Land Use Review Board

Act 250

Appeals Study Report

Pursuant to Act 181 of 2024, Sec. 11a

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VERMONT

ACT 250 APPEALS STUDY REPORT

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I. EXECUTIVE SUMMARY

This Act 250 Appeals Report of the Land Use Review Board ("Board") is the result of an appeals study and robust stakeholder process conducted by the Board pursuant to Act 181 of 2024[1].

The following table provides a brief summary of the Board's Recommendations[2] on the study's key issues. Please see Section XIII of the Report for the Board's discussion, analysis and rationale for each recommendation:

	Key Issue	**Board Recommendation**
#1	Whether to transfer Act 250 Appeals to the Board?	Yes.
#2	Whether to transfer Municipal Appeals to the Board for consolidated hearing with Act 250 Appeals?	Yes, give Applicants the option to transfer a Municipal Appeal to the Board for consolidation with an Act 250 Appeal of the same project.
#3	Whether to Transfer ANR Appeals to the Board for consolidated hearing with Act 250 Appeals?	No. ANR Appeals should stay with the Environmental Division.
#4	How to prioritize/expedite Housing Appeals?	Transfer Municipal Appeals of: - Tier 1A (all permits) - Tier 1B (housing permits only) to the Board for adjudication.
#5	Board Rules of Appellate Procedure	Proposed Board Rules include the use of hearing officers, board panels, firewall protections; but eliminates discovery and limits motion practice.
#6	Other Improvements for efficient and effective appeals, including Act 250 permitting & JO appeals?	1. Prioritize Act 250 housing applications 2. Amend VRECP Rule 5 3. Update Act 250 Rules

[1] Act 181 of 2024, Section 11a. Act 250 Appeals Study.

[2] The stakeholder group provided vital feedback and information which educated the Board and informed its recommendations. However, the Board's recommendations are solely from the Board, not a consensus of the stakeholder group; nor was the stakeholder group asked to specifically endorse these recommendations.

	Key Issue	Board Recommendation
		4. Update Procedural Rules 5. Develop policy directives 6. Clarify the Board's role in appeals 7. Evaluate appeals for early motion practice 8. Enhanced training for District Commissioners 9. Public outreach, education & engagement 10. Study whether and where to establish a Permit Specialist/ Ombuds Office

II. INTRODUCTION

Act 250, Vermont's landmark land use and development law, was designed to achieve a balance between economic development and the legitimate interests of citizens, municipalities, and state agencies in protecting the environment. Innovative and bold at its inception, Act 250 is now part of the fabric of Vermont.

However, Act 250 has also been subject to various amendments and studies aimed at modernizing and improving its effectiveness. Throughout the past decade, legislative efforts have consistently aimed to balance development needs with environmental protection, reflecting Vermont's commitment to sustainable land use practices.

Act 181, enacted in 2024, introduced significant modifications to Act 250, including the establishment of the Land Use Review Board ("Board") in place of the Natural Resources Board ("NRB") to oversee the administration of Act 250 and mandating the new Board to undertake rulemaking, implement a tiered location-based jurisdiction system, develop new administrative guidance and policy documents, initiate regional plan review and approval processes, and conduct various studies and reports.

One critical report that the Board has been entrusted with involves a comprehensive study of the appeals process for Act 250 permitting decisions, from which the Board must develop recommendations, strategies and improvements designed to expedite permitting appeals, including strategies to prioritize housing projects.

III. STATUTORY CHARGE

Section 11a of Act 181[3] contains the statutory charge for the Act 250 Appeals Study which delineates the scope of the Study and specifies the essential Board recommendations to be made on the following key issues:

- Whether appeals of Act 250 permit decisions and jurisdictional opinions should be transferred to the Board or remain with the Environmental Division of the Superior Court.
- Whether appeals of Agency of Natural Resources (ANR) and municipal land use decisions should be transferred to the Board for consolidation with Act 250 appeals or remain with the Environmental Division of the Superior Court, and how to consolidate.
- Strategies to prioritize and expedite appeals related to housing projects.
- Establishing procedural rules for the Board's administration of Act 250 and the adjudication of appeals.
- Identifying actions to enhance the efficient and effective adjudication of appeals, including procedural improvements to the Act 250 permitting process and jurisdictional opinion appeals.

The Land Use Review Board's recommendations are provided in the following Appeals Report which is respectfully submitted to the Senate Committees on Economic Development, Housing & General Affairs and on Natural Resources & Energy and the House Committee on Environment.

IV. THE STAKEHOLDER MEETING PROCESS

The Appeals Study commenced with the Board initiating a stakeholder meeting process, assembling a diverse group as specified by statute. This group represented a wide range of interests, including environmental, legal, municipal, commercial, housing, public, and governmental agencies. Their role was to provide input, discussion, and debate to inform the Board's recommendations to the legislature.

A. Stakeholder Group Members

The Board extends its appreciation to all of the Appeals Study Stakeholders for their time, dedication and contributions to the robust discussions and debates that significantly informed the Board's study and recommendations.

See **APPENDIX B** for a complete list of Appeals Study Stakeholder group members.

[3] **See APPENDIX A for the full text of Section 11a of Act 181.**

B. Stakeholder Meetings

Between May and July 2025, seven stakeholder meetings were held, focusing on several key areas:

1. **Transfer and Consolidation of Appeals:** Discussions revolved around whether appeals should remain with the court or be transferred to the Board, weighing the benefits and challenges of each system. The meetings also explored consolidating appeals from various permits, such as zoning, subdivision, and ANR permits, with Act 250 appeals for the same project.
2. **Expediting Housing Appeals:** Stakeholders examined methods to prioritize and expedite housing-related appeals, including employing hearing officers and setting timelines for processing. The discussions highlighted the need for procedural changes or additional capacity to address delays in housing projects.
3. **Procedural Rules and Conflict of Interest:** The group considered rules to govern the Board's administration of Act 250 and prevent conflicts of interest, suggesting measures like creating firewalls and ensuring transparency and accountability in the appeals process.
4. **Environmental Justice, Permit Specialist and Ombuds Office:** The meetings explored the potential role of an environmental justice, permit specialist or ombuds office to support applicants and enhance public participation and accessibility in the permitting process, emphasizing equitable participation and support for various stakeholders. See **APPENDIX G** for a detailed discussion of the topic.
5. **Board Models and Structure:** Stakeholders debated different board models for handling appeals, including the use of Administrative Law Judges and hearing officers. Discussions of the board's structure and composition included suggestions for incorporating legal expertise and ensuring sufficient resources to manage appeals.

Throughout the meeting process, stakeholders provided input on various appeals models and approaches, considering factors such as efficiency, cost, complexity, public access and participation, quality of decisions, legal and administrative consistency, predictability of outcomes, fairness/objectivity, and resource needs. The meetings highlighted the complexity of reforming the appeals process and the importance of collaboration and stakeholder engagement in developing actionable recommendations for the legislature.

See **APPENDIX I** for a comprehensive Summary of the Appeals Study & Stakeholder Process.

C. Public Hearing and Comments

The Board released its Draft Appeals Report on October 17, 2025, for a 14-day written public comment period and held a public hearing on October 23, 2025, from 4 p.m. to 6 p.m. at the Vermont State University Randolph Campus' Langevin House. Notices and a Teams invite were sent to all stakeholders and posted on the Board's website agenda.

See **APPENDIX H** for a compilation of public comments received on the Draft Report.

V. ACT 250 BACKGROUND

A. Act 250 History

In the late 1960s, Vermont's tranquil countryside experienced rapid and significant changes. The state, which had seen little population growth or development since the early 20th century, suddenly became a magnet for new permanent and part-time residents.

As described by prominent Vermont historian and Norwich University Professor Emeritus Gene Sessions:

> In Vermont, support for legislation such as resulted in Act 250 had been building since the early 1960s when Vermonters began to sense that growth was threatening to destroy the state's natural heritage and essential character. The expansion of the interstate highway system into Vermont in that decade opened the state to an influx of affluent out of-staters who were attracted to the region because of skiing, second homes, and retirement. Burgeoning ski complexes attracted developers who began buying up large tracts of land for construction of vacation homes. Site planning, lot size, and sewer system adequacy were being sacrificed to quick profit. Small rural farm communities, most of which lacked local zoning or planning control, were being overwhelmed by the rapid growth. Property taxes soared as communities struggled to pay for increased road maintenance, police, fire protection, and garbage disposal. Land prices were driven up: property that sold for $50 in 1960 was selling for $500 by the early 1970s, and $2,000 or more around ski areas. The increases made it impossible for many young Vermont families to acquire a home of their own.
>
> Mobile home parks were springing up, encroaching on farm and wood lots, with inadequate septic and utility infrastructure and inaccessible roads, but providing the only housing option for many Vermonters. Farmers, unable to pay the escalating tax rates, were selling out, often to developers who then turned more farmland into subdivisions. Open

> land and wildlife habitats were shrinking rapidly in some parts of Vermont, and fragile mountain soil structure faced destruction.
>
> Conservative Republican Governor Dean Davis responded to the growing concern by establishing a state commission on environmental control . . . . From its deliberations emerged the basic outline of the "Act 250" legislation. Although vigorously opposed by realtors and developers, the act passed two legislative houses by large margins with bipartisan support, and Governor Davis signed it into law.
>
> — Gene Sessions (1987, revised 2021)[4]

"Act No. 250 of the Acts of 1970, An Act to create an Environmental Board and District Commissions," now known simply as "Act 250," established nine District Environmental Commissions, composed of laypersons rather than government officials. Supported by a modest staff, these commissions were tasked with evaluating development and subdivision plans based on 10 criteria addressing significant environmental, aesthetic, and community impacts. The District Commission process was designed to be citizen-accessible and reflective of Vermont's regional diversity. This local review by Vermont citizens, guided by the Act 250 criteria, has remained central to the Act 250 process ever since.

B. The Vermont Environmental Board (1970-2004)[5]

Before January 31, 2005, appeals of District Commission decisions went to the former Environmental Board.[6] Similarly, appeals of District Coordinator jurisdictional opinions went to that board by means of petition for declaratory ruling.[7] Today, appeals from District Commission decisions and District Coordinator jurisdictional opinions go to the Environmental Division of the Superior Court.[8]

The Environmental Board was an administrative body in charge of the Act 250 program that consisted of nine members appointed by the Governor with the advice and consent of the Senate. It was a citizen board. Only the Chair was full-time. There were no statutorily specified qualifications for appointment. In addition to its authority to hear appeals, the Environmental Board heard petitions for revocation

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[4] Woodsmoke Productions and Vermont Historical Society, "Act 250," *The Green Mountain Chronicles* radio broadcast and background information, original broadcast 1988-89. https://vermonthistory.org/act-250-1970.

[5] The following section on the Vermont Environmental Board and the content of FN 4-16 are reproduced from the Report of the Commission on Act 250 – The Next 50 Years, January 11, 2019.

[6] 2004 Acts and Resolves No. 115, Sec. 58.

[7] Id., Sec. 47.

[8] 10 V.S.A. § 6089.

and had rulemaking and overall management authority for the implementation and enforcement of Act 250.[9]

The Environmental Board made decisions as a body, by majority vote, including appeals and declaratory rulings.[10] The appeal and declaratory ruling procedures were governed by the Administrative Procedures Act ("APA"), which requires notice to the parties of the issues and the hearing and gives parties the right to present and respond to evidence and conduct cross-examination.[11] The rules of evidence were applicable, but in a relaxed manner to ensure that all material or relevant evidence could be received.[12]

A party appealing to the Environmental Board was required to file the appeal within 30 days and to include a statement of the issues to be addressed, a summary of the evidence to be presented, and a preliminary list of witnesses. Cross-appeals were permitted within 14 days.[13] The Environmental Board would then hold a de novo hearing on the issues identified by appeal and cross-appeal.[14] Therefore, the Environmental Board heard only the criteria raised by the appeal documents.

The Environmental Board typically proceeded by convening a pre-hearing conference to identify the parties, clarify the issues, and set a schedule for the case. It could hear the case itself or assign the hearing to a member or subcommittee of the Board, who would then issue a proposed decision subject to presentation by the parties of oral argument and written objections to the full Board.[15] There was no discovery in Environmental Board proceedings other than through issuance of subpoena to compel a person to appear and testify or produce books and records.[16] However, to provide information to the parties about each other's case and to expedite the hearing process, the Board typically required the parties to file their testimony in written form prior to the hearing, called "prefiled testimony."

Appeal from the Environmental Board was to the Vermont Supreme Court, which reviewed the appeal on the record and sustained the Board's findings if they were supported by substantial evidence on the record as whole.[17] Unless there was a

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[9] 2004 Acts and Resolves No. 115, Secs. 48–52, 67–69.

[10] 1 V.S.A. § 172.

[11] 10 V.S.A. § 6002; 3 V.S.A. §§ 809–10.

[12] 3 V.S.A. § 810(1); In re Desautels Real Estate, Inc., 142 Vt. 326, 335 (1982).

[13] 2014 Acts and Resolves No. 115, Sec. 58; C. Argentine, Vermont Act 250 Handbook at 57–58 (1st ed. 1993).

[14] 2014 Acts and Resolves No. 115, Sec. 58.

[15] Id., Sec. 50; 3 V.S.A. § 811.

[16] 3 V.S.A. 809(h).

[17] 2014 Acts and Resolves No. 115, Sec. 58.

"compelling indication of error," the Court deferred to the Board's interpretation of Act 250 and its own rules.[18]

C. The Natural Resources Board (2004-2024)

In 2004, the Vermont Legislature passed Act 115, an act relating to consolidated environmental appeals and revisions of land use development which transferred jurisdiction over Act 250 appeals from the Environmental Board to the newly expanded Environmental Court and transferred the Environmental Board's administrative functions to a new entity named the Natural Resources Board, which could participate as a party in Act 250 appeals at the Environmental Division.[19]

Proponents of transferring appeals jurisdiction to the Court argued that the Environmental Board's process lacked formality, did not adhere to court rules, and often included policy guidance rather than merely resolving disputes. However, the elimination of the Environmental Board raised concerns with others about potential harm to Act 250, including:

- The court appeals process could become expensive, complicated, and difficult for citizens, including applicants, without legal representation.
- Replacing nine Vermonters with diverse perspectives with a single judge could significantly alter the nature of Act 250 decisions.
- The court's focus on resolving individual disputes might undermine the Act 250 program's role in providing clarity and breadth to the criteria.

Many now believe that these concerns have materialized but could be remedied by restoring appellate jurisdiction to an independent expert Land Use Review Board to oversee the Act 250 program. Advocates argue that the former Environmental Board issued hundreds of comprehensive, well-reasoned decisions over more than 30 years, thoroughly addressing every aspect of Act 250, and these decisions were frequently upheld by the Vermont Supreme Court.

D. Land Use Review Board (2025)

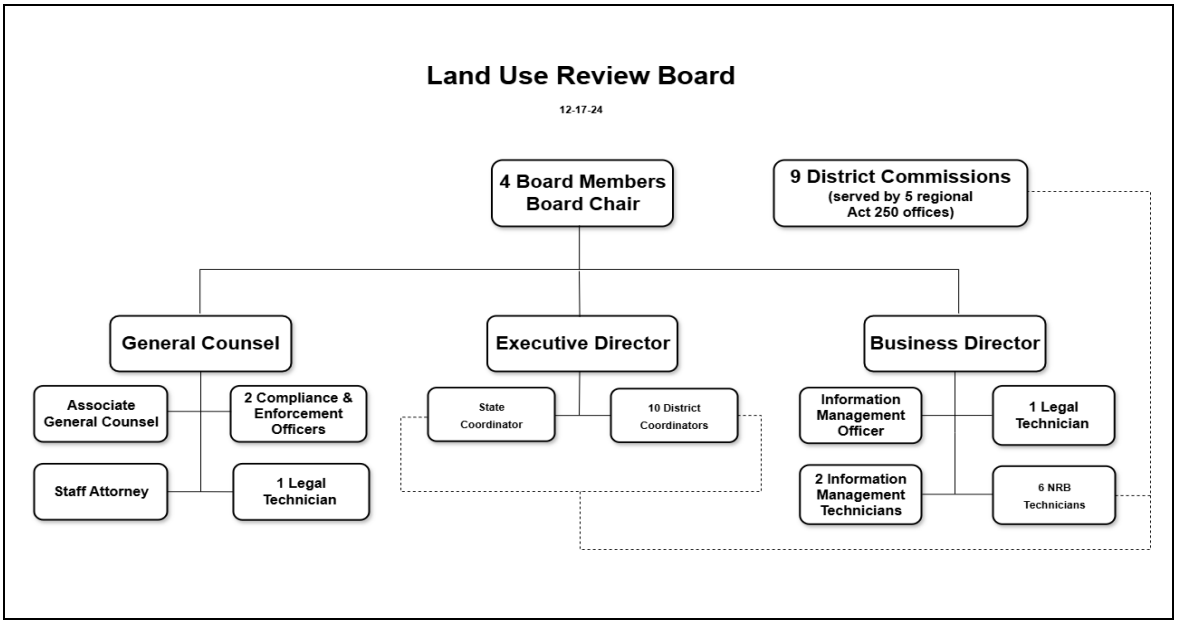
Act 181 of 2024 replaced the Natural Resources Board, establishing a five-member full-time professional Land Use Review Board ("Board"). This Board has taken over the responsibilities of administering the Act 250 program, transitioning it to a new

[18] In re BHL Corp., 161 Vt. 487 (1994).

[19] The NRB initially had two panels: a land use panel and a water resources panel. Subsequent legislation transferred the duties of the water resources panel to the Department of Environmental Conservation. This transfer reduced the Natural Resources Board to five members with the duties of the land use panel only.

system of location-based jurisdiction, and defining natural resource areas for additional protections.

The Board's primary role in administering the Act 250 program includes managing five regional offices, recruiting, training, and supervising staff, and providing administrative and technical guidance to the nine district environmental commissions responsible for issuing Act 250 land use permits. The program is supported by 34 full-time employees and approximately 60 citizen volunteer commissioners, as outlined in the Land Use Review Board's Organizational Chart:



The Board is responsible for promulgating rules and policies, enforcing Act 250, and prosecuting enforcement violations in the Superior Court Environmental Division. It also participates as a party in appeals of Act 250 permitting decisions and jurisdictional opinions before the Environmental Division. Additionally, the Board has a quasi-judicial role in hearing appeals of energy compliance determinations made by the Commissioner of the Department of Public Service.

Act 181 introduces new jurisdictional thresholds and exemptions which will be phased in over the next few years. The Board's expanded authority, jurisdictional changes, rulemaking, and the development of new administrative guidance and policy documents demand significant attention from the Board, its General Counsel, Business Director, Executive Director, and State Coordinator. The Act allocated funding for a new Staff Attorney position to support these efforts.

E. How does Act 250 work?

The district commissions serve as the central component of the Act 250 process. Each Act 250 permit application is evaluated by one of nine district commissions,

whose members are appointed by the Governor. These commissions receive support from full-time district coordinators and technicians based in five regional offices across the state. District coordinators are also responsible for issuing written jurisdictional opinions to determine whether an activity requires an Act 250 permit or a permit amendment.

In 2024, district coordinators issued 267 jurisdictional opinions, while district commissions rendered 363 permit decisions, with 98 percent receiving approval. During the application process, some plans are modified, and district commissions typically attach conditions to land use permits to ensure that the Act 250 criteria remain satisfied in perpetuity.

All appeals of District Commission decisions, District Coordinator jurisdictional opinions, and Act 250 enforcement actions are heard by the Superior Court's Environmental Division, where the Land Use Review Board may participate as a party.

VI. SUPERIOR COURT ENVIRONMENTAL DIVISION

A. Environmental Division Jurisdiction

The Vermont Environmental Division was expanded in 2004 to streamline environmental appeals by consolidating them into a specialized division within the Superior Court. This division was created to efficiently handle complex environmental and land use disputes, offering a more focused judicial process for such appeals. The types of cases it addresses include:

1. **Act 250 Appeals:** of jurisdictional opinions and permitting decisions under Vermont's land use and development law, which mandates permits for certain development projects.
2. **Municipal Permit Appeals:** concerning decisions made by local development review boards and planning commissions, including issues related to zoning permits, variances, subdivisions and site plan approvals.
3. **Environmental Permit Appeals:** concerning permits issued by the Vermont Agency of Natural Resources (ANR), covering issues such as water quality, air quality, waste management, and other environmental regulations.
4. **Enforcement Actions:** cases which involve the enforcement of environmental laws and regulations, including actions taken by ANR, Act 250, or municipalities to address violations.
5. **Other Environmental Matters:** any other cases that fall under the jurisdiction of the Environmental Division as specified by Vermont law.

B. Consolidation of Appeals

The Environmental Division currently has the authority to coordinate or consolidate permit appeals from the Agency of Natural Resources (ANR), Act 250, and municipalities when the permits pertain to the same project.[20] By consolidating these appeals into a single case, the division can address all related issues in one proceeding, reducing the need for multiple hearings. This approach may save time and resources for both the parties involved and the judicial system by avoiding duplicative processes.[21]

Despite these benefits, consolidation is infrequent, with only 2-3 cases consolidated annually. This rarity is largely due to practical considerations and strategic decisions made by applicants, including:

1. **Resource Management:** Applicants often choose to manage their resources by addressing permits sequentially rather than simultaneously. This strategy allows them to concentrate their efforts and financial resources on one process at a time, minimizing the risk of being overwhelmed by multiple complex processes.
2. **Sequential Strategy/Testing the Waters:** While not required, securing a municipal permit first, enables applicants to assess potential opposition and community sentiment. Municipal processes are generally simpler and less costly, allowing applicants to address concerns early before moving on to the more complex and resource-intensive Act 250 process. This approach can help establish a foundation for their project and potentially strengthen their position in subsequent Act 250 reviews.
3. **Processing Time Differences:** The varying processing times of different permitting programs also hinders consolidation. Zoning permits are usually processed more quickly than Act 250 permits, which require more

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[20] **10 VSA § 8504. Appeals to the Environmental Division** states in relevant part:

> "(g) Consolidated appeals. The Environmental Division may consolidate or coordinate different appeals where those appeals all relate to the same project."

Vermont Rules of Civil Procedure Rule 42(a) states:

> "(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may, with consent of the parties, order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

[21] **10 VSA § 8501. Purpose** states:

> "It is the purpose of this chapter to: (1) consolidate existing appeal routes for municipal zoning and subdivision decisions and acts or decisions of the Secretary of Natural Resources, district environmental coordinators, and District Commissions . . ."

comprehensive environmental and regional impact assessments. This discrepancy makes it difficult to align timelines for simultaneous processing.

4. **ANR Permits as Presumptive Evidence:** Applicants frequently obtain ANR permits first to use them as presumptive evidence in Act 250 proceedings. This strategic move provides a basis for demonstrating compliance with environmental standards, even though Act 250 does not mandate any specific requirement or order for obtaining other permits.

Overall, these strategic choices reflect applicants' efforts to navigate the permitting landscape efficiently, minimize costs, and manage risks associated with opposition and regulatory requirements. Consequently, while consolidation offers potential resource savings, it affects only a small number of cases each year.

C. Jurisdiction over Permit-Related Property Rights

The Vermont Superior Court Environmental Division is empowered to adjudicate property rights issues that are directly linked to a permitting appeal when these issues are crucial for determining compliance with statutory and bylaw requirements. This authority allows the court to resolve disputes over property rights that are integral to the permitting process, as highlighted by the Vermont Supreme Court in *In Re Ranney Dairy Farm, LLC, Major Subdivision Appeal,* 2024 VT 66.

Such property rights issues may include disputes over easements, boundary lines, or ownership claims that are vital to the permitting decision. When these issues arise during a permitting appeal, such as the existence of a required easement or right-of-way, the Environmental Division can address them within the context of the appeal. This approach enables the court to issue a comprehensive decision that considers both permitting and property rights, thereby conserving time and resources by eliminating the need for separate legal proceedings.

Overall, the Environmental Division's ability to address property rights issues within permitting appeals enhances its capacity to provide thorough, integrated, and efficient adjudication of complex land use and environmental cases.

D. Environmental Division Judges

The Environmental Division is staffed by two environmental judges, “each sitting alone,”[22] who conduct trials across the state. Most hearings are held remotely via video conferencing, unless the judge requests in-person attendance or specific

[22] 4 V.S.A. § 1001(a).

evidence needs to be presented. Additionally, judges conduct site visits to better contextualize the evidence presented during hearings.

Judges in the Environmental Division bring extensive expertise in law, environmental regulation, Act 250, municipal zoning, and various land use and property law matters. They undergo a rigorous nomination and selection process[23] and, as judicial officers, are held to the highest standards of conduct, facing disciplinary action for any misconduct. Furthermore, judges in the Vermont judiciary must undergo a retention process, ensuring accountability for their conduct and their handling of cases, litigants, and the public.

E. Caseload Volumes

Over the past three years (2022-2024), the Environmental Division has averaged 138 case filings annually. These cases encompass all permitting appeals related to the Agency of Natural Resources (ANR), Act 250, and municipal decisions, as well as enforcement actions from these entities.

On average, the breakdown of cases filed each year by appeal type is as follows:

- 14 Act 250 appeals
- 64 municipal appeals
- 6 ANR appeals
- 53 enforcement cases (all ANR, Act 250, and municipal)
- 2 miscellaneous cases

This results in an average of 78 Act 250 and municipal permitting appeals filed each year. Of these 78 appeals, approximately one-third, or an average of 26 projects, are related to housing developments.

[23] 4 V.S.A. § 1001(c).

F. 2024 Act 250 & Municipal Permitting Appeals Statistics:

1. **Act 250 Permits (2024):**

Total Decisions Issued:	630
Total Appealed:	9
Percentage Appealed:	1.4%
District Comm'n Decisions Issued:	363
Total Appealed:	6
Percentage Appealed:	2.4%
Jurisdictional Opinions Issued:	267
Total Appealed:	3
Percentage Appealed:	1.1%

2. **Act 250 Appeals (2024):**

Total Act 250 Appeals filed:	9
District Comm'n Appeals (6 cases)	
Jurisdictional Opinion Appeals (3 cases)	
Avg. Disposition Time:	223 days
Total Appeals Related to Housing:	2
Avg. Disposition Time of Housing Appeals:	391 days

2. **Municipal Appeals (2024)**

Total Municipal Appeals Filed:	51
Average Disposition Time:	221 days
Total Appeals Related to Housing:	18
Avg. Disposition Time of Housing Appeals:	187 days

G. Court Procedure

Practice before the Court is governed by the Vermont Rules of Environmental Court Procedure (VRECP). For each appeal, the Environmental Division establishes a pre-trial schedule aimed at efficiently resolving the matter, as outlined in VRECP 2. This scheduling occurs prior to, during, or shortly after the initial pre-trial conference, typically within 30 to 60 days of the case being filed. Parties usually agree on deadlines for discovery, motion practice, mediation, and trial readiness, which are then submitted to the Court as a joint stipulation. If the parties cannot agree, the Court imposes reasonable deadlines based on its disposition guidelines.

Occasionally, parties propose a pre-trial schedule that exceeds the standard guidelines or seems disproportionate to the case's needs from the Court's perspective. In such instances, the Court conducts a status conference to hear from

the parties and decide whether to adopt the proposed schedule as the official scheduling order. If a developer requests an extended schedule, the Court typically approves it if the presiding Judge finds good cause for the additional time.

In some cases, the scope of discovery is contested. Under VRECP Rule 2(c), the Judge has the discretion to limit discovery to what is necessary for a full and fair determination of the proceeding. The Judge exercises this discretion to ensure compliance with VRECP Rule 1, which guides the overall process.

H. Disposition Guidelines

The Environmental Division currently has disposition guidelines in place that establish target processing times for appeals at the Court:

CASE TYPE	DAYS TO DISPOSITION
Act 250 Appeal and ANR de novo Appeal	**360**
ANR/LURB Enforcement	**240**
Municipal De Novo	**300**
Municipal Enforcement	**150**
On the Record Appeal	**360**

As of August 2025, the Environmental Division had 55 pending cases, with 85% classified as "under goal" and 15% as "over goal" according to the Court's disposition guidelines.

I. Clearance Rates:

The Judiciary utilizes clearance rates as a metric to assess their effectiveness in progressing matters through the appeal process. Clearance rates compare the number of new appeals filed to the number of appeals resolved. The purpose is to measure whether a court is keeping up with its incoming caseload. A clearance rate above 100% indicates that the court is resolving more cases than have been added. Conversely, a clearance rate below 100% indicates that the court has resolved fewer cases than have been added, which means that a backlog of cases may be developing.

The clearance rate is calculated by comparing the number of cases filed during a fiscal year with the number of cases that were resolved during the same time period.

Below is a summary of the Environmental Division's clearance rates from 2019 to the present, with 2025 data extending through September:

Clearance Rate:	FY19	2021	2022	2023	2024	2025
Incoming Cases	163	147	116	150	106	87
Outgoing Cases	185	134	117	150	162	105
Clearance Rate:	113%	91%	101%	100%	153%	121%

It is noteworthy that the clearance rate for all Environmental Division cases in 2024 was 153%, and so far in 2025 (through September), it stands at 121%. This has reduced the number of pending cases presently before the Environmental Division to 55.

J. Docket Management and Practice

1. For any appeal pending before the Court, the Environmental Division can typically schedule a merits trial within two weeks of the parties notifying the Court that they are ready for trial. Because of the substantial availability of trial dates on the Court's calendar, the Court does not have a formal prioritization system for appeals related to housing projects.
2. Each month, judges and staff review the docket to ensure that all pending matters, including housing-related appeals, are progressing efficiently through the Environmental Division process, tailored to the needs of each case.
3. Since January 2024, the time that a motion or merits decision remains "under advisement" before the Environmental Division—meaning it is prepared for the Court's decision—ranges from 30 to 60 days, with many decisions made in under 30 days. In rare instances, the Court may take up to 90 days when circumstances require additional time.
4. In appeals, including those related to housing projects, parties often request more time than provided in the scheduling order or what the Court would impose under disposition guidelines. This occurs for various reasons, and the Court generally considers the following:
5. The Court evaluates whether it is appropriate to pressure parties when their timing request is reasonable. This is based on the belief that parties and their lawyers best understand their case and goals, and that better outcomes are achieved when parties are fully prepared. The Court considers whether it is reasonable to push parties to trial before they are

ready, while also ensuring expedited proceedings for a full and fair determination.

6. The Court gives significant weight to developers' or applicants' scheduling requests within the appeal. It recognizes that developers or applicants often appear as appellants seeking judicial review of permit denials or conditions imposed by lower tribunals, not just to defend issued permits.
7. When parties request unreasonably long periods for discovery, motion practice, or trial, the Court routinely intervenes to shorten these periods, balancing the parties' needs with the efficient resolution of the matter.
8. Delays Related to On-the-record Appeals: On-the-record appeals currently face significant delays due to a shortage of available transcribers. It is not uncommon to experience delays of 60 to 90 days or more in obtaining a transcript for adjudication.
9. The Court supports *pro se* litigants by offering a monthly free Environmental Division Pro Se Clinic, designed for individuals representing themselves in environmental cases. The clinic lawyer provides advice and consultation, answering questions and directing litigants to useful resources, but does not represent parties in court.

K. Appeals to the Supreme Court

Decisions made by the Environmental Division can be appealed to the Vermont Supreme Court, as outlined in 10 V.S.A. Section 8505 and VRECP 5(k). In 2024, there were 17 appeals from the Environmental Division to the Supreme Court, and in 2025, there have been 6 appeals to date. Frequently, these appeals focus on specific conditions rather than challenging the permitting decision as a whole. The Land Use Review Board is represented by the Attorney General's Office at the Supreme Court.

VII. AGENCY OF NATURAL RESOURCES ("ANR") APPEALS

A. Appeals of ANR Permit Decisions

10 V.S.A. Chapter 220 governs appeals of an act or decision of the Secretary of the Agency of Natural Resources, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking. Typically, these appeals involved Agency-issued permits or denial of permit applications, but they can also encompass other types of decisions, as outlined in 10 V.S.A. §8503. The Vermont Rules for Environmental Court Proceedings (VRECP), specifically Rules 2 and 5, detail the process for these proceedings. In summary, such decisions may be appealed to the Superior Court, Environmental Division within 30 days of the decision per 10 V.S.A. §8504(a).

B. ANR's Position on Transfer of ANR Appeals

The Agency of Natural Resources (ANR) does not support the transfer of Agency permit appeals from the Environmental Division of Superior Court to the Land Use Review Board, including the option of a limited transfer where appeals are consolidated at the Board with Act 250 permit appeals, for several reasons. Since January 1, 2020, to present, ANR has had approximately 35 appeals of ANR permits, permit denial decisions, and "acts or decisions of the Secretary." Certain ANR acts or decisions beyond regulatory permitting decisions are also subject to appeal and within the Court's jurisdiction.

ANR issues thousands of permits annually, encompassing over 80 different types, many of which involve significant regulatory and technical complexity. The Court has developed the necessary expertise to adjudicate these appeals, issuing decisions within a reasonable timeframe and in compliance with legal requirements. Additionally, ANR values the Court's motion practice, which helps narrow the scope of appeals and can lead to outright dismissals. This practice has been effective in limiting appeal scopes and securing dismissals when appropriate. Furthermore, there are few complex appeals involving both Act 250 and ANR permits.

The Court possesses the requisite expertise to review ANR permit appeals, ensuring regulatory consistency for NGOs, developers, and other litigants. The Environmental Division of the Vermont Superior Court has long adjudicated ANR permit appeals, providing a fair and objective venue for resolving complex factual and legal issues. The existing appeal process is well-established and familiar to parties, with the Court having developed significant experience and case law related to ANR's statutes, rules, and permit programs. For these reasons, the Agency strongly opposes transferring its permit appeals to a new tribunal.

VIII. HOUSING APPEALS

The housing crisis in Vermont has been a central focus of the Appeals Study stakeholder process, with discussions emphasizing the need for more efficient adjudication of housing-related appeals. The Land Use Review Board has been tasked with evaluating the appeals process to address the state's housing needs effectively.

