

**Testimony on H.394 “An act relating to authorizing the Secretary of Natural Resources to make site-specific resource determinations”**

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**Table 1:** Distinguishing Procedure for Rulemakings from Site-Specific Resource Determinations

	<b>Rulemaking process for statements of general applicability</b>	<b>Resource determination process for site-specific decisions</b>
<b>Stage 1:</b> Submission	DEC receives petition to initiate rulemaking proceedings and reviews petition for completeness	DEC receives petition to issue a resource determination and reviews petition for completeness
<b>Stage 2:</b> Consultation with sister dep'ts	DEC notifies DFW and FPR, receives comments and resolves any conflicts	DEC notifies DFW and FPR, receives comments and resolves any conflicts
<b>Stage 3:</b> Public participation	<ol style="list-style-type: none"> <li>1. Notify public and stakeholder groups (including town clerk, RPCs, local legislators, neighboring property owners, and other interested parties) of meeting 30 days in advance</li> <li>2. Hold public meeting(s)</li> <li>3. Receive written comments from public</li> <li>4. Issue response summary</li> </ol>	<ol style="list-style-type: none"> <li>1. Notify public and stakeholder groups (including town clerk, RPCs, local legislators, neighboring property owners, and other interested parties) of meeting on draft decision 30 days in advance</li> <li>2. Host public meeting(s)</li> <li>3. Receive written comments from public</li> <li>4. Issue response summary</li> </ol>
<b>Stage 4:</b> DEC determination	Initiate rulemaking procedure or deny petition request	Issue resource determination or deny petition request
<b>Stage 5:</b> APA Rulemaking procedure	<ol style="list-style-type: none"> <li>1. File proposed rule with ICAR and Sec'y of State and publish proposed rule for public comment</li> <li>2. Notify public of hearing 30 days prior</li> <li>3. Host public hearings on proposed rule</li> <li>4. File final proposed rule with LCAR and Sec'y of State</li> <li>5. Respond to comments from LCAR</li> <li>6. File adopted rule with Sec'y of State and LCAR</li> </ol>	N/A
<b>Stage 6:</b> Appeal	<ul style="list-style-type: none"> <li>• Route: 1 year to file a motion to repeal the rule with the Washington County Superior Court Civil Division</li> <li>• Std of review: Rules adopted within the expertise of agency are presumed valid unless clear and convincing showing otherwise. <i>In re Professional Nurses Service, Inc.</i>, 164 Vt. 529, 532 (1996).</li> </ul>	<ul style="list-style-type: none"> <li>• Route: 30 days to appeal an act or decision of the Agency to the Superior Court Environmental Division under 10 V.S.A. Chapter 220</li> <li>• Std of review: <i>de novo</i></li> </ul>

