



STATE OF VERMONT

Legislative Committee on Administrative Rules (LCAR)

December 14, 2023

SENT VIA ELECTRONIC MAIL ONLY

Catherine Gjessing
General Counsel
Vermont Fish and Wildlife Department
1 National Life Drive, Davis 2
Montpelier, VT 05620
Catherine.Gjessing@vermont.gov

Re: 23-P15 – 10 V.S.A. Appendix § 44, Furbearing Species

Dear Ms. Gjessing:

This letter is to formally notify you that at its meeting on December 14, 2023, the Legislative Committee on Administrative Rules (LCAR) voted to file the following objections in certified form with the Secretary of State pursuant to 3 V.S.A. § 842(c)(1):

- the objection to Sec. 3.20, the definition of trapping, on the ground that it is contrary to the intent of the General Assembly, including the intent of 2022 Acts and Resolves No. 159, Sec. 1(d), to add the word hunt to the definition;
- the objection to Sec. 3.14(b), a portion of the definition of public trail, on the ground that this portion of the definition is contrary to the intent of the General Assembly, including the intent of 2022 Acts and Resolves No. 159, Sec. 1(a)(4), to include all trails where persons may reasonably be expected to recreate;
- the objection to Sec. 4.15, trapping setbacks, that exempts from the setback requirements traps set in the water or under ice on the ground that it is contrary to the intent of the General Assembly, including the intent of 2022 Acts and Resolves No. 159, Sec. 1(a)(4), to exempt traps set in the water or under ice from setback requirements; and
- the objection to Secs. 3.6, definition of control of dog(s), and 4.20, taking coyote with the aid of dogs, on the ground that it is contrary to the intent of the General Assembly, including the intent of 2022 Acts and Resolves No. 165, Sec. 3(b)(4), to allow the taking of coyote with aid of dogs unless there is a required means of controlling dogs that sufficiently minimizes the risk that dogs pursuing coyote will enter onto land that is posted against hunting, enter onto land where pursuit of coyote with dogs is not authorized, harass or harm people or domestic animals, and cause other unintentional damages to people or property.

Filing the fourth objection, to Secs. 3.6 and 4.20, in certified form has legal significance with respect to the current moratorium on pursuing coyote with the aid of dogs. *See* [2022 Acts and Resolves No. 165](#) (Act 165), Secs. 2 and 3. Under Act 165, “[a] person shall not pursue coyote with the aid of dogs, either for the training of dogs or for the taking of coyote, except” in limited circumstances and it is not until “the effective date of the Fish and Wildlife Board rules **required by Sec. 3 of [Act 165]**” that the moratorium is repealed. *See* 2022 Acts and Resolves No. 165, Sec. 2 (emphasis added).

Specifically, the “rules required by Sec. 3 of [Act 165]” **must**, among other requirements “include at least . . . (4) a definition of control to minimize the risk that dogs pursuing coyote:

- (A) enter onto land that is posted against hunting;
- (B) enter onto land where pursuit of coyote with dogs is not authorized;
- (C) harass or harm people or domestic animals; and
- (D) cause other unintentional damages to people or property . . .

2022 Acts and Resolves No. 165, Sec. 3(b).

As previously explained in correspondence from some members of LCAR, the House Committee on Environment and Energy (the successor to the House Committee on Natural Resources, Fish, and Wildlife), and the Senate Committee on Natural Resources and Energy dated October 26, 2023, the definition of control and the requirements for taking coyote with the aid of dogs in Secs. 3.6 and 4.20 of the version of 10 V.S.A. Appendix § 44, Furbearing Species as proposed by the Fish and Wildlife Board in its response to LCAR’s objections (November 30, 2023, Rule), do not meet the General Assembly’s intent that the level of control required by an adopted rule would, in general, “reduce conflicts between landowners and persons pursuing coyote with the aid of dogs by reducing the frequency that dogs or persons pursuing coyote enter onto land that is posted against hunting or land where pursuit of coyote with dogs is not authorized[,]” or the specific requirements of the definition of control. 2022 Acts and Resolves No. 165, Sec. 3; *see also* [Memorandum from Rep. T. Squirrell et al. to C. Gjessing, Oct. 26, 2023](#); [Letter from C. Gjessing to Rep. T. Squirrell et al, Nov. 30, 2023](#).

The five members of LCAR who voted to file the fourth objection in certified form are of the opinion that the fourth objection being filed in certified form shifts the burden of proof to the Fish and Wildlife Board in any action for judicial review or for enforcement of the rule related to Secs. 3.6 and 4.20, *see* 3 V.S.A. § 842(c)(2), and should be interpreted as evidence that the current moratorium on pursuing coyote with the aid of dogs is **not** lifted upon the effective date of the November 30, 2023, Rule, if adopted, because Secs. 3.6 and 4.20 of the November 30, 2023, Rule do not meet the minimum requirements of the rules required by Sec. 3 of Act 165, specifically Sec. 3(b)(4), and therefore the triggering event for the repeal of the moratorium in Act 165, Sec. 2(b) has not been met.

This opinion is consistent with the intent of the General Assembly that the moratorium on pursuing coyote with aid of dogs remain in place until the effective date of a Fish and Wildlife

Board rule that meets the minimum requirements of Act 165, Sec. 3, of which the November 30, 2023, Rule does not.

Sincerely,

/s/ Trevor Squirrell

Trevor Squirrell
Chair, Legislative Committee on Administrative Rules

cc: President *Pro Tempore* Philip Baruth, Vermont Senate
Louise Corliss, APA Clerk, Office of the Secretary of State
Anthea Dexter-Cooper, Committee Counsel, LCAR
Charlene Dindo, Committee Assistant, LCAR
Chair Brad Ferland, Fish and Wildlife Board
Commissioner Christopher Herrick, Department of Fish and Wildlife
Speaker Jill Krowinski, Vermont House of Representatives
Michael O'Grady, Deputy Chief Counsel, Office of Legislative Counsel
Members, LCAR
Members, House Committee on Environment and Energy
Members, Senate Committee on Natural Resources and Energy