January 14, 2026

TO: DEC Rule Making WetlandsRulemakingComment@vermont.gov
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

RE: Executive Order 06-25 "Promoting Housing Construction and Rehabilitation"; Vermont Wetland Program proposed Rule Change: Public Comments.

While I am currently a District Wetland Ecologist with the State Wetlands Program, the following comments, questions, and concerns are submitted solely in my capacity as a private citizen and Vermont resident. I am not providing these comments from my professional role, nor am I presenting any materials that are not already publicly available.

My UVM education was in Conservation Biology, and I have over 27 years of cumulative field and laboratory experience with consulting firms, federal and state agencies, universities, and non-profit organizations. Specifically, I am an Environmental Educator, Wildlife Biologist, and a Professional Wetland Scientist (PWS #4119). I have 15 years of direct wetland experience in and outside Vermont, including conducting wetland delineations, habitat assessments, surveys for rare, threatened, and endangered species, and wetland function and value assessments and teaching the 40-hour Army Corps of Engineers (ACOE) Wetland Delineation Training at the Vermont State University. I offer these comments based on my personal expertise and experience, in the interest of protecting Vermont's wetlands and supporting informed rulemaking.

References, found at the end of this submittal are in order of sequence as they appear within the document indicated by subscript numbers.

Comment RE: proposed rule is beyond the authority of the [Governor] agency

The proposed changes under this Executive Order (EO) undermine the authority of the Legislature and the separation of powers established in the Vermont Constitution. The Governor and executive branch agencies cannot ignore, amend, or circumvent statutory mandates or duly adopted rules through an EO. As a result, the Wetland Program is pursuing rule changes in order to implement the EO that appear contrary to legislative intent and may exceed the authority delegated by the Legislature through existing Vermont Wetland Rules (VWRs). These changes also risk conflicting with or compromising the intent of other State statutes, acts, rules, and policies.

I request clarification on how significant rule changes of this nature, in the absence of an emergency, can be enacted solely by EO rather than following the legislative and rulemaking processes prescribed by law. If VWRs require modification for legitimate

reasons, the proposal should be introduced, debated, and voted on in the Legislature, as with any statutory change.

Additionally, I ask whether this proposed rule change was reviewed for environmental justice, equity, and fairness, especially since it is industry or locationally specific, and request documentation of any such review and concurrence.

Given these concerns, I believe the Legislative Committee on Administrative Rules (LCAR) should object to this proposed rule change as it appears beyond the authority of the Governor or the agency.

Comment RE: proposed rule is contrary to the intent of the Legislature

The proposed rule change, which would rely solely on wetland mapping as the basis for jurisdiction, contradicts the intent of past and current legislation regarding Vermont wetlands. Vermont law[1] defines *"wetlands"* as areas inundated by surface or groundwater sufficient to support vegetation or aquatic life that depend on saturated soils for growth and reproduction (10 V.S.A. § 902(5)). The methodology for wetland identification, established in the original 1990 Vermont Wetland Rules[2] (VWRs, § 3.2) and maintained in subsequent rule updates, requires documentation of hydrology, hydric soils, and wetland vegetation. This methodology is recognized by both the State and the ACOE. The proposed EO and rule change, which would limit jurisdiction to mapped wetlands, ignores this scientific methodology and contradicts the established rules for wetland identification.

The 1990 VWRs explicitly include all mapped wetlands and contiguous areas as Class II wetlands, recognizing their significant functions and values (10 V.S.A. § 905b). Subsequent studies, including Morrissey et al. (2006)[3], demonstrated that wetland maps are incomplete and inaccurate, particularly for wetlands less than 20 acres in size, emergent wetlands, and forested wetlands, including vernal pools.

The 2010 VWR[4] update codified this understanding, establishing that unmapped wetlands meeting certain criteria are also Class II and merit full protection, including a minimum 50-foot (ft) buffer (10 V.S.A. § 902(9) and § 914), with the clear intent that jurisdiction would no longer be tied directly to a wetland being mapped. The 2010 and 2023 VWRs[5] further emphasis the limitation to wetland mapping "The VSWI maps should not be relied upon to provide precise information regarding the location or configuration of wetlands (see Section 3.2). The VSWI maps are intended to denote the approximate location and configuration of wetlands. It is critical to note that wetland characteristics and boundaries are not static; wetland boundaries may change as a result of landscape and climatic changes".

