

VERMONT
WETLAND
RULES:
PROPOSED
AMENDMENTS

Legislative
Committee on
Administrative
Rules April 30, 2026

LCAR REVIEW

- ▶ When a proposed amendment to a rule is filed with LCAR, the Committee requests that the Office of Legislative Counsel review the rule for the LCAR review criteria.
- ▶ Chairs of standing committees with jurisdiction over the subject matter of the rule also request Legislative Counsel input as those chairs are requested to submit comment to LCAR on a proposed rule.

LCAR may object to a draft rule for one or more of the following reasons:

- (1) a proposed rule is beyond the authority of the agency;
- (2) a proposed rule is contrary to the intent of the Legislature;
- (3) a proposed rule is arbitrary;
- (4) the agency did not adhere to the strategy for maximizing public input;
- (5) a proposed rule is not written in a satisfactory style in accordance with 3 V.S.A. § 833;
- (6) the economic impact analysis fails to recognize a substantial economic impact of the proposed rule, fails to include an evaluation and statement of costs to local school districts required under 3 V.S.A. § 838, or fails to recognize a substantial economic impact of the rule to such districts; or
- (7) the environmental impact analysis fails to recognize a substantial environmental impact of the proposed rule.

LEGISLATIVE COUNSEL MEMO TO LCAR CHAIR AND STANDING COMMITTEE CHAIR

To: → Senator Anne Watson¶
→ Chair, Senate Committee on Natural Resources and Energy¶
→ Representative Amy Sheldon¶
→ Chair, House Committee on Natural Resources¶
→ Representative Trevor Squirrel¶
→ Chair, Legislative Committee on Administrative Rules¶

¶

From: → Michael O'Grady¶
→ Office of Legislative Counsel¶

CC: → Commissioner Misty Sinsigalli¶
→ Department of Environmental Conservation¶

Date: → April 17, 2026¶

Subject: → ANR Proposed Amendments to Wetlands Statutes and Rules¶

The LC Memo to the LCAR Chair and Standing Committee Chairs proposed 5 major questions regarding the proposed rule, with sub-questions in some categories.

The chairs requested I send the memo to the Commissioner of DEC and the ANR General Counsel.

ANR General Counsel provided a response memo on Monday, April 29.



1 National Life Drive, Davis 2, Montpelier, VT 05620-3901
(802) 828-1294 | <https://anr.vermont.gov/>

To: Senator Anne Watson
Chair, Senate Committee on Natural Resources and Energy

Representative Amy Sheldon
Chair, House Committee on Natural Resources

Representative Trevor Squirrel
Chair, Legislative Committee on Administrative Rules

Michael O'Grady
Office of Legislative Counsel

CC: Commissioner Misty Sinsigalli
Department of Environmental Conservation

Catherine Gjessing, General Counsel
Vermont Agency of Natural Resources

Date: April 27, 2026

Subject: ANR Proposed Amendments to Wetlands Statutes and Rules

The Agency of Natural Resources' responses to the letter are set forth below in the order of the questions and comments articulated in the letter.

ANR RESPONSE TO LC MEMO

LC Question

Questions for the Agency: Please clarify the authority you assert for adoption of the allowed use for residential housing projects and linear utility projects.

Specifically, if the Agency has existing authority to adopt the proposed rule amendments, why is the Agency proposing the session law amendments that purport to grant that authority?

Does the Agency believe the session law amendments will control over the proposed rule changes.

ANR Response

Title 10 V.S.A. Chapter 37 sets forth statutory authority to adopt the Vermont Wetlands Rules under 10 V.S.A. § 905b(18) and 10 V.S.A. § 913(a).

Section 913(a) provides clear and explicit authority for the Agency of Natural Resources' statutory authority to adopt allowed uses that are exempted from permitting by rule.

The intent of the Administration and ANR in proposing the session law was to provide the Legislature with information about ANR's rulemaking efforts and an opportunity to support temporary amendments to the wetland rules that facilitate housing projects in designated growth areas. This is in part because it has been apparent since the issuance of E.O. 06-25 that some legislators and environmental advocacy groups are adamantly opposed the E.O. directives related to the wetland rules.

