

**Environmental Justice Recommendations from Karla Raimundí,
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Vermont Agency of Natural Resources to
House Committee on Environment and Energy Regarding H. 687, “An act relating
to community resilience and biodiversity protection through land use”**

February 26, 2024

Chair Sheldon and Committee Members:

As you consider House Bill No. 687, I wanted to take an opportunity to provide the Committee with written recommendations. My recommendations reconcile the mandates contained in this legislation with the recently enacted Vermont Environmental Justice Law (VT EJ Law or Act 154 of 2022)¹, and the tenets of environmental justice (EJ) that this Law upholds, and best practices regarding equity, accessibility and justice established by the State of Vermont Office of Racial Equity (ORE).

Introduction

In 2022, the VT Legislature enacted and Governor Phil Scott signed Act 154 into law. The purpose of Act 154 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 VT EJ Law also protects communities from disproportionate environmental burdens such as polluted air and water, climate change impacts, and limited access to green spaces. Further, it requires State agencies to meaningfully engage Vermonters in the environmental decision-making processes.

The VT EJ Law also created the first ever State of Vermont EJ Policy that declares:

*It is the policy of the State of Vermont that no segment of the population of the State should, because of its racial, cultural, or economic makeup, bear a **disproportionate share of environmental burdens** or be denied an **equitable share of environmental benefits**. It is further the policy of the State of Vermont to provide the opportunity for the meaningful participation of all individuals, with **particular attention to environmental justice focus populations**, in the development, implementation, or enforcement of any law, regulation, or policy. (3 V.S.A. §6003) (Emphasis provided.)*

¹ Citation

H. 687 Purpose and Environmental Justice

The stated purpose of H. 687 is “to further assist the State in achieving the conservation vision and goals for the State established in 10 V.S.A. § 2802 [and] provides a regulatory framework that supports the vision for Vermont of **human** and natural community **resilience** and biodiversity protection in the face of climate change.” (Emphasis provided).

While this legislative purpose acknowledges the importance of achieving conservation goals and promoting natural and human resiliency in the face of climate change, it falls short in adequately identifying the central role environmental justice plays in a land use framework intending to support the development of human resiliency.²

Integrating environmental justice considerations into land use planning and permitting processes is essential for promoting equity, fairness, and sustainability in decision-making and ensuring that all communities have a voice in shaping their environments.

Diversity of Membership for the Nominating Board and the Environmental Review Board

The importance of diverse participation in land use decision-making cannot be overstated. Diverse participation ensures that the voices of all stakeholders, including marginalized communities and underrepresented groups, are heard and considered in decision-making processes. Meaningfully involving diverse perspectives helps identify and address the needs, concerns, and priorities of different communities. This can lead to more equitable outcomes in land use decisions, ensuring that the benefits and burdens of development are distributed fairly among all residents.

H.687 revamps the current Natural Resources Board into a five-person, half-time professional board called the Environmental Review Board. The Bill tasks the Environmental Review Board with hearing appeals of District Commission-issued Act 250 permits and jurisdictional opinions as contested cases under the Administrative Procedure Act, as well as engaging in policy and rulemaking toward the creation of a location-based (tiered) jurisdiction scheme for Act 250 that would ease regulatory burdens in areas well-suited for future development (Tier 1a and 1b) while identifying natural resource areas that require additional protection and oversight (Tier 3).

H.687 should require the Nominating Committee to appoint a fixed number, not less than 2, of individuals who belong to, or are well-positioned to represent, environmental justice focus populations.

Likewise, the Nominating Committee should be *required* to consider Environmental Review Board candidates’ competencies with environmental justice concepts and policies. As currently drafted, candidates for the Environmental Review Board need only have “experience, expertise, or skills relating to one or more of the following areas: environmental science, natural

² supra.

resources law and policy, land use planning, community planning, or environmental justice.” Sections 3 and 4 of H.687 should be redrafted to promote the nomination of candidates who will bring environmental justice expertise to the Environmental Review Board. Moreover, H.687 should require that a fixed number of positions, not less than 2, be held by individuals who belong to, or are well-positioned to represent, environmental justice focus populations.

H. 687 should look to ensure that membership for the Nominating Board and the Environmental Review Board will be representative of environmental justice focus populations by assigning permanent seats to members of these populations.

Mapping and Location-Based Jurisdiction

The State of Vermont does not currently have a State-managed mapping tool that clearly identifies environmentally overburdened communities. The Vermont Environmental Justice Law requires the Agency of Natural Resources to:

[C]reate and maintain the State environmental justice mapping tool. The Agency, in consultation with the Environmental Justice Advisory Council and the Interagency Environmental Justice Committee, shall determine **indices and criteria** to be included in the State mapping tool to depict environmental justice focus populations and measure environmental burdens at the smallest geographic level practicable. (32 V.S.A. § 6007) (Emphasis added.)

