

January 14, 2026

Vermont Agency of Natural Resources
1 National Life Drive
Montpelier, Vermont 05620

Re: Comments on Proposed Changes to the Vermont Wetland Rules (VWRs)

Via email to: WetlandsRulemakingComment@vermont.gov

To Whom It May Concern:

I. Introduction

The undersigned organizations submit the following comments regarding the Vermont Agency of Natural Resources (ANR) proposed amendments to the Vermont Wetland Rules (VWRs). We oppose the proposed rule changes that would increase Vermont's vulnerability to floods, drought, water pollution and biodiversity decline by weakening protections for wetlands. While we support efforts to facilitate the development of housing in growth areas designated by the Land Use Review Board (LURB) through the planning process set forth in Act 181 of 2024 (Act 181), we oppose the proposed changes to the VWRs because they will result in the destruction of wetlands that provide important protections for Vermonters and exceed ANR's authority to amend the VWRs under Vermont law.

Our comments as set forth below detail our concerns that the proposal to allow unmapped wetlands to be developed and to reduce the protective wetland buffer from 50 feet to 25 feet for wetlands in certain growth areas violates Vermont's wetland statutes and will result in harm to people, housing, infrastructure and the environment. In addition, we offer alternative ideas for wetland permitting in growth areas designated by the LURB that are consistent with the law and would not have the adverse effects of the proposed amendments to the VWRs.

II. The Proposed Rule Increases Vermont's Vulnerability to Flood, Drought, Water Pollution, and Biodiversity Decline

Wetlands are pivotal in creating a flood and drought resilient landscape through water absorption and retention, a natural filter of pollutants, and play an outsized role in providing habitat for species biodiversity. By weakening protections for wetlands, the proposed amendments to the VWRs place already vulnerable Vermonters at increased risk of harm from flooding and water pollution, while reducing our overall climate and biodiversity resilience.

Wetlands in areas like downtowns, village centers and other settlement areas play a crucial role in retaining and slowing flood waters, thereby protecting important infrastructure. We saw this play out in numerous downtown areas in the recent flooding in Vermont including in Barre City, Plainfield Village, Johnson, Hardwick, Lyndonville and many more communities. If not for the presence of wetlands, Vermonters would have seen far worse flooding and water pollution during these floods.

A UVM study of the buffering effect that wetlands had during Tropical Storm Irene found that the wetlands reduced the maximum height of floodwaters in Middlebury Vermont by 6-10 feet, saving 20-50 structures from flooding, estimated at \$500,000 to \$1,800,000 in damages averted.¹ The researchers estimated that the annual savings to Middlebury (from less catastrophic flooding events) was \$125,000 to \$450,000 per year. A study by The Trust For Public Land found that Vermont's wetlands provide an estimated \$590 per acre annually in flood protection and wildlife habitat, more than three times as much as the next land cover type, deciduous forests.² These benefits will only grow in importance with the escalating impacts of climate change.

On the other end of hydrological extremes, wetlands serve a critical role in retaining water on the landscape during periods of prolonged, severe drought, as experienced by Vermonters last year. As climate change models predict more severe flooding followed by more frequent periods of drought, protection and restoration of our wetlands will prove essential in regulating water flows in Vermont.

Wetlands also improve water quality by trapping sediments and removing nutrients and other pollutants. Small wetlands adjacent to rivers and streams are especially effective at removing pollutants and sediment. Restoring wetlands in the Vermont portion of the Lake Champlain Basin could achieve 15% of the pollution reduction goals required for the lake by the federal government.³

Furthermore, wetlands play an important role in supporting the survival of wildlife and maintaining biodiversity. Wetlands are critical for bird health and population stability. Approximately one-third of North American bird species use wetlands for food, shelter, or breeding. In addition, according to the Department of Environmental Conservation's website, wetlands provide essential habitat and food for numerous wildlife species, including rare species,

¹ Quantifying flood mitigation services: The economic value of Otter Creek wetlands and floodplains to Middlebury, VT, K. Watson, T. Ricketts, et al., *Ecological Economics*, October 2016.

² Vermont's return on investment in land conservation (Trust for Public Land, 2018), p. 48.