It is well established that statutes control over rules, in other words, a rule is not valid if it conflicts with a statute. The rule sections of the session law are entirely consistent with the proposed rule pending before the Legislative Committee on Administrative Rules (LCAR).

STATUTORY AUTHORITY FOR ADOPTION OF ALLOWED USES

LC Question

In addition, the Agency's proposed amendments to the Wetlands Rules would eliminate permitting for the construction of mixed-use housing in unmapped wetlands and allow construction of utility corridors in mapped Class II wetlands.

As the wetlands rules are required to “only protect the values and functions sought” in the designation of a wetland, how are the proposed rules consistent with the statutory requirement to protect wetlands and the specific values and functions set forth in 10 V.S.A. § 905b(18)(A)?

ANR Response

The premise underlying this question – that the Vermont Wetland Rules require individualized protection of functions and values for every activity in every wetland – appears to misread the structure of the statutory and regulatory framework. The statute directs the Agency to adopt rules that protect the functions and values set forth in § 905b(18)(A). It does so through a tiered classification system that includes both permitted uses and categorical allowed uses.

CONSISTENCY OF PROPOSED RULES WITH
STATUTORY REQUIREMENT TO PROTECT WETLANDS
AND THEIR SPECIFIC VALUES AND FUNCTIONS

ANR Response

LC Question

Under the Administrative Procedure Act, one of the ways that a rule is defined as “arbitrary” is that “[t]he decision made by the agency would not make sense to a reasonable person.”

Could you explain how the Agency’s decision to rely on Class II VSWI maps for the identification of a wetland for purposes of the allowed use for residential housing and related required utilities would make sense to a reasonable person when the Vermont Wetlands Rules themselves deem the maps to be unreliable?

The Agency’s decision to rely on Class II VSWI maps for the identification of wetlands within the proposed residential housing allowed use in designated areas is reasonable, well-grounded in the existing regulatory framework, and would make sense to a reasonable person for the following reasons:

Section 4.4 states that all wetlands shown on the VSWI maps are Class II wetlands, and Section 2.7 defines Class II wetlands by direct reference to VSWI map identification. The Rules have always relied on the maps as the foundation of the regulatory classification system and the primary regulatory trigger. The caveat in Section 4.4 of the Vermont Wetland Rules that the VSWI maps “should not be relied upon to provide precise information regarding the location or configuration of wetlands” was written to protect landowners and the resource in individual permitting contexts – where the exact location of a wetland boundary determines whether a specific activity requires a permit. This is a different regulatory question from designating a category of activities as allowed uses and reflects a historic concern about map quality.

ARBITRARINESS OF RELIANCE ON VERMONT SIGNIFICANT WETLANDS INVENTORY MAPS

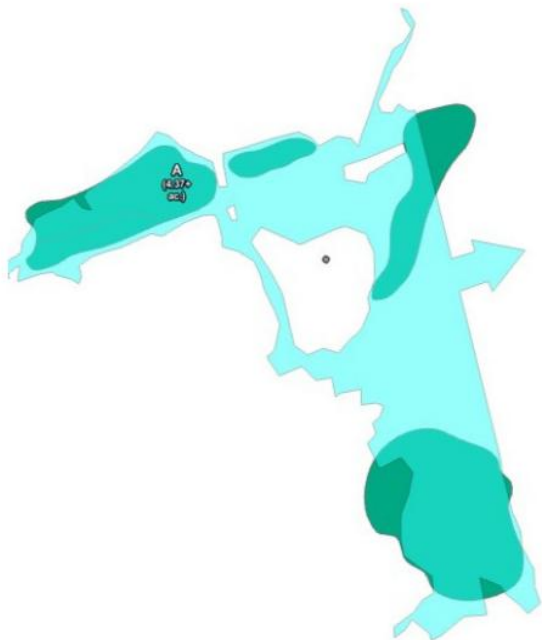
ANR Response

The Agency has substantially invested in improving the quality and accuracy of its wetland maps, under legislative direction and with funds appropriated specifically for this purpose, and is now proposing to use those improved maps for a limited regulatory basis; this is both a rational and transparent approach.

