

ATTACHMENT A

November 13, 2025

Secretary Julie Moore
Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

Commissioner Misty Sinsigalli
Department of Environmental Conservation
1 National Life Drive
Montpelier, VT 05602

Laura Lapierre
Program Manager
Vermont Wetlands Program
Department of Environmental Conservation
1 National Life Drive
Montpelier, VT 05602

Dear Secretary Moore, Commissioner Sinsigalli, and Program Manager Lapierre:

We are writing to address recent amendments to the Vermont Wetland Rules proposed by the Department of Environmental Conservation (DEC) to implement the wetlands directives in Governor Scott's Executive Order 06-25 entitled "Promoting Housing Construction and Rehabilitation."

We believe these proposed rules are destructive to Vermont's wetlands, violate statutory authority, conflict with legislative intent, and attempt to circumvent the General Assembly's lawmaking and policy-making authority through hastily drafted and poorly considered changes to the State's wetlands rules.

We ask that you withdraw the proposed rules and engage in policy discussions with the General Assembly regarding solutions to the State's housing needs that will serve the State as a whole and not just those who wish to develop wetlands.

1. DEC's Proposed Wetland Rules Violate the Statutory Goal for Wetlands Management

As you know, Vermont has experienced catastrophic flooding in each of the past three years. After the first flood event in 2023, there were multiple efforts to improve flood resiliency and prevent future damages through restoration of natural flood controls, such as flood plains and wetlands. The Vermont General Assembly formalized those efforts through the enactment of 2024 Acts and Resolves No. 121, known as the Flood Safety Act.

Among other provisions, the Flood Safety Act required the Agency of Natural Resources (ANR) to amend the Vermont Wetlands Rule to "clarify 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.” The Vermont Wetland Rules are directed to meet these goals by prioritizing “the protection of existing intact wetlands from adverse effects” and by requiring restoration, enhancement, or creation of wetlands in response to certain adverse effects in order to ensure a statewide net gain of wetlands and their integral values for ecosystems and flood protections.

The proposed Vermont Wetland Rules that DEC submitted to the Interagency Committee on Administrative Rules (ICAR) on Monday, November 3, 2025, will not protect wetlands or restore wetlands but instead will create further adverse effects to flood safety by authorizing the destruction or damage to existing significant wetlands and their buffers. The proposed rules violate statutory authority and conflict with legislative intent by failing to implement the required rules revisions under the Flood Safety Act to establish a net gain policy for wetlands management.

Moreover, in response to inquiries on the status of the rulemaking required by the Flood Safety Act, Secretary Moore repeatedly stated that DEC did not have the resources to conduct rulemaking. Nevertheless, DEC is now going forward with rulemaking that likely will be just as administratively difficult while also damaging the State’s wetland resources. Such a proposal clearly is not what the General Assembly intended when it directed DEC to amend the Vermont Wetland Rules to ensure protection of the resource.

2. DEC’s Proposed Rules Conflict with Statutory Authority for Allowed Uses

The proposed rules submitted to ICAR will allow the construction of residential housing projects and related utilities in significant Class II wetlands, including draining, dredging, filling, grading, or vegetation clearing. Statute, 10 V.S.A. § 913, prohibits an activity in a significant wetland or buffer zone of a significant wetland except in compliance with a permit, conditional use determination, or order issued by the Secretary. DEC is authorized to adopt allowed uses under the Vermont Wetland Rules where Secretary approval of an activity in a wetland is not required. However, those allowed uses are usually temporary and either prohibit draining, dredging, filling, or grading or allow limited actions for activities such as silviculture or repair to existing utility infrastructure. The traditional allowed uses do not allow or involve new, permanent construction in a wetland.

Under the proposed DEC rules, DEC will not only allow draining, dredging, filling or grading of significant wetlands but also will allow new construction of residential and mixed use commercial buildings, provided the wetland is located in one of five designated areas and the activity will occur outside a 25-foot buffer zone of a Class II wetland or will occur in an unmapped Class II wetland. These allowed uses also will include the construction of new utility infrastructure for the allowed residential and commercial buildings, including allowed utility construction within 50 feet of a Class II wetland. This type of construction with permanently destructive effects to wetlands is not what the General Assembly intended in authorizing DEC to adopt by rule allowed uses of wetlands.

