VERMONT
AGENCY OF NATURAL RESOURCES

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

DATE: June 4, 2026

TO: Representative Trevor Squirrell, Chair
Legislative Committee on Administrative Rules (LCAR)
Vermont State House
115 State Street
Montpelier, VT 05633-5301
TSquirrell@leg.state.vt.us

FROM: Misty Sinsigalli, Commissioner
Vermont Department of Environmental Conservation
1 National Life Drive, Davis 3
Montpelier, VT, 05620-3520
Misty.Sinsigalli@vermont.gov

RE: Proposed Final Vermont Wetland Rules, 25-P040

Delivery via email

Dear Chair Squirrell,

I am writing in response to the letter from the Legislative Committee on Administrative Rules (LCAR) objecting to proposed amendments to the Vermont Wetlands Rules, directed to the Department of Environmental Conservation (DEC) Commissioner Misty Sinsigalli, dated May 18, 2026. In addition, the letter dated April 27, 2026 from Secretary Julie Moore, directed to the Chairs of the legislative committees of jurisdiction and LCAR, and Legislative Counsel Michael O'Grady, is attached and incorporated into this response.

As the Agency demonstrates in this response, the proposed rule is legally authorized, scientifically grounded, and carefully bounded. For the reasons set forth below, the Agency requests that LCAR withdraw its objection and allow this rulemaking to proceed.

The proposed amendments to Section 6.26 of the Vermont Wetland Rules set forth three distinct allowed uses related to facilitating housing development consistent with smart growth principles within designated areas in the State. This narrow set of locations constitute about 3% of Vermont and have been designated by the State of Vermont Agency of Commerce and Community Development and the Land Use Review

Board, based on the following statutes and legislation. See, 24 V.S.A. Chapter 76A, 10 V.S.A. Chapter 151 (§§ 6033 and 6034), and Act 181 of 2024. The proposed amendments include the following new allowed uses for the following:

1. the construction of housing and narrowly defined associated infrastructure in unmapped Class II wetlands.
2. the construction of housing and narrowly defined associated infrastructure within 25 to 50 feet of the buffers of mapped Class II wetlands.
3. the construction and installation of linear utilities within mapped Class II wetlands in accordance with a stringent set of best management practices.

Specifically, the proposed Wetland Rule amendments specify that certain types of housing projects are allowed uses within a portion of the fifty-foot buffer of a Class II wetland so long as those projects meet the applicable requirements of the amended rules (such as location within designated areas). In accordance with statute, allowed uses are the exception to the requirement for a wetland permit. As proposed, these allowed uses will sunset in 2030.

The proposed revisions to the Wetland Rules rely on the Secretary's express statutory authority to create allowed uses in rule that balance natural resource protection with significant policy priorities (in this case, facilitating needed housing in areas prioritized by the State for increased growth). The proposed allowed uses rely in part on updated, high-quality maps produced in response to a legislative mandate to provide greater regulatory certainty. The Agency believes this proposal is a reasonable, targeted, and evidence-based regulatory adjustment that is in line with the Agency's authority and that a reasonable person would expect the State to make in response to an ongoing housing crisis affecting Vermonters. The Agency's responses to LCAR's objections are outlined further below.

I. Agency Authority

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). Both sections authorize ANR to promulgate wetlands rules and § 913(a) explicitly provides the Secretary with authority to promulgate allowed uses: "Except for allowed uses adopted by the Department by rule, no person shall conduct or allow to be conducted 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." As noted by LCAR, allowed uses do not require wetland delineations, permitting, or mitigation and compensation.

The authority for allowed uses in statute and the provisions that set forth allowed uses in the rules have been in place for decades. In fact, the Agency has adopted 25 distinct allowed uses in rule to date. Some existing allowed uses have an adverse impact on the functions and values of wetlands. For example, allowed uses set forth for existing hydroelectric facilities, maintenance and repair of existing facilities, and agricultural uses

can result in adverse impacts on wetlands functions, and recreational use can undermine the use of wetland habitat by wildlife. In its rulemaking package and other correspondence to LCAR, the Agency has explained its efforts to develop a proposed allowed use related to certain housing projects in a manner that is thoughtful, respects the Agency's regulatory authority outlined in Chapter 37 of title 10 and that also addresses the important policies spurring the need for the new allowed uses in the first place.

LCAR's reliance on the Attorney General Opinion 2025-01 (Opinion) in support of LCAR's objection that the Agency exceeded its authority is misplaced. The Opinion states that the Secretary cannot "immediately and categorically halve" fifty-foot wetland buffers or, "unilaterally create a new, categorical exception to wetlands permitting requirements because statute requires that permitting exemptions be created by rule. See 10 V.S.A. § 913(a) ('[e]xcept for allowed uses adopted by the Department by rule,' permits required)." The Opinion specifically supports the promulgation of allowed uses in wetlands pursuant to rulemaking undertaken in accordance with 3 V.S.A. Chapter 25. Accordingly, rulemaking is exactly the course of action taken by the Secretary, and thus the Rule as proposed fulfills the Governor's intent in a manner consistent with both the Opinion and Title 10 V.S.A. Chapter 37.

