



LAND USE REVIEW BOARD

10 Baldwin Street

Montpelier, VT 05633-3201

To: House Committee on Environment
Rep. Amy Sheldon, Chair
Rep. Larry Labor, Vice Chair
Rep. Larry Satcowitz
Rep. Sarita Austin
Rep. Ela Chapin
Rep. Micheal Hoyt
Rep. Kate Logan
Rep. Kristi Norris
Rep. Rob North
Rep. Chris Pritchard
Rep. Mike Tagliavia

From: Janet Hurley, Chair, Land Use Review Board
Brooke Dingledine, Land Use Review Board
Jenny Ronis, General Counsel, Land Use Review Board

Date: April 28, 2026

RE: S.325

Introduction

Chair Sheldon and members of the committee, thank you again for the opportunity to provide testimony on S.325 and the work of the Land Use Review Board (“Board”). After our testimony on April 14, 2026, this committee signaled that it would propose repeal of the Tier 3 and “Road Rule” provisions of Act 181 of 2024. With House and Senate leadership signaling support of this plan, the Board acted to suspend all its work on these two aspects of its Act 181 charge. This has been communicated through a press release and follow-up media appearances, updates to the Board website, and in public meetings held last week in Winhall and Halifax. This committee released Draft No. 2.3 of S.325 on April 24, 2026, reflecting repeal of the Tier 3 and “Road Rule” provisions among other revisions to Act 181 of 2024. At its meeting on April 27, 2026, the Board reviewed this draft of S.325 and has the following recommendations. We will address the Board’s recommendations in the order that they arise in Draft No. 2.3 and then provide comment on a provision that appeared in the prior version Draft No. 1.2. Our comments were drafted based on version 2.3. We became aware of draft 3.2 this morning and will do our best to address changes in our testimony.

S.325 Section 3. Criterion 8(C) Rulemaking

The current draft provides for an extension of the effective date for Criterion 8C rules and related definitions, from December 31, 2026, to January 1, 2028. However, it does not provide a necessary date change in Section 14(c) of Act 181 – that is, the Board’s delivery date of Criterion 8C rules to the Legislative Committee on Administrative Rules (LCAR). Furthermore, the Board requests the effective to be pushed out to July 1, 2028 and the LCAR deadline be extended to January 1, 2028. This will allow time for the LCAR process to conclude before the new effective date of July 1, 2028.

S.325 Section 6. Permits Required and Exemptions

Interim Housing Exemption for Up to 50 Units. In place of what is currently proposed, the Board suggests allowing clear exemptions for these projects if the project area is located entirely within the area of exemption. The draft in version 3.2 introduces a new term of disturbed land that would be problematic to apply without further definition. We proposed the following language:

Sec. 6. 10 V.S.A. § 6081 is amended to read:

(2)(A) Notwithstanding any other provision of law to the contrary, until January 1, ~~2027~~2028, no permit or permit amendment is required for the construction of housing projects such as cooperatives, condominiums, dwellings, or mobile homes with 50 or fewer units including any land incidental to the use of the housing project such as lawns, parking lots, driveways, leach fields, and accessory buildings constructed or maintained on a tract or tracts of land of 10 acres or less; located entirely within:

(i) areas of a designated village center and within one-quarter mile of its boundary with permanent zoning and subdivision bylaws and served by public sewer or water services or soils that are adequate for wastewater disposal; or

(ii) areas of a municipality that are within a census-designated urbanized area with over 50,000 residents and within one-quarter mile of a transit route.

Interim Exemptions Dates. Regarding the Committee’s conversation last week about moving the interim exemption dates up or down, the Board recommends having firm expiration dates for the interim housing exemptions that are informed by the Tier 1A and 1B approval process. It provides certainty for developers as to what their Act 250 obligations will be, and allows municipalities to work on their plans, zoning, and Tier 1 requests at their own speeds without fear of losing critical housing projects.

