

SEN. SETH BONGARTZ, VICE CHAIR
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SEN. DAVID WEEKS



REP. TREVOR SQUIRRELL, CHAIR
REP. MARK HIGLEY
REP. CAROL ODE
REP. LARRY SATCOWITZ

STATE OF VERMONT

Legislative Committee on Administrative Rules

July 24, 2026

SENT VIA EMAIL
To 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 a version of this memo sent on July 23, 2026, characterized the action of the Joint Legislative Committee on Administrative Rules (the Committee) as requiring another response within 14 days prior to adoption of final proposal 25-P040 the Vermont Wetland Rules. Upon reexamination, the July 23, 2026, memo should be considered a modification of the Committee's initial objection made on May 21, 2026.

The Joint Legislative Committee on Administrative Rules (the Committee) has voted to object to the Agency of Natural Resource's (ANR) final proposal 25-P040 relating to the Vermont Wetland Rules. The Committee's objection was made at its meeting on July 23, 2026.

On May 21, 2026, the Committee voted by a majority to object to the ANR proposed amendments to the Vermont Wetland Rules. On June 4, 2026, ANR initially disagreed to the Committee's objections and asked for the Committee to withdraw its objections.¹ However, at the June 18, 2026, meeting of the Committee, Chair Trevor Squirrel noted that ANR had requested additional time to respond to the Committee's objections not only to address the concerns of the Committee but to also address the concerns of interested parties who potentially would litigate. The Committee granted ANR the additional time.

On July 14, 2026, ANR submitted proposed changes to the Vermont Wetland Rules to address the Committee's previous objections. That letter indicated that ANR was not "speaking for" other interested parties, but the letter indicated there was an agreement among interested parties on draft changes to the Vermont Wetland Rules. The ANR letter then described the proposed

¹ See Letter from Commissioner of Environmental Conservation, Misty Sinsigalli to Chair of the Legislative Committee on Administrative Rules, Trevor Squirrel re Proposed Final Vermont Wetland Rules, 25-P040 (June 4, 2026), available at <https://legislature.vermont.gov/Documents/2026/Workgroups/LCAR/25-P040%20-%20Vermont%20Wetland%20Rules/W-Misty%20Sinsigalli-VANR%20Response%20to%20LCAR%20Objection%20of%2025-P040-6-4-2026.pdf>.

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changes and responded to each of the Committee's previous objections to the Vermont Wetland Rules.

After review of ANR's proposed changes, the Committee notes that the scope of the proposed construction of residential housing projects in wetlands has narrowed by eliminating allowed construction in unmapped Class II wetlands and by reducing the allowed construction outside of designated areas. ANR also clarifies construction of linear utility corridors in wetlands and the practices to be applied for construction in corridors. In addition, ANR proposes to eliminate reliance on the Vermont Significant Wetlands Inventory (VSWI) maps.

The Committee reviewed ANR's changes to the Vermont Wetland Rules at its July 23, 2026, meeting. On a vote of 5-3, the Committee decided to object to the revised rules for the following reasons.

I. Section 6.26 and Appendix B of the Proposed Rules are Contrary to Legislative Intent

a. The Committee's May 21, 2026, Objection

The Committee objected to adding construction of residential housing² as an allowed use within Class II wetlands as provided in Section 6.26 and Appendix B of the proposed Vermont Wetland Rules because the changes are contrary to the intent of the General Assembly. The Committee noted 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, the Committee stated 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 Committee concluded that 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. Further, the Committee stated that because the proposed Rules do not require loss of wetlands due to construction of residential housing to be offset elsewhere, the proposed Rules likely will result in a net loss of wetlands acreage. The

² The allowed use proposed by ANR is for residential housing. However, as defined by Section 2.34 of the proposed rules, "residential housing project" means a "project located on a single tract or multiple contiguous tracts of land for the construction of one or more dwelling units and includes access and utility infrastructure necessary for construction or use of the residential function of the project. The term includes duplexes, emergency shelters, multiunit or multifamily dwellings; and mixed-use projects." The term "mixed-use projects" is defined by Section 2.27 of the proposed rules to mean "a project that includes both residential uses and nonresidential uses provided that the nonresidential uses are limited to retail, office, services, artisan, and recreational or community facilities, do not include industrial uses, and not less than 40 percent of the total gross floor area of all buildings within the project is designated for dwelling units." Consequently, the allowed use would not just be for residential housing but for residential and commercial development.

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Committee concluded that this loss of wetlands acreage is directly contrary to the intent of the General Assembly.

In addition, the Committee noted that ANR testified that part of the basis for the proposed Rules is to promote housing. However, the Committee further noted that the promotion of housing does not directly support the State policy to increase wetlands acreage through regulation and management based on scientific considerations, with permitted activities providing a net environmental benefit to the State. The Committee stated that ANR lacks discretion 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.

b. ANR's Proposal to Address the Committee's Objection

In response to the Committee's objection that the proposed rule is inconsistent with legislative intent regarding net gain, ANR stated that proposed changes filed with its response letter eliminated any credible allegation that the allowed uses associated with housing will be inconsistent with net gain. ANR stated that this lack of consistency with the net gain requirements is because the proposed rules would no longer contain allowed uses for residential housing projects in unmapped Class II wetlands and because the proposed allowed use would require a wetlands delineation of the wetland within the prior 10 years.