The proposed allowed use also removes a structural constraint that has slowed housing development in Vermont. Under the current framework, wetland delineations can only be reliably conducted during the growing season – approximately May through October. Because the Agency generally advises to “delineate then design” a housing developer can experience months of delay and associated cost before being able to obtain any of the necessary permits for their project. Tying the allowed use in designated areas to mapped wetlands provides regulatory certainty necessary for larger-scale design and planning and eliminates the seasonal constraint for the housing projects in state-designated growth areas where the State has expressly determined it wants to concentrate development.

In summary, the Agency is applying updated, high-quality maps – produced under legislative mandate and representing the best available science – to accelerate the development of housing in the very places the State has already said it wants more housing. This is a targeted regulatory adjustment that reasonably balances important State policies to prioritize much needed housing in certain designated areas of Vermont.

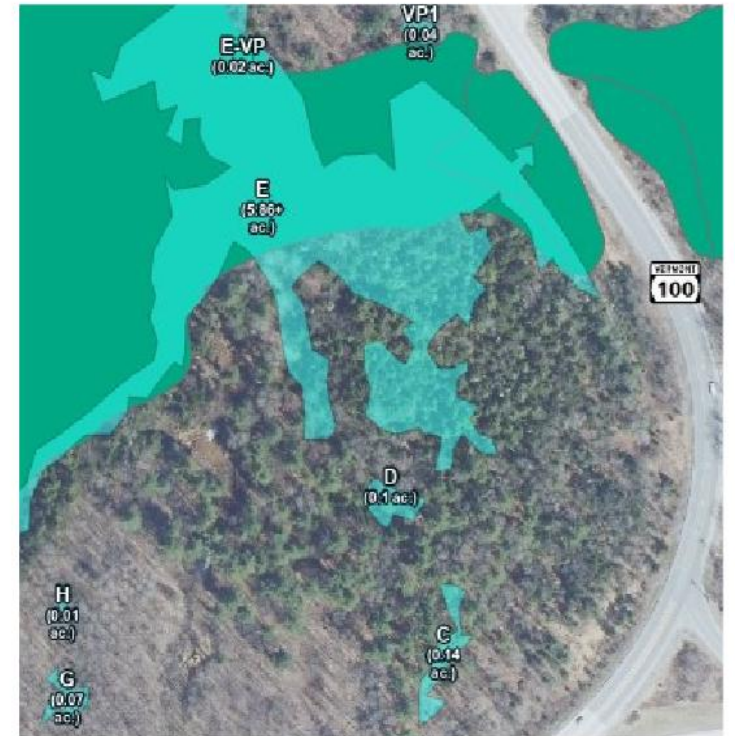
ARBITRARINESS OF RELIANCE ON VERMONT SIGNIFICANT
WETLANDS INVENTORY MAPS



This image shows the new VSWI mapping in dark green and the formal field delineation that I conducted using the science based protocols in blue. The VSWI mapping located wetland but came far short of accurately identifying the wetland boundaries.

Testimony Submitted by
Arrowhead Environmental,
Dori Barton Wetland
Ecologist

This image shows the new VSWI in dark green and the formal delineation that I conducted using the science based protocols in light blue. As you can see the new VSWI mapping significantly under maps wetland in the southern part of the property and over maps the wetland in the northern part of the property.



ARBITRARINESS OF RELIANCE ON VERMONT SIGNIFICANT WETLANDS INVENTORY MAPS

LC Question

Considering the plain language of the statute, the plain language of the current Vermont Wetlands Rule, General Counsel's misstatement regarding the process and authority for modifying a buffer, and the Attorney General's Opinion, could you clarify the Agency's statutory or regulatory authority to modify the buffer zone of a Class II wetland as the Agency has proposed in the draft Vermont Wetlands Rules?

10 V.S.A. § 902(a) provides that "[t]he 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."

Representative Mike Hoyt asked Agency of Natural Resources General Counsel Catherine Gjessing what authority the Agency relied on in amending the buffer zones for residential housing or a linear utility. General Counsel indicated that the Secretary of Natural Resources has authority under 10 V.S.A. § 913 to allow uses or activity by rule in a significant wetland or buffer zone.