Since the 1990 VWRs, the buffer zone for a Class II wetland extends at least 50 ft from the physical edge of the wetland and generally encompasses the immediate upland area,

not an arbitrary boundary drawn on a map using potentially inaccurate data. The EO and proposed rule change seeks to reduce these buffer zones from 50 ft to 25 ft. And the 25-ft buffer would be applied from the edge of the mapped polygon without field verification and may actually overlap unmapped wetland, effectively rewriting Vermont statute.

The legislature clearly established a 50-ft minimum buffer from the edge of the Class II wetland. 10 V.S.A. § 902(9) provides that a "buffer zone for a Class II wetland shall extend at least 50 ft from the border of the wetland unless the Secretary determines otherwise under section 914," and § 914 requires that buffer size be determined through a functions and values assessment specific to each wetland (not just mapped portions). The EO and rule change bypasses this process.

How does limiting jurisdiction and protection to only mapped wetlands align with statutory protections for all Class II wetlands, contiguous wetlands, and unmapped wetlands with significant functions and values?

How can the failure to recognize contiguous or unmapped wetlands as jurisdictional, while allowing fill or wetland forest removal without a permit, be reconciled with statute, the VWRs, and legislative intent, when it allows for significant wetland loss without oversight or mitigation?

This proposed rule change is also in direct contradiction to the state's climate resilience priorities as outlined within the 2025 Resilience Implementation Strategy[6] (Vermont Climate Change Resilience Strategy), which prioritizes implementation of state-level actions to reduce the harmful impacts of climate change including: flooding, landslides, heat waves, drought, wildfire smoke, and declining water quality. The proposed wetland rule change ignores how functions and values are assessed and are protected for Class II wetlands to ensure no undue adverse impact to those functions and values that are not just applicable to the proposed project location, but also to surrounding lands and its contribution to the whole of watershed health.

The Climate Change Strategy identifies priority actions for the state to help communities build resilience, support those most affected by disasters, and reduce future harm to Vermont's infrastructure, economy, and natural environment. This Strategy was a collaborative initiative led by Governor Phil Scott and Treasurer Mike Pieciak, coordinated by ANR and a cross-government Steering Committee. Among the high-priority actions outlined are measures that emphasize nature-based solutions, including leveraging wetlands, floodplains, and upland forests to mitigate flooding and support biodiversity.

The proposed rule change is in direct contradiction to the intent of Act 59, Vermont Conservation Design & Vermont's Community Resilience and Biodiversity Protection

Law[7], which sets a goal to conserve 30% of the state's land area by 2030 and 50% by 2050. These targets are guided by the principles of conservation science and the conservation priorities identified within Vermont Conservation Design, supported by multiple studies and reports.

The 2014 Vermont Habitat Blocks and Habitat Connectivity: An Analysis using Geographic Information Systems report[8] (VTFWD) highlights that maintaining a connected network of unfragmented habitat blocks is a primary strategy for conserving biodiversity amid a rapidly changing climate. It further emphasizes that creating a well-connected landscape is essential for landscape resilience in the face of climate change. Wetlands are often the last undeveloped areas in and around urban centers.

The 2015 *Vermont Wildlife Action Plan*[9] provides the following conclusion: “In the short-term, riparian areas [the banks of rivers and streams] and adjacent land, including their floodplains [wetlands], may be the best places to invest our conservation efforts because when healthy these areas are more resilient to flooding, reduce downstream flood impacts, keep waters cool and provide important habitat and connectivity to many wildlife species. Habitat restoration [conservation] is also an effective way to support rare, threatened, or endangered species”.