The ANR response does not specify how the proposed allowed use for residential housing projects is science based. ANR clearly states in its overview letter for the proposed changes that the rules are intended to facilitate housing development, which ANR has indicated is an important policy issue. Further, ANR stated that the proposed changes in response to the Committee's objections are to minimize the risk of litigation and avoid diversion of resources from the complex problem of housing. These are policy-based proposals and not backed by science as required by the legislative policy of wetlands management set forth under 10 V.S.A. § 901.

The Committee maintains that the rules are inconsistent with the legislative intent in 10 V.S.A. § 901 that the regulation and management of wetlands should be guided by science.

II. Section 6.26 and Appendix B of the Proposed Rules Exceed Statutory Authority

a. The Committee's May 21, 2026, Objection

The Committee further objected to Section 6.26 and Appendix B of the ANR proposed Vermont Wetland Rules on the grounds that the sections exceed statutory authority. The Committee stated that 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

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V.S.A. § 914. However, the Committee noted that 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.” Because the ANR proposed rules modified the size of a wetland buffer categorically and not based on the statutorily required individual determination, the Committee objected to the rule.

b. ANR’s Proposal to Address the Committee’s Objection

In ANR’s letter requesting changes in response to the Committee’s objections, ANR stated that statute explicitly grants the Agency authority to adopt wetlands rules under 10 V.S.A. § 905b(18) and that statute further allows ANR to adopt allowed uses by rule under 10 V.S.A. § 913(a). ANR noted that the conditions on the proposed allowed use for residential housing projects are unique to allowed uses, but there is no prohibition on imposing conditions. Additionally, ANR argues that the proposed allowed use in the outer 25 feet of a Class II buffer is consistent with statute and an Attorney General Opinion as the allowed use was created by rule. Further, ANR argues that there are other categorical determinations in the Vermont Wetland Rules, such as the categorical determination of certain wetlands, such as vernal pools, as Class II wetlands without a delineation.³

The Committee notes that ANR does have statutory authority to adopt rules and allowed uses under 10 V.S.A. §§ 905b(18) and 913(a), respectively. The Committee also notes that the Attorney General did state that the proper method for ANR to adopt an exemption to wetlands permitting is through rulemaking. Similarly, the existing Vermont Wetland Rules do include categorical designation of certain natural features as protected Class II wetlands without a delineation.

However, despite ANR’s assertions being correct, the Committee notes that they are irrelevant to the Committee’s review. The size of the buffer for a Class II wetland is specifically set in statute under 10 V.S.A. § 902(9). The statute states “[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.” Section 914 of Title 10 is the authority for the Secretary of Natural Resources to conduct evaluation of individual wetlands to determine if a wetland is a protected Class II wetland. Further, under 10 V.S.A. § 914, the Secretary of Natural Resources may “establish the necessary width of the buffer zone of any Class II wetland as part of any wetland determination pursuant to the rules of the Department.”

³ See Agency of Natural Resources, Vermont Wetland Rules, Sec. 4.6.

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The Secretary of Natural Resources has not conducted any individual wetlands determination under the proposed rules. Similarly, there has been no buffer width established by the Secretary as part of an individual wetlands determination to allow for residential housing projects. ANR has argued that the individual determinations are not necessary because the rules proposed the reduction in buffer width of the relevant Class II wetlands as an allowed use. However, rulemaking must maintain consistency with statutory authority, and there is an argument that the categorical halving of wetlands buffers by rule as an allowed use or otherwise is inconsistent with the required statutory width of a Class II buffer and how that buffer width may be adjusted.

Further, while 10 V.S.A. § 905b(18) permits the Secretary to adopt rules, subdivision (C) of § 905b(18) provides an important framework for those rules. Subdivision (C) states for wetlands that have been designated so significant that they merit protection, the Secretary may adopt rules, but the “rules may only protect the values and functions sought to be preserved by the designation.” Subdivision (C) goes on to provide that the rules cannot constrain agricultural or silvicultural activities without the consent of the Secretary of Agriculture, Food and Markets or the Commissioner of Forests, Parks and Recreation, respectively.

In this context, rules should aim to protect wetland values and functions, and any rulemaking should be constrained by that principle. Allowing rulemaking without this constraint could, theoretically, lead to future illogical results where things beyond the construction of residential housing projects could be determined to be an allowed use. Further, subdivision 905b(18)(C) provides special consideration for rules that restrain agricultural and silvicultural activities, but it does not provide similar consideration for the construction of residential housing projects. If the General Assembly wanted to authorize special consideration for rules that address housing construction, it could have done so. In this statutory context, 10 V.S.A. § 905b does not grant the Secretary of Natural Resources unlimited authority to adopt rules that designate allowed uses. That rulemaking authority is limited by the principle of protecting wetland values and functions.

Consequently, the Committee maintains a basis for objecting to the rule as exceeding statutory authority. ANR’s characterization of development of residential housing projects in the outer 25 feet of the buffer of certain Class II wetlands as an allowed use can be argued to be indistinct from the categorical halving of the buffers for these wetlands. Regardless of whether the activity is characterized as an allowed use or not, allowing the permanent development in the outer 25 feet of the buffer potentially conflicts with the required statutory buffer width, the statutory process for adjusting that width, and the statutory constraints on ANR rulemaking.

C/O OFFICE OF LEGISLATIVE COUNSEL
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Sincerely,

A handwritten signature in cursive script that reads "Trevor Squirrel".

Rep. Trevor Squirrel
Chair, Legislative Committee on Administrative Rules

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