



To: LCAR, via Lindsey Schreier, Lindsey.Schreier@vtleg.gov

CC: Representatives and Senators in the watersheds we represent:

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Rep. Amy Sheldon, asheldon@leg.state.vt.us, Chair of House Committee on Environment

Sen. Anne Watson, awatson@leg.state.vt.us, Chair of Senate Committee on Natural Resources & Energy

From: Lewis Creek Association

Kate Kelly, Program Manager, kate@lewis creek.org

Date: April 24, 2026

Re: Proposed Wetlands Rules Changes before LCAR

Lewis Creek Association commented on the proposed wetland rule changes, and our comments were not fully addressed in the ANR responsiveness summary. We strongly feel that this rule, even as revised, is **contrary to the intent of the Legislature, is arbitrary, and fails to recognize substantial economic and environmental impacts**. See our comments below to support these assertions. The bold sections are aligned with our public comment (shown on pp. 301-306 of the

filing); beneath each are the relevant portions of the ANR responses, with italics below that describing how the response did not address our concerns.

Do not meet statutory requirement and are arbitrary.

Statute re: net gain of wetlands

- ANR Response 1 states that “the proposed Vermont Wetland Rules amendments were revised to include provisions that require mitigation to achieve a net gain of wetlands, consistent with the Flood Safety Act, Act 121 of 2024, **when direct impacts to wetlands are proposed through permitting.**” (bold is my addition).
 - *This rule changes the permitting process, by taking unmapped class II wetlands out of the permitting process. This does not comply with the intent of the statute/Act 121, as it causes loss of class II wetlands without accounting for the loss (because it would no longer be permitted).*
- Also in ANR Response 1, “By contrast, and as documented in annual legislative reports required by Act 121 (2024), **permitted wetland losses are, on average, less than one acre per year.** The net gain in functions and values that accrue statewide vastly offsets the potential losses that may occur as a result of the proposed rule within the very limited geographic extent of designated areas (roughly 3 percent of total land area of the State) where some wetlands remain unmapped.” (bold is my addition)
 - *Using the baseline of previously permitted wetland losses to future losses is not a fair comparison, as future losses will be greater (as they will be not permitted, and not required to comply with the compensation requirement).*
- #16 Explanation of how the rule is not arbitrary states “The proposed rule amendments are not arbitrary; they are supported by both the Agency’s enabling authority, data collected by state government, as well as Agency staff and wetland professionals.”
 - *The Agency provided no evidence of which Agency staff and wetland professionals were consulted or supported the proposed rule change. There are no data provided to support this statement, and we have heard of no wetlands professionals or staff who support this change.*

Are inequitable. (Neighbors would have different rules applied to their properties. Large landowners who hope to develop a parcel could meet the standard simply by including a house on some portion of the property. In addition, the modification areas are too big and extend well beyond village growth areas/village centers.)

- *The ANR response did not address this concern. Removing the Opportunity Zones from the rule changed helped marginally, but still does not address issues of inequity.*

Are contrary to other recently passed acts, Would negatively impact water quality and our work to reduce phosphorus inputs to Lake Champlain, and Would lead to increased costs to taxpayers in our watersheds and beyond during floods and droughts.

Act 121 states “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.”

