Vermonters for a Clean Environment

January 6, 2026

Memo: Land Use, Solar Siting, Tower Siting, Appeals, Act 250, Sections 248 & 248a
To: Chairs of House Environment, House Energy & Digital Infrastructure, Senate Natural Resources & Energy, Senate Finance Committees

Dear Senators Cummings, Watson, Representatives James, Sibilia and Sheldon,

To the chairs of the committees of jurisdiction over energy, the environment, land use, Act 250 and the Land Use Review Board (LURB), Sections 248 and 248a and the Public Utility Commission (PUC), I offer information about improving the processes through which Vermont addresses land use siting issues for housing, telecommunications, renewable energy, etc.

Background: In 2025, I participated in the LURB's four stakeholder groups established in Act 181 to address appeals, wood products, Tier 3, and the 8C Rule. I have attended LURB meetings and Climate Council meetings. In recent years, VCE's work in response to outreach from the public has primarily involved telecom tower siting cases, which have increased in number and, because the companies are choosing locations closer to village centers and residences without any advance community engagement, more opposition from towns and neighbors is resulting in contested cases at the PUC. Our other activity at the PUC has primarily involved 500 kW, 2.2 and 20 MW solar projects, but with the new Renewable Energy Standard and end of Standard Offer, we expect few 500 kW and 2.2 MW solar contested cases and more MW size solar projects that will raise concerns and result in conflict. VCE's goal is to reduce conflict through public engagement at the beginning, instead of litigation.

The problem with Environmental Court and the PUC Section 248 and 248a processes: The LURB's appeals stakeholder group's meetings were valuable in understanding the problems with the Environmental Court's appeals process. Lawyers representing both developers and neighbors pointed out the abuse of discovery and motion practice as methods used by skilled litigators to slow the process. This is the problem I have witnessed taking place at the PUC, taken to an extreme by the litigious solar attorney/developer.

The PUC's process is known to be the most legalistic process in the state. Its reliance on prefiled testimony, discovery, depositions, and motions makes sense for rate cases, which is what the process was intended to address. Exchanging information about finances, accounting, numbers, going back and forth, gathering more information, examining the expertise of witnesses is a process appropriate for evaluating costs, profits, salaries, income and all that goes into a utility rate case.

When the PUC began taking up land use siting cases for transmission lines, gas pipelines, wind projects, solar arrays, telecom towers and antennas, the process did not and has not changed. Act 174 made minor changes to make the process easier for the public, but the fundamental problems remain and new problems resulted from that legislation, which has been in effect for ten years.

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The Benefits of the Act 250 District Commission process: The people who created Act 250 came up with a process that avoids the problems of legal processes. I have only recently come to appreciate just how brilliant it is, thanks primarily to the LURB appeals stakeholder group discussions where I heard the attorneys detail the same problems at Environmental Court that I have been seeing at the PUC: abuse of discovery and motion practice.

The Act 250 District Commission process enables anyone to participate without a lawyer. It also enables informal processes (such as stakeholder groups) rather than contested cases. It allows participants to appoint someone who is not a lawyer to represent them. Most cases go through as Minors and are not contested, and there are no appeals. For Major cases, a hearing must be requested. People can apply for Party Status on specific criteria. Each District Commission has a District Coordinator for people – applicants and the public – to talk to for guidance about the process. The PUC has nobody to talk to, and while the Department of Public Service has, in the past, been available to educate the public about the PUC processes, it is currently not happening.

I am doing what should be done by someone at the state level to guide people through the PUC process which, as many people say, is so inscrutable "they speak a different language." I give the same presentation over and over explaining Section 248, Section 248a, the PUC, the difference between DPS and the PUC, the difference between Advance Notice and the Petition, the role of towns, standards for intervention by members of the public, how to use ePUC, the difference between public comment in the Advance Notice phase versus public comment in the Petition phase, the role of town recommendations, town plans, municipal by-laws and ordinances, motions to intervene, scheduling hearings, pre-filed testimony, discovery, preparing for an evidentiary hearing, Briefs and Reply Briefs, comments on the Proposal for Decision, oral argument. It is so overwhelming, I can only cover small pieces at a time.

At an Act 250 District Commission hearing, all parties can present their information. After the hearing, the District Commission may issue a "Recess Order" requesting more information from parties. This serves the function of discovery without burdening parties with having to interact with each other outside of the legal process (which is what happens in Environmental Court and the PUC). In my opinion, Act 250 at the District Commission level works best without lawyers.

The Benefits of Consolidating Land Use Decision-Making: Vermont currently has two different sets of standards for land use depending on the type of development. Energy and Telecom projects go through the PUC process, everything else goes through Act 250, with ANR issuing many other permits. Act 250 has policies that address impacts to wetlands, prime agricultural soils that can result in mitigation. The PUC has no similar requirements. I could detail other ways in which the two processes are inconsistent in land use decision-making, but for now I think it is sufficient to point out that the impacts to the land and the environment are what need to be regulated, regardless of the type of development, and we need consistency in how those impacts are addressed. That can best be done through Act 250, Vermont's land use law. Act 250 is a good law and it is time to stop the endless bashing of Act 250 and recognize the value it brings to this unique state. Act 250 is inaccurately being blamed for ANR permitting. Appeals of Act 250 permits are claimed to be slowing housing development, when the data clearly shows that there are far more appeals of municipal permits. Implemented on the regional level, Act 250 reduces the numerous conflicts of interest that occur at the municipal level.

Recommendations:

- Sunset Section 248a and return telecom and antenna siting to Act 250 and municipal zoning.
- Move solar siting land use issues out of Section 248 to Act 250.
- Stay the increase in Tier II renewable energy requirements of the RES until siting is addressed.
- Create incentives for siting renewable energy next to load and on the built environment and disincentives for siting renewable energy far from load and on forests and fields.
- Evaluate how to address linear energy projects such as transmission lines, gas pipelines, and wind projects.
- Prioritize the LURB's focus on improving Act 250 District Commissions, assuring they are adequately staffed.
- Reestablish permit specialists to guide applicants through Act 250.
- Establish an ombuds office to assist the public in participation and address environmental justice issues.

Thank you for considering these suggestions. I am available for further discussion.

Solar parking lot canopy at Stafford Technical Center and Rutland High School rooftops

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