Within the Wetland Section of Vermont Conservation Design: Natural Communities and Habitats Technical Report (pg 28; 2018)[10] the Highest Priority wetlands are defined as: Any wetland that meets one or more of the following conditions:

- Is designated as a Class 1 wetland, or likely to meet Class 1 standards
- Is an exemplary (state-significant) wetland natural community occurrence, or is immediately adjacent to one
- Is wholly or partially within any of the highest priority landscape scale elements of Vermont Conservation Design
- Is wholly or partially within a small watershed with >50% of the land area developed
- Is wholly or partially within an important watershed for Lake Champlain water quality: Missisquoi River watershed and South Lake A & B watersheds

The report further emphasizes that wetlands in watersheds with more than half of the land developed are high priority for conservation, as development increases stress and fragmentation of these systems. Notably, these areas overlap with the Designated Areas referenced in the EO and proposed rule change.

The report also underscores limitations in mapping: “The map layer is an incomplete representation of priority and highest priority targets. Mapping reflects the best current knowledge of target locations. Approximate locations of wetland targets are shown using

VSWI, NWI, and Natural Heritage data sources. All polygons are approximate. Additional wetlands exist that are not represented in the map data. Field verification may be needed to confirm that any wetland meets the target criteria and provides appropriate ecological functions" (pg. 29).

Finally, the March 2025 VTFWD Report for Implementing the Vermont Conservation Design[11] indicates that all surface waters and riparian areas as highest priority for ecological function, and includes nested priorities for Riparian Connectivity, Wetlands, Vernal Pools & Aquatic Features. Conservation and restoration of aquatic systems is essential to meeting the vision of Act 59 and sustaining an ecologically functional landscape. This also supports the guidance for Act 171 from 2016[12] focused on land use and forest protection, requiring towns to plan for "forest blocks" and "habitat connectors".

Vermont's wetlands support the highest levels of plant, animal, and rare, threatened, or endangered (RTE) species diversity, while also providing critical water quality protection and natural storage functions. Over half of Vermont's plant species are found in wetlands, and all of the state's toads and frogs rely on wetlands for at least part of their life cycle. Many important wetlands such as hillside seeps, vernal pools, forested and headwater wetlands, and agricultural wetlands remain unmapped, leaving them vulnerable to degradation. In urban areas, wetlands, even those not mapped, serve as wildlife corridors, connective habitats, and refuges, while also providing some of the last remaining green spaces within developed landscapes.

What environmental analysis has been conducted to assess the acreage, type, and location of unmapped wetlands that could potentially be lost under this rule change, including the impacts of allowing fill placement or wetland conversion to upland, evaluated by town, watershed, and statewide? Have the proposed Designated Areas been cross-referenced with priority conservation areas identified in state plans?

Please explain how the implementation of this rule change will not conflict with the methodologies, priorities, and protections outlined in the relevant Acts and Strategies, including Acts 59 and 171, and the Vermont Conservation Design and Climate Resilience strategies. Demonstrate whether and how the rule change can be reconciled with the protection of contiguous wetlands, urban wetlands, and specific wetland types, particularly when these wetlands may be unmapped but fall within Designated Areas.

Act 171 and Act 59 directs municipalities and state agencies to identify and protect forest blocks, habitat connectors, and significant natural areas, including wetlands, as part of statewide land use and conservation planning. Explain how the proposed rule change does not undermine or contradict these statutory directives.

In addition to Vermont's goals of maintaining biodiversity and conserving 50% of the state's land by 2050, the legislature passed Act 121, the Flood Safety Act[13], in response to the catastrophic floods of 2023 and 2024. This law specifically includes mandates addressing wetlands due to their critical role in adapting to changing climate conditions.

The 2021 Vermont Climate Assessment (UVM), led in part by State Climatologist Lesley-Ann Dupigny-Giroux, provides a comprehensive analysis of Vermont's climate trends. Since 1900, annual precipitation has increased by approximately 10–15%, with heavier winter and spring rainfall. Future projections indicate more intense storms, increased flood and erosion risks, and more variable summer rainfall, raising the likelihood of droughts. Urban areas and rivers are particularly vulnerable to these increasing flood risks, threatening infrastructure and communities.

The 2021 Assessment underscores that wetlands and adjacent riparian zones are essential natural buffers. They reduce flood impacts, maintain cool water temperatures for aquatic species, and support biodiversity under shifting climate conditions. Loss or degradation of wetlands diminishes these protective and ecological functions, highlighting the need for strategic conservation, restoration, and integration of wetlands into land-use planning as a nature-based solution for climate resilience. In short, wetlands must be protected, not removed because they are not mapped.

