Report to the

House Committee on Fish, Wildlife and Water Resources
House Committee on Natural Resources and Energy
Senate Committee on Natural Resources and Energy

Report on Improving Vermont's Environmental Protection Process

JRH.19 (R-264)

December 16, 2011

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Natural Resources Board

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Agency of Natural Resources

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Legislative Report Prepared Pursuant to JRH.19 (R-264)

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I. Executive Summary

Consistent with JRH.19, from the outset of this process, the Natural Resources Board (NRB) and the Agency of Natural Resources (ANR) explored a variety of approaches and options for improving environmental protection in Vermont. The NRB and ANR heard from a wide cross-section of people from around the state, many of whom have experienced the permitting process first-hand. We also heard from other agencies and branches of state government. The public comments made clear that (1) Act 250, and in particular, the District Commission process works quite well; (2) ANR can improve some of its processes through internal changes; and (3) the appeals process needs major improvements.

This report presents several options to improve the process including:

- an enhanced Superior Court - Environmental Division with magistrates and streamlined procedures;
- a professional board for environmental appeals that could also exercise original jurisdiction for all state permits needed for major projects likely to be appealed;
- on the record review of District Environmental Commission decisions;
- in-house streamlining of the permit process, for example, procedures making greater use of technology, eliminating redundancy between applications, and assuring transparency;
- other improvements described below.

Some of the options require legislative action, while others can be accomplished through rulemaking or internal procedural changes at the NRB and ANR. Some improvements may be achieved at little or no cost; others will require additional resources.

II History

The Water Resources Board was established in 1948. From its inception until 2005, the Water Resources Board heard appeals from permits issued by the Department of Environmental Conservation and engaged in rulemaking in the followings areas: Water Quality Standards, Outstanding Water Resources, Use of Public Waters, Wetlands, Surface Levels, and Mean Water Levels. In 2005, as a result of 2004 permit

reform amendments which abolished the Water Resources Board and created the Natural Resources Board, appeals from Department of Environmental Conservation permits were transferred to the former Environmental Court (now, the Superior Court, Environmental Division). The present Water Resources Panel of the NRB continues to engage in rulemaking and also appears as a party in water-related appeals in the Environmental Division, but has no other role in administering or overseeing any of the programs for which it promulgates rules.

The Environmental Board was created in 1970 with the adoption of Act 250 (10 V.S.A. Ch. 151). From 1970 through 2005, the Board heard appeals from permit decisions issued by the nine District Environmental Commissions and Jurisdictional Opinions issued by the Commissions' Coordinators. While these appeals are now heard by the Environmental Division, the Land Use Panel of the NRB continues to engage in the duties and responsibilities of the former Environmental Board; it administers and provides administrative and legal support to the Commissions, writes the Act 250 Rules, develops policy, coordinates the District Environmental Commissions, and enforces violations of Act 250. The Land Use Panel also appears as a party before the Environmental Division in appeals from Commission decisions and Coordinator opinions.

The Environmental Court was established in 1990 as a result of the enactment of the Uniform Environmental Enforcement Act (Act 98, 1989). Its initial responsibilities were limited to hearing enforcement actions brought by the ANR Secretary and the Environmental Board. In 1999, appeals of municipal zoning and planning decisions were transferred from the Superior Courts to the Environmental Court. The 2004 permit reform amendments transferred to the Environmental Court appeals from decisions of the ANR Secretary, the District Commissions and the Coordinators which were formerly heard by the Superior Courts, the Environmental Board and Water Resources Board. As result of the 2010 court reform amendments, as noted, the Environmental Court is now the Superior Court, Environmental Division.

III. 2011 Resolution – JRH.19 (R-264)

In 2011 the Legislature adopted JRH.19 (R-264), a joint resolution "supporting the administration's efforts to examine and provide recommendations for improving . . . the effectiveness of Vermont's state and municipal environmental protection process."

This resolution provides for the Secretary of ANR and Chair of the NRB to review the permit process and to develop recommendations intended to assure environmental protection, while making the process "more efficient, more effective, more user-friendly, more open, more predictable, better coordinated, and quicker for applicants and citizens." The resolution provides for consultation with key legislators, representatives of the Agencies of Agriculture, Food and Markets, Commerce and Community Development, Transportation, the Environmental Division of Superior Court, and municipal permitting officials, as well as the gathering of public input.

Recommendations are to be reported to the Chairs of the House and Senate Committees on Natural Resources and Energy and the Chair of the House Committee on Fish, Wildlife and Water Resources by January 15, 2012.

A copy of JRH.19 is appended to this report.

IV. Public Comment Process

In carrying out the mandate of JRH.19, the NRB and ANR collected comments and suggestions on the environmental protection process from state agencies, municipal officials, and other focus groups and meetings with other stakeholders; a series of public meetings around the state; and through email on the Board's website.

