



# Land Use Review Board

## Act 250

# Appeals Study Report

Pursuant to Act 181 of 2024, Sec. 11a

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**State of Vermont**

**Land Use Review Board**

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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<sup>1</sup>.

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

	<b>Key Issue</b>	<b>Board Recommendation</b>
#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: <ul style="list-style-type: none"> <li>- Tier 1A (all permits)</li> <li>- Tier 1B (housing permits only)</li> </ul> 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?	<ol style="list-style-type: none"> <li>1. Prioritize Act 250 housing applications</li> <li>2. Amend VRECP Rule 5</li> <li>3. Update Act 250 Rules</li> </ol>

<sup>1</sup> Act 181 of 2024, Section 11a. Act 250 Appeals Study.

<sup>2</sup> 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.

	<b>Key Issue</b>	<b>Board Recommendation</b>
		<ol style="list-style-type: none"> <li>4. Update Procedural Rules</li> <li>5. Develop policy directives</li> <li>6. Clarify the Board's role in appeals</li> <li>7. Evaluate appeals for early motion practice</li> <li>8. Enhanced training for District Commissioners</li> <li>9. Public outreach, education &amp; engagement</li> <li>10. Study whether and where to establish a Permit Specialist/ Ombuds Office</li> </ol>

**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.

## **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.