A. Key Concerns and Issues

1. Delays in Housing Appeals:
    - The current appeals process is seen as a significant barrier to timely housing development. Delays are often due to procedural complexities, missed deadlines, and the latitude given to appellants in meeting court procedures.

- Approximately one-third of permitting appeals filed with the Environmental Division relate to housing projects, highlighting the need for a more streamlined process.

2. Complexity of the Permitting and Appeals Processes:
   - The existing system involves multiple layers of review, including Act 250, municipal zoning, and ANR permits, which can complicate and prolong the appeals process.
   - Concerns were raised about the potential for district commission processes to become more formalized and lawyer-driven, deterring community participation and increasing costs for developers.
3. Resource and Capacity Constraints:
   - The Board discussed the need for additional personnel and resources to handle the increased volume of housing appeals.

B. Proposals and Recommendations:

1. Prioritization and Expedited Processing:
   - Suggestions included the Board taking municipal housing appeals in Tier 1A and Tier 1B municipalities in order to help address the housing crisis by prioritizing housing project appeals.
   - The use of hearing officers, 3-member panels could provide flexibility to effectively deploy resources to expedite the appeals process with comparisons to the Public Utility Commission's model.
2. Procedural Improvements:
   - Suggestions included procedural changes such as eliminating Discovery, limiting motion practice, and shortening case processing deadlines.
3. Other Ideas:
   - Proposals included limiting municipal zoning review of housing projects in Tier 1 growth areas to allow affordable housing projects in Tier 1 areas to bypass development review and directly obtain a building permit for expeditious municipal approval. This could eliminate needless appeals of housing development that is in conformance with town plans, served by sewer and water, and meeting zoning requirements for height, setback, and other easily verifiable criteria.
   - This concept of “by right” permits under certain conditions was advocated for by many of our housing expert Stakeholders and was supported by Vermont Natural Resources Council (VNRC) as a compelling idea that

needs more time and discussion as it could speed up the production of housing in an effective way. However, due to the limitations of time and resources in conducting this study, the Board did not pursue this idea further during this appeals study.

4. Environmental Justice and Public Participation:
   - The role of an Environmental Justice Advocate or Ombuds Office was considered to support applicants and enhance public participation and accessibility.
   - Ensuring meaningful participation in decision-making processes aligns with environmental justice goals to reduce disparities.

IX. THE COURT VS. THE BOARD DEBATE

A. The Case for Keeping Appeals at the Court

Advocates for retaining Act 250 land use and municipal zoning permitting appeals within the Vermont Superior Court Environmental Division, rather than transferring appellate jurisdiction to a proposed Land Use Review Board, offer several compelling arguments which are rooted in maintaining judicial independence, ensuring quality, consistency and fairness, leveraging existing legal expertise, and preserving public trust in the legal process.

1. **Judicial Independence and Impartiality**: The Vermont Superior Court Environmental Division is part of the judiciary, which is inherently designed to be independent from political pressures. Judges in this division are appointed based on their legal expertise and are bound by ethical standards that ensure impartiality.
2. **Expertise and Specialization**: Judges in the Environmental Division are lawyers who have specialized knowledge and decades of experience in environmental and land use law, which is critical for understanding the complex issues that arise in Act 250 and zoning appeals. This expertise ensures that decisions are well-informed and legally sound.
3. **Consistency and Precedent**: The Environmental Division has established a body of case law that provides consistency and predictability in land use and zoning decisions. This consistency is crucial for developers, municipalities, and citizens who rely on established precedents to guide their actions and expectations.
4. **Public Trust and Transparency**: The judiciary is a well-established institution with procedures that ensure transparency, public participation,

and accountability. Court proceedings are open to the public, and decisions are published, providing transparency and fostering public trust.

5. **Efficiency and Resource Allocation**: The Environmental Division is already equipped with the necessary infrastructure and resources to handle appeals. Establishing a new Board database and document filing system would require significant investment of time and resources.
6. **Integration with Broader Legal Framework**: The Environmental Division is integrated into the broader Vermont judicial system and has expanded jurisdiction over property law issues related to permit appeals, allowing for integration with other legal processes and considerations. This integration ensures that land use decisions are consistent with other legal principles and frameworks.

In conclusion, retaining Act 250 land use and municipal zoning permitting appeals within the Vermont Superior Court Environmental Division offers numerous advantages in terms of specialization, ensuring consistency and fairness, leveraging existing legal expertise, and preserving public trust in a predictable process.

B. The Case for Transferring Appeals to the Board

Transferring Act 250 land use permitting appeals from the Vermont Superior Court Environmental Division to the newly established Land Use Review Board, offers several compelling advantages rooted in specialization, efficiency, consistency, and effective governance.

1. **Board Independence and Impartiality**: The Land Use Review Board is part of the Executive branch but was specifically designed to be geographically diverse and independent from political pressures. Members must have a commitment to environmental justice and are bound by ethical standards that ensure impartiality.
2. **Expertise and Specialization**: The Land Use Review Board is composed of professional members with diverse expertise in environmental science, land use law, policy, planning, community planning, engineering, and flood plain management all of which is well-tailored to the complexities of Act 250 and zoning appeals. This specialized knowledge can enhance the quality and relevance of decisions. Moreover, the ability to deliberate and discuss issues collectively would help ensure the scientific, legal, and factual complexities of land use cases are thoroughly considered, leading to informed and balanced decisions.
3. **Consistency and Precedent**: The predecessor Environmental Board heard Act 250 appeals from 1970 to 2005, which established a significant

body of case law including binding interpretations and tests under the Act 250 criteria, such as the Quechee analysis, which have provided consistency and predictability in land use decisions for the past 53 years. This consistency is crucial for developers, municipalities, and citizens who rely on established precedents to guide their actions and expectations. The Land Use Review Board could continue that role and provide much-needed policy-based guidance that has been missing from the process, and which could enhance consistency in decision-making across districts.

4. **Public Trust and Transparency**: The Land Use Review Board is a new institution with procedures that ensure transparency, public participation, and accountability. All Board meetings and hearings are subject to the Open Meeting law. Meetings and hearings are open to the public, minutes and audio-video recordings are posted and viewable online, and decisions are published, providing transparency and fostering public trust.
5. **Efficiency and Timeliness**: The Land Use Review Board, with its focus on Act 250 and Tier 1, could expedite the appeals process, reducing procedural maneuvering and ensuring quicker resolutions.
6. **Governance and Authority**: The current governance structure lacks a central authority to most effectively implement Act 250 and the Board's lack of authority to hear and decide appeals limits the Board's ability to provide full oversight and guidance to the program. As an appellate Board, it would have the authority to hear appeals and make final decisions, ensuring that Act 250 is administered effectively and efficiently.
7. **Accessibility and Public Participation**: The current judicial process can be intimidating and inaccessible to citizens. The Land Use Review Board could offer a more accessible and user-friendly process, similar to administrative hearing boards used in other states and at the federal level. This approach would encourage greater public participation and better ensure that diverse perspectives are considered in land use decisions. In addition to the requirements of the Open Meeting Law, the Board is subject to Vermont’s Environmental Justice Law and will be implementing a public engagement plan and working to ensure access to environmental justice for all Vermonters.
8. **Flexibility and Adaptability**: The board would have the flexibility to tailor its processes to the complexity of each case, allowing for more streamlined hearings for simpler cases and more detailed proceedings for complex ones. This adaptability would help the appeals process be efficient and responsive to the needs of all parties involved.

In conclusion, transferring Act 250 land use permitting appeals to a Land Use Review Board offers numerous advantages, including increased specialization, efficiency, consistency, and more effective governance. These benefits could lead to a more streamlined and accessible appeals process, better suited to address Vermont's evolving land use challenges and priorities while improving the administration and implementation of Act 250.

X. APPEALS BOARD MODEL

The Appeals Board Model proposed by the Board introduces a structured framework for managing Act 250 Appeals (**See APPENDIX C – Act 250 Board Model**) and Municipal Appeals (**See APPENDIX D – Municipal Appeals Board Model**), focusing on efficient and equitable adjudication processes. The Appellate Board would operate much like the former Environmental Board, having the following elements:

A. Structure of Appeals Board

1. **Full Board vs. Hearing Panels:** The model allows for flexibility in adjudicating appeals by utilizing either the full board or 3-member panels, depending on the complexity of the case. Complex cases may be heard by the full board, while average or simpler cases can be handled by a three-member panel.
2. **Hearing Officers:** One Board member will be designated as Hearing Officer for each appeal to manage scheduling, narrow appeal issues, decide procedural motions, and ensure the case is trial-ready, thereby expediting the process.

B. Standards of Review

1. **"On-the-Record" Review**: For the small number of municipalities that have opted for on-the-record review by the Court, the board will maintain this standard, ensuring maximum consistency with existing court practices.
2. **"De Novo" Review with "Due Consideration"**: For all other municipalities that have not opted for on-the-record review, and for all Act 250 appeals, the proposed model primarily maintains the status quo, i.e. de novo review, allowing the Board to consider all questions of law and fact anew. However, the model also permits the Board to give "due consideration" to the decision and record below.
    a. **"Due consideration"** is a legal standard that requires a decision-making body to give appropriate weight and thoughtful evaluation to certain opinions or evidence presented during a proceeding. This

standard does not mandate that the decision-making body must agree with or adopt the opinions or evidence, but it does require that they be meaningfully considered and factored into the decision-making process.

b. **Purposes of giving "due consideration" to the Decision and Record below:**

First, it respects the decision made by the Act 250 district commissions and municipal panels, acknowledging their thoroughness and diligence in the initial review, which enhances the credibility and legitimacy of the appellate process. By valuing the local expertise of these bodies, the appellate process ensures that their valuable local knowledge and insights are not overlooked, recognizing the important role municipalities play in land use planning and development.

Second, this approach promotes efficiency and expediency. Utilizing the existing record can streamline the appellate review by reducing the need to re-establish facts that have already been thoroughly examined, leading to quicker resolutions. It allows the appellate body to focus its hearings on key issues that require further examination, rather than revisiting all aspects of the case, thereby saving time and resources for both the board and the parties involved.

Third, it balances a fresh review with established findings. While a de novo review allows for a comprehensive evaluation of the case, considering the record ensures that the appellate body is informed by the established findings and context of the initial review. This approach provides the flexibility to conduct a fresh review where necessary while still leveraging the work already done, allowing for a balanced and informed decision-making process.

The proposal to maintain de novo review while giving due consideration to the record below offers a balanced approach that respects the work of the District Commissions and municipal panels, enhances efficiency, and provides consistency and predictability in the appeals process. By leveraging the existing record, the Board can conduct a more focused and informed review, ultimately leading to effective and timely resolutions.

C. Scope of Issues on Appeal

Appeals are limited to issues raised in the initial proceedings where the appellant has or claims party status. This limitation ensures that the appeal process remains

focused on relevant and previously contested issues, preventing the introduction of new matters that were not part of the original proceedings.

D. Procedural Rules and Conflict of Interest

- **The Board has no inherent conflict of interest**: Contrary to what some commentators argued, there is no conflict of interest with District Commissions making decisions that are then heard by the Board on appeal. District Commissions are quasi-judicial bodies that make decisions based on the facts and law of a given matter. The Board has no role in the District Commission decision on a given matter.
- **Board attorneys:** can provide legal advice to District Commissions on a matter if the Commission requests such advice. If legal advice is provided to a District Commission, that Board attorney can be walled off from working on an appeal of that matter with the Board if there is a concern about any conflict or the appearance of a conflict.
- **Firewall Protections:** The model includes procedural rules that create a firewall, preventing conflicts of interest and the appearance of conflicts of interest when the board attorneys are involved in both permitting and the appeals processes.
- **Discovery and Motion Practice:** The model proposes eliminating discovery and limiting motion practice to streamline the process and reduce delays.

See **APPENDIX E** – for Proposed Board Rules of Appellate Procedure.

E. Roles and Responsibilities

Board members and staff will have the following roles and responsibilities for appeals:

- **Board Members:** As a full Board or Hearing Panel, members are responsible for issuing written decisions supported by factual and legal analysis after hearings or oral arguments.
- **Hearing Officers:** One Board member will be appointed to manage each appeal's scheduling, trial preparation, and to narrow and/or define appeal issues to ensure efficient case management.
- **Appellate Counsel:** Appellate Counsel will consist of the Board's General Counsel and Staff Attorneys as assigned by General Counsel in compliance with proposed *Rule 44. Procedural Firewall Rule for Board Lawyers in Act 250 Appeals.* Appellate Counsel will provide legal support and advice to the Board or Panel and will prepare recommended responses to legal motions.

- **Administrative Support:** An administrative staff person will handle docketing, appeal administration, and preparation of records for Vermont Supreme Court review.

F. Board Disposition Guidelines

The model includes proposed guidelines for processing times to ensure timely adjudication of appeals. These guidelines set target timelines for different types of appeals.

APPEAL TYPE	DAYS TO DISPOSITION[24]
Act 250 Jurisdictional Opinion	**120-180**
Act 250 Permit Decision	**120-270**
Municipal Permit Decision - de novo	**120-240**
Municipal Permit Decision - on-the-record	**120-210**

XI. APPEALS BOARD RESOURCES NEEDED

The potential transfer of appeals from the Environmental Division to the Land Use Review Board necessitates a strategic approach to resource planning and allocation to effectively manage the anticipated increase in workload. The Board has conducted a thorough analysis of the resource requirements, focusing on both administrative and legal staffing, as well as the potential for repurposing existing resources to meet these needs.

A. Human Resource Needs

1. **Administrative Staff:** The addition of one administrative staff member is necessary for managing the appeals docket efficiently. This role will be essential in assisting with scheduling, case management, document filing, and supporting the logistical aspects of the appeals process, ensuring that it runs smoothly from filing to final decision.
2. **Legal Staff:** If the Board assumes responsibility for all municipal Tier 1A appeals and Tier 1B housing appeals, there is some debate as to whether

[24] **Days to Disposition** is calculated beginning as follows:
- For De Novo Appeals - from the date the appeal is filed.
- For On-the-record Appeals: from the date the record is complete (with a transcript).

there may be a need for additional legal staff to assist the Board in handling the increased volume and complexity of cases. However, predicting the exact need is challenging due to uncertainties surrounding appeal volumes and the impact of Act 181, which introduces new jurisdictional thresholds and exemptions that could influence the number and nature of appeals.

3. **Reassignment of Existing Legal Staff:** The Board has been allocated a new Staff Attorney position to support the implementation of Act 181. Once the initial workload related to Act 181 tasks, such as rulemaking and regional plan reviews, is reduced, this attorney could potentially be reassigned to focus on appellate work. Additionally, board attorneys currently representing the Board in the Environmental Division for Act 250 permit and jurisdictional opinion appeals could have their hours redirected to support the Board's appellate functions, providing additional legal capacity without the need for new hires.

B. Infrastructure and Training

1. **Technology and Office Space:** Investment in technology infrastructure is necessary to support electronic filing, case management systems, and virtual hearings. This includes upgrading existing systems or implementing new platforms to handle the appeals process. Additional office space may also be required to accommodate new staff.
2. **Training and Development:** Comprehensive training programs for new and existing staff on the appeals process, legal procedures, and the use of technology systems are essential. Continuous professional development will ensure that staff remain updated on legal and procedural changes, enhancing the Board's capacity to manage appeals effectively.

C. Cost Estimates

1. The addition of one Administrative Staff person, plus the cost of infrastructure and incidentals are estimated to be $123,050.00 for one-time expenses and an additional $192,500.00 in annual expenses.

Scenario 1: Appeals Board for Act 250 Permit & JO Appeals Costs		
Annual Expenses		
	$ 110,000.00	One LURB Legal Services Specalist
	$ 30,000.00	Annual increase to maintain databases, electronic storage and electronic systems
	$ 37,500.00	Annual increase to fee for space charge
	$ 15,000.00	Annual increase to incedental costs
	$ 192,500.00	Total annual expenses
One-time Expenses		
	$ 100,000.00	One-time costs for databases, electronic storage and electronic systems
	$ 20,000.00	One-time costs to move office to acccomodate new staff and functions
	$ 3,050.00	One-time incidental costs
	$ 123,050.00	Total one-time expenses

2. While it is unknown whether the addition of another Lawyer would be necessitated by the municipal appeals volumes, the costs of this second scenario were calculated to include the second additional salary, infrastructure and incidentals which were estimated to be $126,100.00 for one-time expenses and $393,500.00 in annual expenses.

Scenario 2: Appeals Board for Act 250 Permit & JO Appeals and Municipal Appeals		
Annual Expenses		
	$ 110,000.00	One LURB Legal Services Specalist
	$ 200,000.00	One LURB Staff Attorney
	$ 30,000.00	Annual increase to maintain databases, electronic storage and electronic systems
	$ 37,500.00	Annual increase to fee for space charge
	$ 16,000.00	Annual increase to incidental costs
	$ 393,500.00	Total annual expenses
One-time Expenses		
	$ 100,000.00	One-time costs for databases, electronic storage and electronic systems
	$ 20,000.00	One-time costs to move office to acccomodate new staff and functions
	$ 6,100.00	One-time incidental costs
	$ 126,100.00	Total one-time expenses

D. Conclusion

Transferring appeals from the Environmental Division to the Board necessitates careful planning and strategic resource allocation. For handling Act 250 appeals, the addition of an administrative staff member, along with infrastructure upgrades and comprehensive training programs, is essential. Should the Board's scope expand to encompass municipal Tier 1A (all appeals) and Tier 1B (housing appeals), additional resources, including legal expertise, may be required. To navigate these uncertainties, the Board advocates for a phased approach over two years and revisiting staffing levels at that time. This strategy will allow the Board to prepare for and assume responsibility over Act 250 appeals while continuously evaluating capacity and resource needs over the next two years. By doing so, the Board will be well-positioned to adapt to evolving demands and ensure the efficient and effective adjudication of appeals.

XII. BOARD CAPACITY AND TIMING CONSIDERATIONS

One of the primary challenges the Board faces in formulating recommendations regarding the transfer of appeals to the Board is the lack of data to predict how Act 181 will affect appeals volumes. The introduction of new Act 250 jurisdictional thresholds and exemptions could lead to fluctuations in the number and nature of appeals. This uncertainty makes it difficult to assess the demands on the Board's capacity and resources, requiring the Board to remain flexible and adaptive in its planning.

The Board is currently navigating a complex landscape of responsibilities under Act 181, including reviewing and approving Regional Plan and Tier 1 applications, implementation of the Wood Products report recommendations, Tier 3 and Criterion 8C stakeholder processes and studies, Road Rule jurisdictional guidelines, and modernizing the Act 250 program to align with the vision set forth in Act 181. Thus, the Board's current workload is substantial, and the additional responsibility of handling appeals would exceed the Board's current capacity.

The Board's Act 181 "to do list" further underscores the need for a phased approach for the transfer of appeals. Moving into 2026, the Board will continue with the implementation of the Wood Products Study, rulemaking for Tier 3, the Road Rule and Criterion 8C, as well as conducting the Tier 2 study and updating existing rules and procedures.

Given the Board's extensive obligations and the uncertainties of appeals volumes, the Board is recommending a phased approach to transferring appeals. First, Act 250 Permit Decision and JO Appeals would be transferred from the Court to the Board on or before July 1, 2028, with a prior "check-in" report date of October 1, 2027, to advise on the Board's capacity and appeals volumes, to determine when the Board would have the capacity to adjudicate municipal appeals.

In conclusion, the Board's current capacity is heavily influenced by its extensive responsibilities under Act 181, and the lack of predictive data on appeals volumes adds another layer of complexity. By adopting a phased approach and setting a target date for taking on Act 250 Appeals, the Board aims to ensure that it can manage its workload effectively while maintaining the quality and integrity of its decision-making processes.

XIII. BOARD RECOMMENDATIONS

A. Recommendation #1: Transfer Act 250 Appeals to the Board

The Board recommends transferring jurisdiction over Act 250 appeals from the Environmental Division to the Board on July 1, 2028. This recommendation is informed by the need for specialization, efficiency, consistency, and effective governance of the Act 250 program as well as the capacity and timing issues related to the Board's Act 181 tasks.

1. **Rationale for Recommendation**

   a. **Specialization and Focus**: A dedicated professional board would allow for more collaborative, specialized and informed decision-making. This focus would enable the board to provide clearer guidance to District Commissions, applicants, and other parties, improving the overall administration of Act 250.

   b. **Efficiency and Timeliness**: The Environmental Division's formal process can lead to delays in processing appeals. The Land Use Review Board could expedite the appeals process, reduce procedural maneuvering and ensure quicker resolutions.

   c. **Consistency and Precedent**: The Land Use Review Board is a professional board that could enhance consistency in decision-making across districts by establishing binding interpretations and tests under Act 250 criteria. This could provide better uniformity in District Commission reviews and clearer expectations for developers and municipalities.

   d. **Governance and Authority**: The Board's lack of authority to hear and decide appeals prevents it from providing the necessary oversight and guidance through the entire permitting and appeals process. If the Board had the authority to hear appeals and make final decisions, it could better ensure that Act 250 is administered effectively and efficiently.

   e. Capacity and Timing: The Board recognizes the current capacity constraints due to the Board's numerous Act 181 tasks, including regional plan and Tier 1 approvals, rulemaking and administrative updates.

Therefore, the Board suggests a phased approach, with the transfer of Act 250 Appeals on July 1, 2028, at which time, the Board will be better able to assess capacity and changes in appeals volumes. This timeline allows for the completion of current tasks and the potential reallocation of resources to handle appeals efficiently.

2. **Cost-Benefit Analysis**

   a. **Costs**

   - **Infrastructure and Training**: Establishing the necessary infrastructure for the Board to handle appeals will require investment in technology, office space, and training programs for staff. These initial setup costs are estimated to be $123,050, although they are largely one-time expenses.
   - **Increased Staffing and Ongoing Operational Costs**: Transferring Act 250 appeals to the Board will necessitate hiring an additional administrative staff person to manage the appeals docket. The Board will incur ongoing operational costs related to maintaining the appeals process, including salary, benefits, and administrative expenses. These costs estimated at $192,500 will need to be sustained over time, regardless of fluctuations in the volume of appeals.

   b. **Benefits**

   - **Improved Efficiency and Timeliness**: By focusing on Act 250 appeals, the Board can streamline the process, reduce delays and providing quicker resolutions.
   - **Enhanced Consistency and Precedent**: A dedicated board will provide consistent and uniform decisions, establishing clear precedents that guide future cases. This consistency reduces uncertainty for developers and municipalities, potentially decreasing the number of appeals over time.
   - **Specialized Expertise**: The Board's focus on Act 250 will allow for the development of specialized expertise, leading to more informed and accurate decisions. This specialization can improve the quality of outcomes and increase stakeholder confidence in the process.
   - **Centralized Governance**: The Board's authority to oversee Act 250 appeals will enhance governance and allow for the effective implementation of recent changes to the law. This centralized approach can lead to more coherent policy application and better alignment with state development goals.

c. Concerns

- **Cost vs. Volume of Appeals**: One of the primary concerns is the disproportionate cost of resources needed to adjudicate a relatively small number of appeals. With Act 250 appeals averaging only 14 cases per year, the cost per case could be high, raising questions about the overall cost-effectiveness of the transition of only Act 250 appeals to the Board. This concern about the efficient use of funds could be addressed by adding municipal appeals to the LURBs responsibilities.
- **Uncertainty in Future Appeal Volumes**: While current appeal volumes are low, recent changes to the law could lead to fluctuations in the number of appeals. This uncertainty makes it challenging to predict long-term resource needs and costs accurately.

3. Conclusion

Routing appeals to the Board, which is also charged with supervising the Act 250 program would mean that policy decisions inherent in any appeals would be made by the administrative body charged with those decisions. The interpretation of the Act and the rules issued by the Board would be informed by those policy decisions and a practical understanding of the day-to-day administration of the program. Acting as an appellate board would endow the Board with a greater ability to provide direction to the District Commissions and consistency to the Act 250 program.

The decision to transfer Act 250 appeals to the Land Use Review Board involves a trade-off between the benefits of improved efficiency, consistency, and governance, and the increased costs associated with additional resources required. While the benefits are significant, the relatively small number of appeals raises concerns about the cost-effectiveness of the transition. Therefore, the Board recommends a phased approach with a target goal of taking Act 250 appeal by July 1, 2028, at which time the Board will be able to better assess capacity, costs, and changes in appeal volumes, to determine the date upon which it could begin to adjudicate municipal Tier 1A or Tier 1B housing appeals ensuring that the process remains efficient and sustainable.

B. Recommendation #2: Transfer Municipal Appeals to the Board for Consolidation

The Board recommends providing applicants the option to transfer municipal appeals to the Board for consolidated adjudication with Act 250 permit appeals for the same project. This recommendation aims to streamline the appeals process, reduce redundancy, and enhance efficiency.

1. Rationale for the Recommendation

a. **Streamlined Process**: Allowing applicants to consolidate municipal and Act 250 appeals into a single adjudicative process at the Board like they are able to do at the Environmental Division will maintain the option for applicants to streamline the appeals process. This consolidation reduces the need for separate proceedings in different forums, saving time and resources for both the applicants and the adjudicating bodies.

b. **Efficiency and Timeliness**: Consolidated adjudication can expedite the resolution of appeals by eliminating duplicative processes and reducing procedural delays for complex projects that require both municipal and Act 250 permits.

c. **Consistency and Coherence**: A single adjudicative body handling both municipal and Act 250 appeals can ensure consistency in decision-making. This approach allows for a more coherent application of land use policies and criteria, reducing the potential for conflicting decisions from different forums.

d. **Specialized Expertise**: The Board's focus on land use and development appeals allows it to leverage specialized expertise in handling complex cases. This specialization can lead to informed and accurate decisions, enhancing the quality of outcomes for applicants.

e. **Applicant-Driven Choice**: Providing the option to transfer appeals empowers applicants to choose the most efficient and effective forum for their cases. This flexibility allows applicants to tailor the appeals process to their specific needs and circumstances, potentially reducing litigation costs and delays.

2. Implementation Considerations

a. **Eligibility Criteria**: The option to transfer municipal appeals should be available only to applicants seeking consolidated adjudication with an Act 250 permit appeal for the same project. This ensures that the consolidation is relevant and beneficial to the specific case.

b. **Procedural Rules**: A Rule to govern the transfer and consolidation process, could be easily added to the proposed Appellate Board Rules, ensuring a fair and transparent approach.

c. **Resource Allocation**: Historically, the number of consolidated appeals is very small, averaging 2-3 per year. Thus, there does not appear to be a need for additional resources to manage the small increased workload from a very few consolidated appeals.

3. Conclusion

The Land Use Review Board recommends providing applicants the option to transfer municipal appeals to the Board for consolidated adjudication with Act 250 permit appeals for the same project. This recommendation aims to streamline the appeals process, enhance efficiency, and improve consistency in decision-making.

C. Recommendation #3: Do NOT Transfer ANR Appeals to the Board

The Board recommends that Agency of Natural Resources (ANR) appeals remain within the jurisdiction of the Environmental Division of the Superior Court. This recommendation is based on several key factors that highlight the suitability of the current system for handling ANR-related appeals:

1. **Expertise and Complexity**: ANR issues a vast array of permits, exceeding 80 different types, many of which involve significant regulatory and technical complexity. The Environmental Division has developed the necessary expertise to adjudicate these complex appeals effectively. The court's established experience and understanding of ANR's statutes, rules, and permit programs ensure that appeals are handled with the requisite depth of knowledge and legal acumen.

2. **Efficiency and Precedent**: The Environmental Division has demonstrated the ability to issue decisions within a reasonable timeframe, maintaining the legal requirements of the permit programs. The court's motion practice, which ANR effectively utilizes, helps narrow the scope of issues on appeal and can lead to outright dismissals when appropriate. This process not only enhances efficiency but also contributes to the development of case law and precedents that provide regulatory consistency for all stakeholders, including NGOs, developers, and other litigants.

3. **Fairness and Objectivity**: ANR has expressed confidence in the fairness and objectivity of the court process. The Environmental Division is a well-established venue known to all parties involved, providing a transparent and impartial forum for resolving complex issues of fact and law. This established trust in the court's ability to handle ANR appeals is a critical factor in maintaining the current system.

4. **Limited Number of Appeals**: Since January 1, 2020, ANR has experienced approximately 35 appeals of its permits and decisions, a relatively small number given the volume of permits issued annually. This limited number of appeals further supports the argument that the current system is adequately equipped to handle ANR-related cases without the need for transfer to a new tribunal.

In conclusion, the Land Use Review Board, after careful consideration of ANR's position and the insights provided by ANR, recommends that ANR appeals remain within the jurisdiction of the Environmental Division of the Superior Court. This decision ensures that ANR's complex and technical appeals continue to be adjudicated by a body with the necessary expertise, efficiency, and fairness, maintaining consistency and trust in Vermont's environmental regulatory framework. Moreover, it would allow the Board to focus on Act 250 and municipal appeals, where it can leverage its expertise in land use and development to ensure more efficient adjudication.

D. Recommendation #4: How to Prioritize/Expedite Housing Appeals

The Board recommends transferring municipal zoning appeals for all Tier 1A permits and for all Tier 1B housing-related permits from the Environmental Division to the Board. This recommendation aims to prioritize and expedite housing appeals, addressing Vermont's urgent need for increased housing stock.

1. **Rationale for the Recommendation**

    a. **Prioritization of Housing Appeals**: Transferring all zoning appeals in Tier 1A areas and all housing appeals in Tier 1B areas from the Court to the Board will prioritize these cases, ensuring they receive the focused attention necessary to expedite their resolution. This prioritization aligns with Vermont's goals to increase housing availability and affordability. State policy prioritizes Tier 1A and Tier 1B for housing creation and charges the Board with reviewing and approving these areas. As such, the Board will be familiar with these areas, and it is

logical for the shift to Board appellate review of municipal housing appeals to begin with Tier 1A and Tier 1B areas.

b. **Efficiency and Timeliness**: The Board's specialized focus on land use and development appeals allows for a more streamlined and efficient process. By handling these appeals directly, the Board can reduce procedural delays and provide quicker resolutions.

c. **Consistency and Expertise**: The Board's expertise in land use and development will ensure consistent and informed decision-making for housing appeals. This consistency is crucial for developers and municipalities, providing clear expectations and reducing the potential for conflicting decisions.

d. **Centralized Governance**: By centralizing the adjudication of housing appeals within the Board, Vermont can ensure that these cases are handled in a manner that aligns with statewide housing policies and goals. This centralized approach allows for more coherent policy application and better coordination with state development objectives.

2. **Implementation Considerations**

a. **Capacity and Timing**: The Board recognizes the current capacity constraints due to ongoing Act 181 tasks, including rulemaking and administrative updates. To address these constraints, the Board suggests a phased approach with an implementation target date to be determined after the Board's further report check-in on October 1, 2027. This timeline allows for the Board's completion of many pressing tasks and deadlines and provides time to assess capacity and the potential reallocation of resources to handle housing appeals efficiently.

b. **Procedural Rules**: The Board will develop procedural rules to prioritize and govern the transfer and adjudication of housing appeals, ensuring a fair and transparent, but expedited process.

c. **Resource Allocation**: Adequate resources will be necessary to manage the increased workload from housing appeals. This might include hiring a lawyer in addition to the administrative staff person required to support the appeals docketing process and to ensure timely adjudication processing.

3. **Conclusion**

The Land Use Review Board recommends transferring all Tier 1A zoning appeals and all Tier 1B housing appeals, from the Court to the Board in order to prioritize and expedite these cases. This recommendation aims to

address Vermont's urgent housing needs by providing a more efficient and accessible appeals process. The Board is committed to ensuring smooth implementation, suggesting a check-in in two years, which will allow for a better-informed assessment of board capacity and appeals volume, ensuring the process remains viable, sustainable, and efficient.

E. Recommendation #5: Proposed Board Rules of Appellate Procedure

The Board has drafted proposed Board Rules of Appellate Procedure (See **APPENDIX E**) to address the use of Hearing Officers, Board Panels, and Firewall protections which will eliminate any potential for conflicts arising from the Board's lawyers assisting with appeals while providing support to the District Commissions' decisions and the District Coordinators' issuance of jurisdictional opinions.

Given the time and resource constraints, these draft Rules have not been fully vetted by legal counsel but are offered to provide detail and direction to the proposed board model.

See **APPENDIX E** for the proposed Board Rules of Appellate Procedure.

F. Recommendation #6: Actions to Promote Efficient Permitting & Appeals

This Study involved extensive stakeholder engagement and analysis of current practices in the permitting and appeals process in order to identify other actions the Board should take (or suggest) to promote the efficient and effective adjudication of appeals, including any procedural improvements to the Act 250 permitting process and jurisdictional opinion appeals. Based on this study, the Board recommends several actions to promote the efficient and effective permitting of projects and adjudication of appeals:

1. **Prioritize Act 250 Residential Housing Applications:** Executive Order 06-25 requires state agencies, departments, boards, and commissions to "[p]rioritize residential housing, including mobile home, and shelter applications for review." The Board has begun implementation of the Executive Order by adopting and approving a prioritization procedure, which directs the Act 250 program staff to prioritize the processing of housing applications ahead of other non-housing applications. See **APPENDIX F** for Board's "Application Prioritization Procedure under EO 06-25."

2. **VRECP Rule 5 Amendment**: The Board supports Stakeholder Jim Dumont's proposal and Chief Superior Judge Thomas A. Zonay's recent submission to the Civil Rules Committee to amend Vermont Rules of Environmental Court Procedure, Rule 5, to require the Statement of Questions to be filed with the Notice of Appeal. This amendment will save 21 days in the court appeals process. This procedural change will help streamline the process, reduce delays, and provide clarity to all parties involved.

3. **Update Act 250 Rules**: The Board will undertake a comprehensive review and update of the Act 250 rules to ensure proper codification of guidance and policy directives as well as to reflect recent legislative changes. This update will provide consistent guidance and policy directives, ensuring that the rules are clear, relevant, and aligned with Vermont statute.

4. **Update Rules of Procedure**: The Board will revise its Rules of Procedure to incorporate best practices and ensure consistency in the adjudication process while promoting procedural efficiencies.

