

House Environment Committee

S.325

Testimony of Ed Stanak

April 8, 2026

I am a resident of Barre City and was employed by the State of Vermont for 32 years as an Act 250 District Coordinator. While I served in all of the nine Act 250 districts, the bulk of my career was spent in District 5 consisting of 35 towns in Washington, Lamoille and Orange counties. I have appeared before this committee and filed written testimony during prior legislative sessions. I appear today to provide perspectives on S.325 and to offer suggestions toward the efficient and user-friendly administration of Act 250.

Introduction

This testimony will be presented in the context of the provisions of S.325. I strongly supported the components of Act 181 that established the Land Use Review Board (LURB), particularly the possible transformation of the LURB into a quasi judicial panel for the purposes of appeals of District Commissions decisions and District Coordinator jurisdictional determinations. In support of this possible appellate role, I served on the LURB's appeal study committee during the summer of 2025. I struggle with the "tier" system established by Act 181 but acknowledge that the overall "tier" system remains largely intact pursuant to S.325.

Roads

Section 19 of Act 181 established new Act 250 jurisdictional standards for road construction and section 20 of the Act indicated that the LURB may adopt rules "providing additional specificity to the necessary elements of " the new jurisdictional standards. Sections 2 and 7 of S.325 imply an extension of the implementation of the new standard from July 1,2026 until January 1, 2030. I am aware of the draft "Road Construction Jurisdiction Guidance" document circulated by the LURB on March 27, 2026.

Road Rule

Road construction was a jurisdictional "trigger" under Act 250 since the passage of the Act in 1969 because roads constituted "construction of improvements" for a "commercial purpose" when the road was associated with the sale of land. In response to concerns that jurisdiction over all roads may have been an overreach, the former Environmental Board promulgated Rule 2(A)(6) by 1975 and limited jurisdiction to roads over 800 feet in length or when a road would provide access to 5 or more "parcels" being offered for sale or lease. The rule was then repealed by legislative action in 2001 in conjunction with the amendment of the statutory definition of "lot" to include divided interests in land of any size. By the time of its repeal, designs of subdivisions in order to avoid Act 250 jurisdiction had resulted in poor outcomes.

Infrastructure and Incremental Growth Impacts

The Environmental Board recognized in its earliest decisions (Citations of such precedents will be provided to the Committee upon request) that the unpermitted installation of infrastructure

on tracts of land that would support future “development” or “subdivision” was inconsistent with the 1969 legislative findings and declaration of intent for Act 250 which read, in part:

Whereas, the unplanned, uncoordinated and uncontrolled use of the lands and the environment of the state of Vermont has resulted in usages of the lands and the environment which may be destructive to the environment and which are not suitable to the demands and needs of the people of the state of Vermont and...

Whereas, it is necessary to regulate and control the utilization and usages of lands and the environment to insure that, hereafter, the only usages which will be permitted are not unduly detrimental to the environment, will promote the general welfare through orderly growth and development and are suitable to the demands and needs of the people of this state...

In those Board decisions “infrastructure” was recognized as including sewer and water line extensions as well as roads. This led to the Board’s issuance of decisions requiring the submittal of “master plans” in order to prevent incremental and cumulative impacts under the Act 250 criteria , and then the eventual adoption of Act 250 Rule 21.

The Value of Public Education

There has been substantial adverse reaction to the road provisions of Act 181. In my view, this reaction is primarily the result of insufficient public education about the rationale for the new jurisdictional trigger about roads. While the LURB’s draft “Guidance” document is helpful it will likely be inadequate in and of itself to address the adverse reaction, not to mention misinformation and disinformation circulating about the “reach” of the road provision.

Tier 3

Section 7 of S.325 appears to extend the effective dates of the Tier 3 provisions in Act 181 (sections 12, 13 and 21 of Act 181) until 2028.

The Art of Rulemaking

With all due respect to this Committee and the General Assembly, I unfortunately thought that the original provisions of Act 181 relative to Tier 3 were problematic -if not doomed- from the outset because they were premised upon rulemaking by the newly created LURB and reliance upon mapping for purposes of jurisdictional determinations.

During my 32 years of work as a permit administrator, and having had the benefit of doing so during several rounds of revisions to the Act 250 rules, I learned that effective and successful administrative rule making is an “art” that involves strategic sharing of information and an authentic effort at meaningful public input. The ability to perform such an “art” requires experiential learning by the relevant administrative body. The LURB did not have an opportunity to get up such a “learning curve” before it found itself obligated to proceed with rulemaking to implement the Tier 3 legislative provisions.