³ N. Singh, J. Gourevitch et al., *Optimizing wetland restoration to improve water quality at a regional scale*, *Environmental Research Letters* (2019); *Restore Wetlands to Cut Flood Costs, Phosphorus Pollution: TNC-Gund Study* (2019).

and about “43% of the nation's endangered and threatened species rely directly or indirectly on wetlands for survival.”⁴

Wetlands also play an important role in sequestering carbon. See <https://bwsr.state.mn.us/carbon-sequestration-wetlands> and <https://oceanservice.noaa.gov/ecosystems/coastal-blue-carbon/>. Given the threats from climate change we should not be allowing wetlands to be filled that would mitigate these impacts.

III. The Proposed Rule Violates Vermont Law

The proposed amendments to the VWRs would allow housing projects in specified growth areas to be built in unmapped Class II wetlands or within 25 feet of a mapped Class II wetland without review and protection by ANR. 10 V.S.A. § 902(7) defines a Class II wetland as:

“[a] wetland other than a Class I or Class III wetland that:
(A) is a wetland identified on the Vermont significant wetlands inventory maps; or
(B) the Secretary determines to merit protection, pursuant to section 914 of this title, based upon an evaluation of the extent to which it serves the functions and values set forth in subdivision 905b(18)(A) of this title and the rules of the Department.”

Vermont statute also provides that there shall be a 50 foot buffer around a Class II wetland. Specifically, 10 V.S.A. § 902(6) provides that a buffer zone is:

“[a]n area contiguous to a significant wetland that protects the wetland’s functions and values. The buffer zone for a Class I wetland shall extend at least 100 feet from the border of the wetland, unless the Department determines otherwise under section 915 of this title. The buffer zone for a Class II wetland shall extend at least 50 feet from the border of the wetland unless the Secretary determines otherwise under section 914 of this title.”

Moreover, 10 V.S.A. § 913 prohibits any activity in a Class II wetland without a permit.

Taken together, these statutes require that ANR protect through a permit program both mapped and unmapped wetlands, including a 50 foot buffer around a Class II wetland, unless ANR determines through a scientific analysis that a wetland is not significant or that a 50 foot buffer is not needed to protect the functions and values of a wetland. The functions and values that ANR must consider when making such a determination are listed in 10 V.S.A. § 905b(18)(A), which

⁴Agency of Natural Resources, Department of Environmental Conservation, Wetland Functions and Values: Rare, Threatened and Endangered Species Habitat, available at <https://dec.vermont.gov/watershed/wetlands/functions/wetland-functions-and-values-rare-threatened-and-endangered-species>

are comprehensive, based on science and include storing waters during floods, protecting surface and groundwater quality from water pollution, and protecting fish and wildlife habitat.

ANR does not have the authority to declare that activities in unmapped wetlands that qualify as Class II wetlands can be undertaken without a permit without analyzing the important functions and protections provided by a wetland set forth in Vermont law. 10 V.S.A. § 902(7), 10 V.S.A. § 913 and 10 V.S.A. § 905b(18)(A) are clear - the significant functions provided by Class II wetlands must be protected by ANR unless ANR conducts a scientific review of the wetlands functions and values that allow for a wetland and its 50 foot buffer to be filled.

ANR attempts to circumvent the statutory requirement to protect Class II wetlands - mapped and unmapped - that provide significant functions and protections for Vermonters, and the 50 foot buffer around these wetlands, by creating an exemption for certain housing projects in certain areas of Vermont. ANR does not have the authority to create a broad exemption from wetland protection in the VWRs that directly conflicts with its obligation to protect Class II wetlands and their 50 foot buffer as set forth in 10 V.S.A. § 902(7), 10 V.S.A. § 913 and 10 V.S.A. § 905b(18)(A). Only the Vermont Legislature through an amendment to Vermont's wetland protection statutes can authorize such an exemption.

It appears that ANR is relying on one line in 10 V.S.A. § 913(a) to justify creating a new extremely broad exemption in its proposed rule. 10 V.S.A. § 913(a) provides:

“Except for allowed uses adopted by the Department by rule, no person shall conduct or allow to be conducted an activity in a significant wetland or buffer zone of a significant wetland except in compliance with a permit, conditional use determination, or order issued by the Secretary.”

ANR has taken the one line in statute that references allowed uses being adopted by rule as carte blanche to create a new broad exemption that could have significant adverse impacts on wetlands. By doing so, ANR ignores several other provisions of Vermont statute that place limits on ANR's authority to create exemptions to the VWRs. For example, 10 V.S.A. § 901(2) and (3) provides that:

“(2) the wetlands of the State shall be protected, regulated, and restored so that Vermont achieves a net gain of wetlands acreage; and

(3) regulation and management of the water resources of the State, including wetlands, should be guided by science, and authorized activities in water resources and wetlands should have a net environmental benefit to the State.”

