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STATE OF VERMONT

Legislative Committee on Administrative Rules (LCAR)

December 14, 2023

SENT VIA ELECTRONIC AND VERMONT INTERDEPARTMENTAL MAIL

The Honorable Sarah Copeland Hanzas
Secretary of State
State of Vermont
128 State Street
Montpelier, VT 05633-1101
Sarah.CopelandHanzas@vermont.gov

Re: 23-P15 – 10 V.S.A. Appendix § 44, Furbearing Species

Dear Secretary Copeland Hanzas:

On November 16, 2023, a majority of the Legislative Committee on Administrative Rules voted to approve 23-P15, 10 V.S.A. Appendix § 44, Furbearing Species, with proposed modifications submitted by the Fish and Wildlife Board in correspondence from Catherine Gjessing dated November 14, 2023, except in the case of a portion otherwise objected to. And then LCAR subsequently voted to object to the following portions of the rule pursuant to 3 V.S.A. § 842(b):

- Sec. 3.20, the definition of trapping, on the ground that it is contrary to the intent of the General Assembly, including the intent of 2022 Acts and Resolves No. 159, Sec. 1(d), to add the word hunt to the definition;
- Sec. 3.14(b), a portion of the definition of public trail, on the ground that this portion of the definition is contrary to the intent of the General Assembly, including the intent of 2022 Acts and Resolves No. 159, Sec. 1(a)(4), to include all trails where persons may reasonably be expected to recreate;
- Sec. 4.15, trapping setbacks, that excepts from the setback requirements traps set in the water or under ice on the ground that it is contrary to the intent of the General Assembly, including the intent of 2022 Acts and Resolves No. 159, Sec. 1(a)(4), to exempt traps set in the water or under ice from setback requirements; and
- Secs. 3.6, definition of control of dog(s), and 4.20, taking coyote with the aid of dogs, on the ground that it is contrary to the intent of the General Assembly, including the intent of 2022 Acts and Resolves No. 165, Sec. 3(b)(4), to allow the taking of coyote with aid of dogs unless there is a required means of controlling dogs that sufficiently minimizes the risk that

dogs pursuing coyote will enter onto land that is posted against hunting, enter onto land where pursuit of coyote with dogs is not authorized, harass or harm people or domestic animals, and cause other unintentional damages to people or property.

On December 14, 2023, the Legislative Committee on Administrative Rules considered the November 30, 2023, response from the Department of Fish and Wildlife on behalf of the Fish and Wildlife Board and a majority of the Committee voted to file the following objections in certified form with the Secretary of State pursuant to 3 V.S.A. § 842(c)(1):

- the objection to Sec. 3.20, the definition of trapping, on the ground that it is contrary to the intent of the General Assembly, including the intent of 2022 Acts and Resolves No. 159, Sec. 1(d), to add the word hunt to the definition;
- the objection to Sec. 3.14(b), a portion of the definition of public trail, on the ground that this portion of the definition is contrary to the intent of the General Assembly, including the intent of 2022 Acts and Resolves No. 159, Sec. 1(a)(4), to include all trails where persons may reasonably be expected to recreate;
- the objection to Sec. 4.15, trapping setbacks, that excepts from the setback requirements traps set in the water or under ice on the ground that it is contrary to the intent of the General Assembly, including the intent of 2022 Acts and Resolves No. 159, Sec. 1(a)(4), to exempt traps set in the water or under ice from setback requirements; and
- the objection to Secs. 3.6, definition of control of dog(s), and 4.20, taking coyote with the aid of dogs, on the ground that it is contrary to the intent of the General Assembly, including the intent of 2022 Acts and Resolves No. 165, Sec. 3(b)(4), to allow the taking of coyote with aid of dogs unless there is a required means of controlling dogs that sufficiently minimizes the risk that dogs pursuing coyote will enter onto land that is posted against hunting; enter onto land where pursuit of coyote with dogs is not authorized; harass or harm people or domestic animals; and cause other unintentional damages to people or property.

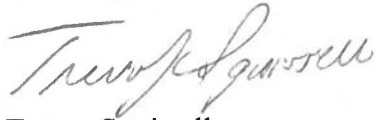
If these objected to sections of 10 V.S.A. Appendix § 44, Furbearing Species are adopted by the Fish and Wildlife Board, the Legislative Committee on Administrative Rules requests that your Office inform any interested party that the Committee's objection has legal effect under 3 V.S.A. § 842(c)(2). That subdivision of the Administrative Procedure Act provides in part that:

[T]o the extent that the objection covers a rule or portion of a rule, the burden of proof thereafter shall be on the agency in any action for judicial review or for enforcement of the rule to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the Legislature, is not arbitrary, and is written in a satisfactory style in accordance with section 833 of this title, and that the agency did adhere to the strategy for maximizing public input prescribed by the Interagency Committee on Administrative Rules and its economic and environmental impact analyses did not fail to recognize a substantial economic or environmental impact.

The Committee also requests that notice of the objections, as applicable depending on which sections of 10 V.S.A. Appendix § 44, Furbearing Species are adopted by the Fish and Wildlife Board, "be included on all copies of the rule distributed to the public[]" by the Secretary of State and the Fish and Wildlife Board. See 3 V.S.A. §§ 842(d) and 847.

Thank you for your attention to this matter.

Sincerely,



Trevor Squirrell

Chair, Legislative Committee on Administrative Rules

cc: Louise Corliss, APA Clerk, Office of the Secretary of State
Charlene Dindo, Committee Assistant, Legislative Committee on Administrative Rules
Chair Brad Ferland, Fish and Wildlife Board
Catherine Gjessing, General Counsel, Department of Fish and Wildlife
Commissioner Christopher Herrick, Department of Fish and Wildlife
Members, Legislative Committee on Administrative Rules
(electronic mail only)