5. **Development of Policy Directives**: The Board will develop clear policy directives to guide the interpretation and application of Act 250 criteria. These directives will provide a framework for consistent decision-making and help reduce the variability in outcomes across different districts.

6. **Clarify the Land Use Review Board's Role in Permit Appeals:** Clarify the Board's focus on overseeing the application of law, especially in cases where the dispute is between a permittee and a project opponent. In jurisdictional opinion appeals, clarify the intent to rely on the factual record to increase predictability of Board's role for other parties.[25]

7. **Evaluation of Appeals for Early Motion Practice**: A current practice that the Board can continue to endorse is Board Counsel evaluating appeals for early

[25] The Act 250 Necessary Updates report identified the following concern:
"Under the current system, an appeal from a District Coordinator's Jurisdictional Opinion is heard by the Environmental Court. The NRB is not generally directly involved in the drafting of the Jurisdictional Opinion and, if it is appealed, the NRB may appear as a party before the Environmental Court, and may take a position, enter into a settlement agreement, or otherwise monitor the case. Some members of the Steering Committee point out structural problems due to limited to no oversight of the District Coordinator's Jurisdictional Opinions in the first instance and the fact that on appeal the NRB may reach a different conclusion than the District Coordinator did in the first instance."

motions to dismiss/motions for summary judgment as soon as statements of questions are filed which can substantially narrow the scope of appeals before any discovery is performed.

8. **Enhanced Training for District Commissioners**: In light of significant statutory and program rule, procedure, and policy changes, the Board recommends supplemental training for District Commissioners to ensure efficiency and consistency in decisions and to minimize appeals.

9. **Public Outreach and Engagement**: The Board will engage in ongoing public outreach to gather feedback and inform the community about changes and improvements to the Act 250 permitting process.

10. **Further Study of a Permit Specialist/Ombuds Office**: The Board suggests further study into the establishment of a Permit Specialist and Ombuds Office to provide applicant assistance with coordination of state permitting programs and to support public access and environmental justice obligations. This role would provide guidance and support to ensure equitable access to the appeals process and address the needs of underrepresented communities.[26] See **APPENDIX G** for a more detailed discussion of the topic.

Conclusion: The Land Use Review Board is committed to promoting the efficient and effective adjudication of appeals through a series of targeted actions. By implementing the Rule 5 amendment, updating rules and procedures, enhancing training for District Commissioners, engaging in public outreach, and studying the potential for an Ombuds Office, the Board aims to streamline the permitting and appeals process to improve the overall administration of Act 250. These actions will ensure that the appeals process is transparent, consistent, and aligned with Vermont's land use and development goals.

[26] The Act 250 Necessary Updates report identified the following priority:
"Provide additional support in the pre-application process, especially for applicants with less capacity and/or fewer resources. This could include funding for permit specialists, navigators, or ombuds who can assist applicants in putting their applications together and navigating the permitting process. The staff serving in this role should have specific expertise in Act 250 permitting requirements and processes. Specific options include: Creating an ombuds position within NRB. Creating a new permit specialist role. It would be important to ensure this role is independent from the Act 250 permitting review process, to enable the provision of impartial advice and ensure there are no conflicts of interests. It would also be helpful to place the role within an institution or agency that has an active interest in enabling economic development, and specialized expertise on Act 250."

XIV. CONCLUSION

This Act 181 Appeals Study Report represents a comprehensive effort by the Land Use Review Board to evaluate and improve the appeals process for Act 250 land use permitting and municipal housing appeals in Vermont. Through extensive stakeholder engagement, data analysis, and careful consideration of the current system's strengths and weaknesses, the Board has developed a series of recommendations aimed at enhancing the efficiency, consistency, and effectiveness of the appeals process.

The Board's primary recommendations include transferring Act 250 appeals to the Land Use Review Board, providing applicants the option to consolidate municipal appeals with Act 250 appeals for the same project, and prioritizing housing-related permitting and appeals to address Vermont's urgent housing needs. These recommendations are designed to streamline processes, reduce redundancy, and ensure that appeals are handled by a specialized body with the necessary expertise and focus while expediting the process.

Additionally, the Board has identified several actions to promote the efficient adjudication of appeals, including updated rulemaking, guidance and procedural improvements, as well as enhanced training for District Commissioners and staff. These initiatives aim to create a more transparent, accessible, and responsive appeals process that aligns with Vermont's land use and development goals.

The Board acknowledges the challenges associated with implementing these recommendations, particularly in terms of resource allocation and capacity constraints. However, by adopting a phased approach, the Board is committed to ensuring a smooth transition and sustainable improvements to the appeals process.

XV. APPENDICES

A. LEGISLATIVE CHARGE

ACT 181 (2024) as amended by ACT 69 (2025):

Sec. 11a. ACT 250 APPEALS STUDY

(a) On or before November 15, 2025, the Land Use Review Board shall issue a report evaluating whether to transfer appeals of permit decisions and jurisdictional opinions issued pursuant to 10 V.S.A. chapter 151 to the Land Use Review Board or whether they should remain at the Environmental Division of the Superior Court. The Board shall convene a stakeholder group that at a minimum shall be composed of a representative of environmental interests, attorneys that practice environmental and development law in Vermont, the Vermont League of Cities and Towns, the Vermont Association of Planning and Development Agencies, the Vermont Chamber of Commerce, the Land Access and Opportunity Board, the Office of Racial Equity, the Vermont Association of Realtors, a representative of nonprofit housing development interests, a representative of for-profit housing development interests, a representative of commercial development interests, an engineer with experience in development, the Agency of Commerce and Community Development, and the Agency of Natural Resources in preparing the report. The Board shall provide notice of the stakeholder meetings on its website and each meeting shall provide time for public comment.

(b) The report shall at minimum recommend:

(1) whether to allow consolidation of appeals at the Board, or with the Environmental Division of the Superior Court, and how, including what resources the Board would need, if transferred to the Board, appeals of permit decisions issued under 24 V.S.A. chapter 117 and the Agency of Natural Resources can be consolidated with Act 250 appeals;

(2) how to prioritize and expedite the adjudication of appeals related to housing projects, including the use of hearing officers to expedite appeals and the setting of timelines for processing of housing appeals;

(3) procedural rules to govern the Board's administration of Act 250 and the adjudication of appeals of Act 250 decisions. These rules shall include procedures to create a firewall and eliminate any potential for conflicts with the Board managing appeals and issuing permit decisions and jurisdictional opinions; and

(4) other actions the Board should take to promote the efficient and effective adjudication of appeals, including any procedural improvements to the Act 250 permitting process and jurisdictional opinion appeals.

(c) The report shall be submitted to the Senate Committees on Economic Development, Housing and General Affairs and on Natural Resources and Energy and the House Committee on Environment.

B. STAKEHOLDER GROUP

1. Representatives of environmental interests

   Annette Smith – Vermonters for a Clean Environment
   Elena Mihaly – Conservation Law Foundation
   Jon Groveman – Vermont Natural Resources Council

2. Attorneys that practice environmental and development law in Vermont

   Liam Murphy – MSK Attorneys (Burlington)
   A.J. LaRosa – MSK Attorneys (Burlington)
   Chris Roy – DRM (Burlington)
   David Grayck – Law Office of David L. Grayck, Esq. (Montpelier)
   David Mears – Tarrant, Gillies & Shems (Montpelier)
   Ron Shems – Tarrant, Gillies & Shems (Montpelier)
   Nick Lowe – Tarrant, Gillies & Shems (Montpelier)
   Geoff Hand – SRH Law (Burlington)
   Malachi Brennan – SRH Law (Burlington)
   Jim Dumont – Law Office of James A. Dumont, P.C. (Bristol)
   Jim Goss – Facey Goss & McPhee PC (Rutland)
   Merrill Bent – Woolmington, Campbell, Bent & Stasny, PC (Bennington)

3. Vermont League of Cities and Towns

   Samantha Sheehan

4. Vermont Association of Planning and Development Agencies

   Catherine Dimitruk

5. Vermont Chamber of Commerce

   Megan Sullivan

6. Land Access and Opportunity Board

   Ornella Matta-Figueroa
   Jean Hamilton

7. Office of Racial Equity

   Xusana Davis

8. Vermont Association of Realtors

   Peter Tucker

9. Representatives of non-profit housing development interests

   Trey Martin – VT Housing Conservation Board
   Jenny Hyslop – VT Housing Conservation Board
   Pollaidh Major – VT Housing Conservation Board
   Miranda Lescaze - Champlain Housing Trust
   Elizabeth Bridgewater - Windsor & Windham Housing Trust
   Peter Paggi - Windsor & Windham Housing Trust
   Kathy Beyer - Evernorth

10. Representatives of for-profit housing development interests

    Andy Rowe & Chris Snyder - Snyder Homes
    Jonah Richard - Village Ventures
    Tim Frost - Peregrine Design Build
    Tom Bachman - GBA Architects

11. Representatives of commercial development interests

    Molly Mahar & Warren Coleman - VT Ski Areas Association
    Greg Tatro - GW Tatro

12. Engineers with experience in development

    Brad Ketterling – VHB
    Jeff Nelson – VHB
    Peter Smiar – VHB
    Christopher Austin - Grenier Engineering

13. Agency of Commerce and Community Development

    Tayt Brooks
    Alex Farrell

14. Agency of Natural Resources

    Billy Coster
    John Zaikowski

15. Citizens Stakeholders

    Ed Stanak
    Renee Carpenter
    Thomas Weiss

16. Environmental Division Court Staff

C. ACT 250 APPEALS BOARD MODEL

The proposed Appeals Board Model aims to streamline the appeals process by shortening disposition timelines and leveraging the Board's specialized expertise. This model is designed to offer a more accessible venue than formal court litigation.

TYPE OF ACT 250 APPEAL	Standard of Review	Appellate Body	Discovery & Motion Practice	DAYS TO DISPOSITION
Act 250 Jurisdictional Opinions	De Novo	3-Member Board Panel	Discovery - none Motion Practice – limit timing	120-150 days
Act 250 Jurisdictional Opinions (Complex)	De Novo	Full Board	Discovery - none Motion Practice – limit timing	150-180 days
Act 250 Permit Decisions	De Novo	3-Member Board Panel	Discovery - none Motion Practice – limit timing	120-180 days
Act 250 Permit Decisions (Complex)	De Novo	Full Board	Discovery - none Motion Practice – limit timing	180-270 days

D. MUNICIPAL APPEALS BOARD MODEL

The Proposed Appeals Board model for municipal appeals maintains the same standards of review as the Environmental Division, using de novo review for most cases, and on-the-record ("OTR") review for the small number of municipalities that have opted for this approach.

Municipal Appeal Type	Standard of Review	Appellate Body	Discovery & Motion Practice	Days to Disposition[27]
Consolidation with Act 250 Appeal (Applicant Option)	De Novo or On-the-Record	Full Board	Discovery - none Motion Practice – limit timing	De Novo: 150-270 On-the-Record:150-180
Tier 1A & Tier 1B housing	De Novo or On-the-Record	3-Member Board Panel	Discovery - none Motion Practice – limit timing	De Novo:120-150 On-the-Record:120-180
Tier 1A & Tier 1B housing (complex)	De Novo or On-the-Record	Full Board	Discovery - none Motion Practice – limit timing	De Novo:150-240 On-the-Record:180-210

[27] Days to Disposition is calculated beginning as follows:
De Novo Appeals - from the date the appeal is filed.
On-the-record Appeals: from the date the record is complete (with a transcript).

E. BOARD RULES OF APPELLATE PROCEDURE

The proposed Board Appeals Model would require the amendment of and addition to the existing Act 250 Rules to govern Appeals.

1. Existing **Act 250 Rules 3, 4, 6, 12, 13, 16,17 and 18** would remain largely intact, but would be amended to specify the procedural rules governing board appeals:

   Rule 3. Jurisdictional Opinions

   Rule 4. Subpoenas

   Rule 6. Computation of Time

   Rule 12. Documents and Service Thereof; Page Limits, Motions, Replies

   Rule 13. Hearing Schedules

   Rule 16. Prehearing Conferences and Preliminary Rulings

   Rule 17. Evidence at Hearings

   Rule 18. Conduct of Hearings

2. The following proposed **new** Act 250 Rules 40, 41, 42, and 43**, were based partially upon the 2004 Environmental Board Rules and the current Vermont Rules of Environmental Court Proceedings (for OTR Review of municipal permits)[28]:

   Rule 40. Appeals

   Rule 41. Administrative Hearing Officer or Board Panels

   Rule 42. Stay of Decisions

   Rule 43. Appeals to the Board Before Final Decision of District Commissions: Questions of Law and Party Status

   Rule 44. Procedural Firewall Rule for Board Lawyers in Act 250 Appeals

[28] Please note that due to time and resource constraints, these Draft Proposed Rules have not been legally vetted by Board Counsel and are provided by the Board by way of example, and are intended to be used as a guide for future rule making, should the legislature so decide.

Rule 40 Appeals

(a) Applicability. This Rule governs appeals to the Land Use Review Board ("Board") from an act or decision of a district commission or from a district coordinator jurisdictional opinion under 10 V.S.A., ch. 151, or of an act or decision of an appropriate municipal panel pursuant to 24 V.S.A., ch. 117.

(b) Notice of Appeal

(1) Filing the Notice of Appeal. An appeal under this rule shall be taken by filing with the clerk of the Board a notice of appeal containing the items required in paragraph 3 of this subdivision within 30 days of the date of the act, decision, or jurisdictional opinion appeals from, unless the Board extends the time as provided in Rule 6. A filing fee as prescribed in 10 V.S.A. § 6083a, payable to the State of Vermont shall accompany the notice of appeal. If a notice of appeal is mistakenly filed with the tribunal appealed from, the appropriate officer of the tribunal shall note thereon the date on which it was received and shall promptly transmit it to the Board, and it shall be deemed filed with the Board on the date so noted. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the Board deems appropriate, which may include dismissal of the appeal.

(2) Cross- or Additional Appeals. If a timely notice of appeal is filed, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within 30 days of the date of the decision of the commission, whichever period last expires, unless the Board extends the time as provided in Rule 6.

(3) Contents of Notice of Appeal. The notice of appeal must be signed by the appellant or the appellant's attorney and must specify:

(A) the address or location and a description of the property or development with which the appeal is concerned,
(B) the name of the applicant for any permit involved in the appeal
(C) the party or parties taking the appeal and the statutory provisions under which each appellant claims party status,
(D) the act, order, or decision appealed from,
(E) a statement of questions identifying the issues to be addressed in the appeal,
(F) a statement of the reasons why the appellant believes the tribunal was in error,

(G) a preliminary list of witnesses who will testify on behalf of the appellant,

(H) a summary of the evidence that will be presented.

Also, the notice of appeal must (A) advise all interested persons that they must enter an appearance in writing with the Board within 21 days of receiving the notice, if they wish to participate in the appeal.

(4) Service.

(A) *Appeal from an Appropriate Municipal Panel.* Upon the filing of a notice of appeal from an act or decision of an appropriate municipal panel, the appellant must at the same time mail a copy of the notice of appeal to the clerk or other appropriate officer of the panel and serve the applicant by certified mail. Upon receipt of the copy of the notice of appeal, the clerk or other officer shall, within 7 days, provide to the appellant a list of interested persons, with instructions to serve a copy of the notice upon each of them by certified mail. A copy of the notice shall thereupon be served by the appellant by certified mail upon each interested person.

(B) *Appeal from a District Commission or District Coordinator.* Upon the filing of a notice of appeal from an act or decision of a district commission or a district coordinator, the appellant shall serve a copy of the notice of appeal in accordance with Rule 12 upon the district commission or district coordinator as appropriate and upon any party by right as defined in 10 V.S.A. § 8502(5), and every other person to whom notice of the filing of an appeal is required to be given by 10 V.S.A. § 8504(c) or (e), as appropriate. In addition, if the appeal is from an act or decision of a district commission, the appellant shall publish a copy of the notice of appeal not more than 14 days after serving the notice as required under this subparagraph, at the appellant's expense, in a newspaper of general circulation in the area of the project which is the subject of the act or decision appealed from.

(c) *Notice of Appearance*. An appellant enters an appearance by filing a notice of appeal as provided in subdivision (b) of this rule. Any other party may enter an appearance within 21 days after the date on which notice of filing of the last notice of appeal to be filed was served, or, if necessary, published pursuant to subparagraph (b)(4)(B) of this rule, by filing a written notice of appearance with the clerk of the Board and by serving the notice of appearance in accordance with Rule 12; provided that any person enumerated in 10 V.S.A. § 8504(n)(1)-(3) may file and serve an appearance in a timely fashion.

(d) Claims and Challenges of Party Status.

(1) ***Appeals of Interlocutory District Commission Party Status Decisions.*** Any party in a proceeding before a district commission, or any person denied party status in such a proceeding, may move the Board for an appeal of an interlocutory decision of the district commission granting or denying party status pursuant to 10 V.S.A. § 6085(c). The motion, together with a notice of appeal, must be filed and served as provided in subdivision (b) of this rule within 14 days after the decision of the district commission appealed from, except that the motion and notice need not be served by publication. The Board may grant the motion and hear the appeal if it determines that review will materially advance the application process before the district commission. The Board shall expedite hearing and determination of the motion and appeal.

(2) ***Claims and Challenges of Party Status in an Appeal from a Final Decision.*** An appellant who claims party status as a person aggrieved pursuant to 10 V.S.A. § 8504(a) and is not denied that status by 10 V.S.A. § 8504(d)(1), or an appellant who claims party status as an interested person pursuant to 10 V.S.A. § 8504(b)(1), will be automatically accorded that status when the notice of appeal is filed unless the Board otherwise determines on motion to dismiss a party. An appellant who claims party status under 10 V.S.A. § 8504(b)(2), (d)(2), or (e)(2) and who has not sought interlocutory relief pursuant to paragraph (1) of this subdivision must assert that claim by motion filed not later than the deadline for filing a notice of appeal. Any other person who appears as provided in subdivision (c) of this rule will be accorded party status unless the Board otherwise determines on its own motion, on motion to dismiss a party, or on a motion to intervene.

(e) Stay. Unless the act or decision appealed from is automatically stayed pursuant to 10 V.S.A. § 8504(f)(1) by the filing of the appeal or a stay has been granted by the district commission pursuant to 10 V.S.A. § 6086(f), the Board, after the notice of appeal has been filed may, on its own motion, or on motion of a party, stay the act or decision and make such other orders as are necessary to preserve the rights of the parties upon such terms and conditions as are just. When the appeal is from the issuance of a permit pursuant to 24 V.S.A. § 4449, unless the decision appealed from is automatically stayed pursuant to 10 V.S.A. § 8504(f)(1)(B), the permit shall not take effect until the earlier of 14 days from the date of filing of the notice of appeal or the date of a ruling by the Board under this subdivision on whether to issue a stay.

(f) Statement of Questions. The appellant and any cross-appellant shall file with their notice of appeal or notice of cross-appeal, a statement of the questions that the appellant or cross-appellant desires to have determined. The statement shall be served with the Notice of Appeal or Notice of Cross-Appeal as provided in subdivision (b) of this rule. No response to the statement of questions shall be filed. The appellant may not raise any question on the appeal not presented in the statement as filed, unless otherwise ordered by the Board in a prehearing order entered pursuant to Rule 16. The statement is subject to a motion to clarify or dismiss some or all of the questions.

(g) De Novo Trial; Pretrial Order. All appeals under this rule shall be by de novo trial, following a prehearing conference and order issued pursuant to Rule 16, except as provided in subdivision (h) of this rule. In an appeal by de novo trial, all questions of law or fact as to which review is available shall be tried to the Board, which shall give due consideration to the decision and record below while applying the substantive standards that were applicable before the tribunal appealed from.

(h) Appeals to the Land Use Review Board on the Record.

(1) ***From an Appropriate Municipal Panel.***

(A) An appeal from an appropriate municipal panel from which appeals may be on the record pursuant to 24 V.S.A. §§ 4471 and 4472 shall be governed by the Vermont Rules of Appellate Procedure, so far as applicable and except as modified by this rule. The record on appeal shall consist of the original papers filed with the municipal panel; any writings or exhibits considered by the panel in reaching the decision appealed from; and a copy of the electronic recording of the proceedings, certified by the presiding officer of the municipal panel as the full, true and correct record of the proceedings. Within 30 days after the filing of the notice of appeal, the clerk or other appropriate officer of the municipal panel shall transmit the papers and exhibits filed to the clerk of the Board in the manner provided in Rule 11(b) of the Rules of Appellate Procedure.

(B) Within 14 days after filing the notice of appeal, if the appellant desires a transcript of the proceedings, appellant shall send to the municipal panel an order for a transcript of all proceedings, unless all parties involved in the appeal stipulate to a transcript of less than all proceedings. A copy of the order shall be served on the clerk of the Board and all persons upon whom copies of the notice of appeal have been served pursuant to Rule 12. It shall thereupon be the responsibility of the municipal panel to cause a transcript to be made by a Board-approved transcription service pursuant to V.R.A.P. 10(b)(1) and (2). Appellant shall pay to the municipal panel at the time of ordering the deposit amount required under V.R.A.P. 10(b)(7).

Before the transcription begins, the municipal panel shall pay the transcription service a deposit pursuant to that provision.

(C) In cases where the proceedings before the appropriate municipal panel were recorded electronically, the Board, on motion of the appellant and a showing of financial hardship or other good cause made before a transcript has been ordered, may allow the electronic recording to be accepted as part of the record in place of a transcript. If the Board grants the motion, the appellant must order copies of the electronic recording from the clerk or other appropriate officer of the municipal panel, who shall send one copy to the clerk of the Board, one to the appellant, and one to every other party, billing the appellant for the copies.

(i) Remand for Reconsideration. At the request of the tribunal appealed from, the Board, at any time prior to judgment, may remand the case to that tribunal for its reconsideration.

(j) Judgment. The order of the Board may affirm, reverse, or modify the decision of the tribunal appealed from, may remand the case for further proceedings consistent with the order of the Board, and may expressly set forth conditions and restrictions with which the parties must comply.

(k) Appeals to the Supreme Court.

(1) ***Rules Applicable.*** Except as modified by this subdivision, the Vermont Rules of Appellate Procedure, so far as applicable, shall govern all proceedings under this subdivision.

(2) ***Filing and Service.*** An appeal from a decision in a proceeding in the Land Use Review Board under this rule shall be taken by filing with the clerk of the Board, a notice of appeal in the form provided in paragraph (3) of this subdivision within 30 days of the date of the decision appealed from, unless the Board extends the time as provided in Rule 4 of the Rules of Appellate Procedure. The appellant shall pay to the clerk of the Board any required entry fee with the notice of appeal. The appellant shall serve a copy of the notice upon the clerk of the Supreme Court and upon counsel of record of each person that appeared at the Board and held party status at the time when the decision appealed from was rendered.

(3) ***Contents of Notice of Appeal.*** The notice of appeal must specify the party or parties taking the appeal; must designate the judgment, order, or part thereof appealed from; must name the court to which the appeal is taken; and must be signed by the appellant or the appellant's attorney. In addition, the notice of appeal must give the address and a description of the property or development with which the appeal is concerned and the name of the applicant for any permit involved in

the appeal and must set forth facts showing that the appellant is entitled to appeal pursuant to 10 V.S.A. § 8505(a)(1) or (2) or shall be accompanied by a motion requesting the Supreme Court to allow the appeal on the grounds specified in 10 V.S.A. § 8505(a)(3).

(4) ***Issues on Appeal.*** An objection that was not raised before the Board may not be considered by the Supreme Court, unless the failure or neglect to raise that objection is excused by the Supreme Court because of extraordinary circumstances.

(5) ***Interlocutory Decisions.*** An appeal from a decision of the Board granting or denying party status as provided in subdivision (d) of this rule or issuing a stay pursuant to subdivision (e) of this rule may be taken before final judgment as provided in Rule 5 of the Vermont Rules of Appellate Procedure.

Rule 41. Administrative Hearing Officer or Board Panels

(a) Unless otherwise directed by the Board, the chair may appoint a hearing officer or a subcommittee of the Board to hear any appeal or petition before the Board, or any portion thereof. A subcommittee of the Board shall be known as a "hearing panel."

(b) Parties shall be given due notice of the chair's intention to appoint a hearing officer or panel and shall have reasonable opportunity to object to the appointment within a stated time. If a party raises an objection, the Board shall review the chair's decision to determine whether, by reason of complexity, necessity to judge the credibility of witnesses, or other appropriate reasons, the matter should be heard by the full Board. The decision of the Board shall be final.

(c) The hearing officer or panel shall be a member or members of the Board. If it appears that any issue should be heard by the full Board by reason of complexity, necessity to judge the credibility of witnesses, or other appropriate reasons, the hearing officer or panel may decline to hear that issue, in which event the matter shall be referred for hearing to the Board.

(d) Rules governing proceedings before the hearing officer or panel shall be the same as those which pertain to hearings before the Board. The hearing officer or panel shall hold such prehearing conferences and issue such notices and orders as may be necessary for the orderly and expeditious conduct of hearings.

Rule 42. Stay of Decisions

(a) **Filing of Stay Request: Board or District Commission.**
Prior to the filing of an appeal of a district commission decision, any aggrieved party may file a stay request with the district commission. Following appeal of the district commission decision, such stay request must be filed with the Board. Any party

aggrieved by a decision of the Board may file a stay request with the Board, notwithstanding an appeal to the Supreme Court. Any stay request must be filed by written motion identifying the order or portion thereof for which a stay is sought and stating in detail the grounds for the request.

(b) **Merit Review and Terms of Interim or Permanent Stay as Determined by the District Commission or Board.**

In deciding whether to grant or deny a stay, the Board or district commission may consider the hardship to parties, the impact, if any, on the values sought to be protected by Act 250, and any effect upon public health, safety or general welfare. The Board or district commission may issue a permanent stay containing such terms and conditions, including the filing of a bond or other security, as it deems just. The chair of the Board or district commission may issue a preliminary stay which shall be effective for a period not to exceed 30 days. Any preliminary stay shall be reviewed by the Board or district commission, as appropriate, within that 30 day period. A party may file a motion to dissolve a preliminary stay within 10 days of its issuance.

Rule 43. Appeals to the Board Before Final Decision of District Commissions: Questions of Law and Party Status

(a) ***Motion for interlocutory appeal regarding all orders or rulings except those concerning party status.*** Upon motion of any party, the Board may permit an appeal to be taken from any interlocutory (preliminary) order or ruling of a district commission if the order or ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and an immediate appeal may materially advance the application process. The appeal shall be limited to questions of law.

(b) ***Motion for interlocutory appeal regarding party status*****.** A commission's decision to grant or deny preliminary party status pursuant to 10 V.S.A. §6085(c)(2) must be appealed to the Board by the filing of an interlocutory appeal. Failure to file such an interlocutory appeal pursuant to subsection (C) below constitutes a waiver of the right to raise the issue before the Board at a later date. Upon the filing of an interlocutory appeal, the Board shall review an interlocutory (preliminary) order or ruling of a district commission if the order or ruling grants or denies party status.

(c) ***Filing of appeal and response*****.** Any motion for interlocutory appeal under this rule must be made to the Board within 10 days after entry of the order or ruling appealed from and shall include a copy of that order or ruling. The motion must be accompanied by the filing fee as prescribed in 10 V.S.A.§ 6083a. The motion, supporting memorandum, and order or ruling shall be filed with the Board, a copy of the motion shall be sent by U.S. mail to all parties and to the district commission, and a certification of service shall be filed with the Board. Within five days of such service, an adverse party

may file a memorandum in reply to the motion with the Board. A copy of a memorandum in reply shall be sent to all parties and to the district commission and a certification of service shall be filed with the Board.

(d) ***Proceedings on appeal*****.** Any interlocutory appeal shall be determined upon the motion and any response without hearing unless the Board otherwise orders. If a motion for interlocutory appeal is granted under section (A) of this rule, Board proceedings shall be confined to those issues identified in the order permitting the appeal. If a motion for interlocutory appeal is granted under section (B) of this rule, board proceedings shall be confined to the specific grant(s) or denial(s) of party status identified in the motion. For any interlocutory appeal, the Board may convene such hearings to hear oral argument as it deems necessary to dispose of the appeal. Such proceedings shall be conducted as provided by the existing rules for appeals to the Board.

(e) ***Stay of district commission proceedings*****.** On receipt of an interlocutory appeal to the Board under this rule, the district commission proceedings shall be automatically stayed until the appeal is disposed of by the Board.

Rule 44. Procedural Firewall Rule for Board Lawyers in Act 250 Appeals

(a) Purpose: To ensure the independence and impartiality of the Board when serving as the appellate body for Act 250 appeals, and to maintain public confidence in the Board's decisions by preventing any appearance of bias or undue influence from Board lawyers who previously assisted the Act 250 District Commission or District Coordinator in an Act 250 matter now before the Board on appeal.

(b) Scope: This rule applies to any lawyer who has provided significant assistance to the Act 250 District Commission or District Coordinator in a case that is now on appeal to the Board.

(c) Definitions:

1. **Significant Role:** Involvement in the case that includes, but is not limited to, drafting opinions, interpreting novel legal issues, or providing substantial legal advice that influenced the decision-making process.
2. **Assistance:** Any form of legal support or advice provided to the District Commission or District Coordinator, including but not limited to research, drafting, or consultation.

(d) Procedural Rule:

1. **Identification of Involved Lawyers:** Upon receipt of an appeal, the Board's General Counsel shall identify any lawyer who played a significant

role in assisting the Act 250 District Commission or District Coordinator in the original case.

2. **Assessment of Involvement:** The Board's General Counsel shall assess the nature and extent of the lawyer's involvement to determine whether it constitutes a significant role. This assessment will consider factors such as the lawyer's contribution to drafting opinions, interpreting novel issues, or providing strategic legal advice.
3. **Implementation of Firewall:** If a lawyer is determined to have played a significant role, a procedural firewall shall be established to prevent any direct or indirect influence on the appellate process. This includes:
    A. Prohibiting the lawyer from participating in any discussions, deliberations, or decisions related to the appeal.
    B. Restricting access to case files, documents, or communications pertaining to the appeal.
    C. Ensuring that the lawyer does not communicate with Board members or staff about the appeal, except as a member of the public or in a capacity unrelated to their previous involvement.
4. **Disclosure and Transparency:** The Board shall disclose the implementation of the firewall to all parties involved in the appeal to ensure transparency and maintain public confidence.
5. **Monitoring and Enforcement:** The Board shall appoint a compliance officer to monitor adherence to the firewall and address any potential breaches. Any breach of the firewall shall be promptly addressed, with appropriate corrective actions taken to preserve the integrity of the appellate process.

Sources: 2004 Environmental Board Rules 40-43 and VRECP Rule 5.

F. ACT 250 APPLICATION PRIORITIZATION PROCEDURE UNDER EO 06-25

Application Prioritization Procedure under EO 06-25

State of Vermont
Land Use Review Board

5.000 Purpose

This document outlines how the Land Use Review Board's District Staff and Commissions will prioritize housing applications in accordance with Executive Order 06-25, provision 2.1.

This procedure supersedes any previous document related to prioritization of processing Act 250 applications. In the event of a conflict between this document and any statute or rule, the statute or rule shall control.

5.100 Legal Standards

Section 2.1 of Executive Order 06-25 requires state agencies, departments, boards, and commissions to "[p]rioritize residential housing, including mobile home, and shelter applications for review." Section 2.3 (Priority Processing) provides:

> Administratively and technically complete permit applications for multi-family housing, shelter and mobile home development, mixed-use projects with a multifamily housing component, and permits required in connection with multi-family rehabilitation projects shall receive priority processing ahead of other non-housing applications within each agency's workflow.

10 V.S.A. § 6083(d) states that "[t]he Board and Commissions shall make all practical efforts to process matters before the Board and permits in a prompt matter."

5.200 Housing Project Prioritization

District staff and commissions must prioritize timely processing, review, and decision, any application for a project that involves creation or rehabilitation of at least one unit of housing in the following order:

1. any application with an affordable housing component[1];
2. any application for multiunit housing[2], shelter or mobile home development, mixed-use projects with a multiunit housing component, or multiunit rehabilitation project;
3. any other application involving a housing component.

The District Staff and Commissions shall use sound judgment and discretion in determining prioritization consistent with this document.

Adopted and approved by the Board: November 17, 2025
Effective: November 17, 2025

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[1] See 10 V.S.A. § 6001(29).
[2] See 24 V.S.A. § 4303(41).

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G. PERMIT SPECIALIST & OMBUDS OFFICE

The appeals study examined the need for a Permit Specialist or Ombuds Office to assist applicants with the permitting process and ensure equitable public participation. Historically, permit specialists, who were housed at ANR, provided personalized guidance and created project review sheets which would identify all permitting programs implicated by a project to help coordinate review. The permit specialist role has been eliminated and since been replaced by the automated ANR Permit Navigator tool, which, while useful for automating referrals, lacks the personalized interaction and support previously offered by permit specialists.

1. Historical Role of Permit Specialists:
    - Act 250 District Coordinator Peter Kopsco, a former ANR Permit Specialist, explained that there were four specialists covering different regions of Vermont. Their primary functions included answering public inquiries about permit requirements and creating project review sheets. These sheets detailed necessary permits and connected applicants with the appropriate contacts, such as wetland specialists.
    - Permit specialists also reviewed all wastewater permit applications, providing a comprehensive overview of potential permitting needs. This role was crucial in facilitating the permitting process and ensuring applicants were well-informed.
2. Impact of Role Elimination:
    - The elimination of the permit specialist position has increased the workload for district coordinators, who now handle more jurisdictional opinions and provide guidance previously offered by specialists. This added burden detracts from their primary responsibilities of processing permit applications.
    - The Permit Navigator tool, while a useful online resource, does not replace the personalized assistance and expertise that permit specialists provided. It primarily serves as an automated referral system, which may not adequately address the needs of all users.
3. Supporting Various Stakeholders:
    - The discussions emphasized the need for an office that assists all participants in the permitting process, including applicants, municipalities, neighbors, and Environmental Justice (EJ) focus populations. Ensuring equitable access and participation aligns with environmental justice goals to reduce disparities and promote fairness.