The authority for the Secretary to establish the width of a buffer zone of a Class II wetland is provided under 10 V.S.A. § 914, not 10 V.S.A. § 913. In order for the Secretary to modify the buffer width under 10 V.S.A. § 914, the Secretary must do so as part of a wetland determination pursuant to the rules of the Department. Thus, a buffer width must be adjusted as part of an on-the-ground, case-by-case scientific determination.

MODIFICATION OF BUFFER ZONES
INCONSISTENT WITH STATUTORY AUTHORITY

ANR Response

To be clear, the proposed wetland rules do not contemplate that the Secretary will modify the buffer for specific Class II wetlands on a case-by-case basis. Instead, the proposed amended rules specify that certain types of projects are allowed uses within portions of the fifty-foot buffer of a Class II wetland, as long as those projects meet the applicable requirements of the amended rules (such as location within designated areas). Without the amended allowed uses proposed in the rules, a permit would be required for housing infrastructure within any portion of a wetland buffer. As noted in the letter dated April 17, 2026, allowed uses are the exception to the requirement for a wetland permit for activities and projects within a wetland and its buffer.

MODIFICATION OF BUFFER ZONES INCONSISTENT WITH
STATUTORY AUTHORITY

ANR Draft Vermont Wetlands Rules

6.26 Construction of residential housing projects and related required utilities, including draining, dredging, filling, grading, or vegetation clearing that meet the requirements of this subsection.

a. The residential housing project is located within an area:

- 1) Designated under 24 V.S.A. chapter 76A as a Downtown Development District, Village Center, New Town Center, Growth Center, or Neighborhood Development Area;
- 2) Outside of an area described in subdivision (a)(1) of this subsection, and located along the extension or terminus of a public sewer or water line available for connection that serves the designated area; or
- 3) Designated by the Land Use Review Board as Tier 1A or Tier 1B in accordance with 10 V.S.A §§ 6033-6034.

b. The residential housing project is served by public sewer infrastructure or located on soils adequate for wastewater disposal and capable of supporting one or more wastewater systems to serve all proposed residential connections.

c. No draining, dredging, filling, grading, or vegetation clearing will occur nor will the residential housing project be located:

- 1) Within a Class I wetland or its buffer zone; or
- 2) **Within, or within 25 feet of, the mapped area of a Class II wetland** shown on the Vermont Significant Wetlands Inventory at the time of the residential housing project's registration under subdivision (e) of this subsection.

MODIFICATION OF BUFFER ZONES INCONSISTENT WITH
STATUTORY AUTHORITY

LC Question

How is the proposed rule allowing development in significant wetlands protecting, regulating, and restoring wetlands? How are the proposed amendments to the Vermont Wetlands Rules guided by science, as the proposed rules apply a categorical allowed use not based on science but on the proposed activities to be allowed?

Title 10 : Conservation and Development

Chapter 037 : Wetlands Protection and Water Resources Management

Subchapter 001 : GENERAL PROVISIONS

(Cite as: 10 V.S.A. § 901)

§ 901. Water resources management policy

It is hereby declared to be the policy of the State that:

- (1) the water resources of the State shall be protected; regulated; and, where necessary, controlled under authority of the State in the public interest and to promote the general welfare;
- (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. (Amended 1959, No. 329 (Adj. Sess.), § 42, eff. March 1, 1961; 1961, No. 100, § 1; 1965, No. 116; 1975, No. 254 (Adj. Sess.), § 142; 1981, No. 222 (Adj. Sess.), § 11; 2023, No. 121 (Adj. Sess.), § 12, eff. July 1, 2024.)

LEGISLATIVE INTENT AND STATUTORY POLICY FOR REGULATION OF WETLANDS

ANR Response

The proposed amendments do not abandon wetland protection. Rather, they make targeted, time-limited adjustments to address evolving priorities in a narrow geographic area while simultaneously strengthening the overall protection framework in several respects.

In addition, the proposed allowed use would sunset on January 1, 2030. This temporal limitation is itself a protective feature, ensuring that the accommodation for housing in designated growth areas is revisited and affirmatively reauthorized rather than becoming permanent, and allowing all parties to evaluate the ecological outcomes of the allowed use and make an informed decision about whether and how to extend it.