3. DEC's Proposed Rules Conflict with Statutorily Required Buffer Zones

The allowed uses that DEC proposed in the rules submitted to ICAR conflict with the statutory requirements for buffer zones contiguous to Class II wetlands. Specifically, 10 V.S.A. § 902(9) 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.” DEC’s proposed rules shrink the buffer zone of a mapped Class II wetland to 25 feet, but the statutory authority for the Secretary to establish another size of a buffer zone under 10 V.S.A. § 914 does not apply.

10 V.S.A. § 914 is the authority of ANR to make a case-by-case determination of whether a wetland is Class II or Class III (i.e., regulated or unregulated). Statute authorizes the Secretary to engage in this consideration upon the petition of any person or the petition of the Secretary themselves. Under the DEC proposed rules, the Secretary is not acting according to an individual petition regarding the consideration of one wetland. The DEC proposed rules are a fiat as to how all wetlands located in one of five designated areas are to be regulated.

Consequently, as the Secretary is not making individual considerations under 10 V.S.A. § 914, the DEC proposed rules cannot change the statutorily required width of a Class II buffer. In addition, designating the reduction or elimination of buffer zones as an allowed use does not transform the Secretary’s failure to comply with the statutory requirements for buffers into an authorized activity. Further, if the rule were to be filed with the existing proposed 25-foot buffers under the allowed use section, the proposed rule and statute would conflict. When a statute and rule conflict, the statute controls.

4. DEC's Proposed Rules Conflict with Statutory Authority and Legislative Intent Regarding Activities in Unmapped Wetlands

Under statute, DEC regulates activities in significant wetlands. Statute, 10 V.S.A. § 902, defines a significant wetland as a Class I or Class II wetland. 10 V.S.A. § 902(7) further defines a Class II wetland as follows:

(7) “Class II wetland” means a wetland other than a Class I or Class III wetland that:

(A) is a wetland identified on the Vermont significant wetlands inventory maps; or

(B) the Secretary determines to merit protection, pursuant to section 914 of this title, based upon an evaluation of the extent to which it serves the functions and values set forth in subdivision 905b(18)(A) of this title and the rules of the Department.

Under this definition, a wetland need not be mapped in order to be determined to merit protection. If an unmapped wetland serves the functions and values, it is protected. In contrast, the DEC proposed rules would authorize development of residential and mixed use commercial development in “any unmapped Class II

wetland.” This authority robs the Secretary of the statutory authority to determine an unmapped wetland should be deemed significant and regulated. This provision consequently is not authorized by statute or consistent with legislative intent.

5. DEC’s Proposed Rules Reduce Public Participation in Wetlands Permitting

DEC’s proposed rules would completely repeal the authority of a person to seek a reconsideration of the Secretary’s determination that a wetland was or was not a significant Class II wetland that required protection. Under existing rule, any person who petitioned for a wetlands determination can seek a reconsideration of the Secretary’s initial decision. DEC’s proposed rules eliminate that option. Instead, a person who disputed the Secretary’s decision would need to weigh whether they wanted to endure the time and cost of litigation. As the waters and wetlands of the State have been determined to be in the public interest, limiting public involvement in the regulation of wetlands is contrary to the General Assembly’s intent to manage these resources for the public as a whole.

Considering the lack of statutory authority, potential conflict with statute, lack of consistency with legislative intent, and the DEC’s general failure to recognize in the proposed rules the need to protect wetlands and not destroy them, we ask that the proposed changes to the DEC Vermont Wetland Rules be withdrawn and that DEC instead pursue science-based proposals that comply with statutory authority and legislative intent to protect the wetlands of the State.

If you would like to discuss this further, please do not hesitate to contact us.

Sincerely,



Representative Amy Sheldon
Chair, House Committee on Environment
Vermont General Assembly



Senator Anne Watson
Chair, Senate Committee on
Natural Resources and Energy
Vermont General Assembly

CC: Governor Philip Scott