- Annette Smith (VCE) highlighted the importance of citizen participation in improving development projects and the challenges faced by those unfamiliar with regulatory processes. She emphasized the need for support in navigating complex systems like Act 250 and the Public Utility Commission (PUC).

4. Environmental Justice Advocate Function:
    - The role of an Environmental Justice Advocate would focus on assisting the public in regulatory processes and ensuring equitable access to information, rather than providing legal advice or representation. This role is crucial for ensuring meaningful participation for all citizens, particularly EJ focus populations.
5. Potential for Dual Roles:
    - Stakeholders discussed the possibility of having dual roles to support both applicants and the public. While some expressed concerns about conflicts of interest, others noted that district coordinators and zoning administrators already manage similar responsibilities by assisting all parties involved in a project.

Conclusion: The discussions recognized the need to balance support for applicants with assistance for the public, considering environmental justice obligations. The potential for re-establishing a permit specialist role was discussed as a way to improve the permitting process, ensuring it is more accessible and equitable. However, given the role the District Coordinators have consistently played in assisting applicants with Act 250 permitting, it seems most appropriate to re-establish the permit specialist role within ANR, to support applicants with the myriad of permitting programs, which would also help alleviate the extra burden that has fallen on the Act 250 District Coordinators.

H. STAKEHOLDER & PUBLIC COMMENTS

The following is a compilation of Stakeholder and Public Comments received on the Draft Appeals Report.

Comments received from:

Alex Arroyo, Esq. (Paul, Frank & Collins, P.C.)

Mark Hall, Esq. (Paul, Frand & Collins, P.C.)

Zachary Handelman, Esq. (SP &F Attorneys, P.C.)

Hon. Thomas Zonay, Chief Superior Judge

Jon Groveman, Esq. (VNRC)

David Mears, Esq. (Tarrant, Gillies & Shems, LLP)

Ron Shems, Esq. (Tarrant, Gillies & Shems, LLP)

Pollaidh Major (VHCB)

Elizabeth Bridgewater (Windham & Windsor Housing Trust)

Kathy Beyer (Evernorth)

Catherine Dimitruk (VAPDA)

James Moore (Frog Hollow Development)

Annette Smith (VCE)

Thomas Weiss

From: Alex Arroyo <AArroyo@pfclaw.com>
Sent: Friday, October 31, 2025 1:09 PM
To: Act250 - Comments <Act250.Comments@vermont.gov>
Cc: Mark G. Hall <MHall@pfclaw.com>
Subject: Appeals Study Draft Report Public Comments

Hello,
Please find attached a comment on the draft Appeals Study Report submitted for your review.

Cordially yours,

Alex Arroyo
Associate

PAUL FRANK + COLLINS P.C.
One Church Street | P.O. Box 1307
Burlington, Vermont 05402-1307
802.658.2311 MAIN OFFICE
www.pfclaw.com

Public Comment on the Act 250 Appeals Study Report

The Act 250 Appeals Study, conducted pursuant to Act 181, represents an important effort to improve the efficiency, consistency, and predictability of Vermont's land use permitting and appeals system. These are worthy goals, and continued reflection on how best to administer Act 250 is essential. However, the proposal to transfer appellate jurisdiction from the Environmental Division of the Superior Court to the Land Use Review Board would be a serious misstep. Such a change would not solve the current challenges within the system; rather, it would create new and more fundamental problems. Take note that no complaint is made regarding the quality of the Environmental Division's decision-making or its impartiality, so a move away from the Court to something unknown as a way to remedy the primary complaint that it moves too slowly is drastic and unnecessary. The court procedures can be easily fixed and streamlined. Other tools, such as adopting the use of magistrates and masters could easily speed up the process. Simply tearing up the process and starting over is not justified qualitatively or financially.

The Environmental Division should retain jurisdiction over Act 250 and municipal zoning appeals to preserve the integrity, independence, and public trust that are central to Vermont's land use framework.

Judicial Independence and Public Confidence

One of the greatest strengths of the current appeals system is its placement within the judiciary. The Environmental Division operates with a level of independence that insulates it from political and administrative pressures. This judicial structure provides predictability and fairness, both of which are grounded in decades of case law and legal reasoning developed by judges with deep expertise in the law, in Act 250, and in a wide array of related land use matters. The Division's connection to the broader Vermont judiciary ensures that its decisions align with other legal principles and frameworks, promoting coherence across the law.

Judges that serve on the Environmental Division are experts in procedure and experts in land use and municipal zoning issues. Judge Walsh has over thirty years of experience in these fields; Judge McClean has a similar wealth of knowledge and experience; and the legacy of Judge Durkin continues to support the particular expertise of the court. Superior court judges are selected as a result of a rigorous nomination and selection process. As judicial officers, the judges of the Environmental Division are held to the highest standard of conduct and are subject to discipline for misconduct. Judges in the Vermont judiciary are also obligated to go through a retention process whereby they are fundamentally accountable for their conduct and their treatment of cases, litigants, and the public.

Transferring this work to the LURB would jeopardize these benefits. The Appeals Study Report itself acknowledges that such a shift would likely result in a loss of institutional knowledge and legal expertise. It would also erode public confidence in the impartiality of decisions that have historically been rendered by judges bound by judicial ethics and precedent. The Environmental Division's role within the judiciary is not incidental; it is the foundation of the public's trust in the fairness of the process.

Infrastructure, Expertise, and Legal Recourse

The Environmental Division already has the necessary infrastructure, staff, and procedural systems to manage appeals efficiently. It has the capacity to handle both factual and legal disputes in a manner that balances thoroughness with efficiency. Crucially, its decisions are subject to appeal to the Vermont Supreme Court, providing an established and transparent avenue for further review.

By contrast, the LURB has not demonstrated that it could provide the same level of appellate oversight or procedural safeguards. The Board's own report concedes that it is "unclear whether a Land Use Review Board would offer the same level of appellate oversight," leaving open significant questions about how affected parties could seek recourse. Courts exist precisely to handle complex disputes—applying established evidentiary rules and legal standards to ensure fairness. Moving appeals away from that structure would sacrifice both rigor and reliability.

The Proper Role of the Board

The Board has a vital role to play in improving the Act 250 system, but that role should center on guidance and rulemaking, not adjudication. The Study Report suggests that concentrating appeals within the Board would provide clearer guidance to district commissions and applicants. Yet it

offers no convincing explanation for how this would occur, particularly given the loss of legal expertise that such a transfer would entail. Moreover, housing appeals within the same body that is tasked with overseeing the Act's goals and process would produce predictable and ongoing conflicts of interest. The Board simply cannot advise Commissioners, Coordinators or the general public regarding specific matters or projects that may later come before it on appeal.

A more constructive approach would be to retain appeals in the Environmental Division—where legal and factual disputes can be fully and fairly resolved—and empower the LURB to focus on enhancing the clarity and usability of the Act 250 process. The Board could develop improved guidance documents, best practices, and rules to help commissions and applicants navigate the permitting system more effectively. This collaborative model would combine judicial integrity with administrative support, improving outcomes without destabilizing the system.

Strengthening the Existing System

There are many practical ways to improve efficiency and consistency within the current structure. Procedural rules, such as Rule 5, could be updated to reduce delays and ensure that parties are better prepared for litigation. Rules related to the discovery process could similarly be amended for the specific context of Act 250 appeals, where investigation into prior events holds little bearing on to-be-completed projects. Expanded training for district commissioners would promote greater uniformity and accuracy in decision-making at the initial review stage, potentially reducing the number of appeals altogether.

The Board's rulemaking authority could also be used more proactively to refine Act 250 administration. By engaging in public notice-and-comment rulemaking, the Board could modernize both the Act 250 Rules and its own procedural rules in ways that meaningfully involve the public and stakeholders. These are changes that strengthen the existing framework rather than dismantle it.

Support for Maintaining Judicial Review

It is notable that many of the agencies and organizations most experienced with Act 250 do not support transferring appellate jurisdiction. The Agency of Natural Resources, for example, has emphasized that the Environmental Division's established expertise and procedural consistency serve all parties well—developers, municipalities, environmental groups, and the public alike. The current system is not perfect, but it is known, predictable, and grounded in law. Those qualities are essential for maintaining public trust and ensuring fair outcomes.

Before the Environmental Division became responsible for adjudicating Act 250 and municipal zoning appeals, that task was assigned to the then Environmental Board. Many of the concerns in the comments on this current choice echo the many issues that were inherent in the system that existed then: problems that will reemerge if appellate jurisdiction is taken from the Environmental Division and transferred to the Land Use Review Board. Simply changing the name of the Board will not alleviate the problems that years ago led to the decision to move appellate jurisdiction to the Environmental Division.

Importantly, despite concerns for the efficiency and approachability of the current Act 250 appellate process, no one is claiming that the Environmental Division is failing in its duty to offer a fair and open forum for the adjudication of land disputes. No one is complaining that the Court's decisions are faulty or misguided. Some may not get the results they were once accustomed to, but there is no outcry that the Court's decisions are poorly made. Instead, its decisions are well-founded, consistent, and unbiased. Given that the quality of the work is unquestioned, it makes little sense to remove substantive matters from the court when some mild tweaking of the rules would drastically reduce the backlog. The problems currently complained of should be addressed by refining the existing appellate procedure, that is both working and understood, rather than discarding it in favor of an unformed and inchoate process.

Conclusion

For more than fifty years, Act 250 has served as a cornerstone of Vermont's commitment to thoughtful and responsible land use. While the pressures of housing demand and economic growth are real and pressing, the solution is not to discard the independent and tested system that underpins the Act. Transferring appeals from the Environmental Division to the LURB would erode institutional knowledge, weaken public confidence, and create new uncertainties with no clear benefit.

Respectfully, if the goal is a process that is more efficient, effective, consistent, and fair, appellate jurisdiction must remain with the Vermont Superior Court Environmental Division, and the Board should focus on supporting that system through guidance, training, and rulemaking.

DATED at Burlington, Vermont this 31st day of October, 2025.

Mark Hall, Esq.
Alex Arroyo, Esq.
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Burlington, Vermont 05401
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From: Zachary Handelman <zhandelman@firmspf.com>
Sent: Thursday, October 23, 2025 6:16 PM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>
Subject: Ranney Dairy VSC Decision

Hi Brooke,

Thank you for your time and consideration during this evening's public comment period. Attached is the VSC Ranney Dairy decision. Let me know if you have any follow up questions on anything I said, and if I have some time next week, I will commit those comments to writing.

Best,
Zach

Zachary I. Handelman, Esq.
SP&F Attorneys, P.C.
171 Battery Street
P.O. Box 1507
Burlington, VT 05402-1507
Office: 802-660-2555
zhandelman@firmspf.com

From: Zonay, Thomas <Thomas.Zonay@vtcourts.gov>
Sent: Friday, October 31, 2025 7:06 AM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>
Subject: RE: Appeals Study Summary Update

Brooke:

Thank you for sending along a draft of the Report. While the Judiciary will be available to address questions and offer comments in the future, there are comments on two points which I thought may be helpful to identify at this time.

First, in Recommendation #2, the LURB recommends there be an option to transfer municipal appeals from the Environmental Division to the LURB for consolidated adjudication. The Report should make clear that the coordination of related municipal permitting appeals, Act 250 appeals, and any related ANR appeals in a single trial currently is possible, and regularly occurs, before the Environmental Division.

Second, though the Draft Report discusses transferring appellate jurisdiction of varying scopes of municipal zoning appeals from the Environmental Division to the LURB, it does not identify or consider the potential impact of the Vermont Supreme Court's 2024 decision in In re Ranney Dairy Farm, LLC, 2024 VT 66 wherein the Supreme Court addressed the jurisdiction of the Environmental Division to adjudicate private property rights under certain provisions of Title 24, Chapter 117 and related zoning bylaws. Should it be determined that Ranney is applicable to the appeals the LURB would be hearing, the question of whether the LURB has the jurisdiction to determine private property rights that could accompany an appeal should be considered.

Please let me know any question.

Thomas A. Zonay
Chief Superior Judge
State of Vermont

From: Jon Groveman <jgroveman@vnrc.org>
Sent: Thursday, October 16, 2025 7:19 AM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>
Subject: Re: FW: Appeals Report

Brooke:

This is an excellent draft. It is clear and very well organized and distills a very complex issue down to a very clear description of the reason for the recommended changes. VNRC will submit detailed comments on the recommendations. As you know, we question the estimated cost to implement the LURB proposal and will propose alternative ways to fund the proposal. We will likely expand on the benefits of a Board hearing appeals for bringing clarity to Act 250 requirements and flexibility for hearing housing appeals.

I personally really appreciate the history and context you bring to the report. Thank you for all your work on this.

Jon

--
Jon Groveman
VNRC Policy and Water Program Director
802-249-7736 (Mobile)
802-223-2328 x-111 (Office)

From: Jon Groveman <jgroveman@vnrc.org>
Sent: Friday, October 31, 2025 3:15 PM
To: Hurley, Janet <Janet.Hurley@vermont.gov>; Dingledine, Brooke <Brooke.Dingledine@vermont.gov>; Sultan, Kirsten <Kirsten.Sultan@vermont.gov>; Weinhagen, Alex <Alex.Weinhagen@vermont.gov>; Hadd, Sarah <Sarah.Hadd@vermont.gov>
Subject: LURB Appeals Report

LURB Board Members:

Attached is the Vermont Natural Resources Council comments on the draft LURB Appeals Report. Thank you for your consideration.

--
Jon Groveman
VNRC Policy and Water Program Director
802-249-7736 (Mobile)
802-223-2328 x-111 (Office)

October 31, 2025

Vermont Land Use Review Board (LURB)
10 Baldwin Street
Montpelier, Vermont 05633-3201

Re: LURB Appeals Study
Via Email

To Whom It May Concern:

The Vermont Natural Resources Council (VNRC) appreciates the opportunity to comment on the LURB Appeals Report and we thank the LURB for the effort that it has put into the report and facilitating the stakeholder group. VNRC is a member of the stakeholder group and had the opportunity to comment as part of that process. Accordingly, we submit these comments as a supplement to the comments that we have made throughout the stakeholder process.

VNRC supports the recommendation in the draft LURB Appeals Report that the LURB hear Act 250 appeals, including appeals of Jurisdictional Opinions. VNRC's position is that in order to improve Act 250, the LURB as a professional board is needed to resolve disputes on how the Act 250 criteria and jurisdictional rules - importantly including the new criteria and jurisdictional rules adopted in Act 181 - are implemented to create clarity for District Commissions, applicants and other parties to Act 250 proceedings and to make Act 250 more effective.

VNRC's reasoning is set forth in detail in this link to testimony that VNRC provided on the issue of Act 250 appeals in 2024 https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:63edc178-10f7-47ea-b7ce-716e0fa28349. The testimony is included in the record of materials that LURB has compiled as part of the stakeholder process. To summarize the points made in the testimony:

- The LURB through decisions on appeals can make rulings that guide the implementation of Act 250 as the former Environmental Board did through hundreds of decisions that fleshed out what is necessary to comply with Act

250. As an expert professional board that administers the Act 250 program , the LURB is in the best position to rule on how Act 250 is interpreted.

- Contrary to what some commentators argue, there is no conflict of interest with District Commissions making decisions that are then heard by the LURB if there is an appeal. District Commissions are quasi-judicial bodies that make decisions based on the facts and law of a given matter. The LURB has no role in the District Commission decision on a given matter. LURB attorneys can provide legal advice to District Commissions on a matter if the Commission requests such advice. If legal advice is provided to a District Commission, that LURB attorney can be walled off from working on an appeal of that matter to the LURB if there is a concern about any conflict.

- It is common that administrative agencies or boards contain both entities that issue permits and hear appeals of those permits. For example, the Environmental Protection Agency's (EPA) divisions issue permits and those permits are appealed to an internal Environmental Appeals Board within EPA. What is unusual is for administrative decisions of a commission to be appealed directly to court where a de novo review (the appeal is heard with no regard to the District Commission decision) is conducted. In the de novo review of Act 250 permits, the court is essentially in the position of issuing an Act 250 permit. Court's typically do not issue permits. Court's decide legal issues and resolve disputes. Our current system places the court in the odd position of standing in the shoes of a District Commission in making a permit decision.

- Hearing appeals would complement other tools that Act 181 has provided the LURB to guide the implementation of Act 250, including adopting rules, procedures, guidance and additional training for District Commissions. In fact, deciding appeals would give the LURB much better insight into what rules, procedures and guidance are needed to bring clarity to the Act 250 process as the LURB will be immersed in the issues as it processes and decides appeals.

- The Board would have more tools to move appeals through the process than a court. There is data that VNRC has collected that is summarized in the 2024 VNRC testimony on appeals that shows the Environmental Board heard Act 250 appeals faster than the court. In addition, the LURB, unlike the Environmental Board, could use its professional full time board members as staff as hearing officers to bring more resources to the appeal process, making the appeals process even faster than the former Environmental Board.

VNRC supports moving municipal housing appeals to the LURB. Like with Act 250 appeals, the LURB could bring its expertise in land use and additional resources with five full time board members and three staff attorneys to process appeals more quickly than the court. The court has two judges and two law clerks for its current docket which includes all Act 250 appeals, all municipal land use appeals, all Agency of Natural Resources (ANR) and enforcement for all of these programs. Moving Act 250 appeals and municipal housing

appeals from the court to the LURB will reduce the court's docket, allowing the court to process its appeals more quickly. In addition, the LURB can be more flexible than a court in terms of administering the appeals process such as managing discovery and procedural matters and will be able to process Act 250 and housing appeals more quickly.

The draft LURB Appeals Report recommends moving only certain housing appeals to the LURB. As noted, VNRC believes that to maximize the benefits of the LURB appeals process, and to avoid having housing appeals heard in different venues, all housing appeals should be moved to the LURB. VNRC would support a phased approach to moving appeals to the LURB to ensure that the LURB can complete its initial work on implementing the Act 181 Tiers and allow it to adopt rules for the LURB appeals process.

VNRC does not agree with estimate in the draft LURB Appeals Report of resources that the LURB would need to process Act 250 and municipal housing appeals. As noted with the five professional board members and three staff attorneys the LURB should be able to process appeals and implement its other responsibilities under Act 181, which will become easier over time after the initial Tier 1 maps are adopted and the Tier 3 rule is established.

Thank you for your consideration.

Sincerely,

Jon Groveman, Esq.

Printed on 100% post-consumer recycled paper, processed chlorine free.

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From: David Mears <david@TarrantGillies.com>
Sent: Thursday, October 23, 2025 12:51 PM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>
Cc: Ron Shems <ron@tarrantgillies.com>
Subject: RE: Appeals Study Summary Update

Dear Brooke: Thank you for sharing this draft with Ron and I. We have reviewed and are generally supportive. Unfortunately, neither of us are available to attend the public meeting this evening but we intend to submit comments before the October 31 deadline. We appreciate the significant amount of careful work that has gone into this draft report. Sincerely, David

David K. Mears

Tarrant | Gillies | Shems **LLP**
Attorneys at Law

44 East State Street, Montpelier, VT 05602
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From: Ron Shems <ron@TarrantGillies.com>
Sent: Thursday, October 30, 2025 10:30 AM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>
Cc: david <david@TarrantGillies.com>
Subject: Comments on Draft Report

Hi Brooke:

David Mears and I submit the following comments on the draft report.

David and I have participated in the process LURB sponsored and organized and that led to the LURB's draft report. We thank the LURB for an excellent process and draft report. The LURB fully heard and understood the several perspectives and developed that into a common-sense proposal that would dramatically expedite appeals, reduce costs, and ensure fairness.

By way of background, we represent many applicants, including housing developers. We practice before boards or commissions and the courts. Our participation in this LURB process is not on behalf of any client. We mention this to share our experience and to dispel the perception that the "development bar" uniformly supports de novo appeals to the courts.

We support the LURB's conclusion that it should hear both Act 250 and zoning appeals. There are much greater efficiencies and process improvements that will result by giving the LURB authority to hear both

types of appeals. Further, leaving the zoning appeals with the Environmental Division avoids dealing with the greatest source of appeals. These appeals should be heard under a hybrid standard that avoids duplication of efforts and assures fairness.

We fully support the need to assure that any appeals process before the LURB is free from ideology or politics. A five-member professional board (as opposed to a nine-member lay board) is already a critical step to curb ideology and politics. Examples of Vermont boards and commissions that have existed for decades without such concerns include the Public Utility Commission and the Transportation Board.

We hope to continue participating in this important effort and remain available to assist the LURB.

Many thanks.

--Ron

Ronald A. Shems

Tarrant | Gillies | Shems **LLP**
Attorneys at Law

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From: Pollaidh Major <p.major@vhcb.org>
Sent: Friday, October 31, 2025 12:03 PM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>
Cc: t.martin <t.martin@vhcb.org>; Gustave Seelig <g.seelig@vhcb.org>; Jenny Hyslop <j.hyslop@vhcb.org>
Subject: Comments on draft appeals report

Dear Brooke,

Thank you very much for your work at the LURB to lead the important conversation about appeals, Act 250, and municipal zoning. Trey and I have appreciated the opportunity to represent VHCB in the process and to support the participation of our Affordable Housing partners. We very much appreciate the direction the LURB is heading, and we support the comments submitted by our partners.

As you know, VHCB has funded affordable housing development in Vermont for almost 40 years, we have seen the issues under review impact our partners and the communities they serve, and we are very interested helping to ensure that the outcome of the LURB's work will help to eliminate barriers and reduce inefficiencies and costs in the land use review process.

We support the LURB's conclusion that it should hear both Act 250 and zoning appeals. We believe that the best, most efficient and fairest outcome for all parties, including the non-profit developers who build and maintain Vermont's affordable housing network, will result by giving the LURB authority to hear both types of appeals.

In addition, we want to echo the request from our partners, as well as friends like the Vermont Natural Resources Council, who have asked that the LURB further explore reforms to the municipal permit process to allow affordable housing projects in Tier 1 areas to bypass design review and directly obtain a building permit for expeditious municipal approval. This could eliminate needless appeals of housing development that is in conformance with town plans, served by sewer and water, and meeting zoning requirements for height, setback, and other easily verifiable criteria.

We hope to continue participating in this important effort and remain available to assist the LURB.

Best,
Pollaidh Major

Pollaidh Major *(she, her)*
Director of Policy and Special Projects
Vermont Housing & Conservation Board
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(802) 828-5865
p.major@vhcb.org

Vermont Housing & Conservation Board

From: Elizabeth Bridgewater <ebridgewater@homemattershere.org>
Sent: Thursday, October 23, 2025 9:39 AM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>
Subject: public hearing on appeals reform

Hi Brooke,

Consider this email as my preliminary comments on the report.

Thank you for sending the draft report and recommendations regarding appeal reform. As I mentioned a while ago, I am unable to attend the public hearing tonight as it coincides with our organizational board meeting. However, I do plan to submit written comments on the plan before the deadline next Friday. Below is a bulleted list of what I plan to submit in a more formal fashion next week.

- I was pleased to see the recommendation that municipal appeals be reviewed by the LURB. However, rather than separate track for municipal appeals based on Tiers, I suggest that they all go to the LURB.
- In the 1st recommendation to transfer ACT 250 appeals to the LURB, the report states in several places that this will be the LURB's singular focus. This is confusing given the subsequent recommendations about municipal appeals being reviewed by the LURB.
- In the cost/benefit analysis related to recommendation #1, it indicates that one of the concerns of this recommendation is the historically low number of ACT 250 appeals filed annually. Given this, there is a stated concern that the required level of investment in staffing and administrative resources may not be worth it for such a low number of appeals. The concern about the efficient use of funds will be addressed by adding municipal appeals to the LURBs responsibilities. This is not made clear because these recommendations are written in a siloed way as opposed to a suite of recommendations.
- There is an inconsistency in the phased approach between transferring ACT 250 appeals to the LURB and transferring municipal appeals to the LURB board. While the former outlines a specific timeline for the completion of this transfer – 3 years, the latter has no such provision. Instead, it includes a check-in in 2 years with no stated intention of when this transfer will happen. I recommend stating a specific deadline to make it clear that this recommendation has a strong intention to come to fruition.
- I noted that some of the other ideas that we discussed were not represented in the report. This includes the concept of 'by right' permits under certain conditions. We discussed this on more than one occasion so I think it ought to be reflected somewhere in the report, perhaps in an appendix.

Finally, I wanted to mention how struck I was by the lack of representation in the report of comments made from housing experts and those with direct experience in the appeal process as appellees. The report reads as a document shaped entirely by the lawyers in the room. While I recognize that the very nature of this work is legal and therefore it makes sense that the legal experts in the room have a clear voice, I feel strongly that the views of developers with direct experience should also be represented in the report. Not only did we consistently show up and make direct contributions to the discussion, such an obvious slant toward the legal stakeholders in the room diminishes the impact of having multiple stakeholder involved. I hope in future drafts, this can be addressed.

Thank you for your work on this project. It has a been a huge undertaking. The report is very well written and reflects so much of what we discussed during this process. I hope you and other charged with finalizing the report will consider my comments as respectful suggestions to strengthen the recommendations and round out how the discussions we had are represented.

With gratitude,

Elizabeth Bridgewater
Executive Director
Windham & Windsor Housing Trust
Office: 802-246-2109
Cell: 802-689-0917
www.homemattershere.org

From: Elizabeth Bridgewater <ebridgewater@homemattershere.org>
Sent: Friday, October 31, 2025 1:38 PM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>
Subject: WWHT comments on Appeals Report Draft #1 10.31.25.pdf

Hi Brooke,

Attached are my comment on the first draft of the Appeals Reform Report. Thank you again for your work on this project. I look forward to the next steps in the process and seeing how we can use the reform process to build more housing in Vermont.

Elizabeth Bridgewater
Executive Director
Windham & Windsor Housing Trust
Office: 802-246-2109
Cell: 802-689-0917
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Memorandum

To: Land Use Review Board, State of Vermont
From: Elizabeth Bridgewater, Executive Director, Windham & Windsor Housing Trust
Date: October 31, 2025
Re: Appeals Reform Study

Thank you for providing the opportunity to comment on the draft recommendations that were developed as part of a stakeholder working group to reform the appeals process in Vermont in order to speed up the construction of new housing projects.

I actively participated in these meetings throughout the spring and summer and brought the perspective of a non-profit housing development organization with 38 years of experience in new construction and rehab projects throughout Windham & Windsor County. More specifically, I was able to share our experience as appellees in an appeal process for a 25-unit project in Putney that included an appeal of the project's municipal zoning permit (for which no variances were requested) and an appeal of the project's ACT 250 Jurisdictional Opinion. Both appeals went to the Court's Environmental Division and to the Supreme Court and in both cases, there were no motion practice tactics used to delay the process. In order words, the appeals process progressed at the quickest pace possible within the current framework and capacity of the court system.

My comments below are informed by the experience referenced above which resulted in a 12-month delay while the environmental court reviewed and reaffirmed the project's municipal zoning permit and another 6-months for the Supreme Court to do the same. In addition, an appeal of the project's ACT 250 Jurisdictional Opinion further caused a further 12-month delay with a 4-month review in the Environmental Court and an 8-month review at the Supreme Court. Because these appeals were considered separately, the total delay in the project start date was just shy of 3 years, during which time construction costs increased over 4 million dollars and families who desperately need housing were left waiting.

The report is comprehensive, informative and captures the robust discussions that occurred over several months. I hope you and other charged with finalizing the report will consider my comments as respectful suggestions to strengthen the recommendations and add additional information we discussed in an appropriate format.

- I support the recommendation that municipal appeals be reviewed by the newly formed Land Use Review Board (LURB). However, rather than separate track for

municipal appeals based on Tiers, I suggest that they all go to the LURB. The basis for support is that the LURB is better positioned to craft policy and procedure to fulfill the housing policy goals of the State of Vermont. They will be able to prioritize housing appeals over other appeals and further prioritize affordable housing appeals. They will also have the option to develop a tiered system of review based on complexity and nature of the appeal. The court system is not in a position to do this and there is no mechanism to compel them to do this since they are outside the jurisdiction of the governor and the legislature.

- I further support the recommendation that the LURB review ACT 250 appeals and municipals concurrently when possible so that they can be resolved in the most efficient way possible.
- In the 1st recommendation to transfer ACT 250 appeals to the LURB, the report indicates in several places that this will be the LURB's singular focus. This is confusing given the subsequent recommendations about municipal appeals being reviewed by the LURB.
- In the cost/benefit analysis related to recommendation #1, it indicates that one of the concerns of this recommendation is the historically low number of ACT 250 appeals filed annually. Given this, there is a stated concern that the required level of investment in staffing and administrative resources may not be worth it for such a low number of appeals. The concern about the efficient use of funds will be addressed by adding municipal appeals to the LURBs responsibilities as recommended later in the report.
- I support the phased approach to implementing these recommendations given the other responsibilities of the LURB related to implementing other land use policy goals outlined in ACT 181. However, there is an inconsistency in the phased approach between transferring ACT 250 appeals to the LURB and transferring municipal appeals to the LURB board. While the former outlines a specific timeline for the completion of this transfer – 3 years, the latter has no such provision. Instead, it includes a check-in in 2 years with no stated intention of when this transfer will happen. I suggest stating a specific deadline to make it clear that this recommendation has a strong intention to come to fruition.
- Finally, I noted that some of the other ideas that we discussed were not represented in the report. This includes the concept of 'by right' permits under certain conditions which is a compelling idea that needs more time and discussion as it could speed up the production of housing in an effective way. We discussed this on more than one occasion so I think it ought to be reflected somewhere in the report, perhaps in an appendix.

Thank you and other members of the LURB for your work on this project. It has a been a huge undertaking and I appreciated the opportunity to participate in the process and to submit these formal comments.

From: Kathy Beyer <KBeyer@evernorthus.org>
Sent: Thursday, October 23, 2025 9:58 AM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>
Subject: Evernorth's comments on the Appeals Report

Good morning Brooke,

Attached are my comments on the Appeals Report.

They are brief, and I will try to attend part of the hearing tonight. I know that there is a vocal community of attorney's who strongly disagree with your recommendations, but as a developer who is in the trenches, I believe your recommendations are a much needed change.

Kathy

Kathy Beyer
Senior Vice President--Real Estate Development

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Web: evernorthus.org

Burlington, VT | Portland, ME

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Investing in communities. Building possibilities.

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MEMORANDUM

TO: Land Use Review Board, State of Vermont

FROM: Kathy Beyer, Senior Vice President Real Estate Development

RE: 2025 Appeals Study

Date: 10.22.25

We appreciate the opportunity to comment on the LURB Appeals Report Draft #1, and also the many hours of work that the LURB members have put into this effort.

Evernorth is a nonprofit affordable housing developer working in Vermont, New Hampshire and Maine. We have developed over 7,800 units of affordable rental housing across the state of Vermont during our 35 year history. In our current portfolio we co-own, with our regional nonprofit housing developers, more than 3,600 apartments across the state. Unfortunately, we are also a multifamily developer with the several experiences in the appeals process for both local and state land use permits.

In our experience, the appeals process is often used to slow down a project and especially an affordable housing project, with the hope that the developer will walk away due to the increased costs not only related to the appeal itself, but also due to increased project costs over time. It is paramount that any changes to the current system result in a more timely resolution of both Act 250 appeals, and local appeals.

We have found that the current system within the Environmental Court does not foster timely resolution, and instead offers up opportunities for the appellant to delay the process.

Recommendation #1: I agree with the approach of transferring the A250 appeals to the LURB, with a check in report to the Legislature to ensure that this approach does improve timeliness. I strongly believe that appeals of a JO should go to the LURB.

Recommendation #2: Our experience is that consolidation can actually slow down the process as the developer needs to gather both the local and A250 permit before starting the combined appeals process. But as long as this option is at the request of the applicant, I support the recommendation.

Recommendation #3: Agree

Recommendation #4: I agree that housing-related appeals in Tier 1A and 1B areas should go to the LURB. Certainly the effort to prioritize and expedite housing appeals should be very helpful and I strongly agree with this approach.

Recommendation #5: No comment.

Recommendation #6: No comment

Thank you for the opportunity to comment. Again, my perspective comes from being a developer with real world experience in the appeal process.

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evernorthus.org

From: cdimitruk <cdimitruk@nrpcvt.com>
Sent: Thursday, October 23, 2025 12:26 PM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>
Subject: RE: Appeals Study Summary Update

Thank you, Brooke. I read the report and think it is very well done, and I especially like the pros and cons section as it lays out many of the key points I remember from stakeholder meetings.

The only specific comment I have at this time is related to the description of the stakeholder group. I think it is important to explicitly state the stakeholder group provided feedback and information that informed the LURB recommendations. The recommendations are from the LURB, not the stakeholder group; the stakeholder group was not asked to endorse these recommendations.

It is implied, but I think it is an important distinction that should be explicit.

Thank you for considering this comment, and compliments again on the report.

From: James Moore <james@froghollowdev.com>
Sent: Monday, November 24, 2025 3:34 PM
To: Act250 - General <Act250.General@vermont.gov>
Cc: Kathy Beyer <KBeyer@evernorthus.org>; Farrell, Alex <Alex.Farrell@vermont.gov>
Subject: Comment regarding the Appeals study

Please accept the comments below as you consider finalizing the Appeals study report.

As a developer of smaller infill projects I have first hand experience with the current appeals process in Vermont, as it relates to appeals of Municipal permits.

I do believe there is an important time and place for public input regarding what development should go where in any given community. That time and place is when a community / legislative body creates the applicable rules and regulations that the public has to follow.

My personal and professional experience is that the current appeals process facilitates frivolous abuse and appeals.

10 years ago I was permitting a single family home. The project received its zoning permit and no variances or conditional approvals were required. The permit was appealed to the E Court and it was then threatened to be appealed to the VT Supreme Court. None of the objections raised were ever shown to have any merit. In the end it was clear that the person filing the appeal didn't have a legit concern with the permit and proposed development, but rather didn't want any additional development on the parcel, which could have had many more housing units. I settled out of court to move the single family home forward, limiting future development on a lot that was served by municipal services and should have housing on it.

The process took a long time and tens of thousands of dollars.

