

To: Legislative Committee on Administrative Rules (LCAR)
Re: Opposition to Vermont Wetland Rules Amendment 25-P040
Date: April 27, 2026

I submit this testimony in opposition to Vermont Wetland Rules Amendment 25-P040 and in support of a formal LCAR objection under 3 V.S.A. § 842. I have reviewed the full 570-page LCAR filing package, including the April 6, 2026 Responsiveness Summary.

The record before this Committee documents multiple independent grounds for a formal objection: the rule exceeds ANR's statutory authority, is not based in science as the statute requires, is arbitrary under 3 V.S.A. § 801(b)(13), fails to recognize substantial economic impact, and was produced by an agency simultaneously out of compliance with a prior legislative mandate on the same subject. Other public comment and testimony before this Committee addresses several of these grounds in depth. I briefly affirm arguments made by others regarding statutory authority, the omission of the required Scientific Information Statement, and the failure of the economic and environmental impact analyses. I focus the balance of my testimony on procedural deficiencies and due process violations that are most directly within LCAR's review authority and that have received less attention in the record.

I came to be invested in this process as a private landowner and land manager. I steward a 600-acre parcel in Orange, Vermont and manage an additional 400 acres for a neighboring landowner. On my own parcel, state maps indicated a calcareous fen and northern White Cedar swamp at approximately two acres. Walking the property, I observed clear indicators of an ecosystem closer to ten acres in size, a discrepancy I subsequently confirmed with DEC wetland ecologists on the ground through a site visit. The 400 acres I manage is home to a Class II wetland with documented S1 imperiled plant species, again mapped at a fraction of its actual extent. These are not isolated anomalies. They are illustrations of the central deficiency in this rule: it bases permit exemptions on maps that the agency itself acknowledges are built from aerial photography rather than field surveys, and that routinely misrepresent and underrepresent both the location and size of the wetlands they purport to show.

The consequences of building policy on this foundation are not theoretical. A half-mile of the unpaved town-maintained road I live on was stripped to bedrock during the 2023 flood. I subsequently volunteered in flood recovery in nearby Barre City in their aftermath, and saw in real time the impacts of these devastating floods. Vermont incurred an estimated total \$1.5 billion in damages across three consecutive years of flooding. Housing development and ecological function are not mutually exclusive goals. Wetlands are among our most effective tools for flood hazard mitigation, and backpedaling on their protection without adequate scientific or economic impact analysis is not a responsible response to a housing crisis. I urge this Committee to exercise its legislative authority to object to this filing.

The rule's stated legal foundation is an admission of statutory non-compliance.

When asked about the missing Scientific Information Statement, a required component listed in the filing's own table of contents but absent from the 570-page package, DEC responded that it was intentionally omitted because the rule "does not rely on scientific information for its validity" and is instead "based on the Executive Order." This is significant for two reasons. First, it is a documentable APA filing deficiency: 3 V.S.A. § 838(a)(8) requires a scientific information summary in any rule filing that depends on science for its validity, and the agency's own characterization does not exempt it; it simply confirms the form is missing. Second, 10 V.S.A. § 901(3) explicitly declares that wetland regulation "should be guided by science." Vermont Attorney General Opinion No. 2025-01 confirms that "an executive order may not direct agency to contravene statute." DEC has stated on the record that this rule is based on an executive order rather than science - an admission that the rule's stated rationale is legally insufficient under the statute it is meant to implement. LCAR should press DEC directly on what the lawful basis for this rule is, if not science.

A second APA filing deficiency is also independently documentable.

3 V.S.A. § 838(a)(14) requires that a final proposed rule filing include a proposed schedule for completing all rulemaking requirements. The schedule in this filing ends at the public comment deadline; no subsequent steps are listed. This omission was identified in the public comment record by Thomas Weiss, P.E. Two required APA filing components are absent from the record, either of which is independently sufficient as a basis for a formal objection under 3 V.S.A. § 842.

The agency is in active non-compliance with a prior legislative mandate on the same subject.

Section 918(a) of Act 121 (2024) required the Secretary to amend the Vermont Wetland Rules "on or before July 1, 2025" to clarify that the goal of wetlands regulation is the net gain of wetlands. That deadline passed without compliance. LCAR is now being asked to approve a rule amendment from an agency out of compliance with a prior, date-specific legislative mandate on the same subject - a rule that not only fails to fulfill that obligation but moves in the opposite direction, explicitly carving unmapped Class II wetlands out of net gain compensation requirements (Responsiveness Summary, Response 1). This is an independent basis for objection: the Committee should not approve a rule from an agency that has not met its prior statutory obligations to the Legislature on the same topic.

The rule quietly eliminates procedural rights unrelated to its housing rationale.

Two additional changes in the rule warrant independent scrutiny. The amendment eliminates the reconsideration process (Sections 8.4 and 9.6) statewide, removing the intermediate step between permit issuance and formal appeal for all wetland permits, not just housing projects in designated areas. This is a statewide rollback of procedural rights with no relationship to the housing justification offered for the rule. Additionally, under current rules, abutting landowners are notified and given the opportunity to comment when a permit is required for impacts to mapped or unmapped Class II wetlands. The proposed rule eliminates this notice and review process for unmapped wetlands, removing a statutory participation right without legislative authorization and eliminating the practical ability to petition for protection of an unmapped wetland before construction begins, a right that cannot be removed by executive rulemaking alone.

The statute, read as a whole, does not support the rule's authority claim.

In *State v. Berard*, 211 Vt. 39 (2019), the Vermont Supreme Court held that statutory interpretation requires examining "the whole and every part of the statute" together. ANR relies primarily on a single line in 10 V.S.A. § 913(a) referencing "allowed uses adopted by rule" as authority for the broad housing exemption, while the statute read as a whole, including §§ 901(2), 901(3), 902(7), 905b(18)(A), and 913(b), requires science-based protection of all Class II wetlands and a net gain of wetland acreage. The allowed-use provision cannot be read in isolation to override that comprehensive protective framework.

I urge LCAR to file a formal objection.

The procedural deficiencies documented here, including two missing APA filing components, an agency admission that the rule's basis conflicts with the governing statute, and active non-compliance with a prior legislative mandate, provide clear, documentable, and legally sufficient grounds for objection that are independent of, and in addition to, the scientific and policy arguments throughout this record.

Respectfully submitted,



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