Vermont Superior Court
Filed 09/28/26
Washington Unit

VERMONT SUPERIOR COURT
Washington Unit
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CIVIL DIVISION
Case No. 26-CV-03144

Patrick Cashman v. VERMONT DEPARTMENT OF FORESTS, PARKS AND RECREATION et al

ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 1)
Filer: Laura Murphy
Filed Date: July 08, 2026

The motion is GRANTED.

Vermont's Use Value Appraisal Program, 32 V.S.A. §§ 3750–3776, also called Current Use, provides tax incentives to qualified owners of agricultural or forest land who enroll in the Current Use Program by taxing the land at the "price per acre that the land would command if it were required to remain henceforth in agricultural or forest use." 32 V.S.A. § 3752(12). In 2026, the Vermont Department of Forests, Parks and Recreation (FPR), adopted revised Use Value Appraisal Minimum Management and Plan Standards, updating its 2010 standards. Plaintiff Patrick Cashman alleges that he owns forestland enrolled in the Current Use Program. He filed this suit against FPR seeking to invalidate the 2026 Standards in their entirety, asserting that: FPR never had any authority to adopt them; they violate the Vermont Administrative Procedures Act (APA), 3 V.S.A. §§ 800–850; they are arbitrary and capricious; and that they are unconstitutional. He does not allege that the new Standards have had any material adverse impact on his participation in Current Use or in relation to the 2010 Standards. Additional defendants include Danielle Fitzko, in her official capacity as Commissioner of FPR, and the Current Use Advisory Board.[1] The State has filed a Rule 12(b)(6) motion to dismiss addressing

[1] A claim against a State official in official capacity is no different from a claim against the State itself. See *Lewis v. Clarke*, 581 U.S. 155, 162–63 (2017); *Hafer v. Melo*, 502 U.S. 21, 25 (1991) ("[T]he real party in interest in an official-capacity suit is the governmental entity and not the named official."); *Karcher v. May*, 484 U.S. 72, 78 (1987) ("We have repeatedly recognized that the real party in interest in an official-capacity suit is the entity represented and not the individual officeholder."); *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) ("As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is not a suit against the official personally, for the real party in

all claims on behalf of all defendants.[2]

I. *Procedural Standard*

The Vermont Supreme Court has described the familiar standard for Rule 12(b)(6) motions to dismiss for failure to state a claim as follows:

> "A motion to dismiss . . . is not favored and rarely granted." This is especially true "when the asserted theory of liability is novel or extreme," as such cases "should be explored in the light of facts as developed by the evidence, and, generally, not dismissed before trial because of the mere novelty of the allegations." In reviewing a motion to dismiss, we consider whether, taking all of the nonmoving party's factual allegations as true, "'it appears beyond doubt' that there exist no facts or circumstances that would entitle the plaintiff to relief." We treat all reasonable inferences from the complaint as true, and we assume that the movant's contravening assertions are false.

Alger v. Dep't of Labor & Indus., 2006 VT 115, ¶ 12, 181 Vt. 309, 316–17 (citations omitted); see also 5B A. Benjamin Spencer, et al., Fed. Prac. & Proc. Civ. § 1357 (4th ed.) ("Ultimately, the burden is on the moving party to prove that no legally cognizable claim for relief exists."). The court does not accept as true "conclusory allegations or legal conclusions masquerading as factual conclusions." *Vitale v. Bellows Falls Union High Sch.*, 2023 VT 15, ¶ 28, 217 Vt. 611 (citation omitted).[3]

II. *Background*

The Current Use statutes broadly delegate authority to FPR to, among other things: adopt "minimum acceptable standards for forest management"; determine the "manner and form" of forest management plans; receive, review, and approve plans; inspect enrolled parcels; receive management activity reports from owners; and submit adverse inspection reports to the Director of the Division of Property Valuation and Review. 32 V.S.A. §§ 3752(13), 3755(b), (c). FPR's

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interest is the entity." (citation omitted)). For purposes of this decision, the Court will refer to the Defendants collectively as the State unless otherwise noted.

[2] The State argues that if any claims survive its motion to dismiss, then the Court at least should dismiss the Board as a party. It is unnecessary to reach that argument.