More recently I got involved in a project to build 4 moderate income homes (in partnership with a non-profit developer) on lots served by municipal services. Neighbors showed up complaining about historical preservation of buildings in the area, and "character" of the neighborhood. I believe this was all a veiled attempt to keep lower income residents from being in the neighborhood. The zoning approval was appealed to the E Court. The appeal has delayed the project and significantly increased the project cost through higher legal costs, engineering costs and construction delays. Further the delay could jeopardize the project funding and kill it all together.

After the above project was delayed we moved forward with a different 4 unit project, consisting of townhomes on another lot, with municipal services. This project was administratively approved by the Zoning Administrator. It was appealed by a "neighbor" whose home is nearly a quarter of a mile away and on a different street. This neighbor made it clear that he thought the multi family building would be an "abomination" in the neighborhood. The neighbor has indicated his intent to appeal the project.

Lastly, on yet another parcel served by municipal services, I submitted a permit application for a curb cut location. The curb cut was placed where the City Department of Public Works and professional engineers determined it would be best to locate it. Neighbors came out in opposition to what might be at the end of that driveway someday. They raised concerns such as stormwater that had nothing to do with the curb cut permit. The permit was approved by the DRB and the neighbors have indicated that they will appeal it to the E Court.

I have had so many conversations about the appeals process where folks' first question is on what grounds is it being appealed. I have to explain to them that to appeal a project one doesn't have to have any legitimate concern. The appellants goal in our current appeals process is all too often to win by losing slowly.

I am confident we will win all of the appeals we are involved in, because they comply strictly with the applicable zoning regulations. However, we will sometimes be forced to change or abandon projects because of the time and cost of the appeals process.

I believe the only challenge with the current process at the E Court is the time it takes. This could be solved with minimal additional staffing. The E Court runs a good process, follows legal rules, and has sound precedent to follow. In many ways I believe this is preferable to a new LURB that might not strictly adhere to the letter of the law, and could be a bit of a wildcard, like the Act 250 process is viewed today.

Could a new LURB work to review these municipal permit appeals? Yes, maybe, probably? But would changing the jurisdiction solve the issues we have? I don't believe so.

The issue is that we have an appeals path, that facilitates abuse.

I believe the path to addressing our broken appeals path, as it relates to housing development in Vermont, is through adoption of "By Right Development". Our challenge is not primarily about jurisdictions and timelines but rather is about what can be appealed.

"By Right Development" would ensure a development proposal that strictly adheres to the local zoning regulations, requiring no variance or conditional use approval, moves forward. There should not be a path to appeal it. The public should have a hand in determining the community regulations. Developers are required to adhere to those regulations and if the community body (DRB) says it does then a project should move forward.

Since by right development would require action by the State Legislature, I hope you encourage them to move the policy forward in this coming session.

As a developer of smaller projects, we can not afford to go through the Act 250 process. The additional legal and engineering fees are generally not supported by these smaller projects. The additional time required is also expensive. However, the biggest challenge is the uncertainty of the Act 250 process and potential requirements. I have spoked with a former Act 250

Commissioner who shared that they routinely added conditions to permits that were not strictly required, but rather were added in to appease grumpy neighbors. I have heard similar anecdotes from developers, lawyers, and engineers.

Thank you,
James Moore
Frog Hollow Development

From: Annette Smith <vce@vce.org>
Sent: Tuesday, October 14, 2025 2:11 PM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>
Subject: Re: Appeals Report

On case performance, the PUC published this recently, in case you want to compare.

https://puc.vermont.gov/sites/psbnew/files/documents/fy25-case-processing-performance-report.pdf

Here's my first comment.

p. 7 first paragraph add in a sentence or a few lines about mobile home parks. See three articles attached. It wasn't just ski area development or the interstate, it was the response to a shortage of low income housing and mobile home parks were being developed. At the end of that first paragraph, could add in ", and mobile home parks were being developed in response to a shortage of low cost housing."

Annette Smith
Executive Director
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Judging Mobile Homes

Gov. Davis' new development advisory team on mobile home parks will need the wisdom of Solomon, unless we miss our guess. Since the root of the problem is aesthetic, normal rules of debate do not apply, a fact which has been well demonstrated in New England town halls in recent years. But if the problem is aesthetic, the answer must be humanitarian, because it deeply affects many young couples just starting out in life and many retired people on limited incomes.

Some people love them and others detest them, but there is no question that mobile homes are here to stay. With the shortage of low cost housing, and with building costs and interest rates sky high, the mobile home represents about the only readily available source of low income housing in the state, a view which Gov. Davis reportedly shares.

Some individuals and communities apparently have been caught off guard — without zoning — by the sudden appearance of mobile home parks. But the evolution of the small trailer to the house trailer took place before World War II, and large mobile homes as we know them today have been around for years. Perhaps the towns have been under the impression "it can't happen here." Such was not the case with Rye, N.H., for one. In the shadow of bombers taking off from Pease Air Force Base, Rye might have been expected to have many mobile homes as residences for military and civilian personnel. But Rye, which jealously guards its quiet elegance, rewrote its zoning laws in the mid-Fifties and carefully selected a nice spot for mobile homes, over by busy U.S. 1. Perhaps the town fathers and property owners would have been more lenient if housing had been as scarce and as costly then as now, who knows?

Many Vermont communities rejected zoning during years when humanitarian arguments for low cost housing were fewer, and mobile homes also were fewer. According to one trade publication, there are more than seven million American families living in trailers or mobile homes this year, and annual sales of wheeled housing units are approaching the half-million mark. If mobile homes are a headache to some people, they obviously are a headache that isn't about to go away.

The two commonest complaints about mobile homes are that they disfigure the landscape, thus lowering the value of adjacent property, and that they don't pay their fair share of taxes. Since aesthetic values vary greatly from person to person and are really a matter of opinion rather than fact, the first complaint usually leads to endless and inconclusive debate. The tax complaint is more tangible, but if some town has a mobile home family with four children in school and a low tax bill, another town may have a mobile home housing a retired couple who pay a tax in keeping with those on conventional residences. Generalizations are neither accurate nor fair.

Architecture, being an art form, is subject to aesthetic judgment on its appearance as well as practical judgment on its functional quality, and who can deny there are some magnificent and costly eyesores in our land. Basically, mobile homes are a form of architecture and must be so judged at the same time they are judged for safety, sanitation and the other standards of housing.

The advisory team will probably find it must apply the same rules to mobile homes that are applied — or should be — to other residences. Like them or not, they fill a housing need, and, with living costs, building costs and interest rates where they are, no government agency can very well dispute another view reportedly held by Gov. Davis: "Let's zone them in and not zone them out."

Who knows? We may all get used to them. We got used to automobiles.

Another State Development Advisory Team Is Needed

VERMONT PRESS BUREAU

Gov. Deane C Davis will name another development advisory team before the end of the week.

The new team's assignment will be to help local communities cope with trailer park development problems.

The team will not only advise communities with such problems, but will be charged with the job of preparing some mobile home park legislation to be considered by the 1970 Legislature.

Norman Williams of Woodstock, a planning expert, and architect Robert Metz of Burlington, will be named co-chairmen of the team.

The team will be the second of its type to be named by Gov. Davis. Already in action is a team headed by planner Walter Blucher of Arlington, which is helping communities deal with development problems.

State Planning Director Theodore M. Riehle said Wednesday that a major reason for lining up a new advisory team is the fact that Blucher's group is simply getting more work than it can handle.

The director said Wednesday that his office is getting more and more calls for help every day from Vermont towns.

And he prophesied, "I think that in a very few days we're going to be swamped."

The planning office received calls for help Wednesday from the towns of Addison, Barnard, and Milton.

Barnard and Addison were interested in adopting interim zoning.

The Milton call came from a citizen concerned about the purchase of a 200-acre tract of land within the town.

Riehle got Williams and Metz to agree to head the new task force Wednesday.

Other members of the group will be named by the end of the week.

Official announcement of the formation of the team and its membership can be expected from Gov. Davis' office by the weekend.

Looking at the development situation in the state, Riehle said Wednesday, "We're just going to have to hold out until the first of next year when hopefully the Legislature acts to give us some more tools to control development."

Riehle said that, hopefully, the Legislature will adopt some sort of subdivision regulations that can be adopted by local communities to help check development.

The governor's Environmental Control Commission headed by Rep. Arthur Gibb, R-15 of Weybridge, is expected to come up with some proposed legislation regarding development in the state.

Riehle said Wednesday that the new advisory team will be working closely with Gibb's group.

There has been some mention during sessions of the Environmental Control Commission of the possibility of recommending that the governor call a special legislative session to deal with development problems.

Riehle said Wednesday that he sees little chance of such a session being called. He pointed out that by the time proposed legislation could be drafted for such a session, it would probably be about time for the start of the regular General Assembly session.

Wednesday Riehle went beyond talk of the prospects for the next regular legislative session and indicated that he has a contingency plan in mind should the Legislature fail to enact laws which will hlep ease the development situation.

Riehle said that if such is the case, he is considering seeking additional funds, probably Federal Housing and Urban Development funds, to increase his staff and the staffs of local planning commissions.

Riehle said that with the added funds and staff, his office could send more men out to help local communities fight zoning.

And he said that with more men, local planning commissions could perhaps employ development specialists to advise towns on development problems.

Riehele said Wednesday he hopes that the new advisory team will be able to relieve the original team of some of its work load.

He said the new team will deal exclusively with mobile home problems and he predicted that the team will have plenty to do.

The Central Planning Office has already had at least one request for help in dealing with a mobile home park. That request came from the town of Salisbury which is concerned with a trailer park being developed on the shore of Lake Dunmore.

Until it was learned of the new team's formation Wednesday, it had been expected that Blucher's team would look into the situation.

Riehle said that the primary job of the new team will to develop proposed trailer park regulation legislation to be considered during the coming session.

But he also said the team will be available to help communities as Blucher's team does.

Though Blucher and his boys aren't directly developing legislation, they are assisting Gibb's commission in drafting proposed laws.

Gov. Davis has already given his blessings to formation of the new team.

Davis is reported to feel that while mobile homes aren't too desirable, they represent about the only readily available source of low income housing in the state.

His attitude has been described as "Let's zone them in and not zone them out."

Riehle said that with the formation of the new team to help the old one and with his office staff, he hopes that at least partially adequate check of development in Vermont can be kept until the next session.

Although some might disagree with him, Riehle said Wednesday, "although the situation is bad, I don't see the whole state going to the dogs before January." That's when the Legislature reconvenes.

West Newbury

Callers at the parsonage last week were Mr. and Mrs. Lester Bell of St. Johnsbury; Miss Flora Emerson of Westmore; the Rev. and Mrs. Howard Spaulding and two sons of Norwich, Conn.

Miss Eleanor Dimmick of

Propose Zoning Plan

VERMONT PRESS BUREAU

Gov. Deane C. Davis will try to sell the 1970 Legislature on his proposal to zone in mobile homes by setting up a scale model of a new mobile home park design in the State House.

The scale model will be based on a design recommended as proposed legislation by the governor's committee on manufactured homes.

Davis said the model is designed to depict the aesthetic possibilities of a mobile home park.

"Anything that approaches the problem of upgrading the health and aesthetics of mobile homes is improving our environment," said Davis.

Davis called the design "a big step forward" and said that Ray Pecor of Shelburne, a mobile home dealer, has indicated he plans to construct such a mobile home park in Chittenden County as soon as possible. The park would feature large green open spaces and trees, and would have at least 8,000 square feet for each mobile home.

Davis wants mobile homes

(Continued from page one)

Zoning

(Continued from page one)

"zoned in" rather than "zoned out" because he believes mobile homes are an important part of the solution to the low-cost housing problem in the state.

Norman Williams, a Rutgers University professor and a resident of Woodstock, and Burlington architect Robert Metz, were co-chairmen of the governor's committee on manufactured homes.

Serving on the committee were Robert Proctor of Proctor, Robert Burley of Waitsfield, Daniel Kiley of East Charlotte, Charles Helmer of Woodstock, and Bryan Lynch of Woodstock.

Annette Smith
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From: Annette Smith <vce@vce.org>
Sent: Tuesday, October 14, 2025 2:47 PM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>
Subject: Re: Appeals Report

Overall very well done, readable, covers the topic well and provides a balanced review of the issues. Other comments are below:

p. 16, appeals of ANR permits related to renewable energy are heard by the Public Utility Commission and not the Environmental Division. Could be a footnote, but it should be noted that not every appeal of an ANR permit goes to the court. I would like to see ANR recommend moving those appeals back to the Environmental Division.

p. 22 Jon Groveman's name is misspelled, Jon, not John. Also misspelled on p. 23

p. 23. 4. This line doesn't make sense since the NRB no longer exists: The NRB's limited authority means it cannot provide the necessary oversight and guidance.
The above is repeated in d. on p. 25

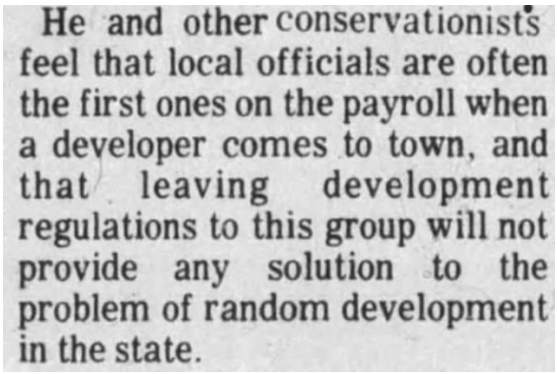
Pages 25 and 26 and the cost benefit analysis. Missing from the section with the costs is the idea that once the Act 181 work that you all are doing is over with, it may be that you will not need another lawyer because you have one already, and you may be able to use the Act 250 database, at least that was the discussion you all had. Leading to the idea that those costs are likely to be offset by the funds already allocated for implementing Act 181. I think that's important to include. I also note Rachel's admonition that the costs might be higher than projected.

Yes, it needs more about the important role that Vermonters play in assuring that land use decisions are made with communities and the environment in the forefront, and the Ombuds office will enhance public participation to make it more efficient and effective.

There is a common theme running through a lot of these stakeholder meetings about the NIMBY public getting in the way of development. That assumes that all development (and developers) are good and necessary. Just as there are individual citizens who have held up projects and individual

lawyers who over-litigate, there are developers who propose bad projects, some of which should just be denied, others which can and should be modified. This is an important aspect of Act 250.

Also important is the role District Commissions play in somewhat insulating decision-making on the municipal level from influence. The attached screen shot comes from the attached article. It is the fundamental reason for supporting the District Commission process over municipal review. I do not know if this is something that fits into this report, but I do think that the design of Act 250 is under-appreciated.


He and other conservationists feel that local officials are often the first ones on the payroll when a developer comes to town, and that leaving development regulations to this group will not provide any solution to the problem of random development in the state.

The Rutland Daily Herald (Rutland, Vermont) · Wed, Sep 17, 1969:

...And Even Conservatives Agree

By JOE JAMELE
(Vermont Press Bureau)

MONTPELIER — Conservative Richard E. Snelling of Shelburne surprised the Governor's Commission on Environmental Control Tuesday by declaring his support for statewide zoning and strict building regulations in Vermont.

Snelling even admitted he was a little surprised himself at his stand.

"Ten years ago, I had a strong aversion to zoning," the Shelburne industrialist admitted, as if revealing some dark chapter from his past.

"I feel just the opposite now," Snelling said.

"We can't afford to be without these laws any longer."

Snelling, whose appointment to the commission figured to be for balance of the conservationist minded body, suddenly was getting nods of approval from former Federal Power Commissioner Charles Ross of Burlington and Woodstock conservationist Richard Brett.

Both Brett and Ross have long records of conservationist leanings, but Snelling has often weighed his deliberations on the cost-benefit ratio that he utilizes as an engineer uses a slide rule.

But Snelling was talking Tuesday about the "gross and terrible things that might have happened" had not the state taken immediate action to discourage the rash of developments springing up throughout the southern part of the state.

And he was boosting overall state controls over local controls to govern the problem.

The interim subdivision regulations that the commission urged last week for local control of developments was a stopgap measure until broader statewide controls could be developed, Snelling said.

Brett, has had misgivings over the recommended legislation that would allow community officials to enact subdivision regulations through simple adoption of a transportation plan (street map).

He and other conservationists feel that local officials are often the first ones on the payroll when a developer comes to town, and that leaving development regulations to this group will not provide any solution to the problem of random development in the state.

Ross urged Tuesday that the commission prepare recommendations for statewide controls that can be acted upon by the Legislature in 1970.

Ross said that if half the towns fail to employ the subdivision regulations, thereby controling development in their communities, the rest of the state is victim of their inaction.

He called for the commission to work harder to put together guidelines that will result in controls at the state level.

Ross and other members of the commission said the group should decide what values must be preserved for Vermont, and then draw up the legislation protecting them from future desecration.

Here Snelling objected to the presumptuousness of the commission in making a decision for all Vermonters on how the state should evolve.

But Ross and Brett said it was the duty of the commission to continually make the people aware that Vermont's way of life could be irrevocably altered by the changes that are being pressed upon the state from without.

But it was the emergence of Snelling as a conservationist that stole the spotlight Tuesday, especially since Gov. Deane C. Davis another conservative, had indicated his preference of some development regulation code over statewide zoning. Davis has consistently opposed statewide zoning during the land development crisis in the state.

Stocks

(This notice of transactions on the New York Stock Exchange is provided through the courtesy of E. F. Patnod Securities Co., 36 Merchants Row. The Herald is not responsible for any inaccuracies which may occur in the listings).

(CLOSING)	Sept. 15	Sept. 16
Admiral	15⅞	15¾
Amer Airlines	31⅝	31½
Amn Brands	34⅛	34
Amn Can	48¼	48
Amn Motors	9⅜	9⅜
Amn Tel & Tel	51¼	50¾
Ampex	43½	45¼
Ames	14⅜	14¼
Avco	26½	26⅝
Anaconda	28⅛	28⅛
Anheuser Busch	64½	64½
Bethlehem Stl	31	30⅞
Boeing	32¾	33
Burroughs	153⅛	154⅝
Canad Pac	70⅝	70¾
Campbell Soup	29½	30
Chase Man Bk	51	51⅜
Ches & Ohio	59½	60
Chrysler	40¼	40¾

Next Step 'Up to Davis' In Controlling A-Plants

CHARLOTTE — (Special) — Spokesmen for the Lake Champlain Committee urged Tuesday that Gov. Deane C. Davis act quickly to see that Vermont adopts strict environmental control for nuclear power plants.

Committee spokesmen Tuesday also criticized the Atomic Energy Commission for its handling of the Atomic Power Conference held last week in Burlington.

Said committee general counsel Atty. Peter Paine: "We urge that the state move rapidly in the area of enacting strict environmental controls on nuclear plants because of the possibility of an atomic plant being built in Charlotte and because of the nuclear plant now being built at Vernon."

The Vermont Yankee Nuclear Power Corp. is constructing a nuclear plant at Vernon on the

Symphony Woodwind Quintet to Appear In Springfield Sept. 23

SPRINGFIELD — (Special) — The woodwind quintet of the Vermont Symphony Orchestra will present demonstration concerts here Tuesday for four different audiences of students at the Park Street School, where

Annette Smith
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From: Annette Smith <vce@vce.org>
Sent: Friday, November 14, 2025 7:48 AM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>
Subject: Comment on appeals report

pp. 12-13
It would be appropriate to add a footnote to the section on the jurisdiction of the Environmental Division appeals to note that appeals of renewable energy-related permits are heard by the PUC, and not the Environmental Division.

So, a stormwater permit for a wind project, if appealed, does not go to the Environmental Division. This is ridiculous and needs to be changed, because the PUC defers to ANR that issues the permit in the first place. Calling it out in this report would remind or educate legislators about the system, and the opportunity to provide consistency in environmental appeals. As far as I know, the PUC has heard only one ANR permit appeal, and that was for the Lowell wind stormwater permits.

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From: Thomas Weiss <tweiss@together.net>
Sent: Monday, October 27, 2025 11:20 AM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>
Cc: Sultan, Kirsten <Kirsten.Sultan@vermont.gov>; Weinhagen, Alex <Alex.Weinhagen@vermont.gov>; Hurley, Janet <Janet.Hurley@vermont.gov>; Hadd, Sarah <Sarah.Hadd@vermont.gov>
Subject: Appeals report comments

Hello Brooke,

A letter with my comments on draft 1 of the appeals report is attached.

The letter includes my comments from Thursday.

The letter also includes additional comments that I did not make Thursday. I include the additional comments, because it appears this is the only chance to make comments before the draft is submitted to the legislative committees.

Sincerely,
Thomas

Thomas Weiss, P. E.
P. O. Box 512
Montpelier, Vermont 05601
October 27, 2025

Ms. Brooke Dingledine Land Use Review Board 10 Baldwin Street
Montpelier, Vermont 05633-3201

Subject: Comments on Appeals Report, draft 1 Dear Ms. Dingledine

Here is the text from which I spoke at the Board meeting last Thursday .afternoon. After that text, I provide additional comments, because this appears to be the only chance the public will have to comment on the draft before it becomes final and sent to the legislative committees.

I am leaning toward transferring appeals of Act 250 decisions to the Board. This report has not convinced me. That is why I am asking that the report be amended to provide a more compelling case for the transfer.

The committees and thus the legislature asked for the report to receive firm recommendations on appeals. If I remember correctly, there had been conflicting testimony in the committees about how appeals should be handled. Remain with the court or be transferred to the new Board? The committees likely will give deference to the report. The more compelling the report, the more likely that the committees will find it persuasive against all opposing testimony.

I also supplement last Thursday's comments with additional ones to bolster those comments. The additional comments are in italics following the comments I actually presented.

---------- start of supplemented Thursday testimony ----------Good afternoon. I am Thomas Weiss, a resident of Montpelier.

Thank you for taking comments on draft 1 of the Act 181 Appeals Study Report. Thank you for including the charge from the legislature in this report.

I am viewing this report from my experience sitting in on legislative committees and what they are looking for.

This report needs to make a compelling case for each of its recommendations. I find the report is less than compelling regarding some of the recommendations.

I have six points to make today.

1. Alleged inconsistency between districts has never been documented

I have heard the claim many times and have never heard anyone provide specific examples of inconsistencies. Thus there is no basis for recommendations to improve training. Instead, I suggest that the report describe the training that is already being provided to district commissions and co-ordinators and why that training is sufficient. And state in the report that the Board finds that inconsistency has never been demonstrated and that the Board sees no need to alter its existing training. This will challenge those making the unasserted claims to provide specifics or shut up.

I have never actually heard the Board concede that its training procedures and monitoring are insufficient. Maybe the Board is aware of inconsistencies through its monitoring of appeals to the courts. If so, I have not heard that. Nor have I heard the Board counter the claims of inconsistency with statements that decisions made by district commissions and co-ordinators are based on the specific facts of each case. Without an analysis of specific claims of inconsistency, one cannot determine whether it is an inconsistency or due instead to a consistent application of the principles to the different facts.

I acknowledge that on-going training is important and necessary.

Recommendation: Add at the appropriate points in the report something like: "There have been many claims that there is a lack of consistency between and among district commissions. None of those making these claims of inconsistency have ever documented even one pair of inconsistent cases. Thus the Board sees no inconsistency between or among decisions of district co-ordinators or district commissioners. And the Board finds that its existing training program for district commissions and district staff are already providing the necessary training and guidance to them."

Of course, if the Board is aware that its training is inadequate in this regard, then the recommendation would be different.

1. Alternatives to retaining appeals of ANR permits at the Court are not included in the report

The draft report omits any mention of several alternatives discussed by the stakeholders. Nor does the draft mention their views concerning those alternatives. The report presents no counter arguments against retaining appeals at the Court. Nor does the report mention what the non-ANR stakeholders had to say about who should hear ANR appeals. This recommendation would be more compelling with a description of the alternatives considered by the stakeholders, their opinions, and the reasons why those alternatives are not recommended.

2. The proposed board model

This report is going to the legislature. Likely they will have questions about why this particular model. I suggest expanding the text to discuss the alternative board models presented to the stakeholders and why they were not recommended.

The transition from VIII. to A.(page 17) seems abrupt, and disjointed or disconnected. Text between the heading VIII. and the subheading A. could smooth the transition. Perhaps something as simple as "The Board is proposing the following model" followed by a description of how the Board reached this model and what other models were rejected. And why various elements are recommended in the form presented.

3. The Court *vs.* the Board debate

I do not find that this section of the report makes a compelling case for transferring appeals to the Board. Rather this section seems to make the case that either is acceptable and that maybe the court is a better choice.

If there are disadvantages to keeping appeals at the court, the report doesn't mention them. I suggest any disadvantages be discussed in the report. If there is no disadvantage, then why is the recommendation to remove the authority of the Court to hear Act 250 appeals? The portion of the report discussing the transfer to the Board provides multiple cons to the transfer.

Some of the text seems to cast doubt on the wisdom of the recommendation to transfer appeals to the Board.

The report makes unsupported claims that hearings at the Board will be more accessible, more user-friendly, more flexible, and more streamlined than the courts. The claims cannot be evaluated because the proposed procedures for hearings have not been made public.

I suggest providing more details to make a compelling case for the transfer to the Board. Otherwise conclude that appeals should be left with the courts.

4. Board capacity and timing considerations

The longer the delay until implementing a change, the less likely it is that the change will actually happen, based on my experience elsewhere

I suggest determining the Board's capacity based on an analysis of the multiple activities required of the Board. I would do this using a table or chart listing each activity in the first column and have subsequent columns for time periods. Those columns would show the amounts of time spent on the Act 181 duties and ongoing duties (enforcement is one of them), by each Board member, the Act 181 staff attorney, and other support staff.

I suggest expanding the text in this section to at least list all the Act 181 requirements (appeals and reviews of regional plans and tiers 1B and 1A, to name a few) and ongoing actions (including enforcement).

The table or chart will show each of the Board's activities and how the Board and staff distribute their time in carrying out those activities. The estimation of hours will be made easier if the Board and staff have kept track of their time by activity.

Analysis of the Board's capacity

Activity	*time period 1*	*time period 2*	*time period 3*	*time period 4*	*time period 5*
Appeals report (sec. 11a)					
Hurley					
Hadd					
Weinhagen					
Dingledine					
Sultan					
Act 181 staff attorney					
Other supporting staff					
Regional Plans and Tiers 1B					
Tier 3					
Road Rule					
Enforcement					
Hearing appeals					
Additional activities					
Totals					

Notes:

- *Other supporting staff might be grouped together or might be listed individually by position.*
- *The time period might be by day or by week or by month. The hours anticipated to be spent by each - individual would be placed in this column.*
- *The lead person, in this activity Brooke Dingledine would have the most time in the appeals activity. The other personnel would have less time.*
- *The other activities shown are only a sample of all the activities that need to be included in the table to determine Board capacity.*
- *Each additional activity will be a block similar to the one for appeals, with one row for each individual involved. These blocks will include all the Act 181 activities and additional activities in which the Board is involved.*

5. How to prioritize/expedite housing appeals

The purpose of the Tier 1A and 1B exemptions is to get Act 250 out of the picture. Thus it seems contrary to the legislative purpose to recommend having the Board involved in appeals of housing projects in Tiers 1A and 1B. The appeals will involve the Board in those very projects that are intended to be exempt from Act 250 and the Board.

The Board now has little jurisdiction over housing.

I suggest amending the report to say that it is inappropriate to expect that the Board can help expedite housing appeals, because the Board has so little jurisdiction over housing.

- **In conclusion**

I ask that you find that these comments and their recommendations have merit, and that you use them to shape the report into something more compelling for the legislative committees receiving the report.

Thank you for your time.

---------- end of supplemented Thursday testimony ----------

It appears that the public might not get another chance to comment on this report before it is submitted to the legislative committees. The rest of this letter provides additional comments that are not as broad as those I made at the public meeting.

Page 8. Actually no criteria have been added. Act 250 started with 10 and still has the original 10. Four of the criteria have never been modified.

Page 8. Actually, in 2004, the functions of the EB and WRB were combined into the nine member Natural Resources Board. The NRB had two distinct five-member panels (a common chair): one each for land and for water. The water panel was later eliminated, resulting in the five-member NRB that was abolished at the end of 2024.

Page 8. One might condense down what Act 250 was designed to do as given in the last paragraph of B. I think what is written is oversimplified. The actual findings and declaration of intent of Act 250 never made it into statute. They provide an accurate (and much longer) statement of what Act 250 was designed to do. I provide them for your reference.

Sec. 1. Findings and declaration of intent

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, a comprehensive state capability and development plan and land use plan are necessary to provide guidelines for utilization of the lands and environment of the state of Vermont and to define the goals to be achieved through land environmental use, planning and control; and

Whereas, it is necessary to establish an environmental board and district environmental commissions and vest them with the authority to regulate the use of the lands and the environment of the state according to the guidelines and goals set forth in the state comprehensive capability and development plan and to give these commissions the authority to enforce the regulations and controls; 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;

Now, therefore, the legislature declares that in order to protect and conserve the lands and the environment of the state and to insure that these lands and environment are devoted to uses which are not detrimental to the public welfare and interests, the state shall, in the interest of the public health, safety and welfare, exercise its power by creating a state environmental board and district environmental commissions conferring upon them the power to regulate the use of lands and to establish comprehensive state capability, development and land use plans as hereinafter provided.

Page 11, C.4.. I consider that "environmental justice permit specialist" and "ombuds office" are not synonyms. The previous position held by an individual in the regional offices was neither an environmental justice permit specialist nor an ombuds person. This topic is not required. It is relevant to the charge under (b)(4) "other actions to "promote the efficient and effective adjudication of appeals". I suggest that the discussion in the report be framed in terms of how this office would relate to appeals. Perhaps that the assistance to potential applicants and to parties up front will

provide understanding. And that understanding will reduce the need for appeals. I also suggest that the report cover the discussions by the stakeholders on the negative effects on district co-ordinators of the switch to DEC's on-line permit navigator.

Various locations: jargon and acronyms to be explained: OTR, motion procedure at a minimum. Remember, this report is going to legislative committees. Some of those committee members have little interaction with, or little knowledge of, Act 250.

Page 13, C and D. There are lots of references to footnotes that are not provided. Page 15. What does "within the needs of the relevant case" mean?

Page 15, 4.a. Does the court track such delays: Why was the original schedule not met? Who requested the time and why? This would be useful for determining whether one party (applicant? Municipality? State agency? Other party?) predominantly is responsible for not meeting the schedule.

Page 15, 4.b What weight does the Court give to requests from parties other than the developer/applicant?

Page 20. The table could have an additional row at the end. The columns in that row would contain: All other municipal appeals; All types; Environmental Division of Superior Court; According to practices of that Court.

There are multiple locations where the no-longer-existent Natural Resources Board is referred to in the present tense. I think those references should be in a past tense. One example is on p. 23, 4. Similarly, there are locations where the Land Use Review Board is referred to as if it does not yet exist. I think those should be in the present tense, or some conditional tense if it is a possible future action for the LURB. They should be in the present Examples are on p.22, B.1 and p. 23 6 and 8.

Page 24 XI. A. 1. c. I would find that a reference to the Environmental Board having done this successfully when it existed and that the NRB never attempted to do this (as far as I know) to be more compelling than the way it is written.

Page 25, d. This paragraph starts out stating that the LURB lacks a central authority. Perhaps the first sentence might more accurately be stated something like: "Act 181 created a full-time LURB in order to implement the changes to Act 250 required by Act 181. The former Natural Resources Board was limited to enforcement actions and administrative matters. The NRB had the authority to provide oversight and guidance and to make rules and policies. The NRB did not exercise that authority." Also, it seems that the LURB cannot make final decisions. The supreme court would make final decisions if a LURB decision is appealed. Also the NRB implemented many changes to Act 250. Act 250 was amended by 49 separate acts in the 20 years that the NRB was in existence. For context, Act 250 has been amended by 108 separate acts in the 55 years following its creation.

Page 26 c. Who will be involved in the appeals.? I hope that none of the appeals staff will be sitting idle when there are no active appeals. This is one part of the report where the text seems to cast doubt on the wisdom of transferring appeals back to the Act 250 Board. When appeals loads are low, what other duties will those staff be doing? The report could contain an estimate of the time that might be involved in appeals (labor hours, not calendar time) with the current number of appeals. Then a sensitivity analysis could be done to show the effect of more appeals or fewer appeals. I acknowledge that the amount of labor hours per appeal will be variable. The Board seems convinced an appeals clerk and an appeals IT person will be needed. So the Board seems to have some idea of the costs and staff needed to handle some level of appeals.

- **In conclusion**

It is important that this report provide a strong basis for convincing the legislature to accept and enact the Board's recommendations. Not all stakeholders support the change of appeals to the Board. The stronger the arguments, the clearer the points, the more likely it will be that the committees will support the recommendations.

These comments: point out areas where I think the arguments can be stronger and some areas where I don't think the report actually supports the conclusions stated in the report.

I hope that you find these comments useful in the preparation of the report on appeals.

Sincerely, Thomas Weiss

From: Thomas Weiss <tweiss@together.net>
Sent: Tuesday, November 11, 2025 10:51 AM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>; Sultan, Kirsten <Kirsten.Sultan@vermont.gov>; Weinhagen, Alex <Alex.Weinhagen@vermont.gov>; Hurley, Janet <Janet.Hurley@vermont.gov>; Hadd, Sarah <Sarah.Hadd@vermont.gov>
Subject: Appeals report draft 2, comments

Dear Board,

Here are the written version of the comments that I presented at yesterday's Board meeting.

When I said I'd submit the comments this morning, it had slipped my mind that today is a State holiday.

Sincerely,
Thomas Weiss

Thomas Weiss
P. O. Box 512
Montpelier, Vermont 05601
November 11, 2025

Brooke Dingledine
Land Use Review Board
10 Baldwin Street
Montpelier, Vermont 05633-3201

Subject: Comments on Appeals Report, draft 2 Dear Ms. Dingledine:

Here are some comments on draft 2. They contain specific recommendations for each comment.

- **Please get the history right:**

History is important. This draft 2 revises and distorts much of that history. I think it is necessary for the Board to

understand the history and to get the history right.