The second question rests on the premise that a categorical allowed use based on the nature of proposed activities, rather than site-specific ecological assessment, cannot be scientifically grounded. That premise mischaracterizes both the established nature of allowed uses under the Vermont Wetland Rules and the appropriate role of science in policy-based regulatory decisions.

The Vermont Wetland Rules have always contained categorical allowed uses – exemptions from permitting that apply based on the nature of the activity rather than site-specific scientific evaluation. The list of allowed uses in the current Vermont Wetland Rules were established because the Legislature and the Agency determined that certain activities, appropriately conducted, present acceptable impacts relative to the larger values they serve. For example, allowed uses include growing crops, recreation, education, and routine maintenance of existing utilities. These are policy judgments informed by science, not a rejection of it. The proposed housing allowed use follows the same logic and operates within this same established framework.

- ▶ Silvicultural activities that comply with AMPs, +.
- ▶ Restoration, reconstruction, rehabilitation, or upgrading of existing roads used for silvicultural if the roads are not increased in width by more than 20%.
- ▶ Construction of new roads used for silvicultural purposes in buffer zones.
- ▶ Removal of beaver dams to prevent impairment of existing logging roads or ongoing silvicultural management.
- ▶ Silvicultural activities to protect T&E habitat.
- ▶ Growing of food or crops in connection with farming activities when: T&E are protected; deer wintering yards are not cleared; and in compliance with RAPs.
- ▶ Operation of existing hydroelectric facilities.
- ▶ Routine repair and maintenance of utility poles, lines and corridors
- ▶ Hunting, birdwatching, hiking, boating, trapping, fishing, horseback riding, swimming, snowshoeing, skiing, and similar outdoor recreational activities.
- ▶ Snowmobiling on VAST trails.
- ▶ Scientific research and educational activities.
- ▶ Maintenance, reconstruction, or routine repair of structures and facilities.
- ▶ Emergency repair, cleanup, or maintenance of structures and facilities, or emergency actions required to provide for public health, safety and welfare.
- ▶ Routine maintenance and upkeep or maintenance dredging of constructed ponds.
- ▶ Wildlife or fisheries management activities.
- ▶ Placement, maintenance or removal of duck blinds, ice fishing shanties, fences, catwalks, footbridges, observation decks, docks, or similar structures
- ▶ Harvesting of wild foods and collection of scientific specimens, for noncommercial purposes.
- ▶ Control of non-native nuisance plant by hand pulling.
- ▶ Activities in existing lawns and other residential uses.
- ▶ Use of pesticides to control mosquitoes.
- ▶ Operation of dams according to surface level rules.
- ▶ Installation of 3 or fewer new overhead utility lines that do not involve extensive tree clearing.
- ▶ Wetland restoration or stream restoration projects.
- ▶ Dry hydrants installed in constructed ponds.
- ▶ Cleanup of spills of oil or hazardous materials.

Proposed new allowed use: Construction of mixed use housing in unmapped Class II wetlands in designated areas.

ALLOWED USES

ANR Response

LC Question

Can you provide the factual basis or criteria that would be used to determine what is “practicably unavoidable”? If not, can you explain how this provision is not arbitrary?

The terms “practicable” and “practicably” are defined in 2.31 of the Vermont Wetland Rules as “available and capable of being done after taking into consideration logistics, existing technology, and cost in light of the overall project purpose.” The terms “avoidable” and “unavoidable” are used throughout the wetland rules, often in the context of avoidance and minimization, and has a commonly understood definition. The Oxford Dictionary for example, defines “avoidable” as: “not able to be avoided, prevented, or ignored; inevitable.” . . . “avoidable” and “unavoidable” are used throughout the wetland rules, often in the context of avoidance and minimization, and has a commonly understood definition. The Oxford Dictionary for example, defines “avoidable” as: “not able to be avoided, prevented, or ignored; inevitable.”

CLARIFICATION: PRACTICALLY UNAVOIDABLE

ANR Response

A permanent impact is a consequence or effect that is long term. Permanent wetland impacts result in long lasting alterations to wetland characteristics such as vegetation, hydrology or soils. In contrast temporary impacts are areas that are promptly restored to preconstruction conditions within one growing season. A permanent impact may entail a structure or installation that is built to last, such as a building, road, or conversion of forested swamp to lawn. The intent here is to consider the cumulative impacts, in other words all of the potential impacts, of a project on a wetland.