Mapping and Act 250

The use of mapping as a mechanism for jurisdictional determinations has history within the Act 250 program. During the early 1970s efforts were undertaken by the State to develop a series of statewide “capability and use” maps. Adverse reaction to the maps was swift and severe. As a result the mapping process was terminated and the effort to adopt a “Capability and Development Plan” was derailed – although a legislative statement of intent and findings survived in sections 6 and 7 of Act 85 of 1973. (These findings are found in the “History” section following 10 VSA 6042).

This is not to say that mapping does not have a sound function in substantive reviews under the “ten criteria” of applications for land use permits. Maps displaying multiple details – such as necessary wildlife habitats -have been utilized throughout the 56 year history of the Act 250 program and such use has largely been without controversy.

Administrative Nightmares

Taking a step back as a former District Coordinator and considering future efforts to administer Tier 3 as set up in Act 181, I cannot help but call to mind the Vermont Supreme Court’s holding in In Re Agency of Administration (1982) wherein the Court held that it is most important that the implementation of Act 250 -particularly with regard to jurisdictional determinations- not be allowed to become an “administrative nightmare”. My concern is – as has been already evidenced from public reactions to the early efforts by the LURB to implement the Act 181 Tier 3 provisions – that such an ongoing nightmare will result. And that this will be a serious detriment to the protection of the finite natural resources (ie the “critical natural resources” that were framed in section 22 of Act 181) that the General Assembly has recognized as being critical to the overall public interest.

Vermonters Support Protection of Finite Natural Resources

I strongly support the protection of the “critical natural resources” and I have faith that the vast majority of Vermont residents support the preservation of remaining finite natural resources. Another way of expressing this recognition of the common good is the lyric from a old tune - “You don’t know what you got until you lose it”. Lands with “critical natural resources” are bound to increase in financial value over time. The basic law of supply and demand applies. Consistent with public education, a legislatively commissioned study to examine and quantify such potential beneficial economic impacts for landowners would be revealing.

Jurisdictional “Bright Lines”

I suggest that there is a remedy to the adverse reactions to, and misunderstandings of, the legislative objectives behind the process intended by the Tier 3 legislation. The remedy is based upon adherence to the principle relied upon by the Environmental Board: that jurisdictional triggers under Act 250 must be “bright lines” - in other words, statutory standards that are clear and easily understandable.

Suggestions for New and Prudent Jurisdictional Triggers

I suggest that prudent enhancement of Act 250 jurisdiction, in order to encompass sufficient reviews of impacts on the “critical natural resources”, be structured upon 1) amendments to 10 VSA 6001(3) (A) and (19) and 2) revised Act 250 rules that strengthen the administration of the existing “ten criteria”.

Many of the “critical natural resources” recognized in Act 181 are situated above the 1,500 contour in elevation. In saying this, I acknowledge that there are most certainly “critical natural resources” below that elevation that surely require protection. My purpose is in addressing the resources most likely to not be covered by the Tier 1A assumptions of Act 181.

10 VSA 6001(3) could be amended to assert jurisdiction under Act 250 to all proposed “development” on tracts of land situated above 1,500 feet in elevation, regardless of whether a municipality has adopted permanent zoning and subdivisions bylaws.

Even more importantly – because my experience as a permit administrator was that the terms “subdivision of land” and “fragmentation” are essentially synonymous in effect when it comes to land use impacts – 10 VSA6001 (19) could be amended to include the subdivision of tracts of land above 1,500 feet in elevation into 3 or more lots within a continuous 5 year period. How many Vermont residents sell off more than a couple of lots over the course of a few years?

LURB Rulemaking to Strengthen Administration of the Act 250 Criteria

In my opinion, rulemaking undertaken by the LURB to strengthen the administration of the “ten criteria” would be much different than attempting to articulate new jurisdictional “triggers”. My reading of the “critical natural resources” provisions of Act 181, and experience as a District Coordinator, do not reveal any such resources not already considered in some fashion under one or more of the existing Act 250 criteria and having had the benefit of interpretations by both the Environmental Board and the Environmental Division of the Superior Court. The holdings in those precedents, along with feedback from the professional staff of the Agency of Natural Resources and input from the public during rulemaking, can result in a successful undertaking by the LURB to protect the “critical natural resources”.

Conclusions

I appreciate this opportunity to appear before the committee. As I have mentioned, I am more than willing to provide citations to relevant precedents of the Environmental Board. Likewise, I am also willing to provide supplemental exhibits regarding the distribution of lands above 1,500 feet in elevation and data quantifying ownership (ie public and private) patterns.