II. Legislative Intent

It is well established that a rule must be consistent with legislative intent. A rule may not "compromise[] the intent of the authorizing statute." *Lemieux v. Tri-State Lotto Comm'n*, 164 Vt. 110, 113, 666 A.2d 1170, 1172 (1995) (citing cases); see also, 3 V.S.A. § 842(b)(2) (grounds for LCAR objections include where rule is contrary to legislative intent). In determining whether a rule complies with legislative intent, the Court examines "the plain language of the statute, and if this language is clear and unambiguous," the Court interprets and enforces "the statute according to its terms." *Maple Run Unified Sch. Dist. v. Vermont Hum. Rts. Comm'n*, 2023 VT 63, ¶ 13, 311 A.3d 139; *In re Carroll*, 2007 VT 19, ¶ 9, 181 Vt. 383, 925 A.2d 990.

Even though § 913 provides the Secretary with clear authority to designated allowed uses, a proper determination of legislative intent may also consider the statutory provisions "as a whole. . .'". *TD Banknorth, N.A. v. Dep't of Taxes*, 2008 VT 120, ¶ 15, 185 Vt. 45, 967 A.2d 1148 (citation omitted); see also *Ran-Mar, Inc. v. Town of Berlin*, 2006 VT 117, ¶ 5, 181 Vt. 26, 912 A.2d 984 ("We construe all parts of the statutory scheme together, where possible, as a harmonious whole, and '[w]e will avoid a construction that would render the legislation ineffective or irrational.'")

Here, although the plain language of § 913 is clear, LCAR and stakeholders opposed to these amendments to the Wetlands Rules focus exclusively on the policy and net gain sections of Title 10 V.S.A. Chapter 37, specifically §§ 901 and 918. These provisions requiring net gain of wetlands were adopted via Act 121 in 2023. The Legislature, however, made no corresponding changes to limit or modify the Agency's authority to define allowed uses pursuant to § 913. If the legislature intended allowed uses to be

subject to compensation, or otherwise subject new allowed uses to additional limitations or standards, for example, the legislature could have amended § 913 accordingly.

LCAR's May 18th letter asserts that the proposed Rules are contrary to legislative intent because they do not require construction of housing projects under the allowed use to be offset elsewhere, which will "likely result in a net loss of wetlands acreage." This conclusion appears to rely on an interpretation of the net gain requirements as applicable on a parcel-by-parcel basis (as opposed to a cumulative statewide basis) for all wetland impacts including those that do not require a permit under the Rules. This approach and LCAR's statement are inconsistent with and unsubstantiated by the data in the annual wetlands reports on wetland permitted losses and gains that the Agency submits to the General Assembly.[1]

The allowed uses for housing within a portion of wetland buffers and the allowed uses related to the installation or construction of linear utilities within an unmapped wetland align with the statutory goal to avoid impacts to wetlands where possible. The proposed rule allows construction only within the outer 25 feet of the 50-foot buffer; the inner 25 feet closest to the wetland remains fully intact. This is a higher standard than any other existing allowed use, none of which require any portion of the buffer to be preserved. Further, these provisions are narrowly defined, limited to designated growth areas representing approximately 3% of Vermont's area, subject to enforceable standards that meet the plain language and legislative intent of the statute. Additionally, the proposed allowed uses will expire in 2030, whereas no other existing allowed uses under the Rules carry temporal constraints. In other words, all other allowed uses are statewide until changed in accordance with rulemaking. For linear utilities, the rule requires offsets for any permanent impact exceeding 5,000 square feet, consistent with 10 V.S.A. § 918(B), and imposes best management practices equivalent to what an individual permit would require.

III. Arbitrary

The reliance on updated Vermont Significant Wetlands Inventory (VSWI) is not arbitrary as LCAR contends. The legislature explicitly directed ANR to "complete High Quality Wetlands Inventory (NWI) Plus level mapping for all of the tactical basins in the State." Act 121 of 2023. The work to update the Vermont Significant Wetlands Inventory (VSWI) will be completed before the end of July 2026. Reliance on the VSWI for planning and providing notice to landowners and developers regarding the presence of wetlands has played an important role in the regulatory framework relating to wetlands.