[3] In briefing, Mr. Cashman appears to materially change the nature of some of his legal claims or add altogether new ones, and he includes many new factual allegations. For Rule 12(b)(6) purposes, however, the Court focuses on the claims and allegations in the complaint. *Sutton v. Purzycki*, 2022 VT 56, ¶¶ 20, 22, 217 Vt. 326 (noting that the court looks to the pleadings for the facts in a motion to dismiss); see also *Webb v. Leclair*, 2007 VT 65, ¶6, 182 Vt. 559 (mem.) (noting that the court is not responsible for sifting through the evidence or briefs to find the relevant facts).

standards and procedures largely appear in its recently revised policy: Use Value Appraisal Minimum Management and Plan Standards. The policy is 130 pages in length, 43 fewer than the most recent edition of the 2010 Standards.

The 2026 revision was not adopted as a formal rule under the APA. FPR publicly represents as follows on its website:

> The Use Value Appraisal (UVA) Program—also known as Current Use—allows eligible landowners to have their forestland assessed based on its value for producing forest products, rather than its development value. This helps keep Vermont's forests working, productive, and in private ownership.
>
> The Minimum Management and Plan Standards were last substantially updated in 2010. Since then, changes in law and policy, advances in forest management, and increased participation in the UVA Program have made the previous standards more difficult to apply consistently and effectively.
>
> In response, the Department of Forests, Parks and Recreation undertook a multi-year revision process that included:
>
> ●More than 90 consulting foresters submitting nearly 450 comments on an initial draft
>
> ●Over 450 additional comments from landowners, foresters, and other stakeholders on a second draft
>
> ●Direct outreach to approximately 9,500 landowners
>
> ●Ongoing engagement with the Private Lands Advisory Committee, which accepted the Standards in December 2025
>
> The 2026 revision improves clarity, consistency, and organization—supporting more efficient plan review, effective stewardship, and the continued success of Vermont's working forestlands.

See https://fpr.vermont.gov/CurrentUseForestLandStandardsRevision (last visited Sept. 24, 2026).

III. *Analysis*

A. *Count 1—The Standards exceed FPR's statutory authority*

Mr. Cashman claims that the Current Use statutes give FPR no authority whatsoever to adopt any policy addressing the matters contained in the 2026 Standards. He further points to more specific components of the Standards and alleges that nothing in the statutes specifically authorized FPR to adopt a policy on that specific issue. His various allegations include:

> ●Ch. 124 does not grant FPR authority to "promulgate binding minimum management standards, create enrollment subcategories, impose mandatory reporting requirements, or authorize inspections of enrolled forestland."
>
> ● "FPR promulgated the 2026 Standards without any express grant of authority from 32 V.S.A. Chapter 124 to adopt binding management standards governing silvicultural practices, inspection rights, plan amendment requirements, enrollment subcategories, forester licensing mandates, or mandatory reporting requirements."
>
> ● "Chapter 124 deliberately confers rulemaking-adjacent authority within the UVA program upon the Current Use Advisory Board under 32 V.S.A. § 3754, not upon FPR."

Mr. Cashman does not more explicitly explain why he thinks FPR had no authority to adopt the Standards or any specific part of them or why the Board's rulemaking authority wholly supplants FPR's policymaking.

As the Vermont Supreme Court has explained:

> In evaluating claims that an administrative agency exceeded the scope of its statutory authority, "we look to its enabling legislation." "While we presume the validity of agency actions . . . [t]here must be some nexus between the agency regulation, the activity it seeks to regulate, and the scope of the agency's grant of authority." Agencies have "only those powers expressly granted by the Legislature and those incidental powers as are necessarily implied for the full exercise of the legislative grant." Accordingly, we have struck down agency action that was not "reasonably related to, or necessary for," the purposes of the enabling legislation.

In re Amend. #1 to FY23 Accountable Care Org. Budget Ord., 2024 VT 38, ¶ 31, 219 Vt. 461 (citations omitted).

As set forth above, the Current Use statutes expressly direct FPR to adopt minimum

acceptable standards for forest management and fulfill several other roles related to the Current Use Program. That delegation of authority, particularly regarding minimum acceptable standards, may be broad, but it certainly exists. In his filings, Mr. Cashman does not point to anything that reasonably raises a question as to whether some component of the 2026 Standards is not related to the purpose and thrust of the Current Use Program and FPR's statutory authority. He also does not point to any facts or legal interpretation that would indicate whether what FPR has done somehow necessarily conflicts with what the Board exclusively may do. The allegations in regard to both these areas are extremely conclusory and abstract.

Moreover, setting aside the arguments in Mr. Cashman's Count 2 for the moment, nothing in the Current Use statutes require FPR's policymaking to only or necessarily proceed as a formal Administrative rulemaking.

