

# VCE Comments on H.687

April 15, 2024



**Vermonters** for **Clean Environment**

by Annette Smith, Executive Director

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# Background

Since 2000, VCE's Director has

Testified as an Aesthetics Expert in Act 250

Represented Citizens at District Commission Hearings

Participated in

Act 250 Permit Review study committees, discussions , legislative hearings, public hearings in 2001, 2003, 2005, etc.

the 2018 Act 250 Commission's meetings and public forums

Legislative Committee Act 250 Bills in 2019, 2020, 2021, 2022, 2023

Environmental Focus Group of the 2023 NRB Report

and

assisted citizens in participation in Act 250 during the last 24 years.

Served on Regional Planning Commission for 12+ years

Served on Municipal Planning Commission for 6 years

# REVIEW AND COMMENT ON LATEST DRAFT H.687

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Sec. 3. Board. Support

Sec. 4. ERB Nominating Committee. **Add public application process for District Commissioners through ERB Nominating Committee, send names of candidates to Governor.**

Sec. 5. Rules. Support ERB Rulemaking Capabilities.

Sec. 6. Power. Support, **except for the Tiers.**

Sec. 7. Personnel. Support, especially personnel to assist District Commissions. **Add Permit Specialists to assist small businesses.**

Sec. 8. Notice of Applications, Hearings, Reviews. Support.

Sec. 9. Stay. Support.

Sec. 10. Appeals. Support.

## DISCUSSION about ERB vs. Court

VCE supports the creation of the Environmental Review Board and Nominating Committee. We supported the move to Court and understand why many lawyers prefer it; after observing the effects, combined with the dysfunctional NRB, change is needed. The ERB will be quasi-judicial, administrative, and do rule-making, similar to the PUC but with a less legalistic and formidable process than the PUC.

With the creation of the ERB Nominating Board, we can see the benefit of adding to the legislation a public application process for District Commissions to replace the current political process.

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- Sec. 11. Disclosure Statement, Jurisdictional Determination. **Defer to Ed Stanak.**
- Sec. 12. Act 250 Fees. Support, **except for Tiers.**
- Sec. 13. Consolidated Appeals. Support.
- Sec. 14. Jurisdiction; Environmental Division.
- Sec. 15. ERB Positions; Appropriation. **Add Permit Specialists to assist Small Businesses.**
- Sec. 16. NRB Transition. Support.
- Sec. 17. Environmental Division; Continued Jurisdiction. Support.
- Sec. 18. Revision Authority.
- Sec. 19. Forest Blocks. Support.
- Sec. 20. Ecosystem protection. Support.
- Sec. 21. 8C Rulemaking. **Oppose. Unnecessary.**

## DISCUSSION about Forest Blocks, Habitat and Ecosystem Protection

VCE Supports adding the forest block and habitat connector criteria. However we do not think the rule-making is necessary, and will delay critically important application of Act 250 that has been delayed far too long. The PUC already applies these criteria and did not need rule-making.

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- Sec. 22. Resource Mapping. **What “other technology” exists for resource mapping?** Support.
- Sec. 23. Wood products manufacturers and prime ag soils. **Defer to Ed Stanak.**
- Sec. 24. Accessory on-farm business. **Defer to Ed Stanak.**
- Sec. 25. Permits Required; Exemptions. **Defer to Ed Stanak.**
- Sec. 26. Road Rule. **Support except for Tiers.**
- Sec. 27. Rulemaking; Road Construction. **NRB should not be doing rulemaking.**
- Sec. 28. Location-based Jurisdiction. **DO NOT SUPPORT.**
- Sec. 29. Tier 3 Rulemaking. **DO NOT SUPPORT.**
- Sec. 30. Tier 1 Areas. **DO NOT SUPPORT. Require report back on 3-year exemption from Act 250 before proceeding with Tiers.**

## DISCUSSION about Mapping and Tiers

VCE supports the proposed Future Land Use Mapping, with the potential for using it for a Tier system in the future. **VCE does not support the Tier system as proposed at this time.** Give the ERB time to get established. Give the RPCs time to develop the maps. Give ACCD the time to develop the new designations. After all those changes are in place, take a fresh look at a Tier system and the Reports required by this legislation. As written at this time, Tier 3 is too diffuse, is likely to spur conflict in communities, and will probably not be implemented in a timely manner and may not be the best solution for ecosystem protection. Tier 1A may increase regulation in downtowns that are currently exempt from Act 250. Tier 1B is questionable in its application.