Creating a broad exemption for housing projects in areas that ANR has determined are designated for growth directly violates the requirement in Vermont statute that wetlands should be “protected, regulated and restored” to achieve “a net gain of wetlands acreage.” 10 V.S.A. § 901(2). How can allowing Class II wetlands and buffer areas to be filled be consistent with managing wetlands to achieve a net gain of wetlands?

We note that the net gain requirement was enacted in just 2024 as part of the Flood Safety Act (Act 121) in response to the extreme flooding Vermont has experienced and to help ensure that Vermonters will be protected in future floods by preserving wetlands. We further note that Act 121 requires ANR to amend the VWRs to implement the net gain policy. Rather than fulfill its obligation under Act 121, ANR is instead proposing to weaken wetland protections and increase the loss of wetlands via its proposed rule.

The proposed rule is also contrary to the Governor’s Resilience Implementation Strategy (RIS) and the Vermont Climate Action Plan, both of which call for increased wetland protection and restoration. See <https://climatechange.vermont.gov/resilience-strategy/overview>. This core component of the RIS is because wetlands serve as ready-made green infrastructure for the community by slowing floodwaters, filtering stormwater, these critical nature-based public service functions are not something we want to destroy but carefully protect.

Similarly, creating this broad new exemption violates 10 V.S.A. § 901(3) that requires that ANR’s management of wetlands should be “guided by science.” ANR’s decision to allow a certain type of project in areas it has designated for growth is clearly not guided by wetland science and puts wetlands that provide vital functions and values at risk. To the contrary, the decision to allow Class II wetlands to be filled is based on allowing development of certain types of projects in areas that ANR has deemed growth areas where natural resources protection should be diminished.⁵

The Vermont Supreme Court has held that when interpreting a statute, the goal is to effectuate the intent of the Legislature and, to do so, the entire context of the statute in question must be analyzed. *State v. Berard*, 211 Vt. 39 (2019). In *State v. Berard*, the Vermont Supreme Court held that:

In construing a statute, our paramount goal is to discern and implement the intent of the Legislature.” Miller v. Miller, 2005 VT 89, 14, 178 Vt. 273, 882 A.2d 1196. “To determine that intent, we must examine and consider fairly, not just isolated sentences or phrases, but the whole and every part of the statute, together with other statutes standing in pari materia with it, as parts of a unified statutory system.”

⁵ ANR’s charge under Vermont law is to protect water resources and to “protect and enhance” the quality of surface waters “to assure public health, not to facilitate the degradation of water resources. 10 V.S.A. § 905b & 1250.

When looking at “the whole and every part of the statute,” rather than the isolated sentence that references “allowed uses,” the purpose of the wetland statute in its entirety is to protect wetlands that provide significant functions and values (including Class II wetlands), manage wetlands based on science and the specific functions and values they provide, and achieve a net gain of wetlands. *Id.* In accordance with Vermont Supreme Court precedent, ANR’s authority to create allowed uses must be read within the context of all these provisions of the wetland statute and, doing so, it is clear that the allowed use proposed in the rule violates the intent of the statute.

Until this proposed rule, ANR has demonstrated an understanding that its authority to create allowed uses is limited by and may not conflict with its obligation to protect significant wetlands based on science. To this end, the allowed uses that are listed in the current VWRs either have minor impacts, like recreation activities and lawn maintenance and placing barbeque pits on properties, or are necessary to address emergencies. There are allowed uses related to managing utility lines, but these activities are limited by the linear nature of utility lines and that the projects must still comply with management practices adopted by ANR to address wetland impacts.

The most significant allowed uses in the VWRs are for certain agricultural and silvicultural activities. However, Vermont’s wetland statute specifically requires ANR to treat agricultural and silvicultural differently under the VWRs and both agricultural and silvicultural activities are subject to separate regulations that address wetlands. 10 V.S.A. § 905b(18)(C).