As a result, the Court finds that Plaintiff's limited and abstract allegations are insufficient to state a claim. Count 1 is **Dismissed**.

B. *Count 2—The Standards should have been adopted as a VAPA rule*

Alternatively, Mr. Cashman claims that the 2026 revisions are void because they were required under the Vermont Administrative Procedures Act (VAPA) to be adopted as a formal rulemaking. Mr. Cashman's claim relies principally on an excerpt from the current definition of the words "rule." Under the VAPA "'Rule' means each agency statement of general applicability that implements, interprets, or prescribes law or policy." 3 V.S.A. § 801(b)(9). He argues that the Standards are such an agency statement and thus had to be adopted through formal rulemaking under the VAPA.

The complete definition of "rule" under Section 801, however, is somewhat broader: "'Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy and that has been adopted in the manner provided by sections 836–844 of this title." Sections 836–844 are the APA's rulemaking procedures. In response, Mr. Cashman disregards the part of the definition that he omits from his analysis as "circular."

Such disregard, however, renders this portion of the definition surplusage, which runs contrary to the principles of statutory interpretation. *Vermont Nat'l Tel. Co. v. Dep't of Taxes*, 2020 VT 83, ¶ 26 ("We accordingly construe statutes to avoid rendering one part mere

surplusage.") (internal quotes and citations omitted). Moreover, the current definition is only "circular" if one looks solely to the surplusage that Mr. Cashman seeks to excise: a rule is whatever was adopted as a rule. The observation does not advance the relevant analysis involved in the present case because what must be adopted as a rule is not principally embedded in the definition of the term, but is addressed separately at 3 V.S.A. §§ 831–832. In 2002, on the heels of *Parker v. Gorczyk*, 173 Vt. 477, 478 (2001), the legislature fundamentally modified the definition of "rule" and §§ 831. Among its primary purposes was to clarify that "state agencies should only be required to initiate rulemaking and adopt rules when due process or a statute requires." 2001, No. 149 (Adj. Sess.), § 45(b)(2).

Section 831 now reads, in relevant part:

> (a) Where due process or a statute directs an agency to adopt rules, the agency shall initiate rulemaking and adopt rules in the manner provided by sections 836–844 of this title.
>
> . . .
>
> (c) An agency shall initiate rulemaking to adopt as a rule an existing practice or procedure when so requested by 25 or more persons or by the Legislative Committee on Administrative Rules. An agency shall not be required to initiate rulemaking with respect to any practice or procedure, except as provided by this subsection.
>
> (d) An agency required to hold hearings on contested cases as required by section 809 of this title shall adopt rules of procedure in the manner provided in this chapter.
>
> (e) Within 30 days after an agency discovers that the text of a final proposed rule as submitted to the Legislative Committee on Administrative Rules deviates from the text that the agency intended to submit to the Committee, the agency shall initiate rulemaking to correct the rule if the period for final adoption of the rule under subsection 843(c) of this title has elapsed.
>
> (f) Except as provided in subsections (a)-(e) of this section, an agency shall not be required to initiate rulemaking or to adopt a procedure or a rule.

Mr. Cashman nowhere explains why FPR's 2026 revision may have been required by this statute to proceed as a formal rulemaking. In Count 5, he asserts a number of variously framed perceived due process violations that result from the adoption, but still he does not explain why due process, apart from any statutory mandate, required formal rulemaking.

This is insufficient to state a claim. Count 2 is **Dismissed**.

C. *Count 3—Review under Rule 75*

Mr. Cashman, in Count 3, seeks broad review of the adoption of the 2026 revision and its provisions under V.R.C.P. 75. Rule 75, however, creates a process to review agency decisions to the extent that they are "available by law." *Preston v. Burlington City Retirement System*, 2013 VT 56, ¶ 13. Under this framework, "available by law" means review under one or more of the "traditional writs," traditional common-law petitions that were available as extraordinary remedies to correct abuses of power or provide limited judicial review of process. Id. These writs were limited and structured proceedings intended to provide specific review or focus corrective relief. See Id. at ¶ 14 (describing the purpose and function of the writ of certiorari); see also *Vt. State Emps.' Ass'n v. Vt. Criminal Justice Training Council*, 167 Vt. 191, 195 (1997) (listing various extraordinary writs).

