



**Testimony before the Vermont General Assembly
House Committee on Natural Resources, Fish and Wildlife**

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- Audubon Vermont supports passage of H.492 relating to Act 250 appeals. The current Act 250 appeals process would benefit from the creation of an administrative review board.
- The current structure, with the Natural Resources Board, does not provide that Board with sufficient authority for the effective implementation of Act 250 or governance of the decision-making process.
- Administrative hearings boards are in common use in other states and at the federal level for hearing appeals of administrative decisions in land use decisions. These types of boards bring the expertise and flexibility of process necessary to hear the range of cases that occur in the land use and environmental arena.
- Having a board made up of persons with a range of experience and knowledge is useful given the scientific, legal and factual complexity of many land use and environmental cases. The range of expertise suggested as criteria for appointments, and the appointment process itself, particularly the inclusion of staggered terms, reduces the risk that any one perspective will have disproportionate impact and increases the ability of the Board to respond to the wide range of issues that can arise in Act 250 cases.
- It is important that this bill authorizes the Board to use hearings examiners – staffing the Board with people who are experienced in hearing a range of types of cases can allow efficient consideration of complex cases, and allow also for more simplified hearings for smaller cases. An effective hearings examiner can play a vital role in managing the adversarial process, whether managing experienced litigators, or assisting unrepresented parties with the process.
- Land use and environmental cases may include both larger, and more factually and legally complex cases, requiring opportunities for discovery and legal briefs, as well as smaller cases that do not require such intensive legal process. This bill would allow the Board to create pathways for appeals that allow the flexibility to manage both circumstances.
- Similarly, larger, more complex, cases require the development of an administrative record in order to support review by a court of record (the Vermont Supreme Court in this case). Compiling an administrative record can present challenges resolving disputes among parties about the information to include in complex cases, and may be a challenge to know what to offer for inclusion in the record for pro se appellants. It is helpful to have a professional board and the assistance of a hearings examiner to ensure that the record is compiled by a neutral arbiter with the expertise in and resources to effectively compile an administrative record.
- The authorization for positions and level of funding appears to be insufficient. I recommend that the positions include a more senior level attorney, and sufficient funds to ensure that the Board can recruit people with sufficient experience and knowledge to serve as effective Board members.