It is well established that a rule will not be upheld if it is arbitrary. *In re Club 107*, 152 Vt. 320, 323, 566 A.2d 966, 968 (1989); see 3 V.S.A. § 842(b)(3) (grounds for LCAR objections include where rule is arbitrary); accord 5 U.S.C. § 706(2)(A) (agency action may be set aside if it is "arbitrary" or "capricious"). It is not enough that a challenger disagrees with an agency decision. Rather, an agency's decision will be upheld where

[1] The most recent (2026) report can be found here: Vermont-Wetland-Permitted-Losses-and-Gains-2025-Legislative-Report.pdf

the agency "acted within the scope of its authority, made findings supported by the evidence, and articulated a rational explanation for its position." *Beyers v. Water Res. Bd.*, 2006 VT 65, ¶ 19, 180 Vt. 605, 910 A.2d 810 (upholding Board regulation and stating: "The real thrust of plaintiff's arguments is that the Board should have made a different decision than it did. But it is not the role of the Court to determine whether the Board made the correct policy decision."); see also *State Dep't of Taxes v. Tri-State Indus. Laundries*, *Inc.*, 138 Vt. 292, 294, 415 A.2d 216, 218 (1980) ("judicial review of agency findings is ordinarily limited to whether, on the record developed before the agency, there is any reasonable basis for the finding"); accord *Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486, 517 (2d Cir. 2005) ("the court must uphold the regulations if [the agency] has established in the record a reasonable basis for its decision") (citation and internal quotations omitted).

As explained in detail in Attachment A of the proposed Rules, the updated maps are more accurate. The use of improved VWSI maps would streamline the wetland permitting process, reducing the timeline and costs associated with delineations and permitting, and provide regulatory certainty for Vermont landowners and developers. These goals are not arbitrary or capricious and certainly make sense to any reasonable person. The allowed uses proposed in Section 6.26 are narrowly defined and limited in impact because they are only applicable to housing projects located in a small set of well-defined areas that encompass about 3% of Vermont land specifically designated as "growth areas" by the State of Vermont (with legislative blessing), and they expire in 2030. The proposed rules advance important smart growth policy objectives set forth in Act 59 of 2023 and work performed in connection with the Global Warming Solutions Act, such as the Climate Action Plan and Resilience Implementation Plan. In addition, the allowed uses for housing projects continue to be subject to other regulatory oversight. For example, the rule does not exempt housing in designated areas from municipal zoning, flood regulations, U.S. Army Corps of Engineering regulation, and Vermont stormwater, wastewater, and threatened and endangered species regulations.

LCAR also asserts that the allowed use for linear utilities and application of Attachment B of the proposed Rules is arbitrary because "the rule does not demonstrate how any of the criteria . . . will be demonstrated." The standards set forth in the rules and the BMPs impose stringent requirements related to the installation of linear utilities, that are protective of wetlands. These are exactly the types or requirements that would be imposed by general or individual permits. The BMPs are incorporated into the rule and will therefore be enforceable, just as a permit or any properly adopted rules are enforceable under Vermont law. Any person who builds housing under the allowed uses is required to register with the Wetlands Program and as such, the Wetland Program will have notice and an opportunity to conduct compliance reviews.

Conclusion

In conclusion, the Agency is proposing allowed uses that apply to a limited type of project (i.e., housing), are geographically-constrained to designated areas and sunset on a date certain. The allowed uses rely in part on updated, high-quality maps produced

in accordance with a legislative mandate and the best available science, intended to enhance regulatory certainty, accelerate project timelines and facilitate compact housing development consistent with smart growth principles. This is a targeted, evidence-based regulatory adjustment that a reasonable person would expect the State to make in response to the ongoing housing crisis in Vermont.

As noted at the outset of this response, the Agency respectfully requests that LCAR reconsider its objection and allow this rulemaking to proceed. As has been articulated throughout the process, the Agency is committed to facilitating thoughtful and sustainable housing development in the State in a manner that balances the needs for housing with minimizing the resulting impacts to Vermont's natural resources, writ large. The Agency believes that by creating time-bound and geographically-limited allowed uses to enable housing projects within 3% of the State that is already designated for growth while reducing sprawl, protecting forest blocks and habitat, reducing potential greenhouse gas emissions, and continuing to protect the highest quality wetland resources is a proportionate and reasoned avenue for doing so.

Whatever LCAR's final determination, the Agency will continue this work. Vermont's housing crisis does not pause for administrative proceedings, and the regulatory barriers that make it harder to build homes in the right places deserve the full Legislature's attention. If this rulemaking does not proceed, the Agency will bring a legislative package to the 2027 session that addresses the concerns, opportunities, and lessons identified through this process. We remain committed to finding common ground with legislators and stakeholders on reforms that create real opportunities for Vermonters to build homes in environmentally sustainable ways – and we intend to keep pressing until we get there.

Sincerely,

Misty Sinsigalli
Commissioner
Vermont Department of Environmental Conservation