Put more plainly, Rule 75 is a procedure that applies to certain types of claims.[4] It is not a claim itself, and it does not authorize review of anything that is not separately available otherwise. It applies, almost exclusively, when review is available under one of the former extraordinary writs, including certiorari. *Hunt v. Village of Bristol*, 159 Vt. 439, 440 (1997); see also Reporter's Notes, V.R.C.P. 75; V.R.C.P. 81(b) (abolishing the extraordinary writs). "It provides a simpler review procedure than that by appeal on the record under Rule 74 for state agency determinations that are not 'contested cases' within the meaning of the [APA] and for most *reviewable* determinations of local governmental bodies." Reporter's Notes, V.R.C.P. 75 (emphasis added).

While Mr. Cashman claims Rule 75 jurisdiction under Claim 3 and seeks review consistent with the provisions of Rule 75, he simultaneously resists identifying any particular writ or underlying claim that may be cognizable under Rule 75 procedure. Pressed in the course of the present briefing, he asserts that if he must identify a claim, it is certiorari.

As defined, Certiorari review allows limited judicial examination of decisions taken by public officers that are quasi-judicial in nature. See *Rheaume v. Pallito*, 2011 VT 72, ¶ 8, 190

[4] Nothing in the civil rules creates or limits the court's jurisdiction. See V.R.C.P. 82 ("These rules shall not be construed to extend or limit the jurisdiction of the superior courts and the District Court, or the venue of actions therein.").

Vt. 245 ("This writ applied to review of judicial actions by inferior courts and tribunals."); *Preston*, 2013 VT 56, at ¶ 14. It is an "extraordinary remedy and one of limited scope and function." *Rhodes v. Town of Woodstock*, 132 Vt. 323, 323–25 (1974). To state a claim for certiorari review, Mr. Cashman would need to establish that FPR's adoption of the 2026 revision is "quasi-judicial." A quasi-judicial action "is one in which all parties are as a matter of right entitled to notice and to a hearing, with the opportunity afforded to present evidence under judicial forms of procedure; and that no one deprived of such rights is bound by the action taken." *Goddard v. City of Albany*, 684 S.E.2d 635, 638 (Ga. 2009) (citation omitted); see also *Frawley v. Police Com'r of Cambridge*, 46 N.E.3d 504, 514 (Mass. 2016) ("[W]hen assessing whether a proceeding is quasi-judicial, we have looked to the form of the proceeding . . . and the extent to which that proceeding resembles judicial action." (citation omitted)); *Eneh v. Minnesota Dep't of Health*, 906 N.W.2d 611, 614 (Minn. Ct. App. 2018) ("A quasi-judicial decision occurs when an agency conducts an investigation into a disputed claim and weighs evidence, applies that evidence to a prescribed standard, and reaches a binding decision on the matter.").

Nothing in the complaint points to the availability of certiorari review in this case. As Plaintiff has not identified any other extraordinary writ or basis for his Rule 75 appeal, this claim is **Dismissed**.

D. *Count 4—Warrantless inspection authority*

Mr. Cashman next claims that § 2.3.8 of the 2026 revision allows FPR agents to inspect enrolled parcels without permission from the landowner or a warrant, all in violation of the Fourth Amendment to the United States Constitution and Article 11 of the Vermont Constitution, and no statute allowed FPR to adopt such a provision. He does not allege that his property has ever been inspected by FPR without permission or a warrant.

The Current Use statutes specifically provide:

> (1) At intervals not to exceed 10 years, [FPR] shall inspect each parcel of managed forestland qualified for use value appraisal to verify that the terms of the management plan have been carried out in a timely fashion.
>
> (2) [FPR] shall have the ability to enter parcels of managed forestland for the purpose of inspections. The [FPR] may bring any other staff from the Agency of

> Natural Resources that have the expertise to evaluate compliance with this chapter or staff that may be required to ensure the safety of [FPR] while conducting the inspections.

32 V.S.A. § 3755(c)(1), (2). On its face, Standards § 2.3.8 says nothing at variance with § 3755.

Neither 32 V.S.A. § 3755 nor Standards § 2.3.8 expressly says anything about whether landowner-permission or a warrant is required for an inspection, there are no allegations that any such thing ever happened to Mr. Cashman, and there are no allegations of such a practice generally. The Court declines to speculate on Mr. Cashman's behalf. As such, there is no injury-in-fact alleged, and the Court finds that Plaintiff has failed to demonstrate standing for this claim. *Housing Our Seniors in Vermont, Inc. v. Agency of Commerce & Cmty. Dev.*, 2024 VT 12, ¶ ¶ 13–15 (holding that parties must allege an actual injury to a protected legal interest for purposes of establishing standing).