Wetlands provide essential natural infrastructure, buffering floods, sustaining water during droughts, and supporting biodiversity, as documented by UVM, The Nature Conservancy, the Vermont Climate Assessment, and NOAA. The proposed rule change threatens these critical functions, yet there appears to be no comprehensive analysis of the environmental or economic consequences of wetland loss. What are the costs to communities, ecosystems, and Vermont's economy if these wetlands and the vital services they provide are degraded or destroyed? Protecting wetlands is not just an ecological priority; it is a cost-effective strategy for climate resilience and public safety.

Within the VWRs, one of the key functions of wetlands is providing temporary storage of floodwater and stormwater runoff. The VWRs specifically evaluate whether a wetland reduces the magnitude or frequency of risks due to floodwater and stormwater runoff, including in watersheds with impervious surfaces, stating:

"Wetlands that provide for the temporary storage of floodwater or stormwater runoff to the extent that they make an important contribution to reducing risks to public safety, reducing damage to public or private property, reducing downstream erosion…"

Wetlands providing this function are classified as Class II significant wetlands, regardless of whether they are mapped or unmapped.

For example, the well-known 2016 UVM study, “Quantifying flood mitigation services: The economic value of Otter Creek wetlands and floodplains to Middlebury, VT”[15] quantified the economic savings by Middlebury during Tropical Storm Irene and 10 subsequent flood events because of wetlands. The research concluded that Middlebury saves an annual average of $126,000 to $450,000 in damages annually due to the Otter Creek floodplain (wetlands), a reduction of 54 to 78 percent, on average, as calculated across the 10 flooding events.

While this 2016 study focuses on flood mitigation, the same hydrologic processes of storing water and slowly releasing it also support drought mitigation by maintaining baseflows, delaying drought onset, and sustaining water in the landscape during dry periods, an important connection between flood and drought moderation services that wetlands provide.

In contrast to the 2023 and 2024 flooding events, VT experienced extreme drought conditions over much of the state in 2025 with wells going dry, municipal water conservation practices implemented, and rivers and streams going dry or documenting record lows, even Lake Champlain, reaching levels not seen since the 1934 drought.

The 2021 Vermont Climate Assessment Water Resources chapter[16] emphasizes how climate change is increasing drought risk in Vermont. It explicitly notes that natural infrastructure, such as wetlands, may be used to increase resilience as they attenuate flows to mitigate effects of drought.

The NOAA Wetlands Ecosystem Services Framework[17] identifies key hydrologic services provided by wetlands which can mitigate potential drought conditions:

- Wetlands act as natural water storage systems
- Wetlands contribute to groundwater recharge
- Wetland provide slow release to streams and maintain baseflow levels

NOAA further explains how wetlands provide drought moderation through hydrologic resilience meaning ‘the combined water storage, infiltration, and connectivity functions of wetlands help delay drought onset or lessen the peak severity of drought by maintaining water in the watershed longer”, or in short, wetlands act to dampen extremes in the water cycle. Similarly, the US EPA (2025)[18] summarizes, “wetlands store water within soils and surface pools, facilitate infiltration to aquifers, and then slowly release water to recharge groundwater and maintain stream flows”, a natural form of hydrologic buffering that can

delay drought onset, lessen drought severity, and sustain water availability for ecological and human systems over dry periods".

In recognition of these ecosystem services, Act 121[19] expressly establishes that the State's policy is to protect, regulate, and restore wetlands so that the State achieves a *net gain* of wetland acreage. This includes protecting existing wetlands and actively restoring those that have been degraded or lost. The Act specifically directed ANR to amend the VWRs to incorporate this goal that regulation results in a net gain through protection and restoration. Act 121 also mandates compensatory mitigation for permitted wetland impacts exceeding 5,000 square feet, requiring a 2:1 restoration ratio. The Legislature clearly intends that wetlands not only be preserved but actively increased through restoration when unavoidable losses occur.

Act 121 further recognizes that wetland mapping is incomplete. ANR is required to update the VSWI maps by January 1, 2026, and annually thereafter, and to complete High-Quality Wetlands Inventory Plus mapping for all tactical basins by 2030. These updates are meant to improve planning, permitting, and conservation, but mapping is not meant to provide 100% identification of wetlands nor to define jurisdictional boundaries.

Given this, it is unclear how the proposed rule change aligns with Act 121's intent to protect existing wetlands and achieve a net gain, especially when there has been no assessment of potential acreage loss in unmapped wetlands. Allowing housing projects to proceed under the proposed rule without quantifying impacts, evaluating lost wetland functions, or requiring avoidance, minimization, mitigation, or compensation could result in the complete loss of entire unmapped wetland areas, effectively bypassing regulatory oversight.

In general, the Legislative intent of Act 121 is to reduce the risk of loss of life, property damage, and infrastructure failure. It recognizes wetlands as critical infrastructure with a goal to maintain and restore these areas as a cost effective and multi-benefit approach to flood resiliency with a broader intent to protect VT's ecological, climatic, and community resilience while accommodating responsible land use. In addition, the Statutory Policy Expressing Legislative Intent for Wetlands looks at 10 V.S.A. § 901; Water resources management policy (as amended by Act 121)[21]:

"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."

The proposed rule appears to contradict this legislative intent. Please explain how it does not conflict with Act 121, particularly in the absence of assessment for unmapped wetlands, the potential loss of flood and drought mitigation services, and the statutory goal of achieving a net gain in wetland acreage.

I believe LCAR should object to the proposed rule as it directly contradicts legislative as expressed in:

- 1990, 2010, and 2023 VWRs;
- Act 59 (Vermont Conservation Design & Community Resilience);
- Act 171 (Forest and Habitat Protection);
- Act 121 (Flood Safety Act, 2023), which mandates net gain of wetlands and regulatory protections based on functions and values assessments; and
- Vermont's 2025 Climate Resilience Strategy.

Comment RE: the economic impact analysis fails to recognize a substantial economic impact of the proposed rule

The Trust for Public Land Vermont's Return On Investment in Land Conservation 2018 study[22] found that every $1.00 invested in land conservation in Vermont returns $9.00 in economic value in natural goods and services, such as water quality protection, flood mitigation, and food production. When reviewed for how wetlands contribute to the economic value of goods and services compared against other land cover types, the study found that wetlands are estimated to provide about $590 per acre per year in natural goods and services, almost three times higher than the next most valuable land cover type at ~$180/acre/yr (deciduous and mixed forests). These goods and services are primarily attributed to water quality protection, flood resiliency, and providing highly productive habitat. The study determined that "managing and restoring wetlands can lead to cost savings when compared to man-made infrastructure solutions".

There are over forty (40) wetland natural community types documented in Wetland, Woodland, Wildland: A Guide to the Natural Communities of Vermont[23] recognized by the VT Natural Heritage Inventory and referenced in the VWRs under Section 5.5 Exemplary Wetland Natural Community. This proposed rule change is indiscriminate with respect to wetland types that may be unmapped, allowing potential loss of diverse wetland communities and their distinct functions and values within Designated Areas.

Under the current permitting framework, wetland functions and values are evaluated and protected through project-specific review. By contrast, the proposed rule change would

allow development to proceed without this assessment. What environmental assessment has been conducted to estimate the types and acreage of wetland natural communities that may be lost under this proposal? What environmental analysis has been completed to evaluate the associated loss of wetland functions and ecosystem services, including impacts assessed by community, small and larger watersheds, and statewide?

Given the well-documented role of wetlands in flood storage, flow attenuation, and downstream protection, the proposed loss of unmapped wetlands within Designated Areas raises serious concerns for downstream communities already facing increasing flood risk. Has the State conducted any statewide or community-level economic assessment to evaluate how incremental wetland loss combined with increased impervious surface coverage and more frequent, intense storm events will affect flooding damages over time? What cumulative environmental and economic impact analysis has been completed to assess how the upstream loss of wetland functions such as floodwater storage, drought resilience, and water quality protection will translate into downstream costs and risks? In the absence of these unmapped wetlands as they are developed, where will floodwaters be stored, and have hydrologic or hydraulic models been used to quantify the increased flooding risk as these unmapped wetlands are lost and development expands? Lacking this analysis, the proposal places downstream communities at increased long-term flood and economic risk without the benefit of a thorough, science-based evaluation.