In contrast to the allowed uses in the VWRs, the new exemption created in ANR’s proposed rule is extremely broad and can have significant impacts on wetlands. The footprint of a house can be many acres depending upon the size of the project and related infrastructure - such as driveways and utilities, for example - but there is no limit on the size of a project that is exempt from the VWRs. Accordingly, entire wetlands could be filled given that the new exception relies solely on maps that may not reflect true field conditions.⁶

⁶ Only protecting mapped wetland represents a shift from a reliance on wetland functions based on science to protect wetlands under Vermont law. This shift represents a poor public policy choice that will result in a loss of significant wetlands. Maps are a planning tool and not meant to substitute in-field delineation of hydrology, soils, and hydrophytic vegetation to protect wetland functions and values. The wetland maps have known inaccuracies, which make them a good planning tool but the wrong tool to protect significant wetlands. This is why Vermont law and federal law do not rely on maps for wetland protection. The proposed rule will be at odds with federal wetland permitting, which requires wetland delineation. This will create an inconsistency between state and federal wetland protection and create more uncertainty in wetland regulation in Vermont.

Moreover, unlike the other allowed uses, there are no practices in place that will limit wetland impacts associated with development in the growth areas established by ANR. Rather, the new allowed use would allow wetlands to be destroyed without any limitations or mitigation.⁷

The allowed use that ANR is proposing to create in its proposed rule is inconsistent with and not authorized by Vermont law. If ANR were to be allowed to create such a broad exemption in the VWRs, it would open the door for ANR to allow major impacts to wetlands without limit and contradict its obligation to protect significant wetlands and achieve a net gain of wetlands. Accordingly, in order to create the new, broad exemption ANR is proposing, the Vermont Legislature would have to amend Vermont's wetland statute.

IV. Alternative Approaches

We urge ANR to withdraw its proposed rule and work with our groups and other stakeholders on alternative approaches. As a first step in such an effort, we reiterate the request we have made of ANR previously to identify any systemic problems that wetland protection is causing with regard to housing development. It is very difficult to craft solutions to problems that have not been clearly identified.

That being said, we are open to the idea of addressing wetland protection in planned growth areas in a manner that recognizes Vermont's need for housing. We support Act 181 and the planning process to map growth areas for housing and critical resource protection areas. Accordingly, we would support policies that address wetlands permitting in the Tier 1B housing growth areas being mapped under Act 181 by the LURB.⁸

However, such policies must ensure that crucial wetland functions that protect Vermonters from floods and water pollution remain protected. We are not helping people or the housing crisis by allowing people to build in areas where flooding and pollution will be exacerbated by eliminating wetlands or building in wet areas that will generally harm development and create long-term, negative economic and environmental impacts. Potential policies ANR could pursue include:

- Allowing housing projects that have a smaller footprint to comply with a set of practices to protect wetlands in certain growth areas rather than requiring an individual permit is one potential way of approaching wetlands protection in these areas. This could be

⁷ Again, allowing wetlands to be filled without any limits or mitigation is directly contrary to the requirement that ANR increase mitigation for wetland impacts in order to meet the policy of achieving a net gain of wetlands in the FSA.

⁸ The growth areas identified in the proposed rule are overly broad including sewer service areas and opportunity zones. Any proposals to address permitting for housing should be limited to Act 181 Tier 1B housing growth areas that are subject to a comprehensive planning process.

accomplished with a General Permit approach, for example, which could include consideration of issues including the extent of wetlands impact, the size/density of the proposed housing, and the functions and value of the impacted wetland. A General Permit approach could also allow for mitigation that complies with the Net Gain requirement of the Flood Safety Act.

- Prioritizing the review of projects in Tier 1B areas and employing additional staff or permit specialists to assist permit applicants for housing projects in growth areas through the process.
- Adopting policies that more specifically define the types of wetland impacts that must be avoided and mitigated for housing projects in growth areas.
- Focusing wetlands mapping efforts in growth areas to reduce the number of unmapped wetlands in these areas and ensuring that wetlands mapping stays up to date and reflective of wetland science
- Working with towns to inventory wetlands in growth areas to identify areas that must be avoided to protect wetlands upfront so people know where development can occur on a parcel.
- Adopting a Vermont Wetland Certification Process for Professional Wetland Consultants practicing wetland science to help relieve burden on ANR review and support wetland science.
- Increasing resources and capacity of the Wetland program to timely respond to requests for on-site ecological evaluation, delineation review, and VSWI map updates.

We stand ready to work on these and other proposals with ANR. However, we cannot support a proposed rule that will eliminate wetlands that protect Vermonters and the environment by creating a broad exemption that violates Vermont law.

Vermont Natural Resources Council
Conservation Law Foundation
The Nature Conservancy
Audubon Vermont
Connecticut River Conservancy
Lake Champlain Committee
Vermont Conservation Voters