



**STATE OF VERMONT**  
HOUSE OF REPRESENTATIVES

November 10, 2023

Necessary Updates to Act 250 Program Study Steering Committee Members  
C/O State of Vermont Natural Resources Board  
10 Baldwin Street  
Montpelier, VT 05633-3201

Dear Steering Committee Members:

Good public policy requires that the administration of our laws be fair, prompt and predictable. In the case of Act 250, our goal should be to have applicants and adjudicators be well enough informed that applications are competent, complete, and quickly adjudicated, and that causes for appeals are relatively rare.

Easy and complete access to guidelines and precedents would tend to cause inappropriate or deficient projects to be amended or abandoned before application is made, and would tend to ensure that objections by participating parties are relevant, informed and on point.

To that end, I recommend, for your consideration, the adoption of measures to ensure

**I. That all applicants and potential parties (i.e., the public at large) have easy online access to:**

- A) Previous environmental court decisions, including all pleadings and attachments.**
- B) Previous decisions by their district commission.**
- C) Previous decisions by all other district commissions.**

*Discussion: Currently some of this material is available online. The goal should be for all of it to be available and easy to locate.*

**II. That district commission decisions include an articulation of reasoning in addition to findings.**

*Discussion: Such articulations both inspire trust in the otherwise opaque quasi-judicial process and provide guidance to all future applicants and parties.*

**III. That applicant guidelines posted online make clear the extent to which decisions by the environmental court are binding on all future district commission deliberations and when they are not.**

*Discussion: No two cases are identical, of course, but understanding the relevance of previous decisions helps applicants meet the expectations of adjudicators, helps other participating parties focus their pleadings, and streamlines the process. This information is not currently being made easily available.*

**IV. That “best practices” promulgated by relevant state agencies be easily accessible and that applicant guidelines articulate the extent to which they are sufficient to meet Act 250 criteria. Act 250 requirements that are more restrictive than these “best practices” should be rare and predictable.**

*Discussion: To the extent possible, the State of Vermont’s regulatory apparatus should speak with one voice. If required permits obtained from state agencies are not sufficient to meet Act 250 criteria, applicants and other participating parties should have advance notice in the published guidelines, and the more restrictive standards should be articulated. All parties have a right to know what Act 250 requirements are, well before applications, objections or other pleadings are filed.*

**V. That special guidance be available to applicants, to objecting and other participating parties, and to district commissioners as to what constitutes “cognizable change.”**

*Discussion: Rule 2(C) (26) states that “cognizable change’ means any physical change or change in use, including where applicable, any change that may result in a significant impact on any finding, conclusion, term or condition of the project’s permit.”*

*This definition, on its face, is unlimited, and cognizable change could theoretically be measured in terms of miles, meters or molecules. To the extent possible, all parties must be on notice as to how commissioners will apply a test of reasonableness to this rule. The doctrine of equal protection requires that different commissions approach the question in a similar manner, and fairness requires that applicants and objecting parties be informed in advance as to how such questions shall be considered. As noted in the attachment to this letter, a cognizable change question concerning one permit in the Town of Reading was debated for more than 1,000 days before being adjudicated.*

**VI. That all Act 250 application, objection and adjudication processes have deadlines, with appropriate consequences in case of default.**

*Discussion: Some processes have such deadlines, while others are open-ended. An endless process is in no one’s interest. Justice delayed is justice denied.*

I thank you all for your work on this important issue and for your service to the State of Vermont. I am aware of your timeline for reporting to the legislature and its various

committees by December 31, 2023, and would be happy to discuss the contents of this letter with you at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tesha Buss', with a stylized flourish at the end.

Tesha Buss

State Representative for Plymouth, Reading and Woodstock.

Biographical information attached