PHPs—Permanent Exemption. Draft 2.3 of S.325 eliminates Draft 1.2 Section 6’s amendment of the permanent PHP exemption at 10 V.S.A. § 6001(35) to include Tier 1B and Tier 1B-eligible areas. The Board wants to ensure that the Committee is aware that, as it currently exists in law, PHPs are limited to “designated downtown development district, designated new town center, designated growth center, or designated neighborhood development area under 24 V.S.A. chapter 76A.” First, Chapter 76A is set to be repealed effective July 1, 2034, to be replaced by the designation program outlined in 24 V.S.A. Chapter 139 and effective upon the Board’s approval of regional future land

use maps. Second, these Chapter 76A designations do not align with the future land use areas in 24 V.S.A. § 4348a and their corresponding Chapter 139 designations, regardless of whether a municipality seeks Tier 1B status (Tier 1B status entitles them only to 50 units, instead of 75 PHP units). In other words, once the future land use maps and regional plans are approved, there will be no areas eligible for exemption of PHP projects in the State. If that is not the Committee’s intent, the Board suggests reinstating the as-passed S.325 language to include Tier 1B and Tier 1B-eligible areas.

PHPs—Temporary Exemption. Likewise, Draft 2.3 of S.325 eliminates Draft 1.2 Section 6’s amendment of the interim PHP exemption at 6001(3)(D)(viii)(III), which would have exempted PHPs from Act 250 if they were located outside of river corridors and floodplains except for infill areas, consistent with the other interim housing exemptions that apply to market rate housing. This correction is an issue of environmental justice, as the law currently enacted has the unintentional effect of allowing affordable housing units to be built in areas that have been deemed unsafe for market rate housing, and putting the most financially vulnerable Vermonters at risk for flood damage. We strongly encourage the committee to reinstate the language that would not allow the PHP exemption in flood hazard and river corridor areas except those areas suitable for infill development.

S.325 Section 7. Municipal Permit Transfer

The Board supports the proposed revisions to 24 V.S.A. § 4460 to clarify that authority to enforce Act 250 permits resides with the Act 250 program until a permit is transferred to the municipality through a permit amendment.

In addition, The Board supports restoring Section 8 of the as-passed version of S.325, which strikes the word “rare” on page 9 line 13 of the unofficial version (*i.e.*, amendment to 10 V.S.A. § 6034(b)(1)(G)).

S.325 Section 8. Public Outreach Framework

The Board supports engagement of a neutral non-governmental entity to prepare and implement a public engagement process to examine “equitable, efficient, and effective regulatory or non-regulatory tools to protect these working lands and critical natural resources.” The Board requests revisions to this section to clarify the following:

- a. What is the full scope of the public engagement? Does this replace the Board’s obligation under the EJ law to develop a community engagement plan?
- b. What does the legislature want to see in the Board’s report?
- c. What is the due date for the report?

For timely action in the 2027 legislative session, the contractor should be engaged by fall 2026, and the Board's report should be delivered January 2027.

We note that draft 3.2 provides additional items for public engagement and have concerns. Section 8A references environmental justice requirements that are under consideration for a longer timeline to implement. It is unclear how we could be in compliance and coordination with environmental justice law and policies that are to be in effect after deadlines proposed for the Board. We additionally have concerns with the scope increase to the public engagement plan. An example is the introduction of the term rare natural communities that is not well defined. We request a well-defined scope that is not overly broad and is specific as to the Legislature's desired outcomes.

S.325 Section 9. Joint Legislative Environmental Oversight Committee

The Board is happy to interface with an oversight committee as we continue to roll out Act 250 reforms. We welcome opportunities to report on our progress outside of the legislative session and check in with legislative liaisons to be sure we are implementing the way the legislature intended. We request more specificity about the scope of oversight and how the Board will communicate with the committee. We recommend considering statutory language from the Health Reform Oversight Committee (2 V.S.A. Chapter 20) or the Transportation Oversight Committee (19 V.S.A. § 12b) to address this. We have concerns about permit oversight in particular and request clear articulation as to how oversight over permitting processes would be exercised.

The Board notes that the interagency permit modernization tool being developed in response to the Governor's Housing EO has the potential to be used more broadly when this work is concluded. In addition, the Board is committed to continuous improvement of the permit process and is currently working to bring efficiencies and consistency of completeness determinations across the program.

S.325 Section 10. Regional Plan Amendment Process

We support providing this shortened process for plan amendments, non-minor future land use map amendments, and standalone Tier 1B requests. Essentially, this would eliminate the 60-day preapplication review for these amendments and separate Tier 1B requests.