Page 9 excerpt by Gene Sessions. I suggest removing the inaccurate phrase from what Sessions wrote: Conservative Republican Governor Dean Davis responded to the growing concern by establishing a state commission on environmental control for the purpose of examining abuses in the vacation home industry * * *. From its deliberations emerged the basic outline of the “Act 250” legislation. Although vigorously opposed by realtors and developers, the act passed two legislative houses by large margins with bipartisan support, and Governor Davis signed it into law.

The part about "examining abuses in the vacation home industry" is not supported by Executive Order #7. That executive order created the "Governor's Commission on Environmental Control". Abuses in the vacation home industry were an impetus for Governor Davis' creation of the Commission. However, that executive order covers the environment in general and never mentions either ski areas or vacation homes. The excerpt also appears in appendix B. I suggest that the phrase "for the purpose of examining abuses in the vacation home industry" be removed and an ellipsis (* * *) be inserted, as shown above, both on page 9 and on page 41.

Page 10, second paragraph in B. Please get the history of the Natural Resources Board right. The following is an accurate amendment. The text in draft 2 merges events over the period 2005 through 2013.

In 2004, the Vermont Legislature shifted jurisdiction over Act 250 appeals from the Environmental Board to the Superior Court's Environmental Division. Concurrently, the Environmental Board and Water Resources Board were merged into a single 5-member 9-member entity known as the Natural Resources Board (NRB), which could participate as a party in Act 250 appeals at the Environmental Division. The Natural Resources Board initially had two panels: a land use panel and a water resources panel. Subsequent legislation transferred the duties of the water resources panel to the Department of Environmental Conservation.. This transfer reduced the Natural Resources Board to five members with the duties of the land use panel.

I heard your response at yesterday's Board meeting. So, an alternative, still accurate, that does not go into as much detail is:

In 2004, the Vermont Legislature shifted jurisdiction over Act 250 appeals from the Environmental Board to the Superior Court's Environmental Division. Concurrently, the legislature abolished the Environmental Board and created Environmental Board and Water Resources Board were merged into a single 5-member entity known as the Natural Resources Board (NRB), which could participate as a party in Act 250 appeals at the Environmental Division. Subsequently, the legislature reduced the size and scope of the Natural Resources Board until finally abolishing it in 2024.

Page 12, V. A. Environmental Division Jurisdiction. The Environmental Division was created by Act 154 (2010). That was "An act relating to restructuring of the judiciary." Act 115 (2004) expanded the then-existing environmental court., adding a second environmental judge. Act 115 was not a "Permit Reform Act". The word "reform" never appears in Act 115. Act 115 is "AN ACT RELATING TO CONSOLIDATED ENVIRONMENTAL APPEALS AND REVISIONS OF LAND USE DEVELOPMENT LAW."

The Vermont Environmental Division was established Court was expanded by the Permit Reform Act 115 of 2004 to streamline environmental appeals by consolidating them into a specialized division within the Superior Court. This division was created was done to efficiently handle complex environmental and land use disputes, offering a more focused judicial process for such appeals. A subsequent judicial reorganization converted the Environmental Court to the Environmental Division of the Superior Court. The types of cases it addresses include:

Page 23 B. 3. Consistency and Precedent Actually, the Environmental Board heard and decided its first appeals in 1970 (not in 1972). According to the E-notes (2016 edition) the following four appeals were decided by the Environmental Board in 1970. Then the Act 250 database provided the relevant dates of the appeal. I appreciate that information on appeals has been added to the Act 250 database.

Project (from E-notes)	Board received the appeal	Board hearing	Board Decision
Bennington City Industrial Corporation #800001, [EB #1] Not in the E-notes.	July 15, 1970	July 28, 1970	July 29, 1970
Vermont Railway, Inc. #300004 (11/5/70). [EB #2]	September 23, 1970	October 27, 1970	November 5, 1970
Cape Lookoff Mountain #400002 (9/16/70). [EB #3]	October 17, 1970	Appeal was dismissed	October 17, 1970
Haynes Brothers, Inc., #70001 (12/22/70). [EB #4]	October 26, 1970	November 23, 1970	December 22, 1970
Albert Rossi, #800003 (12/22/70). [EB #5]	October 23, 1970	November 19, 1970	December 22, 1970

The founding Environmental Board held its first appeals hearing less than 4 months after Act 250 was signed by Governor Davis. I fail to understand why the Land Use Review Board requires more than ten times as long to begin hearing its first appeal.

Appendix A. Act 250 Key Legislative Actions & Initiatives (2013-2024) It is not clear what is meant by "major legislative changes" in the 2013-2016 Biennium. In that biennium, there were eight Acts that mended Act 250. I consider the following to be some of the major legislative changes implemented then.

- Act 11 added ethical standards (§6031) and abolished the water resources panel
- Act 89 required compliance with the building energy standards under criterion (9)(F).
- Act 145 established the mechanism of transportation impact fees.
- Act 147 began the exemptions for priority housing projects

The clause "While no major legislative changes were enacted" would be replaced by a new sentence: "Major legislative changes during the biennium were: adding ethical standards; reducing the scope and size of the Natural Resources Board; adding transportation impact fees; and starting the exemption of priority housing projects from jurisdiction."

Act 250 was amended by 33 Acts in the 13 years 2013 through 2025.

Appendix B, Page 40 excerpt by Gene SessionsB. (paragraph below the excerpt by Neil Peirce). The legislature created the first agencies in 1970 (Act 246 (1970)). (The phrase "super agencies" is incorrect.) The purpose of the agencies was to have fewer individuals reporting to the governor. Before the creation of agencies, each department commissioner had reported directly to the governor. Governor Davis wanted fewer individuals reporting to him. Remember, he had been a businessman: the head of National Life of Vermont. Davis persuaded the legislature to create the first agencies so that the commissioners reported to the secretary and the secretaries reported to the governor. Working closely with the district environmental boards (sic) was only incidental to the creation of that agency.

This excerpt also contains the same passage on page 9 of the report that I commented on above. I suggest here the same removal of the phrase as I did in my comment above.

I am also disturbed by the omissions of criteria in Sessions' excerpt from a work by Neil Peirce. However, I can think of no easy way to override that omission.

I acknowledge that this box is a quote from another document, thus cannot be changed. It is unfortunate that this document was excerpted to be used in appendix. I suggest removing this paragraph and replacing it with an ellipsis: as the legislative counselors do: * * *

- **Executive Summary table (page 6) and Actions Recommended (pp. 36 and 37)**

Recommendation 5. What does it mean to "Clarify Board's supervisory relationship with District Coordinators & Comm'ns" This sounds like the Board is recommending it intends to get involved with district commission hearings and permitting processes. I hope that is not the intent. There is no text on pages 36 and 37 to explain recommendation 5. Possible solutions are to remove 5. from the executive summary. Or to added on page 36 or 37 a description along the lines of "the Board provides training and legal support to the District Co-ordinators and Commissioners and staff. The Board takes a handsoff approach to the actual work of the district offices and commissioners".

- **Page 36, Clarify the Land Use Review Board's role in Permit Appeals.**

The text calls the two parties in a dispute the permittee and the project opponent. I hope that the Board does not consider all non-permittee parties to be an opponent. The report stated the concept accurately: "citizen participation in improving development projects".

"Annette Smith (VCE) highlighted the importance of citizen participation in improving development projects and the challenges faced by those unfamiliar with regulatory processes " (page 47)

Often the other parties are trying to improve the project. Or they are trying to ensure that the project will comply when the proposed project does not comply with one or more standards, statutes, criteria.

An accurate, unbiased term is "non-applicant parties"

Please amend the draft report to incorporate these comments and suggestions.

Sincerely Thomas Weiss

From: Thomas Weiss <tweiss@together.net>
Sent: Wednesday, November 19, 2025 12:08 PM
To: Dingledine, Brooke <Brooke.Dingledine@vermont.gov>
Cc: Sultan, Kirsten <Kirsten.Sultan@vermont.gov>; Weinhagen, Alex <Alex.Weinhagen@vermont.gov>; Hurley, Janet <Janet.Hurley@vermont.gov>; Hadd, Sarah <Sarah.Hadd@vermont.gov>
Subject: Comments on appeals report, draft 4

Hello Brooke,

Here are some comments on draft 4 of the appeals report.

They are mostly in the nature of proofreading. They are intended to correct some factual errors, to strengthen the case for having the Board hear and decide appeals, and to make portions of the report easier to read and understand.

Thomas

Thomas Weiss
P. O. Box 512
Montpelier, Vermont 05601
November 19, 2025

Ms. Brooke Dingledine
Land Use Review Board
10 Baldwin Street
Montpelier, Vermont 05633-3201

Subject: Appeals Report Draft 4 Dear Ms. Dingledine

These comments are in the line of proofreading. They are intended to correct some factual errors, to strengthen the case for having the Board hear and decide appeals, and to make portions of the report easier to read and understand.

Preventing tables from splitting across pages (page 16, cascading through 20)
I find it awkward to understand tables that split across pages. I suggest formatting the table so that it all appears on one page. This will affect pages 16 through 20. Page 20 has extra room, so the pages after 20 will not be affected by this change.

This will then put all of the next table (on pages 16 and 17 now) onto one page, too. If this change splits the clearance table, then the clearance table would be adjusted to also appear on only one page.

How many appeals and when? (page 24, B.3)
Please delete "all" and change 1972 to 1970 in the first sentence. I have explained the reasons in previous comments. (Ability to remove appeals to the courts and appeals first heard and decided in 1970).

Strengthen the reason for having the Board decide Act 250 appeals (page 25, B.3)
The word "could" is conditional. The condition is open to misunderstanding. I suggest that the last sentence in the paragraph be amended.

> The Land Use Review Board could continue can resume that role and provide the much-needed policy-based guidance that has been missing from the process since 2005. and which could enhance consistency in decision-making across different districts.

I do not see that including the rest of the sentence is useful to the argument that the Board should hear appeals. To me, the rest of the sentence, about consistency, admits that the decisions of the various districts, whether by district co-ordinators or district commissions, are indeed inconsistent. As I have pointed out in earlier comments, I have neither seen nor heard any documentation of inconsistency.

There is now a central authority (page 25, 5.)

The current system has a central authority: the Land Use Review Board. I believe that the draft is trying to point out that the Board's authority is not comprehensive, because the Board lacks the power to decide appeals. I suggest amending the paragraph as follows.

6. Governance and Authority: The current governance structure lacks a central authority to effectively implement Act 250 and The Board's lack of authority to hear and decide appeals limits the Board's authority to provide full oversight and guidance to the program. An As an appellate Board, it would have the authority to hear appeals and make final decisions, ensuring that Act 250 is administered effectively and efficiently

Singular or plural? (page 26 X.)
First sentence. Subject is plural, verb is singular. One Model? Two models?

What is subject to de novo review? (p. 26 X. C.)
I do not consider a district co-ordinator to be a tribunal. I suggest changing the sentence. to something like the following.
When reviewing an appeal de novo, the Board may give "due consideration" to the decision of the tribunal made below.

Strengthen the reason for having the Board decide Act 250 appeals (p. 29 XIII.A.1.c.)
The word "could" is conditional. The condition is open to misunderstanding. The paragraph also concedes that Act 250 decisions now are inconsistent. I have neither seen nor heard any documentation of inconsistency. I suggest the following text.

c. **Consistency and Precedent:** The Land Use Review Board is a professional board that could enhance consistency in decision-making across different districts. By establishing can establish binding interpretations and tests under Act 250 criteria. The Board could can provide much-needed precedent and uniformity in District Co-ordinator and District Commission reviews. Having This Board-established precedent consistency could will help reduce litigation and provide clearer expectations for developers and municipalities.

There is now a central authority (p. 29 XIII. A. 1. d.)
The current system has a central authority: the Land Use Review Board. I believe that the draft is trying to point out that the Board's authority is not comprehensive, because the Board lacks the power to decide appeals. My suggested amendment can use a bit more work to make it flow smoothly.

d**. Governance and Authority:** The Board's lack of authority to hear and decide appeals prevents it from The current system lacks a central authority to fully and effectively implement implementing Act 250. The Board's limited authority means it cannot provide the necessary oversight and guidance through the entire permitting and appeals process. If Providing the Land Use Review Board had with the authority to hear and decide appeals and make final decisions, it could will better ensure that Act 250 is administered effectively and efficiently. This centralized governance comprehensive authority would allow for enhance the implementation of recent changes to Act 250, such as including efforts to increase housing stock.

Fuzziness in the date of beginning appeals weakens the case (p. 29 XIII.A.1.e)
Earlier (and later), the draft gives a specific date. I suggest that you remove the "or after" here. Putting in "or after" creates uncertainty of the Board's capability to hear Act 250 appeals at all.

How about some numbers on the cost per case? (p. 30 2. c.)
The estimate for the Board's cost of appeals is $13,750. How does that compare with the court's cost of appeals?

The clearance rate table shows that the court has averaged 136 incoming cases per year, excluding the partial year 2025. With 136 cases per year, the break-even cost of the court would be $1,870,000. The total appropriation for the judiciary is $78,499,456. I have not yet found a budget or staffing breakout for the environmental division. The governor's budget book, the basis of the FY 26 budget, has budgeted $577,577 for the two environmental judges (complete, salaries plus). Even with additional costs of staff and other direct costs, I have a feeling he cost of deciding an appeal at the court costs less than having the Board decide an appeal. If this is so, perhaps more emphasis can be placed on the benefit to the Act 250 program of having the Board hear appeals.

On-going stakeholder engagement? (p. 35 d.)
The similar paragraph in XIII. B.2 (draft 3) has been deleted. I suggest that the paragraph d. Stakeholder engagement be deleted here, too.

Consolidation of what? (p. 43 table in Appendix E.)
The application election is not clear to me. I suggest changing tit as follows.
Applicant Election for Consolidated Board Review of with Municipal and Act 250 Appeal

Appendices J and K.
I hope that they will be filled before Thursday.

Recommendations
Recommendations and suggestions have been provided in each section above. I ask that you find that these recommendations have merit, and that you amend the report accordingly.

Sincerely, Thomas Weiss

I. SUMMARY OF APPEALS STUDY AND STAKEHOLDER PROCESS

The following document was created and updated regularly during the Appeals Study to keep the Board, the Stakeholder group and the public informed of the many topics considered and discussed during the Appeals Study. It is provided as am Appendix to this Report to detail the robust engagement and respectful debate of the Stakeholder process.

FINAL SUMMARY OF THE APPEALS STUDY & STAKEHOLDER PROCESS

INTRODUCTION

The Land Use Review Board ("LURB" or "Board"), which prior to January 1, 2025, was known as the Natural Resources Board, is an independent entity in the executive branch of Vermont state government whose primary function is to administer Act 250 (10 V.S.A. Chapter 151.) There are 34 full-time employee positions and about 60 citizen volunteers serving as commissioners who support the work of the LURB's central and district offices. The Board consists of five full-time professional members, appointed by the Governor. The Board's primary function is to administer Act 250, Vermont's land use and development law.

In 2023, under the directives of Act 182 and Act 47, the Board completed a study that resulted in a consensus report entitled, *Natural Resources Board, Necessary Updates to Act 250*. During the 2024 Legislative Session, the General Assembly enacted Act 181, *An act relating to community resilience and biodiversity protection through land use*. The new legislation significantly modified Act 250 and requires that the Board undertake various rulemaking; administer a new system of tiered jurisdiction; develop new administrative guidance and policy documents; commence plan review and approval; and complete a number of studies and reports.

One such study is of the Appeals process, which requires that the Board report to the Legislature with recommendations regarding:

- Whether and how to transfer jurisdiction over Act 250, ANR and municipal zoning appeals to the Board or whether jurisdiction should remain with the Environmental Division of the Superior Court, and how to consolidate appeals, if transferred to the Board.
- How to prioritize and expedite the adjudication of appeals related to housing projects.
- Procedural rules to govern the Board's administration of Act 250 and the adjudication of appeals of Act 250 decisions (i.e. firewalls).
- Other actions the Board should take to promote the efficient and effective adjudication of appeals, including any procedural improvements to the Act 250 permitting process and jurisdictional opinion appeals

The following is a comprehensive summary of the information presented and discussed during Appeals Study Stakeholder Meetings and Board Meetings, as well as Court and Board models shared by Stakeholders for discussion and consideration.

Links to the pdf source documents (which are posted on the Board's Appeals Report webpage) are provided throughout for your convenience. This document was updated and shared with Stakeholders and posted on the Appeals Report webpage as we moved through the study.

Board Member Brooke Dingledine is the Board's lead for the Appeals Study. She can be contacted at Brooke.Dingledine@vermont.gov or (802) 480-1878.

Please use this link to visit the Appeals Report webpage: Appeals Report | Act 250

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ACT 181 LEGISLATIVE CHARGE as amended by ACT 69 of 2025**:**

Sec. 11a. ACT 250 APPEALS STUDY

(a) On or before November 15, 2025, the Land Use Review Board shall issue a report evaluating whether to transfer appeals of permit decisions and jurisdictional opinions issued pursuant to 10 V.S.A. chapter 151 to the Land Use Review Board or whether they should remain at the Environmental Division of the Superior Court. The Board shall convene a stakeholder group that at a minimum shall be composed of a representative of environmental interests, attorneys that practice environmental and development law in Vermont, the Vermont League of Cities and Towns, the Vermont Association of Planning and Development Agencies, the Vermont Chamber of Commerce, the Land Access and Opportunity Board, the Office of Racial Equity, the Vermont Association of Realtors, a representative of nonprofit housing development interests, a representative of for-profit housing development interests, a representative of commercial development interests, an engineer with experience in development, the Agency of Commerce and Community Development, and the Agency of Natural Resources in preparing the report. The Board shall provide notice of the stakeholder meetings on its website and each meeting shall provide time for public comment.

(b) The report shall at minimum recommend:

(1) whether to allow consolidation of appeals at the Board, or with the Environmental Division of the Superior Court, and how, including what resources the Board would need, if transferred to the Board, appeals of permit decisions issued under 24 V.S.A. chapter 117 and the Agency of Natural Resources can be consolidated with Act 250 appeals;

(2) how to prioritize and expedite the adjudication of appeals related to housing projects, including the use of hearing officers to expedite appeals and the setting of timelines for processing of housing appeals;

(3) procedural rules to govern the Board's administration of Act 250 and the adjudication of appeals of Act 250 decisions. These rules shall include procedures to create a firewall and eliminate any potential for conflicts with the Board managing appeals and issuing permit decisions and jurisdictional opinions; and

(4) other actions the Board should take to promote the efficient and effective adjudication of appeals, including any procedural improvements to the Act 250 permitting process and jurisdictional opinion appeals.

(c) The report shall be submitted to the Senate Committees on Economic Development, Housing and General Affairs and on Natural Resources and Energy and the House Committee on Environment.

Stakeholder Meeting #1

Stakeholder Meeting #1 was held on May 5, 2025, 1pm to 4pm, Dewey Building Rom 206, National Life complex, Montpelier and electronically by Teams.

Focus of Meeting #1: Transfer & Consolidation of Appeals. Act 181 requires that the LURB:

> Recommend whether to transfer appeals of permit decisions and jurisdictional opinions issued pursuant to 10 V.S.A. chapter 151 to the Land Use Review Board or whether they should remain at the Environmental Division of the Superior Court.
>
> Recommend how to consolidate appeals at the Board or the Env Div. and how, if transferred to the Board, appeals of zoning and subdivision permit decisions (24 VSA §§ 4440-4483) and the Agency of Natural Resources can be consolidated with Act 250 appeals;

Meeting #1 Discussion Topics:

Court versus Board

- What works about the Court?
- What is challenging about the Court?
  - Suggestions to mitigate the challenges?
- What are we currently missing from the former Board system?
  - How can those missing items be integrated into the current system?

Consolidating Act 250, ANR & Municipal Appeals

- Formality of consolidation
- Benefits of consolidation between types of appeals
- Obstacles to consolidation between types of appeals
  - Timing
  - Differing standards of review, evidence, etc.
- Standard of Review
  - De Novo versus On the Record (“OTR”)
  - Hybrid (OTR+)?
- If the Board were to take appeals, what is the best format?
  - Level of Formality
    - Administrative Procedures Act
  - Composition of reviewing panel
    - Full Board
    - Sub-panels (rocket docket!)
    - ALJ system?
    - Hearing Examiners?

Appeals to the Vermont Supreme Court
- Standard of Review
- Standing

Environmental Division Jurisdiction and Appeals Statistics

The Env. Division's appellate jurisdiction over Act 250, Municipal (zoning) and ANR permitting and enforcement cases was reviewed.

Please find PowerPoint slides at the following link: PowerPoint - Appeals Study Stakeholder Meeting 1.pdf

Environmental Division Jurisdiction

(i) Act 250 Appeals
Permitting Decisions
Jurisdictional Opinions
Act 250 Enforcement

(ii) Municipal Zoning Appeals
De Novo
On the record
Enforcement

(iii) ANR Appeals
Permitting Decisions
ANR Enforcement

(iv) Env. Div. Coordination/Consolidation of Appeals
Please find PowerPoint slides at the following link:
Coordination vs. Consolidation of Appeals.pdf

- The Env. Division's appeals statistics were reviewed to quantify the type and number of appeals filed with the Court over the past three fiscal years. There was an average of 138 cases filed with the Environmental Division during that time period, approximately 1/3 (one-third) of which were appeals related to housing projects.

Environmental Division 2022

2022 APPEAL TYPE	# CASES FILED	SUBSET: HOUSING
Act 250 De Novo Appeals:		
Dist. Comm'n Decisions	8	1
Jurisdictional Opinion	2	1
ANR De Novo Appeals	6	
ANR Enforcement	20	
NRB Enforcement	3	
Civil Citation	8	
Miscellaneous	0	
Municipal De Novo Appeals	61	23
Municipal OTR Appeals	6	2
Municipal Enforcement	27	
TOTAL	141	27

Environmental Division 2023

2023 APPEAL TYPE	# CASES FILED	SUBSET: HOUSING
Act 250 De Novo Appeals:		
Dist. Comm'n Decisions	10	2
Jurisdictional Opinions	9	4
ANR De Novo Appeal	5	
ANR Enforcement	21	
NRB Enforcement	1	
Civil Citation	5	
Miscellaneous	2	
Municipal De Novo Appeals	62	21
Municipal Enforcement	15	
Municipal OTR Appeals	5	1
TOTAL	135	28

Environmental Division 2024

2024 APPEAL TYPE	# CASES FILED	SUBSET: HOUSING
Act 250 De Novo Appeals		
Dist. Comm'n Decisions	8	3
Jurisdictional Opinions	4	1
ANR De Novo Appeal	7	
ANR Enforcement	17	
NRB Enforcement	4	
Civil Citation	10	
Miscellaneous	2	
Municipal De Novo Appeals	47	13
Municipal Enforcement	28	
Municipal OTR Appeals	12	6
TOTAL	139	23

Env. Division - Act 250/Municipal/ANR Appeals Discussion:

- Env. Div. adjudicates Act 250, ANR, and Municipal zoning appeals
- Avg. of 138 Appeals filed per year for last 3 years (2022-2024)
- Approximately 1/3 (one-third) of Env. Div. appeals relate to housing projects.
- Court can coordinate, or, with the consent of parties, can consolidate ANR, Act 250 and municipal appeals for the same project (See at the following link: Coordination vs. Consolidation of Appeals.pdf)
- Court jurisdiction recently expanded to real estate cases when they are involved in land use cases (which cases typically go to the Civil Division).
- Supreme Court recently ruled that Env. Division can look at real estate cases. If appeals were to go to the Board, this would give LURB much broader jurisdiction than just Act 250. Env. Division could look at any permits that involve land and would coordinate all the issues.
- We need a Land Use Review Court rather than LURB. Boundary issues, easement issues are inherent in making permit decisions.
- Should all 3 types of appeals go to one place?
- Can some types stay with the Env. Division and other types go to the Board?

Meeting #1 Discussion Notes: To review Meeting #1 Notes, please click on the following link: Meeting #1 Notes

Meeting #1 Flipchart Notes:

Appeal Goals:
Less costly
Less complexity
Less duplicity
More accessible/understandable
Fairness/objectivity
Consistency of administration
Predictability of outcome
Quality of decisions
Efficient/Timely
Policy making v. Decision-making
Standing/preserve opportunity to intervene

Discussion Topics for next meeting:
Improvements to Environmental Court appeals process?
If the Board were to take appeals, what is the best format? (Board models)
If the Board were to take appeals, which types of appeals?
How to speed up Housing Appeals?
Value stream systems mapping (do we have time?)
Env. Justice obligations – Permit Specialist/Ombudsperson?

Stakeholder Meeting #2

Stakeholder Meeting #2 was held on May 12, 2025, 1pm to 4pm, Dewey Building Rom 206, National Life complex, Montpelier and electronically by Teams.

Focus of Meeting #2: Consolidation of Appeals (continued from Meeting #1)

Housing Appeals Act 181 requires that the LURB:

Recommend how to prioritize and expedite the adjudication of appeals related to housing projects, including the use of hearing officers to expedite appeals and the setting of timelines for processing of housing appeals.

Meeting #2 Discussion Topics:

- Improvements to Environmental Court appeals process
  - Timing/scheduling of cases

  To review current Env. Div. Case Disposition Guidelines please click on the following link: Env. Div. Case Disposition Guidelines

- If the Board were to take appeals, what is the best format?
  - Board models
  - Standard of review

- If the Board were to take appeals, which types of appeals?

- Composition of reviewing panel?
  - Full Board
  - Sub-panels (rocket docket!)
  - ALJ system?
  - Hearing Examiners?

- How to speed up Housing Appeals?

- Env. Justice obligations – Permit Specialist/Ombudsperson?

  To review Vermont's Env. Justice Legislation, please click on the following link: PowerPoint Presentation

Meeting #2 Discussion:

- De Novo vs. On the Record Review? Uniform on the record review may not be feasible for all Act 250 District Commissions. What about a hybrid model that limits discovery?

- If a project has substantial community engagement and municipal support, simply do not allow appeals of municipal permits for the project. With the understanding that objective standards would be needed to define community/municipal support.

- For Act 250 appeals, perhaps appeals could first go to a hearing officer who writes up a decision, which is then reviewed, edited, approved by the full appellate body.

- It was noted that most large developments start the permit review process at the municipal level. The appeals process could be focused here. Consider not allowing Act 250 appeals if there were no appeals at the municipal permitting level, and a District Commission deems the project to meet the Act 250 criteria.

- Figure out how to separate processing of appeals for small-scale projects from large-scale projects, particularly on the municipal appeals. This could give either model (Court or Board) more bandwidth to focus on the complex cases.

- Concern about Act 250 jurisdictional opinion (JO) appeals getting in the way of housing projects in Tier 1 areas.

- Concern that the LURB's work managing the Act 250 program will be degraded if it also becomes responsible for hearing appeals of municipal permits. Taking on municipal appeals will be too much work, given that they are the bulk of what the Environmental Court adjudicates.

Housing Discussion

- There are multiple ways to expedite appeals of housing projects – e.g., NH housing board system, LURB could review housing appeals, etc. Consider whether the issue requires procedural changes or simply additional capacity (e.g., more judges).
- The current Environmental Court process allows appellants too much latitude on meeting deadlines, following court procedures, etc. This results in unnecessary delays due to missed deadlines, late filings, etc.

- NH Housing Board of Appeals, various time frames for resolution – e.g., six months, 11 months, 12+ months. Recommend getting data from the VT Environmental Court on appeal resolution time data.

  *** In response to this recommendation, please see VT Env. Division Disposition Guidelines at: Env. Div. Case Disposition Guidelines.

- It was noted that three judges were initially contemplated when legislation was discussed to create the Environmental Court. The final version of the law only included two judges. Perhaps a third judge would help.

- Could require that the appeal statement of questions be filed at the same time as the notice of appeal.

- Can standing and other appeal issues be addressed up front? Impose deadlines, limit appeals to Supreme Court?

Meeting #2 Discussion Notes: To review Meeting #2 Notes in their entirety, please click on the following link: Meeting #2 Notes

To review Meeting #2 Flipchart Notes, please click on the following link: Meeting #2 Flipchart Notes

David Mears' Meeting #2 Comments – David was unable to attend Meeting #2 but provided these very thoughtful and relevant comments after reviewing the Discussion Notes. The following is a summary of his comments. To view his comments in their entirety, please click on the following link: David Mears Comments on Meeting #2

Summary of Mears' Comments:

David discusses the potential benefits of implementing different pathways for zoning and land use appeals based on their complexity and controversy. He supports the idea of tailoring processes to suit the significance of the interests involved, referencing legal precedents like Matthews v. Eldridge and Goldberg v. Kelly, which suggest that due process can vary depending on the situation. The author criticizes the assumption that any limitation on process equates to a violation of constitutional due process, noting that courts have accepted various procedures, including informal hearings, as meeting due process requirements.

In addition, David is not convinced that municipalities and Act 250 District Commissions cannot compile adequate records for appellate review. He argues that a full transcription of proceedings is unnecessary and that the administrative record can be defined, provided it meets basic procedural due process requirements. He also suggests that all meetings should be recorded using videoconferencing technology, with the administrative record comprising written documents including applications, exhibits, public comments, expert reports, and correspondence. Transcriptions should be optional, depending on the party's choice.

He proposes that written decisions should be required, providing reasoning for the district commission's or municipal land use board's decisions. These decisions could be brief for simple cases and more detailed for complex ones, with support from LURB staff attorneys for complex cases. David suggests collaboration with VLCT's legal team to support municipal boards in complex cases and advocates for the LURB to hear first-level appeals and allow limited supplementation of the administrative record in specific circumstances.

While acknowledging concerns about increased formality making proceedings less accessible, David argues that informality can create a false sense of access and accountability. Currently, the only option for dissatisfied parties is a full de novo judicial appeal, which is costly and lengthy. Adding formality at the first level and implementing record-review on appeal would make the process more accessible, faster, and encourage accountability. He suggests preserving informal processes by allowing off-ramps for informal discussions, but these should not form the basis for appeals.

Stakeholder Meeting #3

Stakeholder Meeting #3 was held on June 12, 2025, 1pm to 4pm, Vt State University – Randolph Campus, Langevin House and electronically by Teams.

Focus of the Meeting: Court and Board Appeals Models & Rules

Env. Justice Permit Specialist/Ombudsperson

Act 181 requires the Board to:

Recommend whether to transfer appeals of permit decisions and jurisdictional opinions issued pursuant to 10 V.S.A. chapter 151 to the Land Use Review Board or whether they should remain at the Environmental Division of the Superior Court.

Recommend how to consolidate appeals at the Board or the Env Div. and how, if transferred to the Board, appeals of zoning and subdivision permit decisions (24 VSA §§ 4440-4483) and the Agency of Natural Resources can be consolidated with Act 250 appeals;

Recommend how to prioritize and expedite the adjudication of appeals related to housing projects, including the use of hearing officers to expedite appeals and the setting of timelines for processing of housing appeals.

Recommend procedural rules to govern the Board's administration of Act 250 and the adjudication of appeals of Act 250 decisions. These rules shall include procedures to create a firewall and eliminate any potential for conflicts with the Board managing appeals and issuing permit decisions and jurisdictional opinions

Recommend other actions the Board should take to promote the efficient and effective adjudication of appeals, including any procedural improvements to the Act 250 permitting process and jurisdictional opinion appeals.

Meeting #3 Recording: to watch the video click on this link: Meeting #3 Recording

Meeting #3 Discussion Notes: to view a full summary click this link: Meeting #3 notes.pdf

Meeting Overview

The third stakeholder meeting for the Act 250 Appeals Study focused on improving the appeals process, particularly for housing-related cases, by evaluating court and board models, discussing the role of an environmental justice permit specialist/ombudsperson, and recommending procedural rules for the Board's administration of Act 250. The aim was to enhance efficiency, predictability, and accessibility while preserving due process.

Key Concepts/Themes

- **Court and Board Appeals Models:** Considered the pros and cons of the current Environmental Division of the Superior Court versus a board model, focusing on consistency, due process, public accessibility, and procedural delays. Discussed using hearing officers and setting timelines to expedite housing appeals.
- **Administrative Law Judge (ALJ) System:** Explored using ALJs to streamline appeals, comparing it to the Public Utility Commission's model, with concerns about efficiency and public participation.
- **De Novo vs. On-the-Record Review:** Debated the impact of each review type on predictability and fairness.
- **Procedural Rules and Conflict of Interest:** Suggested rules to prevent conflicts of interest in the Board's administration of Act 250.
- **Impact on Housing Development:** Highlighted delays in housing projects due to the current appeals process, stressing the need for timely decision-making.
- **Environmental Justice Permit Specialist/Ombudsperson:** Touched upon this role intended to improve public participation and accessibility, offering guidance to applicants and opponents.

Action Items

- **Evaluate Hearing Officer Implementation:** Analyze integration of hearing officers to expedite housing appeals.
- **Develop Procedural Rules:** Draft rules to ensure conflict-free administration of Act 250.
- **Explore Ombudsperson Role:** Consider establishing an ombudsperson to enhance public accessibility.
- **Explore ALJ Implementation:** Further analyze ALJ integration for improved efficiency.
- **Evaluate Resource Needs:** Assess resource implications for the Land Use Review Board handling municipal and Act 250 appeals.
- **Consider Standard of Review Adjustments:** Investigate adjustments for consistency across decisions.

Main Takeaways

The meeting highlighted the complexity of reforming the appeals process, balancing efficiency, public participation, and legal consistency. Consensus exists on the need for change, but careful consideration of models and implications is required, especially for housing. The Land Use Review Board will make informed recommendations to the legislature based on stakeholder insights and expert analysis.

Stakeholder Meeting #4

Stakeholder Meeting #4 was held on June 23, 2025, 1pm to 4pm, Vt State University – Randolph Campus, Langevin House and electronically by Teams.

Focus of the Meeting: **Discussion of proposed Board Models**

Meeting #4 Recordings: to watch the videos click on these links: Meeting #4 - Part 1 and Meeting #4 Part 2

Meeting #4 Discussion: to view a full summary, click this link: Meeting 4 notes.pdf

- **Vermont Administrative Procedures Act (Contested Cases):** Vt APA (excerpt)
- **LURB Appeal Procedures 24 VSA 4352:** LURB Appeals Procedure for 24 VSA 4352

Meeting #4 focused on evaluating three proposed models for handling land use and development appeals in Vermont, particularly concerning housing. The meeting aimed to address challenges in the appeals process by discussing the potential use of the Land Use Review Board as an expert appeals board, the role of Administrative Law Judges (ALJs), and the merits of on-the-record versus de novo review. Key issues such as board composition, prioritizing housing appeals, and establishing an environmental permit specialist or ombuds office were explored.