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Sec. 33. Amended language, exemption repeal date changed. **DO NOT SUPPORT EXEMPTIONS FOR DISTRIBUTION ELECTRIC LINES.**

Sec. 34. Regional Plan Future Land Use Map Review. **Support creation of the maps. Bring to future legislature to determine regulatory use.**

Sec. 35. Tier 1A Area Status. **DO NOT SUPPORT TIERS (b)(1)(L) Add Enforcement Capacity and Capability.**

Sec. 36. Tier 1A Area Guidelines. **DO NOT SUPPORT TIERS.**

Sec. 37. The Plan for a Municipality.

Sec. 38. Permits Required; Exemptions. **DO NOT SUPPORT TIERS. What about polluting commercial businesses such as auto body shops, or gravel pits and quarries. Are they exempt as long as they are in a Tier 1A area?**

Sec. 39. Appropriate Municipal Panels. **DO NOT SUPPORT TIERS. (h) enforcement of existing permits issued under 10 V.S.A. chapter 151.**

Sec. 40. Tier 2 Area Report. **DO NOT SUPPORT TIERS, Support Report. Include gravel pits and quarries in report. Should Vermont remove pits and quarries from Act 250 and create a separate law as exists in New York State that is much more effective?**

## **DISCUSSION OF OMISSIONS: GRAVEL PITS, QUARRIES, ENFORCEMENT**

The bill does not recognize the unique role Act 250 plays in the regulation of gravel pits and quarries. The blanket exemptions may result in quarries in or next to village centers and downtowns avoiding Act 250. As it is now, the most common contact VCE gets from citizens is about the failure of Act 250 to require gravel pits and quarries to be in compliance, or to enforce. New York State has a law specific to pits and quarries and it may be more appropriate for Vermont to adopt a separate law.

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- Sec. 41. Wood Products Manufacturers Report. **The NRB has not shown itself to be effective. It subcontracted the Act 250 report. Add language to address the changing circumstances of the forest economy including increasingly wet conditions, workforce issues, and recognition of the value of letting forests grow older.**
- Sec. 42. Location-Based Jurisdiction Review. **Replace with review of Environmental Review Board operations, resource maps, and potential for using the maps for Tier System.**
- Sec. 43. Affordable Housing Development Regulatory Incentives Study.
- Sec. 44. Position; Dept. of Fish and Wildlife. **Support.**
- Sec. 45. Future Land Use Maps. **(15) Tier system, especially 1A and 1B, are not equitable. Benefits come to some communities and not others.**

## DISCUSSION about Equity

Exemptions from Act 250 are not equitable. Vermont has 242 Towns, 10 Cities and 4 Gores

*(Note these numbers are approximate)*

Sanitary Waste Treatment Plants: 80 Towns and Cities

Municipal Drinking Water Systems: 118 Towns (some have multiple), 10 Cities, Total 174 Systems