Has a robust economic analysis been conducted to evaluate the true costs and impacts of building in wetlands, including implications for new infrastructure and for the people who will ultimately live in these developments? While construction in wetland areas may be technically feasible, it is inherently complex and frequently results in structural failures, property damage, environmental degradation, and long-term financial liability. Homeowners may face chronic issues such as flooded basements, foundation instability, deteriorating infrastructure, failing septic systems, mold growth, and elevated flood risk, along with ongoing and costly water management requirements.

Has a comprehensive, long-term economic assessment been completed to quantify these risks and cost? These costs may substantially outweigh any short-term development benefits while exposing residents to unsafe or unhealthy living conditions and potential financial or legal consequences. State rules are intended to protect the public interest, and this proposed rule change appears inconsistent with that obligation. Please explain how the proposal serves the broader public good, including public safety, public health, and equitable outcomes for all affected stakeholders.

Under the Vermont Planning and Development Act (Title 24 V.S.A. § 4302)[24], the Legislature directs that development be carried out in accordance with smart growth principles. Vermont law defines these principles to include protecting important

environmental and natural features, such as water quality and natural areas, as outlined in 24 V.S.A. § 2791[25]. Weakening wetland protections directly undermines these statutory directives to preserve natural resources as part of smart growth.

The EO and proposed rule change contradict smart growth principles, which emphasize sustainable, well-planned development that balances community needs with environmental protection. Wetlands provide essential services, flood protection, water filtration, wildlife habitat, and climate resilience, that, once lost, cannot be replaced. Reducing wetland protections prioritizes short-term development over long-term community resilience and environmental stewardship, undermining the foundation of truly smart, sustainable growth.

The proposed rule change raises significant concerns related to equity, environmental justice, fairness under the law, and consistency with the EO as it intends to expedite affordable housing. As written, the proposal does not appear to ensure equitable access to housing opportunities across municipalities, nor does it prevent fragmentation of undeveloped lands outside the designated areas, potentially shifting impacts disproportionately onto certain communities.

Key terms and safeguards remain undefined. How is “affordable housing” defined for project eligibility under this rule, and what mechanisms will be used to verify affordability? Is there a verification system comparable to those used by organizations such as Habitat for Humanity, Healthy Homes, or other affordable housing providers? If not, why has no such framework been included? Additionally, how will the rule ensure that housing developed under this allowed use serves permanent Vermont residents, rather than being converted into second homes or short-term rentals? Clear standards and enforceable restrictions are necessary to prevent misuse and to ensure that the EO’s affordable housing objectives are met, and arguably can be met without impacts to unmapped wetlands This should include explicit eligibility criteria and limitations on mixed-use development where it conflicts with affordable housing goals.

The stated purpose of the proposed amendments is to promote housing; however, the amendments would allow mixed-use development within Class II wetlands without establishing any minimum residential-use threshold or proportionality requirement. Under the proposal, a project would qualify as “mixed-use” and be eligible for the exemption simply by including a “residential housing component,” irrespective of its scale or relationship to the overall project. As a result, a predominantly commercial development could be constructed within an unmapped Class II wetland through the inclusion of a de minimis residential element, such as a single dwelling unit. This outcome is inconsistent with the intent of 10 V.S.A. Chapter 37 and the VWRs, which prioritize the protection of wetland functions and values, and it fails to demonstrate that the limited housing benefit

would outweigh or justify the resulting adverse impacts to regulated wetland resources nor provide an economic benefit. Why does the proposed rule allow mixed-use projects which seem contrary to even the EO's intent?

For these reasons, the Legislative Committee on Administrative Rules (LCAR) should object to the proposed rule change. The absence of a comprehensive environmental and economic analyses obscures potentially substantial negative environmental and economic impacts, including long-term infrastructure costs, flood risk, and loss of ecosystem services.

Comment RE: the proposed rule is arbitrary

Under the current regulatory framework, all projects impacting wetlands are required to demonstrate a legitimate and necessary project purpose and to avoid and minimize impacts. The proposed rule change would allow additional housing infrastructure within unmapped wetlands located in Designated Areas without review or permitting. As a result, two different regulatory standards would be applied to the same type of housing project, solely based on location. This raises serious concerns regarding the fair and consistent application of state law and undermines regulatory clarity.