Focus Groups

The NRB and ANR convened meetings with municipal officials, including permitting officials, municipal and regional planners, the Vermont League of Cities and Towns, the Superior Court - Environmental Division, the Court Administrator's Office, and the Attorney General's Office. Further input was obtained from focus groups of professional consultants, housing stakeholders, environmental interests, the business and development community, district commissioners and coordinators, the Vermont Chapter of the American Council of Engineering Companies, and environmental and land use attorneys. We also scheduled a focus group for citizens, but only one invitee attended. Fortunately, we were able to get input from more citizens at the October 29, 2011 Environmental Action Conference in Randolph, and through the public meetings and email comments.

The NRB and ANR also sought comments in several smaller meetings with stakeholders, including the Vermont Association of Snow Travelers, the Vermont Association of Realtors, Vermont Natural Resources Council, the Lake Champlain Regional Chamber of Commerce, the Greater Burlington Investment Corporation, the Vermont League of Cities and Towns, the Homebuilders and Remodelers Association of Northern Vermont, Vermont Businesses for Social Responsibility, and the Vermont Association of Planning and Development Agencies.

State Agencies

The NRB and ANR also met with representatives from state agencies including: the Agency of Agriculture, Food, and Markets; the Agency of Transportation; Agency of Commerce and Community Development (ACCD) and its Division of Economic, Housing and Community Development (DEHCD); and the Department of Buildings and General Services. This was accomplished through an interagency focus group, through meetings with Patricia Moulton Powden, Deputy Secretary of ACCD, and DEHCD Commissioner Noelle Mackay. We also met with the Court Administrator's Office and were in frequent contact with the Environmental Division. In addition, representatives of

ANR and the NRB have been participating in DEHCD's review of downtown and growth center designation programs, which include some discussion of the land use and environmental permit processes.

Public Meetings

Public meetings were held in St. Albans (October 6, 2011), Williston (October 11, 2011), St. Johnsbury (October 18, 2011), Rutland (October 20, 2011), and Brattleboro (October 27, 2011). A broad cross-section of people attended the public meetings, and a variety of comments were received. General notes were taken from the public meetings, and some commenters submitted their suggestions in writing. As with the focus groups, these notes and comments have been posted on the NRB website.

NRB Website

Early on, the NRB posted a webpage dedicated to carrying out the purpose of JRH.19. The webpage http://www.nrb.state.vt.us/news.htm includes an overall description of the mission and goals of the process, a schedule of the public hearings to be held around the state, notes from all the focus group and public meetings, and a means by which the public can post comments. We have received numerous comments through the website, and those comments, along with focus group and public meeting comments, are incorporated below.

V. Options

The following options cover different aspects of the environmental protection process. They focus on the ANR and Act 250 processes, but also consider the interaction of those permitting processes with the municipal land use process.

A. Appeals

Relatively few permit proceedings are appealed. However, comments indicate that this is the primary source of cost and delay in the permit process. Significant changes are warranted in the environmental appeals system to increase timeliness, decrease costs, and make the system more accessible to the public. Two options are set forth below.

1. Improved Superior Court, Environmental Division

To address the public's concerns that appeals at the Environmental Division of the Superior Court take too long, cost too much, and are inaccessible to neighbors and citizens, the process before the Court should be streamlined. Comments also indicate that the Court is less user-friendly and more legalistic and procedurally difficult to navigate than the former Environmental Board. Some commenters believe that they can only have meaningful access to the Court process if they hire an attorney. With

additional resources and significant procedural reform, steps could be taken to address some of these issues while staying within the constitutional constraints of a formal judicial entity.

Hearing Officers; Limit Discovery; Encourage Prefiled Testimony and Exhibits

Hearing officers or magistrates could be added to expedite the appeals process and decisions. Many who commented on the environmental appeals process were concerned about the slow pace of the legal process and the amount of time it takes to get a final decision, and many acknowledged that two judges is not enough to move the Court's docket efficiently. Adding magistrates could go a long way toward speeding up the process. Discovery could be limited[1] and prefiled testimony encouraged in order to allow for the free exchange of information without costly depositions, interrogatories or requests to produce. Prefiling testimony and exhibits can also reduce the time and resources needed for hearings. To make prefiling more citizen-friendly, unrepresented persons could possibly prefile testimony in narrative format, rather than the traditional question-and-answer format.