As currently drafted, H.687 will require the Secretary of the Agency of Natural Resources to engage in resource mapping to “identify natural resource areas throughout the State.” The newly-created Environmental Review Board’s duties will include “reviewing applications for the planned growth area designation, review the future land use maps of regional plans, and review the maps that establish the rural and working lands areas” in order to support location-based jurisdiction for Act 250. It appears that these efforts are intended to occur simultaneously to each other and the other policy and rulemaking obligations of the Environmental Review Board.

The Vermont EJ Law already requires the Agency of Natural Resources to create and maintain a State environmental justice mapping tool. The revised deadline for this requirement is July 2028. This effort requires the determination of “indices and criteria to be included in the State mapping tool to depict environmental justice focus populations and measure environmental burdens at the smallest geographic level practicable.” *Supra* at 6007(a).

Sec. 22 of H.687 should be redrafted to require the resource mapping efforts to include the data from the State environmental justice mapping tool. Likewise, identifying and considering the presence of communities with EJ concerns should be added to the Environmental Review Board’s planned growth area designation application process in Sections 24 and 25 of H.687. In combination with the recommended added consideration of EJ principles to the Act 250 criteria (discussed below), this recommendation would encourage thoughtful development that does not unduly burden populations who would otherwise be most vulnerable to its impacts.

Environmental Justice Criterion

H.687 already proposes the addition of two new subcriteria related to forest blocks and connecting habitat in Sec. 20 (p. 38-40). *See also* H.687 Sec. 21 (rulemaking for new Criterion 8(B) and (C)). The Committee should similarly consider incorporating environmental justice policies into the Act 250 criteria, thus ensuring that commercial development and subdivision projects subject to Act 250 jurisdiction are reviewed for impacts to environmental justice focus populations, much like the federal agencies currently do under NEPA. *Consideration should be given to whether an “Environmental Justice” subcriterion should be incorporated into the mandatory or conditional criteria of Act 250—that is, whether a project can be denied on the basis of its nonconformance or whether a permit could be conditioned to mitigate impacts on environmental justice focus populations.*

Language Access and Meaningful Participation/Public Participation

Providing language access to members of the public is not just a best practice but also a legal requirement under civil rights laws and regulations. The State of Vermont’s Office of Racial Equity (ORE) published their “2023 Language Access Report detailing community-driven findings and recommendations for expanding language access across all branches of State government.”³ This report includes the language access policy and procedural recommendations generated by ORE through community outreach efforts along with guidelines for creating language access plans and policies in the state of Vermont. This report recommends that effective language access be considered and provided at all levels of engagement to ensure transparency and effective public participation. Additionally, to ensure compliance with civil rights laws and regulations, the Agency of Natural Resources adopted its Language Access Plan on January 4, 2024.

H.687 does not currently provide for an appropriation to ensure language access services are provided during the implementation of the proposed bill. Permitting and rulemaking processes imply direct and extensive community engagement, thus ensuring adequate funding and resources to provide these services to community members is of paramount importance as this can be determinative of compliance with federal and civil right laws and regulations. The inability to do this by implementing entities, undermines the rights of individuals who speak other languages than English and may create legal vulnerabilities based on national origin discrimination.

If the bill intends to provide an opportunity for meaningful participation and engagement of impacted community members, there needs adequate funds for language access.

³ [Office of Racial Equity Language Access Report 2023_0.pdf \(vermont.gov\)](#)

Conclusion

In conclusion, the integration of environmental justice principles into H. 687 is paramount for fostering equitable and sustainable development. By considering the disproportionate impacts of land use decisions on environmental justice focus populations and prioritizing inclusive decision-making processes centered around equity and fairness we can address environmental injustices and promote social equity. Through proactive measures such as cumulative impacts assessments, meaningful community engagement, and equitable distribution of resources, we can create healthier, more resilient communities where all individuals have access to a clean and safe environment.

Modernizing Act 250 requires reframing the foundational principles underlying this legislative framework, revising existing laws to better reflect current societal needs, regulatory and technological advancements, and evolving understandings of key land use and development issues. For H.687, this means including in land use decision-making processes the voices of those who have been at the margins of these conversations, centering permitting decisions around findings of undue and disproportionate environmental burdens negatively impacting environmental justice focus populations, ensuring adequate funding to engage with impacted community members in a meaningful way, and deliver on the promise in the statement of purpose.