
State of Vermont
128 State Street
Montpelier, VT 05609-1101

Dear Secretary Copeland Hanzas:

This letter is to formally notify you that the Joint Legislative Committee on Administrative Rules has voted to certify its objection to the Agency of Natural Resources' final proposal 25-P040 relating to the Vermont Wetland Rules. The Committee's objection was made at its meeting on May 21, 2026. The Agency initially responded to the Committee's objection on June 4, 2026. On June 18, the Committee granted the Agency additional time to respond to the Committee's objections. The Agency submitted a revised rule to the Committee on July 14. The Committee voted to modify its objections at its meeting on July 23, 2026. On August 6, 2026, the Committee voted 6-2 to certify its objection. Sen. Weeks and Rep. Higley voted to oppose certifying the objection.

Pursuant to 3 V.S.A. § 842(b), the Committee objects that the rules are inconsistent with the legislative intent stated in 10 V.S.A. § 901 that the regulation and management of wetlands should be guided by science. The rules do not specify how an allowed use for residential housing is science based. The rules are intended to facilitate the construction of housing and to minimize the risk of litigation and avoid diversion of resources from the complex problem of housing. These are policy-based proposals and not backed by science as required by the legislative policy of wetlands management set forth under 10 V.S.A. § 901.

Pursuant to 3 V.S.A. § 842(b), the Committee also objects that the rules exceed statutory authority as stated in 10 V.S.A. § 913(a) and 10 V.S.A. § 905b(18). Under 10 V.S.A. § 913(a), the Secretary of Natural Resources may adopt allowed uses in wetlands. However, 10 V.S.A. § 914 requires that the buffer of a Class II wetland must be determined as part of an individual wetland determination. The Agency may not reduce the buffer of a Class II wetland by establishing an allowed use. The Agency must conduct an individualized determination pursuant to 10 V.S.A. § 914 before it may do so.

Further, while 10 V.S.A. § 905b(18) permits the Secretary to adopt rules, subdivision (C) of 10 V.S.A. § 905b(18) states that for wetlands that have been designated so significant that they merit protection, the Secretary may adopt rules, but the "rules may only protect the values and functions sought to be preserved by the designation." The rulemaking authority is limited by the

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principle of protecting wetland values and functions. The rules allowing the construction of residential housing do not protect wetland values and functions, so the rules exceed statutory authority.

The Committee requests that your office inform any interested party that its objection has legal effect under 3 V.S.A § 842(c) of the Administrative Procedure Act. That subsection provides in part: "to the extent that the objection covers a rule or a portion of a rule, the burden of proof thereafter shall be on the agency in any action for judicial review or for enforcement of the rule to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the Legislature, is not arbitrary... and that the agency did adhere to the strategy for maximizing public input prescribed by the Interagency Committee on Administrative Rules."

Sincerely,

A handwritten signature in cursive script, appearing to read "Trevor Squirrel".

Rep. Trevor Squirrel
Chair, Legislative Committee on Administrative Rules

cc: Members, Legislative Committee on Administrative Rules
Louise Corliss, APA Clerk, Office of the Secretary of State
Misty Sinsigalli, Commissioner, Agency of Natural Resources
Catherine Gjessing, General Counsel, Agency of Natural Resources