Public Advocate's Office

Members of the public commented that the judicial process was too complicated and legalistic for citizens to access, and several suggested that unrepresented parties need help in the Environmental Division. To this end, a public advocate office could be created to represent environmental interests (similar to the Department of Public Service in Public Service Board proceedings) or help unrepresented citizens navigate the legal system (to provide free or reduced fee legal services, like Legal Aid, only in the Environmental Division). The Environmental Division has already created a program where lawyers can provide limited *pro bono* assistance to unrepresented parties. http://www.vermontjudiciary.org/GTC/environmental/MasterDocumentLibrary/pro%20bono%20flyer.pdf. This program could be expanded because *pro bono* attorneys may not be available to assist an unrepresented party throughout a complex matter.

Improve Use of Alternative Dispute Resolution

The Court already encourages, and sometimes mandates, mediation to help resolve or narrow appeals. This should be continued, but fine tuned to allow other forms of ADR that may be more suitable for a particular matter.[2] It should also be

[1] The Environmental Division may limit discovery under 4 V.S.A. § 1001(g)(3) and V.R.E.C.P 2(c). However, discovery allowed before the Environmental Division is broader and less streamlined than the automatic and limited discovery allowed in Federal District Court. See e.g. F.R.Civ.P. 26 and 33.

[2] For example, a judge or case manager can determine whether ENE, mediation, a conference with a magistrate or other judge, arbitration, referral of a critical issue to a magistrate for an advanced decision or firm "weather report," or a hybrid of these mechanisms is best for a particular matter. *See, e.g.*, multi-option ADR program at http://www.cand.uscourts.gov/adr

recognized that some matters cannot be settled and that continued efforts to mediate result in delay and increased costs.

There is some concern about the cost of mediation, so the availability of free or reduced cost mediation would help people participate fully in environmental appeals, perhaps with the Court's case manager as a neutral third-party facilitator.

2. Professional Board for Appeals, Enforcement, and Consolidated Original Permits in Complex Matters

Another option is a professional appeals board, modeled after similar boards in the States of Maine and Washington and similar to our present Public Service Board (PSB) and federal licensing tribunals. (The description below picks the aspects of these models best suited to Vermont's programs). The board would be comprised of a chair and two full-time members and two alternate members. All members and alternates would be nominated, appointed and confirmed either in the manner of Superior Court judges or of members of the PSB. Board members would have relevant environmental experience (e.g., science, law, engineering) and would serve for fixed and staggered terms to assure independent decision-making. Compensation for board members would be the same as for Superior Court judges. Alternates would be compensated on a *per diem* basis. Board members would have to be well qualified in this field.

The professional board would exercise the same appellate jurisdiction as the present Superior Court - Environmental Division. It would hear appeals from decisions of the ANR Secretary and from Act 250 permit decisions of the District Commissions and Jurisdictional Opinions of the Act 250 Coordinators and appeals from municipal zoning and planning decisions under 24 V.S.A. Ch. 117. The board would exercise original jurisdiction in hearing environmental enforcement matters brought under 10 V.S.A. Ch. 201. As explained below, however, it is anticipated that the board could review District Commission decisions on-the-record.

Importantly, as an administrative body, the board could act in an area not available to the Environmental Division: in a matter of significant public interest the board could hear, in a single proceeding, all ANR and Act 250 permit applications in the first instance, or without the requirement that those applications first be presented to ANR or the District Commissions. This original jurisdiction could also be extended to decisions from municipalities, although it is recommended such jurisdiction only be exercised at the request of the municipality. This unique administrative mechanism that is used successfully in Maine allows significant projects to obtain permitting decisions in a transparent, yet efficient manner. It is anticipated that the board would require the assistance from ANR staff and the District Coordinators in the drafting of permits.

There are other potential benefits of a professional board model. The hearing process before the board would be simpler and more cost effective than the process presently employed by the Environmental Division. Patterning its process after the

citizen-friendly District Commission proceedings, discovery would be limited, and the use of prefiled evidence would be expanded. Parties, witnesses, applications and appeals would be consolidated when appropriate.

Further, board staff attorneys and individual board members (as opposed to law clerks) would act as hearing officers in less complex appeals (rocket docket) and on preliminary issues and recommend decisions to the board. This would more than double existing decision-making capacity and significantly professionalize and expedite the appeals process. Staff attorneys/hearing officers would also play a central role in a robust alternative dispute resolution program.

The Environmental Division presently hears most appeals *de novo,* as if no proceeding before ANR, the District Commission, or the municipal body has occurred. It is suggested that appeals from decisions of the Commissions could be heard on-the-record or under a modified record review.

On-the-record review could also be extended to appeals from ANR permit decisions, should ANR develop a more formal hearing process for the issuance of its permits, ANR is committed to creating procedure to foster greater public notice and input upon the filing of an application. ANR is also committed to developing procedures to create a record for review.

We do not suggest that statutes governing record review of municipal decisions be altered. Currently, the law allows municipalities to opt-in to on-the-record review.