The proposed rule does not define what constitutes "necessary" for an allowed housing use, especially within unmapped wetland areas. Critical questions remain unanswered: What limits apply to building size, accessory structures, lawn area, driveways, utilities, or grading? What are the scope and design constraints intended to minimize wetland impacts and prevent landscape fragmentation? Without clear standards, the rule invites arbitrary application and inconsistent outcomes. Explicit scope, design, and impact limitations are necessary to protect wetlands and ensure predictable enforcement.

Equity and consistency issues are further compounded by the uneven distribution of Designated Areas. Some municipalities are entirely designated as Opportunity Zones, while others have none. How does this approach ensure equal treatment across and between towns? In addition, many Designated Areas extend into steep slopes and forested wetlands, raising questions about development suitability. Has suitability been evaluated, by whom, and using what criteria? Are there enforceable measures to prevent sprawl outside Designated Areas? A comprehensive review and potential redefinition of Designated Areas and wetland jurisdiction is needed to ensure consistent standards statewide.

The proposed rule also fails to clarify whether the allowed use is temporary or permanent. If adopted, would the exemption expire upon termination of the EO or once housing goals are met, or would it remain in effect indefinitely without continued justification? The

absence of a defined sunset provision further underscores the arbitrary nature of the proposal.

Equally concerning is the impact on public participation and due process. Under existing wetland regulations, when a permit is required for impacts to mapped or unmapped Class II wetlands, abutting landowners are notified and given the opportunity to comment on potential impacts to wetland functions and values. The proposed rule would eliminate this notice and review process for unmapped Class II wetlands, thereby undermining the public's statutory right to participate.

Moreover, while both the EO and the proposed rule acknowledge that contiguous unmapped wetlands are considered Class II, these areas would be subject to different permitting criteria, standards, and processes solely based on the arbitrary boundaries of wetland mapping. The proposed changes could therefore jeopardize a person's statutory right to petition ANR for the protection of an unmapped wetland. If no permit is required for impacts to unmapped wetlands, it is unclear how an individual could meaningfully petition for protection prior to construction.

Clarify how the EO will/will not affect individuals' ability to petition for wetland protection before impact occurs. It must be emphasized that neither ANR nor the Governor has the authority to remove this right for individuals, which is established in statute and in the VWRs, without formally amending the law or rules. Any interpretation of the EO that effectively removes this right would exceed executive authority and circumvent established legal protections for wetlands.

Under LCAR review,[26] saying that "a proposed rule is arbitrary" means the rule lacks a rational, evidence-based justification and is not reasonably connected to its stated purpose or to the authority granted by the Legislature. The proposed changes to VWRs under the EO are arbitrary and unsupported. The rule includes no data, studies, or analysis showing why these changes are necessary. It treats similar wetlands differently without justification, fails to advance the statutory purpose, relies on assumptions over evidence, and represents an unexplained departure from existing protections, such as removing permit requirements that previously safeguarded critical wetland functions.

The incorporation of the rule change into the Allowed Use Section of the VWRs allows significant environmental impacts. Housing projects within Designated Areas would be exempt from wetland review without any assessment of impacts as requires no analysis of acreage loss, loss of functions and values, or cumulative effects will be required. This does not advance statutory goals like protection, net gain, or public benefit. I believe LCAR should object on the grounds that the proposed rule is arbitrary, because the EO and consequently the agency has not shown a rational connection between the problem identified, the statutory intent, and the solution adopted in the rule."

In summary, the proposed rule ignores established scientific methods, statutory mandates, and legislative intent. It would reduce protections for significant wetlands and their buffers, limit regulatory oversight, and compromise Vermont's environmental, climatic, and community resilience goals.

For these reasons, I respectfully urge the Legislative Committee on Administrative Rules to object to the proposed rule change, as it is inconsistent with legislative intent, arbitrary in its application, and unsupported by adequate environmental or economic analysis.

Thank you,

Zapata Courage

Zapata Courage

References, in order of sequence within the above document identified by subscript numbers.

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