This claim is inadequately pleaded and is **Dismissed**.

E. *Count 5—Due process*

Mr. Cashman makes numerous assertions in the complaint in support of his state and federal due process claim, among them:

> ● "The 2026 Standards impose vague, overbroad, and inadequately defined compliance requirements that fail to give enrolled landowners fair notice of what conduct is required or prohibited."
>
> ● "The 2026 Standards fail this test in multiple respects: plan amendment triggers are defined in terms that are ambiguous and susceptible of multiple interpretations; the FMAR reporting requirements do not specify with adequate precision what activities must be reported and in what form; management standards in Section 3 employ terms of uncertain scope; and the consequences of non-compliance are not defined with the specificity required by due process.
>
> ● An enrolled landowner of ordinary intelligence cannot determine from the face of the Standards what is required for compliance and what will result in disenrollment."
>
> ● "The 2026 Standards were issued without any opportunity for public participation, comment, or legislative review.
>
> ● Enrolled landowners—whose property rights and economic interests are directly affected by the Standards—were given no meaningful advance notice that

> the Standards were being prepared, no proper opportunity to comment on proposed requirements, no opportunity to appear before a decision-maker and contest the imposition of the Standards' obligations, and no meaningful opportunity to challenge the legal authority for the Standards' issuance."
>
> ● "The 2026 Standards deprive Plaintiff of substantive due process by imposing arbitrary and capricious management requirements that bear no rational relationship to the purposes of Chapter 124."
>
> ● "Yet the Standards do not provide enrolled landowners adequate procedural protections—including notice, a meaningful opportunity to be heard, and review by a neutral decision-maker—before the severe sanction of disenrollment may be imposed. This failure violates procedural due process under both the Vermont and federal constitutions."

These assertions, all of them, are precisely the sort of "conclusory allegations or legal conclusions masquerading as factual conclusions" that do not facilitate the statement of a claim under Rules 8 and 12(b)(6). *Vitale v. Bellows Falls Union High Sch*., 2023 VT 15, ¶ 28, 217 Vt. 611 (citation omitted).

The Court has no obligation to scour 130 pages of an administrative policy in search of a potential constitutional violation, and it declines to do so in this case.

Generally, when one claims a constitutional violation, the complaint must establish a prima facie case of that violation to survive Rule 12(b)(6) dismissal:

> [I]f the complaint sets forth allegations that make out a prima facie case for a [constitutional] violation, then [plaintiffs] have stated a claim and are entitled to move forward to discovery in order to attempt to prove their case. If they fail to make out a prima facie case, they are not entitled to move forward in the litigation process. To make out a prima facie case, a complaint must articulate how a statute is unconstitutional under the applicable substantive standard.

Vitale v. Bellows Falls Union High School, 2023 VT 15, ¶ 31, 217 Vt. 611 (citations omitted). A mere conclusory assertion of a constitutional violation is insufficient.

This claim is **Dismissed**.

F. *Count 6—Preliminary and permanent injunction*

Count 6 describes the injunctive remedy Mr. Cashman seeks and includes argument in support of it, but it includes no separate, underlying legal claim, much less one that could

warrant injunctive relief.

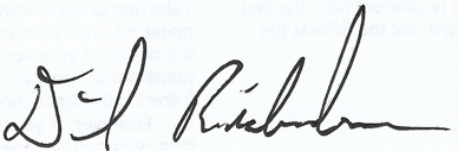
"[A] request for injunctive relief is not a separate cause of action. . . . . [R]ather, the injunction is merely the remedy sought for the legal wrongs alleged in the . . . substantive counts." *Milligan v. GEICO Gen. Ins. Co*., No. 20-3726-CV, 2022 WL 433289, at *6 (2d Cir. Feb. 14, 2022) (quoting *KM Enterprises, Inc. v. McDonald*, No. 11-CV-5098, 2012 WL 4472010, at *20 (E.D.N.Y. Sept. 25, 2012) (cleaned up), aff'd, 518 F. App'x 12 (2d Cir. 2013)).

Count 6 is not a legal claim and is **Dismissed** for that reason.

ORDER

For the foregoing reasons, the State's motion to dismiss is **Granted**. The present matter is **Dismissed** pursuant to V.R.C.P. 12(b)(6).

Electronically signed on 9/28/2026 1:21 AM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge