



March 11, 2019

House Committee on Agriculture and Forestry  
House Committee on Natural Resources, Fish, and Wildlife  
Senate Committee on Agriculture  
Senate Committee on Natural Resources and Energy

Dear Chairs and Committee Members:

Conservation Law Foundation, Connecticut River Conservancy, Lake Champlain Committee, Lake Champlain International, The Nature Conservancy, Vermont Chapter of the Sierra Club, Vermont Natural Resources Council, Audubon Vermont, and Vermont Conservation Voters have significant concerns with the proposals to revise Title 10 Chapter 37 of Vermont statute on wetlands protection presented by the Administration, the Senate Committee on Agriculture, and the House Committee on Agriculture and Forestry. As an alternative, we recommend the Legislature incorporate several key principles to clarify wetland regulation and enhance protection of this finite and precious resource.

Wetlands provide invaluable services to Vermont communities each year. These superstar ecosystems sequester carbon, improve water quality by filtering out pollutants, store floodwater,

and provide fish and wildlife habitat.<sup>1</sup> The Otter Creek wetlands upstream of Middlebury saved the town an estimated \$1.8 million in avoided flood damages from Tropical Storm Irene.<sup>2</sup> A recent study by The Trust for Public Land found that Vermont's wetlands provide by far the greatest per acre value of natural goods and services (such as water quality protection, flood prevention, and habitat) of any land cover type in the state.<sup>3</sup>

In addition, the cleanup plan for Lake Champlain depends on Vermont's wetlands remaining intact since the loss of 10 to 20 percent of wetlands in a watershed can lead to an increased phosphorus load of 18 percent.<sup>4</sup> Beyond Lake Champlain, wetlands play a critical role in protecting water quality throughout Vermont. In fact, the State has highlighted wetlands as "one of the most important microtopographic features abating non-point source nutrients."<sup>5</sup> This conclusion is supported by new research by UVM's Gund Institute for Environment, which suggests that restored wetlands can capture enough additional phosphorus to meet up to one third of Vermont's goals for Lake Champlain under the cleanup plan.<sup>6</sup>

The value of wetlands cannot be overstated. We therefore urge the Legislature to adopt the principles outlined below to ensure wetlands continue to provide Vermonters with critical ecosystem services.

### **The Definition of a Wetland Should Be Scientific**

We recommend the Legislature define wetlands scientifically to avoid confusion and unintended wetland loss. The current definition of a wetland excludes areas that grow food or crops in connection with farming. This exclusion signifies that wetlands that are used to grow food or crops are not, by definition, wetlands, which is scientifically false and misleading. Rather than exempting activities within the definition of a wetland, we recommend defining wetlands based on science.

### **Broad Agricultural Exemptions Should Be Reevaluated**

We recommend the Legislature reassess the need to broadly exempt agricultural activities from wetlands permitting. Despite the State's commitment to no net loss of functions, values, or acreage, roughly 220 acres of wetland and wetland buffer were lost or altered between 2011 and

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<sup>1</sup> Vermont Department of Environmental Conservation, *Vermont Wetlands Program's 2011-2015 Trend Report and Regulatory Update*, 2 (Dec 2017) [http://dec.vermont.gov/sites/dec/files/documents/wl\\_2011to2015TrendReportAndRegulatoryUpdate\\_2017-12.pdf](http://dec.vermont.gov/sites/dec/files/documents/wl_2011to2015TrendReportAndRegulatoryUpdate_2017-12.pdf).

<sup>2</sup> Watson, Keri B., Ricketts, Taylor, Galford, Gillian, et al. (2016) Quantifying flood mitigation services: the economic value of Otter Creek wetlands and floodplains to Middlebury, VT, *Ecological Economics* 130: 16-24.

<sup>3</sup> The Trust for Public Land, *Vermont's Return on Investment in Land Conservation* (Sept 2018) [https://www.tpl.org/sites/default/files/files\\_upload/Vt\\_ROI\\_8\\_16\\_18final.digital.pdf](https://www.tpl.org/sites/default/files/files_upload/Vt_ROI_8_16_18final.digital.pdf) (p.48).

<sup>4</sup> State of Vermont, *Vermont Lake Champlain Phosphorus TMDL Phase I Implementation Plan*, 120 (Sep 2016) [https://dec.vermont.gov/sites/dec/files/wsm/erp/docs/160915\\_Phase\\_1\\_Implementation\\_Plan\\_Final.pdf](https://dec.vermont.gov/sites/dec/files/wsm/erp/docs/160915_Phase_1_Implementation_Plan_Final.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> University of Vermont Gund Institute for Environment, in publication (anticipated Spring, 2019).

2015.<sup>7</sup> The additional impact of farming on wetlands is unknown because the State does not track wetland loss from exempted activities. Wetland loss is particularly concerning in the Lake Champlain and Lake Memphremagog watersheds because of the critical role wetlands play in mitigating phosphorus pollution. We therefore urge the Legislature to reevaluate the need for sweeping agricultural exemptions. The importance of wetlands warrants their close scrutiny by the Department of Environmental Conservation (DEC) with clear and scientifically-grounded rationale for exempting activities from review.

### **Wetlands Jurisdiction Should Be Clear**

We recommend the Legislature ensure wetlands jurisdiction is clear to avoid unintended impacts to wetlands. It can be challenging for landowners to determine whether their property contains a wetland. Therefore, creating a clear process of determining jurisdiction that includes the expertise of DEC staff is critical.

In addition to DEC's important role in wetlands determination, we urge the Legislature to uphold DEC as the sole agency with jurisdiction over wetlands. DEC's mission is to protect wetlands, and it is inappropriate for other agencies or departments to override DEC rulemaking to safeguard these natural resources.

### **Wetlands Should Be Protected and Restored**

We urge the Legislature recognize the need to safeguard existing wetlands in addition to restoring impacted wetlands. Protecting Vermont's 300,000 acres of wetland from disturbances is vital to ensuring ecosystem services. We support making the process easier to reclassify our exemplary wetlands as Class 1 wetlands. In addition, we believe Vermont needs to invest in wetland restoration.

In conclusion, we value wetland regulations that are clear and protective. We do not believe the current proposals under discussion achieve the principles we outline. We appreciate the opportunity to share our comments, and we hope the process for undertaking any revision to statute will be inclusive of the many stakeholders with interest in wetland policy.

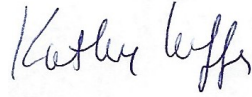
Sincerely,

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<sup>7</sup> Vermont Department of Environmental Conservation, *Vermont Wetlands Program's 2011-2015 Trend Report and Regulatory Update*, 2 (Dec 2017) [http://dec.vermont.gov/sites/dec/files/documents/wl\\_2011to2015TrendReportAndRegulatoryUpdate\\_2017-12.pdf](http://dec.vermont.gov/sites/dec/files/documents/wl_2011to2015TrendReportAndRegulatoryUpdate_2017-12.pdf).



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