LC Question

Can you provide the factual basis or criteria that would be used to determine what is “permanent impact cumulatively”? If not, can you explain how this provision is not arbitrary?

CLARIFICATION: PERMANENT IMPACT CUMULATIVELY

LC Question

Could you clarify what public notice, if any, would be provided prior to or after commencement of construction under the proposed allowed use for a residential housing project or linear access infrastructure?

What opportunity will interested parties have to comment on or appeal construction under the allowed use?

What role does the Agency play if the construction is allowed to commence 30 days prior to notification of the Secretary?

If there is no public notice, no opportunity for interested parties to appeal, and no substantive review of the development by the Agency, how is the proposed allowed use consistent with the water resources management policy of the State to be “protected; regulated; and, where necessary, controlled under authority of the State in the public interest and to promote the general welfare”?

ANR Response

The proposed allowed use for housing projects in designated areas follows the same framework as all other allowed uses under the Vermont Wetlands Rules. No individual public notice or project-level appeal rights attach to any allowed use under the proposed Wetland Rules revisions (though there likely would be public notification required under other applicable State or local/municipal rules)...

CLARIFICATION: REGISTRATION; PUBLIC NOTICE

ANR Response

The proposed allowed use for housing projects in designated areas follows the same framework as all other allowed uses under the Vermont Wetlands Rules. No individual public notice or project-level appeal rights attach to any allowed use under the proposed Wetland Rules revisions (though there likely would be public notification required under other applicable State or local/municipal rules); this has always been true of the categorical exemptions for growing crops, recreation, utility maintenance and others. The registration will, however, allow the Wetlands Program to track housing projects in designated areas and ensure that those projects are built in compliance with the proposed wetland rules, and inform the Agency's evaluation of the allowed use when it sunsets in January 2030. Further, the registration requirement creates a documented record against which present and future compliance can be evaluated. Projects that do not qualify for the allowed use remain subject to full enforcement under the Vermont Wetland Rules.

The allowed use is itself an exercise of State authority in the public interest under 10 V.S.A. § 901. The State is not abdicating its regulatory role, but rather it is determining, through a public rulemaking process, that providing greater and expedited regulatory certainty related to wetlands for housing projects in designated growth areas serves the general welfare. The water resources management policy does not require individual adjudication of every wetland impact. It requires the State to exercise its authority in the public interest, which the Agency has done through a public rulemaking, the addition of the mandatory 2:1 compensation requirement and a net gain goal, registration and tracking, unchanged enforcement authority, and a sunset provision. Moreover, the general welfare the statute references is not limited to wetland protection in isolation. A reasonable interpretation of the Agency's obligation under its water resources management policy to act in the public interest encompasses both wetland protection and other important environmental benefits that accrue by reducing regulatory barriers to development in locations the State has already designated as appropriate for concentrated growth.

CLARIFICATION: REGISTRATION; PUBLIC NOTICE

ANR Response

LC Question

How are the proposed Vermont Wetlands Rules not a violation of the separation of powers?

And, if you assert they are not, why are you seeking legislative authority to adopt the rules that you have already proposed?

[T]here is no constitutional violation of separation of powers here. In plain language, the legislature explicitly delegated the authority to promulgate rules that set forth allowed uses in wetlands. Title 10, Chapter 37 lays out details such as, the purpose of the statute, the protected functions and values of wetlands, and provides for a net gain of significant wetlands. The proposed rules are consistent with the plain language of § 913(a), and the proposed allowed uses for housing are narrowly applicable and expire in less than four years.

SEPARATION OF POWERS

CONCLUSION

Although ANR provided arguable, substantive responses to LC questions, I think issues remain that, after further review, could be the basis of objection:

- Legislative intent: scope of allowed uses, authority to develop in unmapped significant wetlands, protection of wetlands net gain.
- Arbitrariness: reliance on VSWI maps as regulatory threshold.
- Statutory authority: construction in Class II unmapped wetlands, buffer width/impacts, net gain, separation of powers.