- ANR Responses 9 & 10 state “A **comprehensive environmental impact analysis of the proposed rule suggested in comments received is not possible** as it would require the Agency to have mapped all unmapped wetlands that are located within designated areas. Projects proposed in the designated areas identified by Executive Order 06-25 (2025) and the revised proposed rule, in cases where existing wetlands are not mapped, **may result in some environmental impacts to those unmapped wetlands**. Those changes are **potentially** offset through the revised proposed rule amendments involving mitigation sequencing as referenced in the Agency’s response to Comments #1 and #2.” “**No specific studies were conducted.**” (bold is my addition)
 - *There is no indication that this proposed rule change is guided by science, and the scientific environmental impact analysis was not completed. The word “potentially” in the response indicates that the Agency does not know the result and that this analysis is not guided by science.*
- In ANR Responses 18, 19, and 20 regarding degradation to water quality, introduction of invasive species, loss of functions and values, reduced flood storage capacity, increased flooding and erosion, etc., the Agency states “**The Agency agrees that the listed issues are a concern** and that is why the allowed use is only for a limited area of the state for a limited timeframe. The proposed rule aims to balance the compelling housing demands and the environmental benefits of compact settlement against environmental risk in the limited areas of Vermont eligible to utilize the Allowed Use. And as noted in response to Comment #8, it is unlikely that potential wetland impacts within designated areas would meaningfully alter flood dynamics at the watershed-scale.” Also (Response 20), “stormwater management requirements for any development creating more than ½-acre of impervious surface are designed to mitigate changes in hydrology, including flood risk, resulting from development.” (bold is my addition)

- *There is no evidence that this rule change will result in authorized activities in water resources and wetlands that have a net environmental benefit to the State. Building in class II wetlands and decreasing their buffers will, without a doubt, negatively impact the state's environment.*
- *Only developments creating more than 0.5 acre of impervious will be subject to stormwater management requirements; those smaller than that could impact class II wetlands without any stormwater management requirements. 0.5 acre is equivalent to 21,780 sq ft. If a development were to create 20,000 sq ft of impervious surface in unmapped class II wetland under this rule, using the numbers in Comment and Response 27 (which the Agency did not disagree with), in a 1 inch rain storm, there would be more than two above-ground pools worth of water rushing downstream through undersized culverts, flooding and damaging roads downstream (under current rules this water would be stored onsite in the existing wetland and released slowly). Even in a situation where stormwater management was required by the developer, the cost to construct stormwater infrastructure (as opposed to the free work that wetlands already do for us) is immense, easily on the order of \$500,000 for two gravel wetlands. Replacing natural systems with built infrastructure is costly and short-sighted.*
- *The Agency provides no evidence for their comment that “It is unlikely that potential wetland impacts within designated areas would meaningfully alter flood dynamics at the watershed-scale”, nor that the watershed scale is what is important here. The town and local residents (the road and houses just downstream from the impacted wetlands) would argue otherwise, as costs to repair and replace roads and bridges, deal with flooding damages, and more will impact them directly and will be much greater than what exists under current rules.*

Would reduce protections of critical wildlife habitats such as vernal pools.

- ANR Response 21 states “Where National Wetland Inventory polygons intersected with vernal pool data points, the data was included for the VSWI update. The Wetlands Program is considering how to incorporate additional vernal pool data points into future VSWI updates. It should be noted that very large buffer zones are required to sustain vernal pool species populations, and the difference between 25- and 50-feet is unlikely to be dispositive. The proposed rule aims to balance the compelling housing demands and the environmental benefits of compact settlement against environmental risk in the limited areas of Vermont eligible to utilize the Allowed Use.”

- *Vernal pool data points should be included in mapping everywhere they occur, not only if they intersect with NWI polygons. Vernal pools (and other forested wetlands that are difficult to detect via aerial photography or lidar) are not “negotiable” class II wetlands. They are protected class II wetlands, and not including them on maps does not make them disappear or make them less important to biodiversity. This rule would impact vernal pools, and the wildlife that depend on them by making them eligible to be filled (without review or delineation) if they are not mapped.*
- *The VSWI updated maps are better than they were previously, but they still miss many wetlands including vernal pools. We cannot rely on maps without field delineation to regulate class II wetlands.*

To reiterate, we are strongly opposed to these proposed wetlands rule changes, and believe that there are other solutions to improve housing availability and affordability in the state, without making misguided and costly changes to the wetlands rules. The proposed rule in front of you is **contrary to the intent of the Legislature, is arbitrary, and fails to recognize substantial economic and environmental impacts.** We urge you to object to it on these bases.

Thank you for your time,

A handwritten signature in cursive script that reads "Kate Kelly".

Kate Kelly, Program Manager

On behalf of Lewis Creek Association Board