The VNRC Board Model presented by Jon Groveman proposed using the Board to streamline appeals, leveraging expertise for efficient decision-making, while addressing concerns about conflicts of interest and local control. David Mears' ALJ Proposal suggested using ALJs for initial hearings to improve specialization and consistency, though concerns about duplication were raised. Liam Murphy/MSK's depiction of a potential Board model focused on limiting appeals to Act 250 cases, excluding municipal zoning appeals, which sparked discussions on local control and broader land use goals. Stakeholders debated review types, board composition, and strategies for expediting housing appeals. The potential role of a permit specialist or ombuds office was considered to assist with complex permitting processes. The meeting concluded with a commitment to ongoing stakeholder engagement and collaboration to develop actionable recommendations for the legislature, ensuring the appeals process aligns with Vermont's goals for affordable housing, environmental protection, and sustainable growth. Public comments emphasized transparency and accountability, and participants were encouraged to continue contributing feedback.

Jim Dumont's Comments – Jim Dumont was unable to attend Meeting #4 but kindly sent his comments to the Stakeholders prior to the meeting. The following is a summary of Jim's email correspondence to the Stakeholder group. To view Jim's complete correspondence, please click this link: Dumont's Comments for Meeting #4

Summary of Jim Dumont's Comments:

Jim Dumont provided his opposition regarding the proposal for "on the record" reviews of zoning board decisions, highlighting several concerns about how such a change would negatively impact permit applicants and communities. He emphasizes that adopting "on the record" appeals would undermine the zoning process, leading to detrimental effects for both applicants and communities. He outlines several issues with the current zoning process, including unlawful "ex parte" communications between zoning board members and outsiders, which can influence decision-making unfairly. These communications often go unaddressed, denying citizens due process and equal protection under the law.

In addition, Jim points out that zoning board members, who typically lack legal training, may demonstrate bias against parties based on race, political affiliation, personal history, or public comments. Such bias can affect the fairness of decisions, and the proposed opportunity to add evidence through a hearing officer would not adequately address these issues. The text references a U.S. Supreme Court precedent that requires reversing decisions when a tribunal member is improper, suggesting that Vermont's Supreme Court might follow this precedent.

Also discussed are the practical difficulties of implementing "on the record" reviews, such as the challenge of finding court reporters to transcribe often unintelligible recordings. The author notes that Vermont's current de novo appeal process allows cases to start over, effectively curing violations like ex parte communications or bias. If "on the record" reviews were adopted, this protection would disappear, leading to potential lawsuits against zoning board members for denial of due process or equal protection, which would be costly and time-consuming.

Jim explains that Vermont's de novo review process, while unusual, is not unique and is beneficial in maintaining fairness and citizen involvement in zoning decisions. He warns that formalizing the process through "on the record" reviews would discourage citizen participation and make the process unrecognizable. Jim suggests changes to Environmental Court Rule 5, which could reduce processing time by 5 weeks without adopting "on the record" reviews.

To view Jim's proposed changes to the Env. Court Rule 5, click here: Dumont_Proposed VRECP Rule 5 Changes

Land Use Review Board Meetings

Discussions of Appeals Study

The Land Use Review Board has discussed the progress of the appeals study and has provided some feedback and direction regarding the focus of the future Stakeholder Meetings and what additional information and data is necessary to carry out the Appeals Study statutory charge.

Land Use Review Board Meetings - Appeals Study Discussions – See links below for notes of the Board's Appeals Study discussions:

June 30th Board Meeting Notes: LURB Mtg Notes June 30, 2025

July 10th Board Meeting Notes: LURB Mtg Notes July 10, 2025

Sarah Hadd's Written Comments: LURB Mtg Notes by Sarah Hadd

July 14th Board Meeting Notes: LURB Mtg Notes Appeals Study July 14, 2025

June & July Board Discussion Overview: The series of Board discussions centered around evaluating the potential transfer of Act 250 appeals from the Environmental Division of the Superior Court to a proposed board model. Board Members explored various aspects of this transition, including logistical considerations, procedural rules, and the implications for housing and municipal appeals.

Key Issues Discussed:

1. **Central Charge and Models**: The primary focus was on whether Act 250 appeals should be handled by a board instead of the current court system. The concept of "one-stop shopping" for adjudicating multiple permit appeals simultaneously was emphasized, while considering the role of hearing officers and administrative law judges (ALJs) in expediting appeals.
2. **Housing and Municipal Appeals**: There was a consensus on the need to prioritize and expedite housing-related appeals, particularly in Tier 1 areas. Concerns were raised about the Board taking on municipal appeals due to their complexity and potential jurisdictional changes to Act 250. Suggestions included streamlining local permitting processes and exploring options to expedite housing appeals.
3. **Procedural Rules and Transparency**: Board Members discussed the importance of procedural rules to promote efficient adjudication and suggested changes to enhance transparency and establish firewalls to prevent conflicts of interest. The need for updated rules to address present needs and perceived inequities was emphasized.

4. **Role of ALJs and Hearing Officers**: The potential role of ALJs or hearing officers was debated, with suggestions to use them for specific cases to expedite the appeals process. Board Members highlighted the importance of transparency and accessibility in the appeals process.
5. **Enforcement and Cost Concerns**: Public Comment was received from Annette Smith of VCE who raised concerns about enforcement cases and the impact of shifting Act 250 jurisdiction to municipalities, highlighting potential cost shifts and the importance of addressing permit violations.
6. **Data and Resource Needs**: Board Members queried the need for more data to categorize appeals according to complexity and determine the Board's capacity to handle appeals. It was suggested that the Board recommend providing more resources to the court if the court model is retained.

Overall, the discussions revealed varying opinions on the feasibility and implications of different models for handling appeals. Participants emphasized the need for further analysis, stakeholder input, and a comprehensive financial analysis to determine costs and promote efficient adjudication. The meetings underscored the challenges associated with municipal appeals and enforcement cases, as well as the importance of rule changes and resource allocation to support whichever model is ultimately chosen.

Stakeholder Meeting #5

Stakeholder Meeting #5 was held July 16, 2025, 1-2:30pm, electronically by Teams.

Focus of the Meeting: **Discussion of Board Models for Act 250 Appeals**

Meeting #5 Recording: to watch the videos click on this link: Meeting #5 Recording

Meeting #5 Discussion: to view a full summary, click this link: Meeting #5 Notes

Meeting Overview:

The Meeting focused on developing a board model for handling Act 250 appeals to improve Vermont's land use regulatory framework's efficiency and effectiveness. Participants engaged in discussions on key issues such as appeals jurisdiction, standard of review, and board structure and composition. The meeting revealed differing opinions on whether appeals should remain with the Environmental Court or transition to a board model, considering factors like separation of powers, policy guidance, and process efficiency. A hybrid review model was explored to balance thoroughness with practicality.

Key issues discussed included:

1. **Appeals Jurisdiction**: Participants debated whether Act 250 appeals should be transferred to a board, considering the types of cases, standard of review, and structure of appeals. Some favored maintaining the current court system for its impartiality, while others supported a board model for its specialized expertise and potential to streamline processes.
2. **Standard of Review**: The idea of a hybrid standard of review was explored, combining on-the-record and de novo reviews to preserve initial decision integrity while addressing record gaps. Concerns about the feasibility of on-the-record reviews due to transcript limitations were discussed, along with suggestions for using recordings.
3. **Board Structure & Composition**: The structure and composition of the proposed board were debated, with suggestions for the full board to hear cases and include legal expertise to ensure sound legal reasoning. Concerns about conflicts of interest and the need for sufficient resources to handle increased appeals volume were highlighted.
4. **Other Ideas**: The role of rulemaking in providing policy guidance was emphasized, along with the potential impact of municipal appeals and new statutory responsibilities on the system. Participants stressed the need for a future-proofed system adaptable to evolving needs and priorities, and the importance of ongoing stakeholder engagement and collaboration.

Overall, the meeting underscored the need for a coordinated approach to municipal and Act 250 appeals, emphasizing rulemaking, stakeholder engagement, and resource allocation to align with Vermont's land use goals.

Stakeholder Meeting #6

Stakeholder Meeting #6 was held on July 22, 2025, 1pm to 2:30pm, electronically by Teams only and hosted as a hybrid Board Meeting.

Focus of the Meeting: **Discussion of Board Models for Municipal Appeals**

Meeting #6 Recording: to watch the videos click on this link: Meeting #6 Recording

Meeting #6 Discussion: to view a full summary, click this link: Meeting #6 Notes (attached to the LURB Meeting Minutes)

- **Env Div Municipal & Housing Appeals Statistics (2022-24)**: Municipal Appeals FY 22, 23, 24
- **Env Board Rule 41 (2004):** Env Board Rules (2004) - Rule 41

Meeting Overview:

The sixth Appeals Study Stakeholder Meeting focused on exploring a board model for handling municipal permit appeals, aiming to shift these appeals from the Superior Court's Environmental Division to a specialized board. The meeting involved stakeholders from various sectors, including housing, environmental, development, and legal experts, who discussed key issues such as appeals jurisdiction, standard of review, board structure, and standing.

Key Discussions:

1. **Appeals Jurisdiction**: Stakeholders generally agreed that permitting appeals could be managed by the board for a more streamlined and specialized review process, while enforcement cases should remain with the courts due to their legal complexities.
2. **Standard of Review**: There was debate between maintaining a de novo review, which allows a comprehensive examination of evidence, and adopting an on-the-record review to strengthen local processes and potentially reduce appeals. Suggestions included requiring on-the-record reviews for municipalities seeking Tier 1A designation.
3. **Board Structure and Composition**: The use of panels and hearing officers was proposed to handle cases based on complexity, with firewalls suggested to prevent

conflicts of interest. The need for additional attorneys and mediators was highlighted to manage the workload effectively.

4. **Standing**: Discussions included limiting appeals in areas with comprehensive planning to reduce frivolous cases while maintaining public participation and transparency in the appeals process.

Public Comments and Conclusion: Public comments emphasized the need for a more efficient appeals process, particularly for housing projects, and the importance of maintaining public involvement. The meeting concluded with a commitment to explore all options, including enhancing the current court system, to address Vermont's housing crisis and streamline the appeals process. The need for additional resources and staffing was highlighted to manage the potential increase in appeals, balancing local autonomy with state oversight.

Stakeholder Meeting #7

Stakeholder Meeting #7 was held on July 29, 2025, 1pm to 2:30pm, electronically by Teams only.

Focus of the Meeting: Environmental Justice/Ombuds/Permit Specialist

Meeting #7 Recording: to watch the videos click on this link: Meeting #7 Recording

Meeting #7 Discussion: to view a full summary, click this link: Meeting #7 Notes

- **Environmental Justice Presentation:** Env Justice Presentation
- **NRB's 2023 Act 250 Report (See page 16):** Page 16 extract from Necessary Updates to Act 250 Report (2023)

Meeting Overview:

The 7th Appeals Stakeholder Meeting focused on developing a model for an Environmental Justice Ombuds Office. The discussion centered around the roles of a permit specialist and an environmental justice advocate, considering whether the office should encompass multiple permitting programs beyond Act 250, such as those managed by the Agency of Natural Resources (ANR) and the Public Utility Commission (PUC). The historical role of permit specialists, who provided personalized guidance, was contrasted with the current automated Permit Navigator tool. The meeting emphasized the need to support various stakeholders, including applicants, municipalities, neighbors, and EJ focus populations, to ensure equitable participation in decision-making processes. Public comments highlighted the complexity of the permitting process and suggested dual roles to avoid conflicts of interest.

Key Issues Discussed:

1. Permitting Programs:
    - Scope of the Ombuds Office: Consideration of whether the office should focus solely on Act 250 or include other permitting programs managed by ANR, PUC, and municipal bodies, given the broad application of Vermont's environmental justice law.
    - Historical Role of Permit Specialists: Previously, permit specialists provided personalized guidance and created project review sheets, highlighting the benefits of a dedicated role to streamline the permitting process.

- Transition to Permit Navigator: The Permit Navigator tool automates referrals but lacks the personalized interaction of the permit specialist role.

2. Supporting Various Stakeholders:
    - Broad Support Needs: The need for an office that assists all participants in the permitting process, ensuring equitable access and participation.
    - Role of Previous Permit Specialists: Historically, permit specialists assisted developers and other stakeholders, indicating potential for a more inclusive role.
    - Meaningful Participation: Ensuring meaningful participation in decision-making processes aligns with environmental justice goals to reduce disparities.
3. Permit Specialist Function:
    - Responsibilities: Involved reviewing wastewater permit applications, providing guidance, and creating project review sheets.
    - Impact of Role Elimination: Increased workload for district coordinators, highlighting the need for dedicated support.
    - Limitations of Permit Navigator: While useful for automating referrals, it does not replace personalized assistance.
4. Environmental Justice Advocate Function:
    - Role of an EJ Advocate: Focus on assisting the public in regulatory processes and ensuring equitable access to information.
    - Information vs. Legal Advice: The role should facilitate access to information rather than providing advice or representation.
    - Ensuring Equitable Participation: Crucial for ensuring meaningful participation for all citizens, particularly EJ focus populations.

Conclusion: The meeting recognized the need to balance support for applicants with assistance for the public, considering environmental justice obligations. The potential for re-establishing a permit specialist role was discussed as a way to improve the permitting process. The next meeting will focus on the appeals process, examining court versus board approaches. Participants were encouraged to provide input and feedback offline.

Additional Land Use Review Board Meetings

A. August 11, 2025 Board Meeting

Appeals Study Discussion Overview:
During the Land Use Review Board Meeting on August 11, 2025, the board discussed the Appeals Study, focusing on the potential models for handling appeals and the necessary resources. Brooke Dingledine presented data on appeal volumes (see below), particularly from the Environmental Division, and suggested analyzing board models to determine which appeals the board might adjudicate. The discussion included the possibility of the board taking over Act 250 appeals and housing appeals to expedite processes and alleviate caseloads from the Environmental Division.

Key Issues Discussed:

1. **Appeal Volumes**: Brooke shared statistics on appeal cases, noting consistent numbers over the past three years. During that time period, all Act 250 appeals averaged 14 cases per year (avg. 4 housing cases), while all municipal appeals averaged 68 cases per year (avg. 22 housing cases).
2. **Review Types**: The board considered whether appeals should be de novo or on the record. Brooke recommended on-the-record reviews for jurisdictional opinions and Act 250 permitting, with exceptions for manifest injustice or false information.
3. **Housing Appeals**: The board discussed prioritizing housing appeals, particularly those related to Tier 1A and Tier 1B municipalities, to address the housing crisis. There was debate on whether all housing projects should be treated equally or if focus should be on multifamily projects.
4. **Resource Needs**: Brooke highlighted the need for additional personnel if the board takes on more appeals, suggesting that the new function would be more resource-intensive than current litigation roles.
5. **Municipal Appeals**: The board discussed the feasibility of on-the-record reviews for municipal appeals, considering logistical challenges and the capacity of smaller municipalities to maintain records.
6. **Stakeholder Input**: The board acknowledged input from stakeholders, including housing advocates, who emphasized the need for quicker appeal processes to encourage development.

The meeting concluded with plans to further analyze appeal types and gather more data, particularly on municipal housing appeals, to inform future decisions on board models and resource allocation.

The following chart of Environmental Division Appeals Statistics (Act 250 JO & Permitting and Municipal Housing appeals) was reviewed during the discussion:

Environmental Division 2022		
Appeal Type	**# Cases Filed**	**Subset: Housing**
Act 250 Permitting	8	1
Act 250 JO	2	1
Municipal De Novo	61	23
Municipal OTR	6	2
Total	**77**	**27**

Environmental Division 2023		
Appeal Type	**# Cases Filed**	**Subset: Housing**
Act 250 Permitting	10	2
Act 250 JO	9	4
Municipal De Novo	62	21
Municipal OTR	5	1
Total	**86**	**28**

Environmental Division 2024		
Appeal Type	**# Cases Filed**	**Subset: Housing**
Act 250 Permitting	8	3
Act 250 JO	4	1
Municipal De Novo	47	13
Municipal OTR	12	6
Total	**71**	**23**

Environmental Division 2022-24	**3-yr Average**	**3-yr Average**
Appeal Type	**# Cases Filed**	**# Cases Filed Subset: Housing**
Act 250 Permitting	9	2
Act 250 JO	5	2
Act 250 Total	**14**	**4**
Municipal De Novo	57	19
Municipal OTR	8	3
Municipal Total	**65**	**22**

B. August 18, 2025 Board Meeting

Appeals Study Discussion Overview:
During the Land Use Review Board Meeting on August 18, 2025, the Board further explored the potential for the Board to assume responsibility for Act 250 and municipal housing appeals, discussing its capacity, noting that the municipal appeal docket includes about 60 cases annually, with one-third related to housing. Most of these appeals involve single-family homes or subdivisions, often initiated by neighbors, with few large housing projects being appealed.

Standard of review for permitting appeals: The Board is contemplating a hybrid model that begins with the record from the district commission but allows for additional evidence, particularly expert testimony, to ensure a comprehensive review. This approach aims to balance deference to the original decision-makers with the flexibility to consider new information, avoiding a fully de novo process while not strictly adhering to an on-the-record review.

The Board also considered the possibility of allowing applicants to consolidate municipal and Act 250 appeals at the Board, to streamline the process. This would enable applicants to have a single trial for both appeals, potentially reducing the burden on the court system and expediting the appeals process. The Board acknowledged that while the number of cases that could be consolidated is small, maintaining this option is important for efficiency.

Concerns were raised about the potential for district commission processes to become more formalized and lawyer-driven, which could deter community participation and drive-up developers' costs. The Board emphasized the importance of maintaining a process that values community input and the knowledge of residents while ensuring efficient and fair adjudication. Moving forward, the Board plans to draft recommendations and consider additional data if necessary, focusing on a model that balances efficiency with thoroughness in the appeals process.

C. August 25, 2025 Board Meeting

Appeals Study Update to Board:
Brooke Dingledine discussed the potential for the Board to handle municipal housing appeals related to Tier 1A and 1B areas. She is working on proposed Board Rules and is currently reviewing provisions for the use of Hearing Panels and Hearing Officers from the original Environmental Board Rules, which would provide greater flexibility in the strategic deployment of our Board's personnel resources to create greater capacity and efficiency in appellate decision making.

D. September 4, 2025 Board Meeting

Appeals Study Discussion Overview:
Brooke Dingledine led a conversation about the logistics of handling appeals, focusing on creating a procedural framework that aligns with existing rules, such as the APA contested case and Environmental Court rules. She presented a chart to organize the decisions involved in taking on appeals, particularly Act 250 appeals, which include permitting decisions from the District Commission and jurisdictional opinions from the district coordinator. The board agreed that jurisdictional opinions should be reviewed on the record, as they are tied to specific facts at the time of the decision.

Brooke proposed categorizing cases into simple and complex to better allocate resources and suggested that complex permitting decisions be heard by the full board, while simple ones could be handled by a three-member panel. She introduced the concept of "supplemental record review," where the board would consider the existing record, including video recordings, and allow new evidence if necessary to fill gaps, provided it is not duplicative or irrelevant.

The discussion also touched on the standard of review, emphasizing deference to the original tribunal's factual findings while applying a de novo review to legal interpretations. Brooke suggested limiting discovery and motion practice to streamline the process, with specific requirements for expert disclosures.

The board also debated the scope of appeals they would handle, particularly regarding municipal Tier 1A and 1B decisions, focusing on housing projects. There was some disagreement about whether to include non-housing projects in Tier 1A areas. The board decided to postpone further discussion on this topic and the potential inclusion of ANR appeals for consolidation.

The meeting concluded with plans to continue the discussion at the next board meeting, including roles of board members and administrative processing.

E. September 8, 2025 Board Meeting

Appeals Study Discussion Overview:
The board continued its conversation about the appeals study, discussing various aspects of the appeals process related to District Commission decisions and municipal zoning decisions, particularly focusing on housing in Tier 1A and 1B areas. The board debated whether to include all of Tier 1A or limit it to housing-related appeals. Janet Hurley suggested including all of Tier 1A, while Kirsten Sultan preferred focusing on housing to align with housing goals. Sarah Hadd argued against splitting Tier 1A, emphasizing the importance of mixed-use projects and development incentives. Alex Weinhagen noted

that the appeal study was focused on housing, but acknowledged the relevance of considering all Tier 1A communities, even if they are few in number initially.

Brooke Dingledine mentioned the need for legal and administrative support for the board's decision-making process. The board members discussed the roles of legal support and hearing officers, with a preference for having an attorney serve as a hearing officer and assist in writing final decisions. They also discussed the possibility of eliminating municipal petition standing but decided not to pursue it further, as it was not deemed a priority.

The discussion also touched on the potential for an ombudsperson role to support all parties in the appeals process, but it was agreed that this would be a separate conversation and might require legislative changes. The board decided to focus on other priorities for the time being.

Overall, the board aimed to streamline the appeals process, ensure efficiency and accuracy, and provide a fair process for all parties involved. They also discussed the importance of site visits and the need for legal support in handling administrative and substantive issues during the appeals process.

F. September 15, 2025 Board Meeting

Appeals Study Discussion Overview:

Brooke Dingledine reported on her and Janet Hurley's meeting with the Agency of Natural Resources to discuss whether Applicants appealing Agency of Natural Resource decisions should be offered the option to transfer that appeal to the Land Use Review Board for consolidation with an Act 250 Appeal on the same project. This is an option the Board is proposing for Applicant appealing municipal zoning decisions. The consensus was that due to the technical nature, complexity and rarity of Agency of Natural Resource appeals, it would not be advisable to transfer them to the Board. The Board members agreed with this recommendation.

Brooke also mentioned upcoming discussions with the judiciary to discuss recommendations to expedite court processes. Suggestions include a rule change to require a statement of questions to be filed with the notice of appeal, converting jurisdictional opinion appeals to on-the-record proceedings, adding a judge, staff or other resources to the Environmental Division, and limiting Discovery to necessary information. The possibility of making Supreme Court appeals discretionary was discussed, focusing on legal issues rather than on factual ones, especially after cases have been reviewed de novo by the trial court.

G. September 29, 2025 Board Meeting

Appeals Study Discussion Overview:

The Appeals Study discussion focused on the type of review process to recommend for Jurisdictional Opinions (JOs) within a Board model proposal, or as a suggestion to shorten the Court appeals process. Brooke Dingledine shared insights from recent meetings with the Judiciary, District 4 Commission Chair Tom Little and District Coordinators.

Brooke initially had proposed an "on the record" review with the goal of streamlining the appeals process, as JOs are tied to facts presented to district coordinators. However, after discussions, it was clear that the judiciary had concerns about what constitutes the record, which vary greatly in formality and content. Presently the JO process is fairly informal and works well. If review becomes on the record it's likely that parties will engage lawyers at that stage, increasing costs and delays.

District Commission Chair Tom Little voiced the same concerns, that an on-the-record review would cause the JO process to become overly formalized, echoing a similar concern that the Board has tried to protect against with permitting appeals, (i.e. allowing additional evidence at the appellate level so parties do not have to "lawyer-up" below or hire experts unnecessarily). The district coordinators agreed but also discussed the issues of deference and material change to the facts on appeal. Thus, the consensus from all of the discussions was to maintain the current de novo review process, which allows a fresh look not confined to the record evidence, which will not cause formalization at the JO level.

Alex Weinhagen raised questions about the potential for a "supplemental record review" as a middle ground, which Brooke agreed could be a viable option. This approach would incorporate the existing record while allowing additional information to be added, addressing concerns about formality and the need for legal representation at the JO level.

Kirsten Sultan clarified that district coordinators do compile records for JOs, which are available to the public, but noted the differences in process compared to application reviews. Sarah Hadd expressed concerns about the de novo approach, emphasizing the need for a streamlined process.

Ultimately, the Board leaned towards a supplemental record review for JOs, balancing the need for consistency with the court's process and the flexibility to accommodate additional information. Brooke will incorporate this approach into the draft recommendations and share further insights from a recent memo received from Judge Zonay.

H. October 6, 2025 Board Meeting

Appeals Study Discussion Overview:

Brooke Dingledine presented a memo from the judiciary, which she had requested to verify practices related to processing appeals. The memo, from Judge Zonay, provided insights into the judiciary's efforts to shorten appeal processing times and included statistics on the current caseload of the Environmental Court. It was noted that the court has already implemented a Rule 5 change that will save 30 days by requiring a statement of questions to be filed with a notice of appeal.

The discussion then shifted to a cost benefit analysis, examining the cost of adding the necessary resources, including an additional lawyer and administrative staff, which would be an estimated $395,000 annually. Brooke suggested that this cost was disproportionate to the small percentage of Act 250 appeals (under 2%) which average only 15 cases per year and the uncertainty surrounding the volume of future appeals related to Tier 1A and Tier 1B housing.

The board considered the possibility of taking on Act 250 appeals once the current workload related to Act 181 is reduced. They discussed the potential to repurpose the existing legal staff in two ways: 1) legal staff would no longer be representing the Board as a party in the Environmental Division so reassign that staff time to support the Board's appellate functions; and 2) the additional attorney already allocated for Act 181 could be reassigned to the appellate functions once the bulk of the Act 181 workload is completed. This could potentially allow the board to handle appeals without requiring additional attorney resources.

The board members agreed that while they support the idea of taking on Act 250 appeals, they currently lack the capacity to do so. They proposed recommending a board model for handling these appeals to the legislature, with a suggested time horizon for implementation of two to three years. A "check-in" at the two year mark was also discussed which would allow time to assess the board's capacity and the volume of future appeals. In addition, they discussed the possibility of expanding the existing Act 250 database to accommodate appeals, which could be a more cost-effective solution than building a new platform. The board also acknowledged the potential for additional responsibilities in the future and the need for adequate resources to manage the workload.

Click this link to review the Judiciary's Memo: Appeals Study - Judiciary memo

Click this link to review the Cost Estimates: Appeals Study - draft Cost Estimates

I. October 9, 2025 Board Meeting

Appeals Study Discussion Overview:

Brooke Dingledine described the upcoming review and public engagement process for the Appeals Report. The initial draft of the Report will be reviewed and edited by the Board next Wednesday, with the intention to post the resulting Draft Appeals Report for Public Comment by Friday, Oct. 17th for a 10-day written comment period. The Board will also hold a hybrid public hearing on Oct 23rd.

The discussion also covered procedural aspects of the proposed Board model, particularly discovery and motion practice. Dingledine highlighted the desire to save time as well as the challenges in curtailing these processes, referencing the Public Utility Commission's (PUC) practices as a model. The role of a case manager was proposed, ideally a board member, to oversee case scheduling and management, with legal counsel assisting in legal motions and decisions. Board members, agreed with the proposed approach.

J. October 15, 2025 Board Meeting

Appeals Study Discussion Overview:

Brooke Dingledine presented the initial draft Appeals Report, emphasizing the need for further development in certain sections, such as the procedural rules for appeals and the Board's proposed model. She requested feedback on areas that might require more detail or clarification. Alex Weinhagen expressed concerns about the timeline for the Board to take on Act 250 appeals, advocating for a shorter two-year timeframe instead of the proposed three years. He also suggested reducing repetition in the report and moving some procedural details to an appendix to make the document more accessible to legislators.

Sarah Hadd supported the three-year timeline, citing the need to understand the volume and nature of Tier 1 appeals before making any changes. She emphasized the importance of reducing uncertainty and increasing clarity to potentially decrease the number of appeals. Kirsten Sultan suggested expanding certain sections to help lay readers understand legal elements better and proposed revisiting staffing needs during the check-in process. Janet Hurley agreed with the need for a clear timeline and suggested including specific dates for the check-in and implementation phases.

The Board agreed to continue refining the draft report and to seek public input through the posting of the report for written public comment and holding a public meeting on October 23rd. The goal is to finalize the report with clear recommendations and timelines for legislative action, ensuring it is accessible to legislators and effectively guides the implementation of the Board's recommendations.

K. October 20, 2025 Board Meeting

Appeals Study Discussion Overview:

The discussion focused on ensuring actionable recommendations and analyzing the resources needed for Act 250 appeals, including personnel and infrastructure costs. Brooke emphasized the necessity of hiring additional staff, particularly a legal tech and possibly another lawyer, to handle the workload effectively after consultation with staff.

The board debated the timeline for implementing Act 250 appeals, considering legislative direction and rulemaking processes. They tentatively agreed on a start date of July 1, 2028, contingent on receiving legislative approval and funding by mid-2026.

The board agreed to take public comments on the current version of the report and decided against releasing multiple draft versions to avoid confusion. They set a deadline for public comments and planned to finalize the report in future board meetings. The discussion concluded with plans to make draft board rules available as a separate document for public review.

L. October 23, 2025 Board Meeting to Receive Public Comment on the Appeals Report

Draft Appeals Report Discussion Overview:

Draft Status and Timeline: Brooke Dingledine began the discussion explaining that the Appeals Draft Report is currently a working draft, with a legislative submittal deadline set for mid-November. The draft report is still under construction, with several sections needing further summarization, explanation, and analysis.

Feedback and Inclusion: The board has received various comments via email and public discussions, which will be incorporated into the draft. There is a particular emphasis on ensuring that all stakeholder voices are represented, especially those of housing developers who feel their concerns have been overshadowed by legal discussions. The board acknowledged the importance of including housing developers' positions and recommendations to ensure a balanced representation of interests.

Resource Allocation and Concerns: There is an ongoing debate about the resources required for the appeals process. Some stakeholders, like Jon Groveman from the Vermont Natural Resources Council, suggest that fewer resources might be necessary,

arguing that the board's existing resources could be sufficient with strategic allocation. Others emphasize the need for additional staffing, particularly legal expertise, to handle appeals efficiently and ensure due process.

Equity and Accessibility Issues: Concerns were raised about potential inequities between urban and rural areas with regard to the board taking municipal housing appeals, as well as between wealthy individuals and those less well-off with regard to access to justice. The board discussed the potential for the appeals process to be less burdensome than court proceedings, which could benefit applicants and affected parties alike.

Court vs. Board Model: The discussion included a comparison between retaining appeals in the court system versus transferring them to the board. The board model is seen as potentially more flexible and knowledgeable, with the ability to streamline processes and provide expertise in land use issues. However, there are concerns about the startup costs and uncertainties associated with transitioning to a board model.

Municipal Zoning Appeals: The report suggests transferring appeals from Tier 1A and 1B areas to the board, with supplemental record review or on-the-record review. There is debate about whether this should include all housing appeals or be limited to certain areas. The board is considering the implications of expanding the scope to include centers, village areas, and planned growth areas in regional plans.

Supplemental Record Review Concept: The board is proposing the concept of supplemental record review, which would allow them to consider the record from the lower panel and supplement it where necessary. This approach aims to balance the need for a comprehensive review with the desire to avoid duplicating efforts and making the process more accessible. However, Zachary Handelman raised the concern of the inconsistency of altering the standard of review for on-the-record towns for consolidated review. The board will discuss this issue further.

Next Steps and Considerations: The board is considering a phased approach to implementing changes, starting with Act 250 appeals and potentially expanding to municipal housing appeals. They are also weighing the need for additional legal staff and resources to support the appeals process. The board aims to finalize the report with clear recommendations and compelling arguments to present to the legislature.

M. October 27, 2025 Board Meeting

Appeals Report Discussion Overview:

The Board discussion focused on the draft appeals report, specifically on the inconsistency of handling on-the-record appeals with supplemental record appeals that allow more evidence. Brooke Dingledine proposed listening to Zachary Handleman's suggestion to avoid consolidating on-the-record town zoning appeals with Act 250 permits, as there would be no hearing for the former. The Board debated whether to take all housing appeals or limit them to Tier 1A and 1B areas, considering the potential workload and the goal of speeding up housing appeals. The discussion also touched on

defining what constitutes a housing appeal, with a focus on projects creating new housing units. The Board considered a phased approach to implementing the appeals process, starting with Act 250 decisions and expanding to housing in Tier 1A and 1B, with the possibility of eventually taking all housing appeals statewide. The meeting concluded with plans to continue the discussion in the next meeting and to review a workload timeline chart related to Regional Plan and Tier 1A reviews.

N. November 3, 2025 Board Meeting

Appeals Report Discussion Overview:

Appeals Study Draft Report Review - Brooke Dingledine led the discussion on the appeals study draft report, focusing on jurisdictional issues and the board's role in housing appeals. The board debated whether to focus on housing appeals or broader Tier 1A appeals, with differing opinions on the scope and impact on resources. The board agreed to consider a phased approach, starting with Tier 1A and 1B areas, and potentially expanding to all housing appeals in the future. The board also discussed proposing processing time guidelines, which will need further analysis.

Public Comment on the Appeals Report – Annette Smith shared insights from her experience with telecom cases at the Public Utility Commission (PUC), highlighting the challenges of meeting statutory timelines while ensuring due process. She noted that the PUC's 180-day shot clock for telecom cases often proved insufficient for contested cases, suggesting that similar challenges might arise with Act 250 timelines. Annette also emphasized the importance of having permit specialists to assist applicants, noting that their absence is a concern for the public and applicants who need guidance through the permitting process.

O. November 10, 2025 Board Meeting

Appeals Report Discussion Overview:

Brooke Dingledine discussed ongoing refinements to the report, including board capacity and timing. The board discussed the structure of appeals and the potential for expedited processes. Janet Hurley emphasized the need for consensus on recommendations.

P. November 14, 2025 Board Meeting

Appeals Report Discussion Overview:

Brooke Dingledine presented a revised approach to the appeals process, suggesting a return to a de Novo review for Act 250 appeals, eliminating discovery to expedite the process. The board discussed the implications of this change, including the potential impact on municipal panels. The board agreed to request a short delay in the submission date of the report to the legislature to allow for further review and

refinement.

