



BLUERIBBON
COALITION

BlueRibbon Coalition
800 W Main St Suite 1460
Boise, ID 83702
208.237.1008
brc@blueribboncoalition.org

Ben Burr, Executive Director

BlueRibbon Coalition
P.O. Box 5449
Pocatello, ID 83202

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Legislative Committee on Administrative Rules
115 State St.
Montpelier, VT 05633-5301

To: Members of the Vermont Legislative Committee on Administrative Rules (LCAR)

Re: Objection to Proposed Amendments – Use of Public Waters Rules

Dear Members of the Committee,

BlueRibbon Coalition (BRC), is writing regarding the Natural Resources proposed amendments to the *Use of Public Waters Rules* currently before LCAR. After reviewing the full rulemaking record, including the April 20, 2026 submission, annotated rule text, and supporting materials, we believe the proposed rule contains significant legal, procedural, and economic deficiencies under Vermont law, including 3 V.S.A. § 842.

The Rule Exceeds Statutory Authority (3 V.S.A. § 842(b)(2))

The Agency derives authority from 10 V.S.A. Chapter 43, which allows regulation of public waters for safety, environmental protection, and conflict reduction. However, the proposed rule goes beyond those limits by establishing a preemptive eligibility framework that effectively restricts uses absent individualized findings.

Specifically:

- Proposed Section 3.7 (Wakesports Zone Eligibility) creates a statewide framework under which lakes are deemed eligible or ineligible based on generalized criteria rather than site-specific rulemaking;
- The rule introduces threshold-based exclusions and discretionary determinations that are not explicitly authorized by statute;
- The Agency is effectively creating a new classification system for water uses, which constitutes policymaking beyond delegated authority.

Nothing in Chapter 43 authorizes the Agency to impose categorical restrictions across broad classes of waters without individualized determinations supported by rulemaking for each waterbody.

Improper Delegation to Sub-Regulatory Procedures (3 V.S.A. § 801(b)(9))

The most consequential restrictions in the proposal are not fully contained in the rule text itself, but instead rely on a “Draft procedure for assessing wakesports zone eligibility” referenced in Section 3.7; and a “Draft procedure for temporary use restrictions” under Section 4.3.

Under 3 V.S.A. § 801(b)(9), a “rule” includes any agency statement of general applicability that implements law or policy. The Agency may not circumvent rulemaking requirements by embedding core regulatory standards in guidance documents.

LCAR has clear authority to object where agencies attempt to regulate through informal procedures rather than duly adopted rules.

The Rule Is Arbitrary and Not Supported by the Record (3 V.S.A. § 842(b)(1))

The proposed rule lacks clear, objective, and consistently applied standards.

For example:

- Section 3.7 relies on undefined or loosely defined criteria for determining lake eligibility;
- The rule does not establish uniform, measurable thresholds for impacts such as wake energy, shoreline effects, or depth requirements;

The Agency relies heavily on generalized studies that are not site specific to Vermont and precautionary assumptions, rather than lake-by-lake analysis. There are also no documentation of documented incidents that would warrant a more restrictive rule making than what is currently on the books.

Failure to Adequately Respond to Public Comment (3 V.S.A. § 841(b))

The Rulemaking Responsiveness Summary fails to provide meaningful engagement with significant issues raised during the comment period.

In particular, the Agency did not adequately address concerns of documented incidents, economic impact study or scientific basis.

Generic or conclusory responses do not satisfy the APA’s requirement for reasoned responses to significant comments.

Failure to Properly Consider Economic Impact

Vermont law requires agencies to consider economic effects as part of the rulemaking process. See 3 V.S.A. § 838(b)(5).

The proposed rule will have substantial and foreseeable economic impacts. Not only will there be a loss in revenue for local businesses, marinas and operators but real estate and boat dealerships. The record does not give a quantitative analysis of the economic impact of the proposed rule.

Shift Away from Public Access and Traditional Use

Vermont's public waters are held in trust for the benefit of the public. The proposed rule would violate this and restrict public use and access.

Conclusion

We would like to close by saying we support "shared use". We strongly encourage the LCAR to oppose the proposed rule as lake access have already been restricted substantially for wakesurf sports. As long as overall visitation numbers are appropriate for the affected resources, motorized and non-motorized users can be compatible with one another so long as individual users understand designations and plan their activities accordingly. We also hold that responsible recreational use of public waters can exist in harmony with ecosystem needs.

We appreciate the Committee's role in ensuring that agency rulemaking remains lawful, transparent, and balanced. Information can be sent to the following address and email address:

BlueRibbon Coalition
P.O. Box 5449
Pocatello, ID 83202
brc@blueribboncoalition.org

Sincerely,



Bella Eldridge
Attorney
BlueRibbon Coalition



Simone Griffin
Policy Director
BlueRibbon Coalition

