



## STATE OF VERMONT

### Legislative Committee on Administrative Rules (LCAR)

May 21, 2026

**SENT VIA EMAIL**

**To [misty.sinsigalli@vermont.gov](mailto:misty.sinsigalli@vermont.gov)**

Misty Sinsigalli, Commissioner  
Agency of Natural Resources  
State of Vermont  
1 National Life Drive, Davis 2  
Montpelier, VT 05620-3522

Dear Commissioner Sinsigalli:

This letter is to formally notify you that the Joint Legislative Committee on Administrative Rules has voted to object to the Agency of Natural Resource's final proposal 25-P040 relating to the Vermont Wetland Rules. The Committee's objection was made at its meeting on May 21, 2026.

#### **I. Section 6.26 and Appendix B of the proposed Rules are contrary to legislative intent.**

The Committee objects to adding construction of residential housing as an allowed use within Class II wetlands as provided in Section 6.26 and Appendix B because those changes are contrary to the intent of the General Assembly. 10 V.S.A. § 901 provides that it is the policy of the State that there should be a net gain of wetlands acreage, that regulation and management of wetlands should be guided by science, and that authorized activities should have a net environmental benefit to the State. Similarly, 10 V.S.A. § 918 provides that "the goal of wetlands regulation and management in the State is the net gain of wetlands to be achieved through protection of existing wetlands and restoration of wetlands that were previously adversely affected."

In contrast to the stated intent of the General Assembly, the proposed Rules permit significant and permanent construction in Class II wetlands as an "allowed use" that will likely result in permanent loss of wetlands and does not require those losses to be compensated elsewhere. "Allowed uses" do not require permitting. The proposed Rules only require offsetting of wetlands acreage loss through the process for individual permitting of uses within a wetland. Because the proposed Rules do not require loss of wetlands due to construction of residential housing to be offset elsewhere, the proposed Rules will likely result in a net loss of wetlands acreage. This loss of wetlands acreage is directly contrary to the intent of the General Assembly.

The Agency testified that part of the basis for the proposed Rules is to promote housing. However, the promotion of housing does not directly support the State policy to increase wetlands acreage through regulation and management based on scientific considerations, with

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## STATE OF VERMONT

### Legislative Committee on Administrative Rules (LCAR)

permitted activities providing a net environmental benefit to the State. Neither 10 V.S.A. chapter 37 nor the Commissioner's discretion permits the Agency to disregard the General Assembly's intent to protect wetlands in order to weigh the benefit of wetlands versus the economic cost in preserving the wetlands or potential economic benefits of removing wetlands to construct housing or other uses.

#### **II. Section 6.26 and Appendix B of the proposed Rules exceed statutory authority.**

The Committee further objects to Section 6.26 and Appendix B on the grounds that the sections exceed statutory authority. 10 V.S.A. § 902(9) provides that the buffer for a Class II wetland shall extend at least 50 feet from the border of the wetland unless the Secretary otherwise determines pursuant to 10 V.S.A. § 914. However, determinations regarding wetlands buffers made pursuant to section 914 must be individualized. Section 914 does not authorize the Secretary to categorically halve the width of a Class II buffer zone; any reduction in the buffer zone must be done "as part of any wetland determination pursuant to the rules of the Department."

The Committee agrees with the Attorney General's conclusion stated in Formal Opinion 2025-01 that asserts that the Department cannot categorically halve the presumptive buffer zone around Class II wetlands. Moreover, the Department's assertion that the approved use of the outer 25 feet of the buffer of Class II wetlands is an allowed use is a legal fiction intended to circumvent statutory requirements for how the Department is authorized to adjust the buffer width of specific, individual wetlands.

#### **III. Section 6.26 and Appendix B of the proposed Rules are arbitrary.**

Pursuant to 3 V.S.A. § 801(13), a rule is arbitrary when (1) there is no factual basis for the decision made by the adopting entity; (2) the decision made by the adopting entity is not rationally connected to the factual basis asserted for the decision; or (3) the decision made by the adopting entity would not make sense to a reasonable person.

The proposed Rules rely on the Vermont Significant Wetlands Inventory (VSWI) maps to delineate wetlands boundaries. However, under the existing Wetland Rules, the VSWI maps are insufficient to delineate a wetlands boundary. Specifically, Section 3.2(b) provides that the VSWI maps "denote the approximate location and configuration of significant wetlands. The actual boundaries of wetlands shown on the VSWI maps shall be determined in the field in accordance with the methodology [provided in rule]." Further, Section 4.4 provides that "[T]he VSWI maps should not be relied upon to provide precise information regarding the location or configuration of wetlands.... The VSWI maps are intended to denote the approximate location

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### Legislative Committee on Administrative Rules (LCAR)

or configuration of wetlands. It is critical to note that the wetland characteristics and boundaries are not static; wetlands boundaries may change as a result of landscape and climatic changes.”

Under the proposed Rules, the allowed use of a wetlands for residential housing and related required utilities must be located within one of three designated areas but must not be located within 25 feet of the mapped area of a Class II wetland shown on the VSWI maps at the time of the residential housing project’s registration.

Moreover, the proposed Rules also allow a linear utility to cross a mapped Class II wetland or within 25 feet of a mapped Class II wetland. Such a crossing must be practicably unavoidable, result in less than 5,000 square feet of permanent impact cumulatively, or be offset according to best management practices proposed in the proposed Rules. Even if the VSWI maps were reliable, the proposed Rules do not specify how any of the criteria for crossing a mapped Class II wetland shall be demonstrated.

Because the proposed Rules rely on maps that the proposed Rules deem unreliable without individualized determination in the field, the proposed Rules lack a factual basis to support the proposed change and would not make sense to a reasonable person.

Under 3 V.S.A § 842(a), the Agency of Natural Resources is obliged to respond within 14 days following receipt of this notice of the Committee’s objection. After receipt of a response, the Committee may reschedule the proposed Rules and determine whether to withdraw or modify its objection. You should also note that the Agency of Natural Resources shall not adopt the proposed Rules until it has responded to this objection.

Sincerely,

Rep. Trevor Squirrell  
Chair, Legislative Committee on  
Administrative Rules

cc: Members, Legislative Committee on Administrative Rules  
Louise Corliss, APA Clerk, Office of the Secretary of State