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June 15, 2026

Legislative Committee on Administrative Rules
State House
Montpelier, Vermont

Subject: 25-P040, relating to Vermont Wetland Rules

Dear Committee:

Thank you for making a correct objection on May 18, 2026 to the final proposed rule.

I am a civil engineer with training in wetlands identification. My experience includes planning reports, environmental analyses, designs of water and sewer systems, hydrology and hydraulics. Understanding, applying, and complying with rules and regulations and contracts has been an essential component of that experience. I commented on the proposed Vermont Wetland Rule on January 14, 2026. My comment letter is found at pages 337 through 349 of ANR's final proposed rule 25-P040. That is the 582-page document dated April 6, 2026. I had not realized until after seeing your objection memorandum that there had been so many comments and that my comments in ANR's submission would be lost in the crowd.

Why ANR's response does not overcome your objections

Agency authority ANR incorrectly claims to have authority to adopt the proposed final rule in its response of June 4, 2026. ANR cites as authority only two subdivisions of two sections in 10 V.S.A. Chapter 37. The documents submitted with the proposed final rule show that the proposed final rule does not meet the requirements of 3 V.S.A. §841.

Scientific information statement The filing documents do not contain a scientific information summary. They provide information on the housing shortage. They do not show how the final proposed rule will help provide more housing. Nor do the filing documents indicate the amount of wetland and the functions and values that will be lost to help provide more housing.

Economic Impact Analysis The economic impact analysis does not contain the required information. Instead the analysis makes sweeping assertions on the need for housing with no attempt to discuss economic impacts. Statute requires that the economic impact analysis contain anticipated costs and benefits from adoption of the rule for each category of those affected; and to compare the economic impact of not adopting the final proposed rule.

- How many additional dwelling units are expected to be built because of the amended rule?
- What will be the effect of the amended rule on the cost of housing?
- The cost difference between the allowed linear utility crossings in class 2 wetlands (on a per foot basis, perhaps), compared to projects where there is no wetland crossing.
- Changes in property values.
- Loss of business by those who will no longer be hired to delineate wetlands and prepare permit applications.

Conclusion ANR lacks authority to adopt the final proposed rule, because of its failure to provide all information required by 3 V.S.A. §841.

Legislative intent ANR incorrectly claims that the final proposed rule is consistent with legislative intent.

ANR cites several court decisions. Important factors relating to determining compliance with legislative intent

are: clear and unambiguous language in the statute; interpret a statute according to its terms; consider the statutory requirements as a whole, avoiding a construction that would render the legislation ineffective or irrational. Yet ANR's response fails to acknowledge that title 3, chapter 25 (mainly section 841 which incorporates much of section 838) is also part of legislative intent in this rulemaking. Yet the final proposed rule documents lack the scientific information statement and its economic impact statement omits economics.

ANR's response claims that the exclusive focus of the objections is on the policy and net gain sections in 10 V.S.A. Chapter 37. Objections were based on more than policy and net gain. I was a stakeholder at the proposed rule stage. My own comments on January 14 contradict ANR's assertion. Only a small portion of my comments were on policy and net gain. The vast majority of my comments pointed out ANR's failure to comply with the requirements of 3 V.S.A. Chapter 25, section 838.

ANR's response cites three sections in chapter 37 (913, 901, and 918) in support of its claim that the final proposed rule meets legislative intent.

- Section 913 played no role in my findings that the proposed rule was arbitrary.
- ANR's response neglects to mention that section 901(3) requires the wetlands rule to be based on science and to have a net environmental benefit. ANR's final proposed rule submission contains no scientific impact analysis and makes no claim that the rule will have a net environmental benefit.
- Section 918 required ANR to create a rule for a net gain of wetlands by July 1, 2025 and to issue permits with the net gain requirements by September 1, 2025. The requirement for including the net gain provisions in each individual permit implies that each permit is required to support net gain of wetlands. Thus ANR's claim that individual projects do not need to show a net gain is contrary to the intent of sec. 918.

Arbitrary ANR incorrectly claims that reliance on the Vermont Significant Wetlands Inventory Maps is not arbitrary. ANR fails to mention that a large portion of the VSWI Maps were amended effective September 7, 2025. Those maps were developed with the understanding that they were an approximation only and that field delineations would be required for all wetlands. It is arbitrary to require delineations in some portions of the state and to rely only on the VSWI maps in other areas of the state.

The recently updated maps still contain inaccuracies. I commented on the revisions that became effective September 7. I commented on a small area that was of interest to me. I noticed that there are other inaccuracies in the mapping within a short distance of my area of concern. I did not comment on them, because they would be delineated at some time in the future and I chose to focus my comments on the area of interest to me.

The proposed rule is arbitrary. The proposed rule meets all three conditions for being arbitrary, even though only one condition is needed to be found arbitrary. I found the proposed rule to be arbitrary in January and I find the final proposed rule to be arbitrary.

- (i) The claimed factual basis for section 6.26 of the rule is faulty because it fails to include the evaluations (facts) required by statutes and filing information. One of the missing documents is the scientific information study. Thus the basis used for the proposed rule does not rise to the level of a factual basis.
- (ii) The faulty factual basis for the proposed rule means that the proposed rule is not rationally connected to the required factual basis.
- (iii) I am a civil engineer whose experience includes permitting and wetlands. My background is one of many that would qualify an individual as a reasonable person. The decision made in the proposed rule does not make sense to me.

Conclusion I recommend that you find that ANR's response does not overcome your objections of May 21, 2026.

Sincerely,
Thomas Weiss, P. E.