S.325 Section 11. Elements of a Regional Plan

The proposed amendment in draft 3.2 to 24 V.S.A. §4348a(a)(12)(A) for downtowns and village centers adds language requiring centers contain buildings that are listed on or eligible for the National Register of Historic Places. The addition of this language would create disparity amongst regions as some plans will be approved with these benefits prior to July 1st while other regions would then become ineligible.

S.325 Section 17. Formal Review of Regional Planning Commission Decisions

Draft no. 2.3 of S.325 now contemplates charging the Board to report on whether to repeal 24 V.S.A. 4476. The Board supports repeal of this statute, rather than to rewrite 24 VSA § 4476. The Board suggests that the legislature make this decision now rather than waiting until next session.

The Board recommends repeal of the provisions that allow for formal review of regional plan adoptions because this is duplicative and conflicts with the Act 181 regional plan approval process conducted by the Board. However, the Board recommends seeking testimony this week from municipalities and VLCT about whether to repeal the provisions that allow formal review of municipal plan and planning process confirmations by regional planning commissions. Should the legislature decide not to repeal the formal review process for municipal plan and planning process confirmation, the Board would be willing to hear these cases. In this case, the Board requests an effective date that would allow us time to develop rules for hearing these cases.

S.325 Draft No. 1.2 Section 8. Request for Reconsideration.

The Board supports the removal of Section 8 of Draft 1.2, which would have transferred the process for reconsideration of permit denials from our District Commissions to the Board.

We believe that the current process, described below, provide an important opportunity for applicants to correct a project deficiency that was the cause of a permit denial by redesigning their projects in accordance with the reason for their permit's denial without having to go through an entirely new application process. The Board stresses the distinction between reconsideration by the original tribunal versus appealing to a new tribunal and the time and cost savings related.

Under Act 250, **Rule 31 Reconsideration of Decisions**, there are two kinds of reconsideration of decisions of District Commissions.

Subsection (A) provides that any party may file a motion to alter the decision within 15 days. All requested alterations must be based upon the existing record. New arguments and new evidence are generally not allowed and requests are limited to instances of manifest error, mistakes, and typographical errors and omissions. These motions are commonly referred to as Motions to Reconsider.

Subsection (B) provides an additional process for applicants to request a reconsideration of a permit denial from a District Commission or from a Court, by applying to the District Commission for reconsideration within six months pursuant to 10 VSA § 6087(c) and demonstrating that the deficiencies causing the denial have been corrected. The District Commission then holds a new hearing within 40 days of receipt of the request for reconsideration, noticing all parties to the proceeding.

Review is limited to those aspects of the project which have been physically modified to address the grounds for denial. Re-litigation of issues is not permitted, nor are changes in statute or regulation or other factual grounds for reconsideration. The District Commission also has authority to expand its review where a change in circumstances that has occurred since the date of the prior permit decision may have a significant impact on any finding, conclusion, term or condition of the project's permit or upon the Act 250 criteria.¹

In conclusion, the Board agrees that Section 8 of Draft 1.2 should be removed and that 10 VSA § 6087(c) and Rule 31 be left intact.

Conclusion

The Land Use Review Board appreciates the committee's work to refine Act 181. If you would like further input from the Board as you finalize revisions within S.325, we are happy to return for additional testimony.

¹ Rule 31(B)(2) provides the scope of review:

(a) Review shall be limited to those aspects of the project which have been physically modified to address the grounds for denial noted in the prior permit decision. Relitigation of issues is not permitted, nor are changes in statute or regulation or other facts grounds for reconsideration.

(b) The District Commission may expand its review beyond those aspects of the project which have been physically modified to address the grounds for denial noted in the prior permit decision where a change in circumstances that has occurred since the date of the prior permit decision may have a significant impact on any finding, conclusion, term or condition of the project's permit or may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. §§ 6086(a)(1) through (a)(10).

(c) The findings of the District Commission in the original permit proceeding shall be entitled to a presumption of validity in the reconsideration proceeding, insofar as those findings are not affected by proposed modifications in the project or other relevant change in circumstances