Public comment on the Appeals Report:

Thomas Weiss provided feedback on the draft, recommending corrections for accuracy. He pointed out that Act 115 of 2004 was incorrectly named as the "Permit Reform Act" and that the Environmental Board heard appeals starting in 1970, not 1972, and that not all appeals were heard by the board during the period from 1973 to 1985, as applicants could appeal to the county court.

Annette Smith (VCE) commented on the appeals process, expressing support for eliminating discovery due to its potential for being used as a tool against pro se parties. She also suggested that the board consider a presumptive scheduling template to streamline the process. Smith highlighted the issue of renewable energy appeals being an outlier, as they go to the Public Utility Commission, and recommended noting this in the report. Additionally, she raised concerns about the burden on municipalities to provide transcripts and suggested that parties should be responsible for creating transcripts of relevant sections if needed.

ADDITIONAL MATERIALS

A. Act 181 and the Land Use Review Board (Comprehensive Summary):

LURB State Coordinator Aaron Brondyke has prepared a comprehensive summary of Act 181's changes to Act 250's organizational structure, staffing, jurisdiction, and Board responsibilities. Please click this link to view the PowerPoint presentation: Act 181 and LURB Overview.pdf

B. Consolidation vs. Coordination of Appeals at the Court

LURB General Counsel Alison Stone has helped to clarify the difference for us. If you are interested, click on the following link: Coordination vs. Consolidation of Appeals.pdf which cites the governing provisions. Bottom line is that the Court can Coordinate appeals and, with the agreement of the parties, the Court can Consolidate appeals.

C. Joint Hearings at the District Commission

LURB Executive Director Peter Gill has suggested consideration and utilization of Act 250 **Rule 15 Joint Hearings** which provides:

> **Rule 15 Joint Hearings**
> *In order to avoid duplication of testimony and avoid unnecessary expense, the District Commissions may hold a hearing with another affected governmental agency* if the agency communicates its agreement to or request for a joint hearing to a District Commission at least ten days before the scheduled hearing date. The communication must be in writing signed by a representative of the agency but can be sent through any party to the proceedings or directly from the affected agency. Any party may petition, in writing, to the District Commission to request a joint hearing with another affected governmental agency.

D. Answers to Questions that arose during Stakeholder Meetings

LURB Associate General Counsel Jenny Ronis has complied statistics for the past two calendar years ("CY") that assist in providing data on appeals which in response to questions that arose during our meetings:

1. How many Act 250 appeals are from permits issued vs. denied?

NRB Decision Type	All Cases Actively Litigated in CY 2023	EC[1] Appeals Initiated in CY 2023	All Cases Actively Litigated in CY 2024	EC Appeals Initiated in CY 2024
Administrative Order	0	0	1	1
Jurisdictional Opinion/PRS	12	6	10	4
Issued Permit	17	6	13	3
Permit Denial	1	1	2	1
Memorandum of Decision	2	0	2	0
TOTAL	**32**	**13**	**28**	**9**

2. Who is appealing Act 250 Decisions - Applicant or Interested Party?

Party	All Cases Actively Litigated in CY 2023	EC Appeals Initiated in CY 2023	All Cases Actively Litigated in CY 2024	EC Appeals Initiated in CY 2024
Permittee	18	6	17	6
Interested Party	14	7	11	3
TOTAL	**32**	**13**	**28**	**9**

[1] EC = Environmental Court. May include Supreme Court appeals, if taken.

3. What types of housing projects are being appealed?

The cases roughly break down into the following permitting subjects (not necessarily the issue raised on appeal to the Environmental Court):

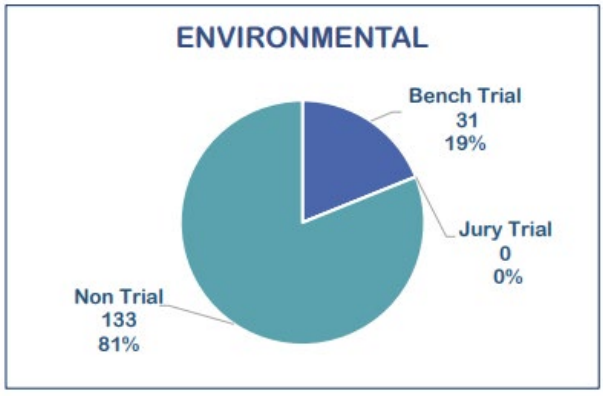
Subject		All Cases Actively Litigated in CY 2023	EC Appeals Initiated in CY 2023	All Cases Actively Litigated in CY 2024	EC Appeals Initiated in CY 2024
Retail	Retail with agricultural component	5	2	4	2
	Nonagricultural retail	7	1	8	2
Earth Extraction		5	3	2	0
Health Services		2	0	1	0
Housing	Single-Family Houses	3	2	1	0
	Priority Housing	1	1	1	0
	Non-PHP Housing Development	5	2	6	3
Recreation		2	0	2	1
Transportation/Utility Projects		2	2	3	1
TOTAL		**32**	**13**	**28**	**9**

4. How many Appeals go to Hearing/Trial at the Env. Division?

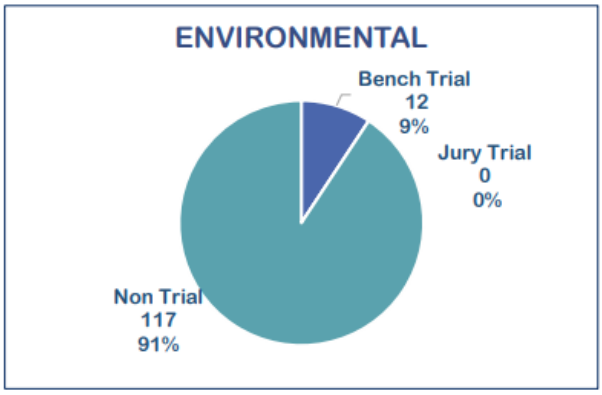
2024: 31 out of 133 cases (19%) went to trial. **2023:** 12 out of 117 (9%) went to trial.

ENVIRONMENTAL DIVISION – METHOD OF DISPOSITION

FY2024 OUTGOING CASES



FY2023 OUTGOING CASES



5. Case Study #1 - ***In re Windham & Windsor Housing Trust***

Town of Putney Zoning Permit: Windham & Windsor Housing Trust's (WWHT) **application for subdivision, conditional use, site plan, and planned residential development approval** for 25 units of affordable housing & associated infrastructure.

TOWN OF PUTNEY ZONING PERMIT	PROCESSING TIMES	Decision (Click on link)
DRB Zoning Permit Decision	61 days	
Environmental Division Appeal 22-ENV-00033 (Feb. 15, 2023)	329 days	WW Housing Trust 22-ENV-00033 Motions for Summary Judgment.pdf
Supreme Court Appeal 23-AP-080 (July 21, 2023)	142 days	eo23-080.pdf
TOTAL PROCESSING TIME **(Does not include appeal period days between issuance of decisions and filing of notices of appeal)**	**532 Days**	

Act 250 Jurisdictional Opinion:

ACT 250 JURISDICTIONAL OPINION	PROCESSING TIMES	Decision (Click on link)
Act 250 Jurisdictional Opinion JO 2-329	33 days	JO 2-329.pdf
Environmental Division Appeal 23-ENV-112 (Feb. 22, 2024)	143 days	Windham Windsor Housing Trust JO Appeal 23ENV112 Motions for Summary Judgment.pdf
Supreme Court Appeal 24-AP-079; 2024 VT 73 (Nov. 15, 2024)	247 days	op24-079.pdf
TOTAL PROCESSING TIME **(Does not include appeal period days between issuance of decisions and filing of notices of appeal)**	**423 Days**	

Opinion: Kathy Beyer: The permit appeal process in Vermont needs to change - Evernorth

Sec. Lindsay Kurrle: How appeals drive up housing costs - VTDigger

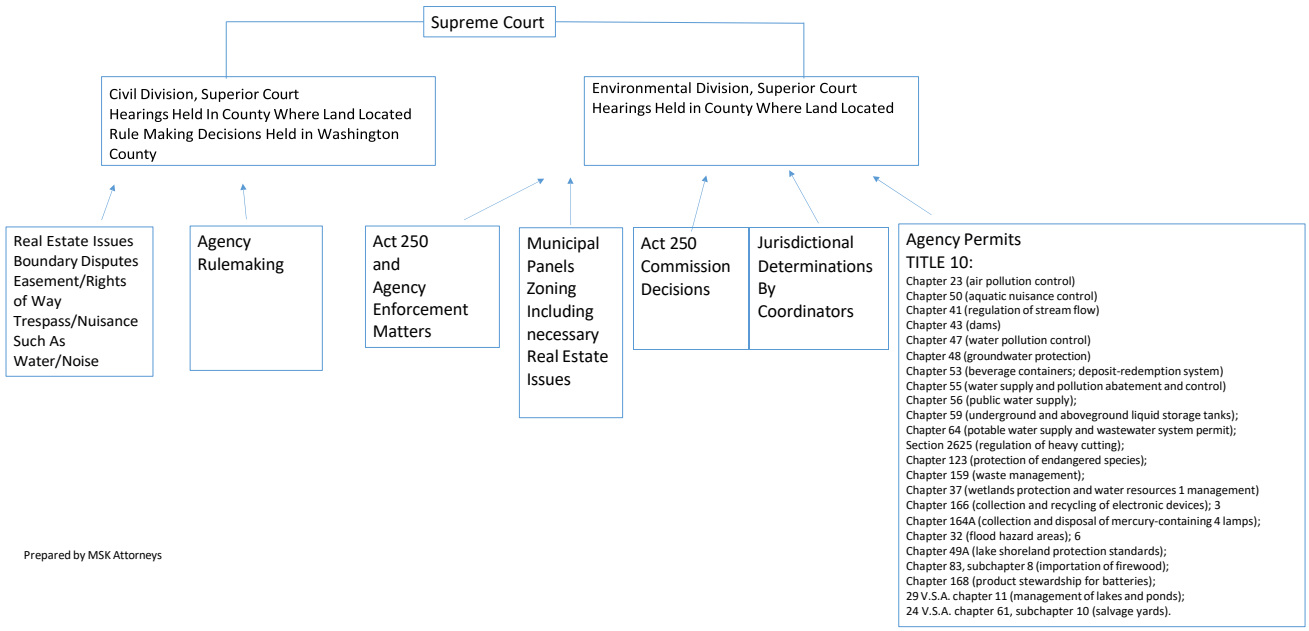
6. Case Study #2 - ***In re Wheeler Parcel Act 250 Determination***

Act 250 Permit: for a 32-unit residential PUD in South Burlington known as the "Wheeler Parcel" which includes construction of 1,020 feet of new roadway and construction of sidewalks, landscaping and supporting utility infrastructure.

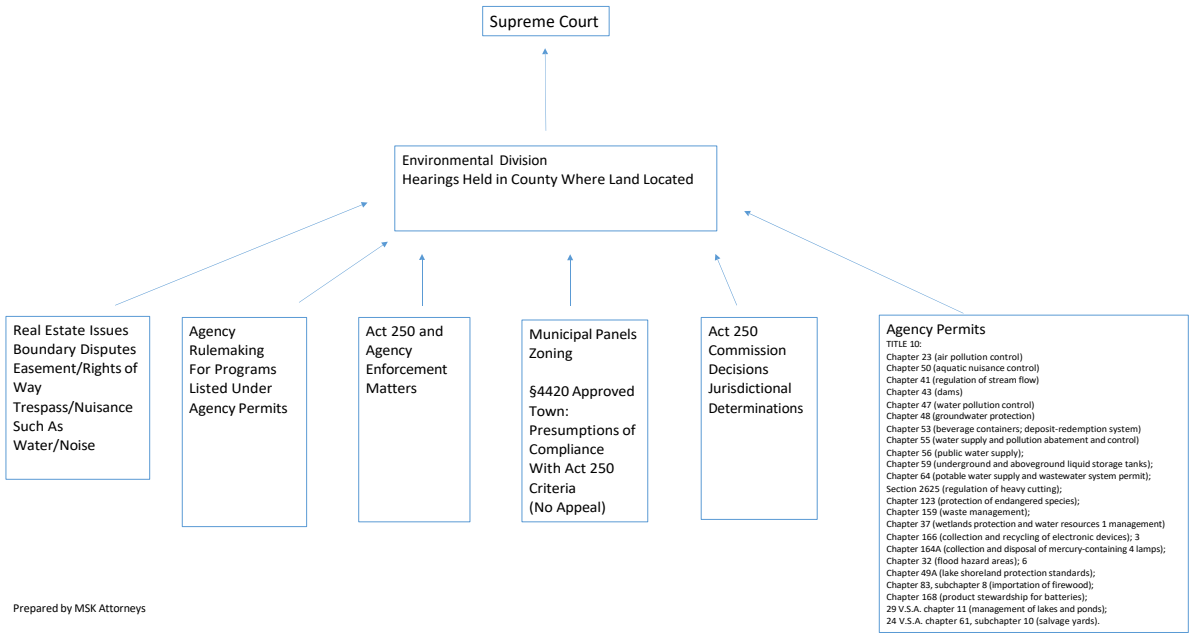
ACT 250 PERMIT	PROCESSING TIMES	Decision (Click on link)
Act 250 Permit 4C0923-5A,4C0694-7A	211 days	4C0923-5A,4C0694-7A permitfindingsexhibitlistcos.pdf
Motion to Alter Permit Decision	21 days	4C0923-5A,4C0694-7A MODMTACOS.pdf
Environmental Division Appeal 22-ENV-92	700 days	Wheele Parcel Act 250 Determination 22ENV92 Merits Decision.pdf
Supreme Court Appeal 24-AP-239	267 days	*op24-239.pdf*
TOTAL PROCESSING TIME **(Does not include appeal period days between issuance of decisions and filing of notices of appeal)**	**1,199 Days**	

COURT AND BOARD MODELS

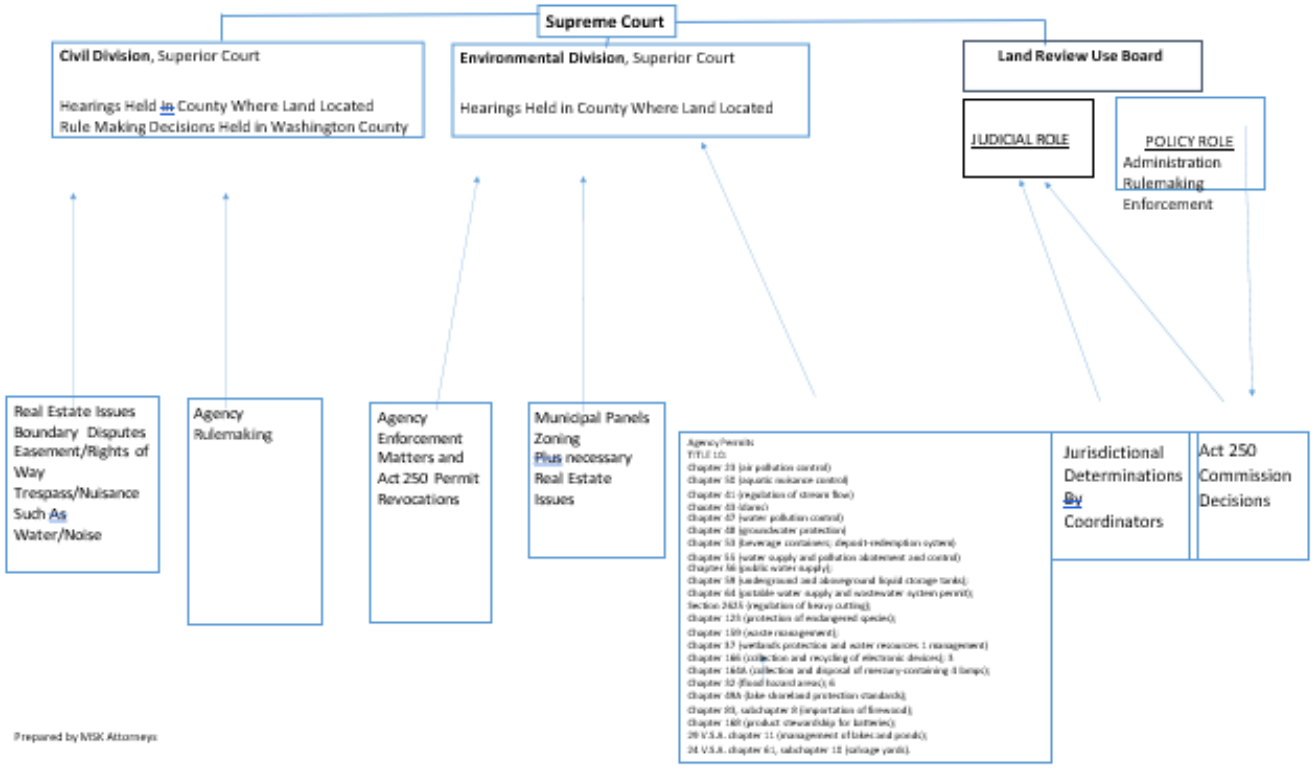
A. COURT MODEL #1 – Current Court Process Env. Division Appeals and Civil Division (Real Estate/Prop Issues & Agency Rulemaking). (by MSK Attys):



B. COURT MODEL #2 – Transfer Jurisdiction over Real Estate Property Issues and Agency Rulemaking from the Civil Division to Environmental Division (Suggested Appeal Process by MSK Attys):

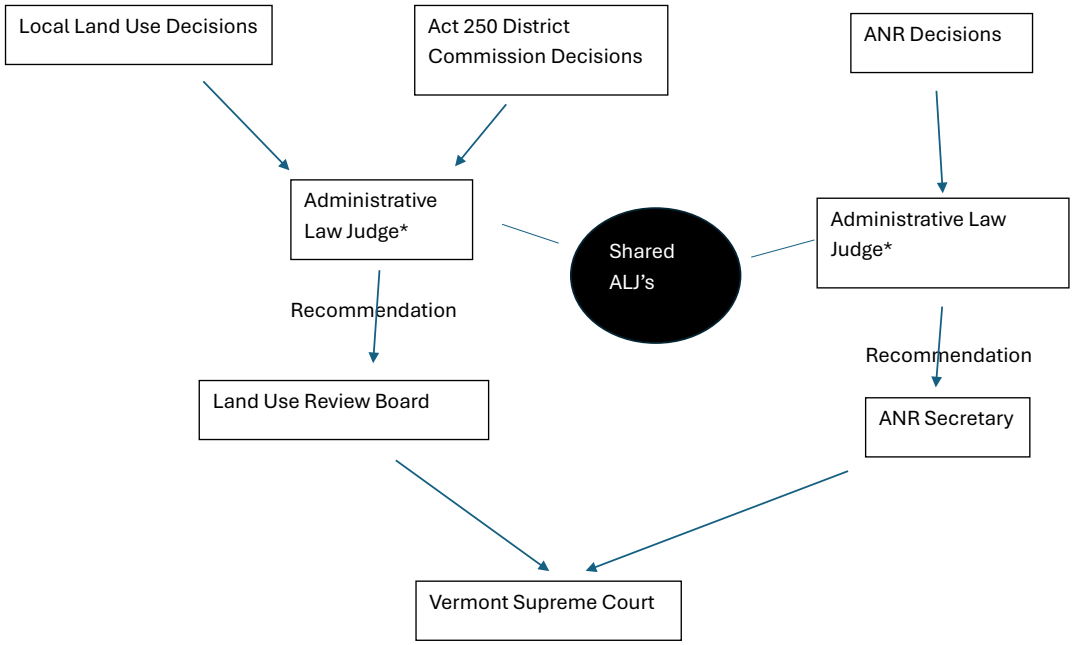


C. BOARD APPEAL MODEL #1 – Transfer Jurisdiction over Act 250 Appeals from Env. Division to Board (Potential Board Appeal Process by MSK Attys):



D. BOARD APPEAL MODEL # 2 – Admin Law Judge (ALJ) Board Model

(Vermont Land Use & Environmental Appeals Process Concept by David Mears)



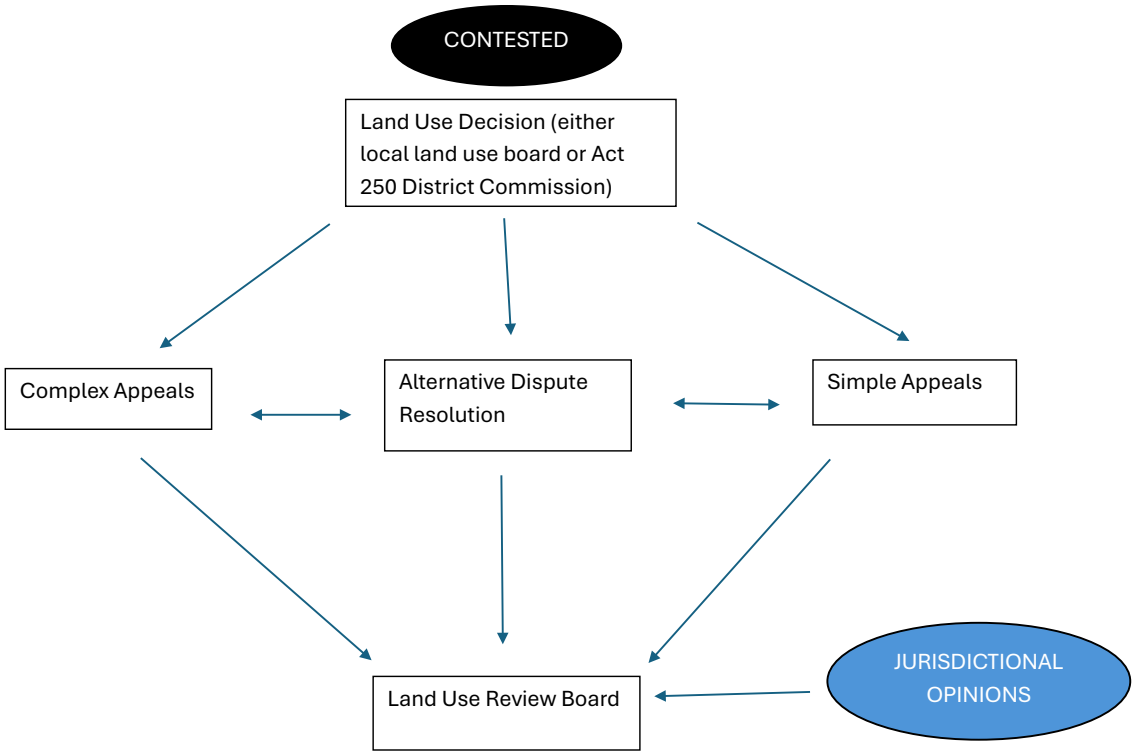
*Administrative Law Judges (ALJ's) are attorneys housed within LURB with experience and training with administrative law and proceedings

Key Elements:

- Creation of new unit of ALJ's/hearings examiners under LURB-similar to PUC model where ALJ holds hearing and formulates a recommendation and draft order for LURB to decide
- Ombuds role provided by LURB to assist pro se applicants
- LURB provides training to District Commissions and to local boards, in partnership with VLCT regarding best practices for administrative proceedings
- Local land use decisions and Act 250 District Commission decisions appealed to LURB
    - Potential for coordinated hearing where local land use and Act 250 permit issued for the same project
- ANR permit decisions appealed within ANR
    - Potential for coordinated hearing where parallel appeal of ANR, land use and Act 250 permits for the same project

- All district commission jurisdictional opinions automatically reviewed by LURB de novo regardless of whether appealed
- Tiered process that distinguishes between simple and complex appeals
    - Simple:
        - Parties can participate pro se
        - No discovery or motion practice
    - Complex:
        - Discovery limited to that necessary to supplement the record
    - ADR:
        - Optional
        - By LURB ALJ or Ombuds for simple cases

Land Use Review Board Tiered Decision Process



- Scope of Record: Review by LURB/ALJ's limited to administrative record
    - All recorded materials considered by the local board or district commission
    - Audio recording of any hearing is sufficient – no transcription required, though can be requested by parties at their expense

  - Record can be supplemented as necessary to explain complex terms or concepts, provide material that was considered but omitted from the record, or show bad faith or illegal behavior by the decision-maker below
- Standard of Review:
  - Questions of law reviewed de novo
  - Questions of fact reviewed under APA reasonableness/substantial evidence standard
- Scope of Issues: Limited to issues raised below
- Standing: APA aggrieved person standard consistent with state and federal jurisprudence
- ALJ's are experienced in managing administrative hearings and serve a variety of roles:
  - Support for ADR (as mediators for simple appeals in partnership with ombuds role within LURB)
  - Provide a forum for non-lawyers to present their case in simple appeals
  - Serve as a hearings officer for both simple proceedings and complex proceedings
  - Provide a written decision supported by an analysis of the facts and law after hearing from the parties for consideration of the LURB of local land use and Act 250 decisions, and of the ANR Secretary of ANR-issued permits
  - Ensure complete administrative record for Vermont Supreme Court review

E. BOARD APPEAL MODEL # 3 – Vermont Natural Resources Council (VNRC Proposals for Appeals Reform (by Jon Groveman)

VNRC has reviewed the notes and materials that Brooke distributed and based on these materials and the discussions at our meetings VNRC would like to put the following proposals to improve the appeals process on the table for discussion by the Appeals Study Group:

- **Make the LURB Vermont's Land Use Appeals Board for Act 250 & Zoning Appeals** - The LURB is constructed (made up of qualified land use professionals) to serve as Vermont's land use appeals Board that would administer Act 250 and hear appeals of zoning and Act 250 appeals. The Board would be in a better position than a court to prioritize housing appeals, use hearing officers to expedite the review of appeals that are less complex (e.g. setback disputes) versus complicated appeals that involve impacts like traffic, character of the area and multiple Act 250 and zoning criteria and making informed decisions on the land use issues raised in Act 250 appeals. With zoning and Act 250 appeals both going to the LURB there can be a consolidated review when there are overlapping issues. Review could be de novo or on the record - there are arguments for both approaches under the LURB acting as Vermont's land use appeals board, which the Appeals Study Group should discuss and make recommendations on the pros and cons of record review versus de novo review for zoning and Act 250 appeals, and if record review is preferred, how it could work to address any potential challenges (e.g. making the process more formal, potentially inaccessible to average citizens, etc). Staffing and the make-up of the LURB would need to be discussed. For example, in addition to planners, engineers, and natural resource experts, the LURB would likely need to have 1-2 attorneys, and as mentioned above, hearing officers to assist with the efficient processing of permits.

- **Create an Administrative Review & Appeals Process for ANR Permits -** For ANR permits, ANR appeals should follow the EPA model - DEC issues a permit with the notice and comment process, an Administrative Law Judge (ALJ) hears an appeal de novo and creates a record and the appeals would go on the record to Superior Court and then to the Vermont Supreme Court. This recognizes that ANR permits are technical environmental permits that should go through a classic

environmental agency technical permit review and hearing officer appeals process that would be conducted de novo by the hearing officer or Administrative Law Judge (ALJ) who would create the record and issue the initial decision on an appeal with the courts playing the traditional role of reviewing the administrative record to ensure there is evidence in the record that supports the permit decision and address any legal issues. Vermont is an outlier in having courts conduct a de novo review of technical permits and then effectively making technical permitting decisions, which is not the role of a court - under the U.S. Constitution the role of a court to resolve legal disputes, not to make permit decisions. Appeals of ANR hearing officer/ALJ decisions could go on the record to Superior Court and the Vermont Supreme Court or right to the Vermont Supreme Court. The Appeals Study Group should discuss this.

- **Limit Zoning Review of Housing Projects in Tier 1 Growth Areas** - As we have discussed, appeals of housing projects in Tier 1 growth areas approved by the LURB (Tier 1 maps will be approved by the LURB in 2026) could be limited by narrowing the issues in zoning approval for housing projects in Tier 1 areas. The idea is that because Tier 1 areas are approved through a thorough planning review with significant opportunities for public input, there is not a need to subject housing projects to a detailed zoning review and zoning permit. One approach would be to enact a law that provides housing projects in these areas would be required to obtain a building permit that ensures there is water and sewer for the project and that the project meets the dimensional requirements in municipal zoning for that district. If other conditions are necessary to address project impacts they could be addressed through a general permit or other required practices for housing projects in Tier 1 areas. This would limit the issues that can be appealed in Tier 1 areas. In VNRC's opinion, limiting issues that could be appealed for housing projects in Tier 1 areas is a better approach than trying to limit who can appeal a zoning permit, which has been proposed in various bills in the Legislature. Limiting who can appeal raises constitutional issues related to affecting the property rights of Vermonters (Vermonters that may be harmed by an approved project) without due process and issues of fairness.

F. COURT MODEL # 3 – CHANGE COURT RULES – (by Jim Dumont)

Proposed changes to Vermont Rules for Environmental Court Proceedings (VRECP) Rule 5(b) and 5(f) that will remove about 5 weeks of delay from the current process:

To view the full version of Rule 5 click here: Dumont VRECP Rule 5 Changes.pdf

Vermont Rules of Environmental Court Proceedings Rule 5
RULE 5. APPEALS

• • •

(b) Notice of Appeal.

(1) *Filing the Notice of Appeal.* An appeal under this rule shall be taken by filing with the clerk of the Environmental Court by certified mail or other means, including electronic filing in accordance with the 2010 Vermont Rules for Electronic Filing, a notice of appeal containing the items required in paragraph (3) of this subdivision within 30 days of the date of the act, decision, or jurisdictional opinion appealed from, unless the court extends the time as provided in Rule 4 of the Vermont Rules of Appellate Procedure. The appellant shall pay to the clerk with the notice of appeal any required entry fee. If a notice of appeal is mistakenly filed with the tribunal appealed from, or the Natural Resources Board, or either of its panels or its predecessor boards, the appropriate officer of the tribunal, board, or panel shall note thereon the date on which it was received and shall promptly transmit it to the clerk of the Environmental Court, and it shall be deemed filed with the Environmental Court on the date so noted. Failure of an appellant to take any step other than the timely filing of the notice of appeal does not affect the validity of the appeal but is ground only for such action as the court deems appropriate, which may include dismissal of the appeal.

(2) *Cross- or Additional Appeals*. If a timely notice of appeal is filed, any other person entitled to appeal may file a notice of appeal within 14 days of ~~the date on which the statement of questions is required to be filed pursuant to Rule 5(f), or within the time otherwise prescribed by this rule, whichever period last expires~~ service on that party of the notice of appeal and the statement of questions, unless the court extends the time as provided in Rule 4 of the Vermont Rules of Appellate Procedure.

• • •

(f) Statement of Questions. ~~Within 21 days after the filing of the notice of appeal, t~~The appellant and any cross-appellant shall file with their notice of appeal or notice of cross-appeal ~~with the clerk of the Environmental Court~~ a statement of the questions that the appellant or cross-appellant desires to have determined. The statement shall be served in accordance with Rule 5 of the Vermont Rules of Civil Procedure and the 2010 Vermont Rules for Electronic Filing. No response to the statement of questions shall be filed. The appellant or cross-appellant may not raise any question on the appeal not presented in the statement as filed, unless otherwise ordered by the court in a pretrial order entered pursuant to subdivision (d) of Rule 2. The statement is subject to a motion to clarify or dismiss some or all of the questions.

G. POSSIBLE BOARD MODEL – Hybrid "Supplemental Record Review"

Appeal Type	Type of Appellate Review	Appellate Body	Discovery & Motion Practice
ACT 250			
District Commission Permit Decisions (Complex)	Supplemental Record Review	Full Board	Discovery - limited to necessary to supplement record Motion Practice – limit timing
District Commission Permit Decisions (Simple)	Supplemental Record Review	3-Member Board Panel	Discovery - limited to necessary to supplement record Motion Practice – limit timing
District Coordinator Jurisdictional Opinions (Complex)	Supplemental Record Review	Full Board	Discovery - limited to necessary to supplement record Motion Practice – limit timing
District Coordinator Jurisdictional Opinions (Simple)	Supplemental Record Review	3-Member Board Panel	Discovery - limited to necessary to supplement record Motion Practice – limit timing
MUNICIPAL APPEALS			
Municipal Zoning Applicant Election for Board Review of Zoning Decision for consolidation with Act 250 appeal	Supplemental Record Review	Full Board	**All towns**: Discovery - limited necessary to supplement record Motion Practice – limit timing

Municipal Zoning Decisions - Tier 1A & 1B Housing (Complex)	**OTR towns**: OTR Review **DeNovo towns**: Supplemental Record Review	Full Board	**OTR towns**: Discovery - none Motion Practice – limit timing **DeNovo towns**: Discovery - limited necessary to supplement record Motion Practice – limit timing
Municipal Zoning Decisions - Tier 1A & 1B Housing (Simple)	**OTR towns**: OTR Review **DeNovo towns**: Supplemental Record Review	3-Member Board Panel	**OTR towns**: Discovery – none Motion Practice – limit timinge **DeNovo towns**: Discovery - limited necessary to supplement record Motion Practice – limit timing

NOTES:

- **Supplemental Record Review:** limited to administrative record with Supplemental Evidence allowed for a liberally applied "just cause" standard:
    - All recorded materials considered by the local board, district commission, district coordinator or ANR.
    - Audio recording of any hearing is sufficient – no transcription required, can be requested at parties' expense.
    - Record can be supplemented (no duplicative or cumulative evidence) as necessary to explain complex terms or concepts, provide material that was considered but omitted from the record, or upon a showing of just cause, or on a showing bad faith or illegal behavior by the decision-maker below.
- **Scope of Issues:** Limited to issues raised below upon which the appellant has or claimed party status.
- **Standard of Review**: Questions of fact: reasonable /substantial evidence, Questions of law: de novo.

- **LURB Appeal Roles:**

  - **Board Members** - Provide a written decision supported by an analysis of the facts and law after hearing or oral argument from the parties

  - **Hearing Officer** – should the Board appoint a Board member or Counsel to act as HO for scheduling conferences, to narrow appeal issues, and to process legal motions related thereto? Counsel to act as HO

  - **Administrative Support:** Clerk, Case Manager, Tech duties for administration of the appeal and preparation and transfer of the administrative record for Vermont Supreme Court review

- **Supreme Court Appellate Review:** Q's of fact: clearly erroneous, Q's of law: deferential if not unreasonable, arbitrary or capricious or discriminatory.