Serving a population of 391,538

Towns with Municipal Water & Sewer: 76

Towns with Planning, Zoning, and Subdivision Regulations: 141

Town Plan & Bylaws

Regulation Status

- Zoning
- Subdivision
- Both or unified regs

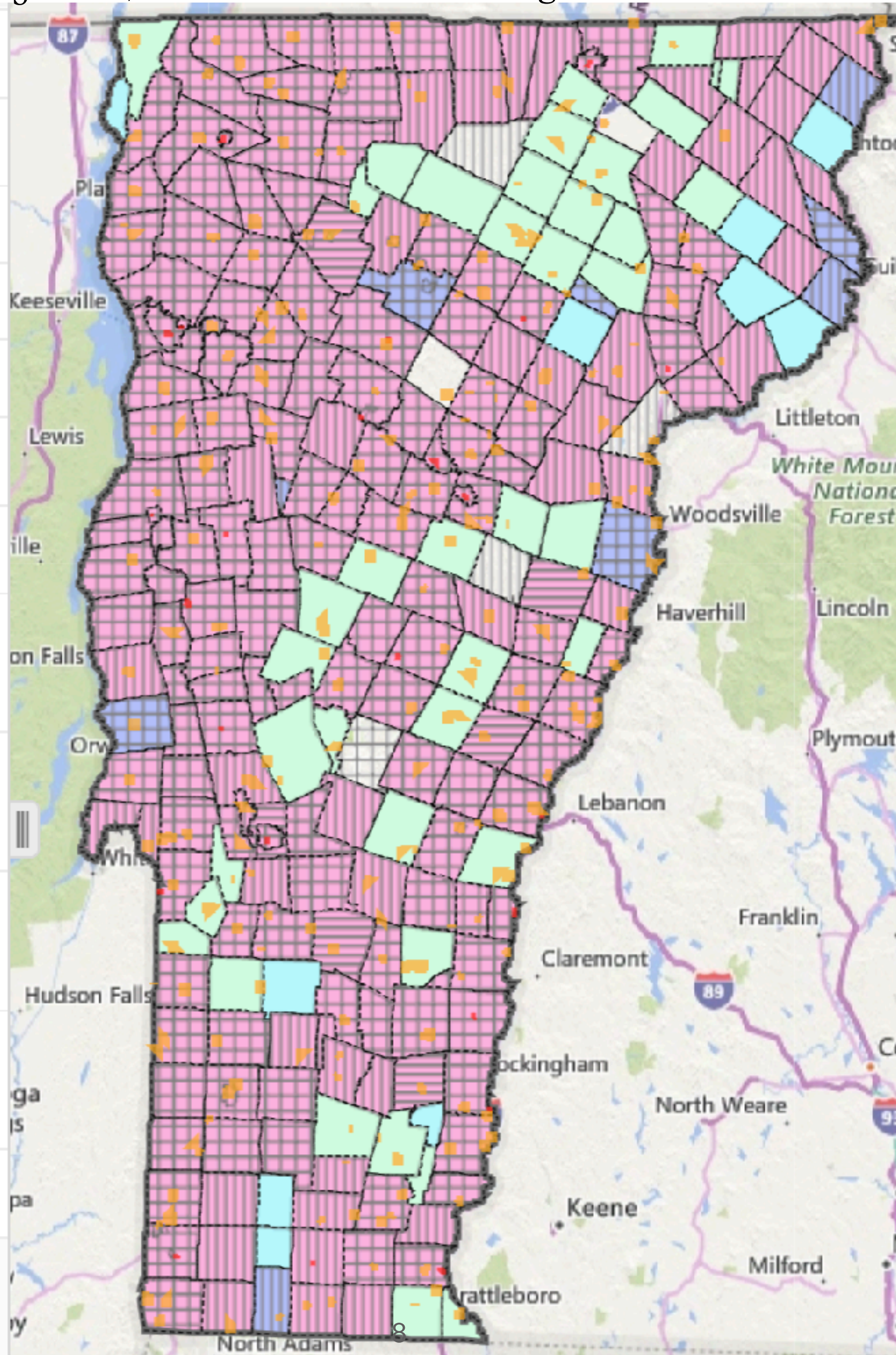
Plan Status

Plan + Regulation Status

- Unconfirmed Planning Process + Local Land Use Regulation
- Unconfirmed Planning Process + No Local Land Use Regulation
- Confirmed Planning Process + Local Land Use Regulation
- Confirmed Planning Process + No Local Land Use Regulation

Community Development

- Tax Increment Finance District Boundary



## By providing exemptions from Act 250 to only some Vermont communities, does H.687 comply with Act 154?

### Vermont Environmental Justice Law

Also known as [Act 154 of 2022](#), the Vermont Environmental Justice (EJ) Law is the state's first law specifically meant to address environmental health disparities and improve the health and well-being of all Vermont residents. The Environmental Justice Law establishes Vermont's Environmental Justice State Policy.

The purpose of the Environmental Justice Law is to ensure all Vermonters regardless of race, cultural background, or income have equitable access to environmental benefits such as clean air and water, healthy food, and public transportation. The Environmental Justice Law also protects communities from disproportionate environmental burdens such as polluted air and water, climate change impacts, and limited access to green spaces. The Environmental Justice Law requires State agencies to meaningfully engage Vermonters in the environmental decision-making processes.



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Sec. 46. Duties of Regional Planning Commissions. **RPCs are not good at public participation. Hardly anyone attends RPC meetings.**

Sec. 47. Purposes of Regional Plan.

Sec. 48. Adoption and Amendment of Regional Plan. **RPCs have trouble with quorums now.**

**This section is very complicated and likely to have very little public input in development of the plan. More likely to result in appeals by disgruntled people, after the fact.**

Sec. 49. Elements of a Regional Plan. **These are major additions to the elements of a regional plan, including elements of all the municipal plans.**

Sec. 50. Regional Planning Commission Study. **Include RPC Commissioners from different regions. RPCs work for Commissioners appointed by Town Boards.**

Sec. 51. Municipal and Regional Planning and Resilience Fund. **Is this the only increase in the Property Transfer Tax this session?**

## DISCUSSION about Regional Planning Commissions

Regional Planning Commissions are very good at many things, but they are an oddly constructed organization that generally does not excel at public engagement. Town boards appoint Commissioners, quorums are often a problem at regular meetings. Warned public hearings on regional and town plan adoptions are rarely attended by any member of the public. H.687 anticipates robust public participation in the development of Future Land Use Maps and Tier boundaries. It is unrealistic to think that Vermont's Regional Planning Commissions will be able to engage the public as envisioned. Take it in steps, develop the maps but do not use them for the Tier system until that part of the process is finished.

## **LACK of ENFORCEMENT= MAJOR FLAW IN H.687**

H.687 and the creation of a Tier system in which municipalities assume the role of permitting that previously has been done through Act 250 is a major cost shift that has not been considered.

Currently, Act 250 has two enforcement officers, each of whom reportedly have 100 active cases.

H.687 proposes to eliminate Act 250 permitting in municipalities which will be assuming the role of enforcement. However, H.687 is silent on requiring municipalities to have the budget in place and capability to enforce permits. This is not a small problem.

VCE has been contacted in recent years about problems with municipal permitting, wherein a DRB will issue a permit it knows does not comply with the town's regulations because they do not have the money to pay a lawyer to go to court after the developer appeals a denial. In a recent instance, a town DRB denied a permit, but the Select Board declined to engage an attorney to defend the DRB's denial.

Lack of enforcement is a common and long-standing problem with municipal permitting. H.687 will eliminate Act 250's enforcement role in permitting, while making no requirement for enforcement of municipal permits. This is a major flaw in the legislation.

## IDEAS MENTIONED TO DISCARD

Currently not in the bill but common ideas that should not be added to H.687:

**On-the-record proceedings.** This was tried by some DRBs. All kinds of problems arose with the record. Act 250 works best without lawyers at District Commissions, and then if there is a need to litigate specific issues, the ERB can and should hear those issues de novo. Only a few issues are usually taken up.

**Dispositive ANR permits.** During the 2001 Act 250 permit reform meetings, ANR staff Rich Phillips conducted a review of ANR permits that were attempted to be rebutted in Act 250. He identified four permits, of which three were rebutted. The panel chose not to make ANR permits dispositive. Similar reviews have been done in recent years with similar results. Act 250 provides an important review of ANR permits. The argument that Act 250 was enacted before ANR permitting came into place does not consider that ANR rarely denies permits, and the permits ANR issues are permits to pollute. It is already challenging to rebut an ANR permit in Act 250. Please do not make ANR permits dispositive in Act 250.

In closing I offer this short video that is a sobering reminder that the housing situation is not one that can be easily solved. Act 250 is improperly blamed for adding expense and delay to needed housing, especially for low income people. Cushing Dolbeare was an expert on housing, and a long-time family friend. Her husband was best man at my parents' wedding. I had the honor of spending many hours with her at her home and office on Capitol Hill in Washington DC. Please listen to her speech from 2002 as she accepted the Heinz Award. Act 250 is a good law. Further weakening it will not solve the housing problem.



**Cushing Niles Dolbeare** (June 25, 1926 – March 17, 2005) was one of the leading experts on federal housing policy and low [income](#) housing in the [United States](#). She designed the [methodology](#) for *Out of Reach*, the widely cited annual report of the [National Low Income Housing Coalition](#) (NLIHC) on the gap between housing costs and wages of low income people. She was also known for her analysis of federal housing subsidies, which document the disparity between the cost of tax-based subsidies that benefit homeowners and direct spending on housing assistance for low income households.

Dolbeare began the National Low Income Housing Coalition in 1974 when she organized the Ad Hoc Low Income Housing Coalition in response to the [Nixon Administration's](#) moratorium on federal housing programs. She served as NLIHC's Executive Director from 1977 to 1984 and from 1993 to 1994. She remained active with NLIHC as a researcher, policy analyst, and board member until her death.

Dolbeare was an adviser and friend to several Secretaries of [Housing and Urban Development](#) (HUD). In 1995, Jason DeParle wrote in *The New York Times* that she was the “dean” of the Washington Corps of housing advocates. In 2002, she was awarded the 8th Annual [Heinz Award](#) in the Human Condition.

Click on image to watch video, 1 minute, 22 seconds