A modified record review process would allow the record that was prepared before the Commission or Coordinator to form the basis for the board's review on appeal. When appropriate, the board could allow the record presented below to be supplemented with additional evidence. This would allow parties on appeal to rely on the evidence, testimony and exhibits presented below, a process not available in *de novo* proceedings, where all such evidence must be presented again on appeal. In record review proceedings, the appellant bears the burden of convincing the reviewing body that the decision below was in error.

Appeals from the professional board would be to the Vermont Supreme Court, as is the case for matters appealed from the Environmental Division today.

Under this model, enforcement and certain water-related rulemaking duties would be transferred from the present NRB to the ANR Secretary. In other respects, however, the new professional board would retain the responsibilities and authority exercised by the present Land Use Panel concerning the administration of Act 250. The professional board would continue to promulgate Act 250 Rules and policies, provide legal and administrative support to District Commissions and staff, and exercise oversight of District Coordinators and staff. The board would also promulgate rules of procedure to govern matters before it.

Finally, there is no present mechanism to review the refusal of a District Commissioner or Coordinator to recuse himself or herself from a pending matter. In the judiciary, the Administrative Judge reviews such decisions of Superior Court judges. The board could hear motions which raise concerns about the service of a board member on a particular matter.

B. Improve Use of Consolidation

The Environmental Division has and exercises the authority to consolidate state and local environmental and land use permit appeals. However, consolidation is not always more efficient, as, on occasion, appeals are put on hold until related appeals reach the Court. Whether appeals remain at the Court or move to a professional board, the use of consolidation can be improved. Strategic refusal to consolidate can also be used to expedite the process, encourage settlement, and limit unnecessary delay.

C. Standard of Review – On-the-Record Appeals

The *de novo* standard of review drew considerable criticism from many developers, municipalities, environmental groups, District Coordinators, state agencies and citizen participants. The business community's concerns focus on the extra time and cost of a new trial before the Court, particularly since the applicant bears the burden of producing evidence in a *de novo* appeal, just as in the original permit application proceeding. Although some developers like the ability to make project changes in a *de novo* review (while opponents may view such changes as a "moving target,") some developers do not like the fact that project opponents have the opportunity to raise new arguments and provide new evidence in a *de novo* appeal.

Currently, municipal appeals can be taken on the record, if the municipality has complied with the requirements of the Municipal Administrative Procedures Act, 24 V.S.A. Ch. 36, although few municipalities have adopted MAPA, and some of those that have adopted the Act have had limited success creating a record for on-the-record appeals. Some municipal officials believe that *de novo* appeals deprive the municipality of a voice in the appeal unless it hires an attorney and participates as a party. These officials would prefer that municipal decisions be given weight or deference on appeal.

Business interests advocate a shifting of the burden on appeal to the appellant, so that the appellant must prove the claimed error. One way to do this would be to change the standard of review from *de novo* to on–the-record. In an on-the-record appeal, the decision on appeal is given deference, and the appellant bears the burden of demonstrating error in that decision. Act 250 permit proceedings are well-suited to such appeals, since they are recorded and staffed. It is worth exploring whether Act 250 jurisdictional opinions (administrative decisions by District Coordinators pursuant to 10 V.S.A. § 6007(c)) and some or all ANR permit decisions could be appealed on the record. Although it is certainly possible to expand and improve municipal use of on-the-

record appeals, it may be unrealistic to shift the standard of review in all municipal decisions from *de novo* to on-the-record at this time.

If the *de novo* standard for appellate review is not changed, shifting the burden of production and persuasion to the appellant could be done through legislation. However, citizen opponents cite a relative lack of access to project information and lack of resources to hire experts.

Under this option (improving the existing Environmental Division process), appeals from the Environmental Division would continue to be taken on-the-record to the Vermont Supreme Court.

D. Transfer of Water Resources Panel's rulemaking responsibilities

It has been suggested that the Water Resources Panel's rulemaking responsibilities should be transferred to ANR. Traditionally, to provide consistency between a rule and its application in the "real world," the agency that promulgates a rule also administers that rule. However, currently, under 10 V.S.A. §6025(d), the Water Resources Panel has the authority to adopt rules governing the protection and use of state waters, and ANR administers and develops the programs surrounding these adopted rules. ANR has the understanding of how these rules function on a practical level and has the technical expertise to make determinations about the effectiveness of these rules. Therefore, to fix this anachronism and improve the efficiency, understanding, and effectiveness of the water resources rulemaking process, authority to promulgate these rules should be transferred to ANR.

E. Other Ideas

Several other key concepts suggested by commenters are summarized below.

Greater Weight to ANR Permits in Act 250

Many commenters suggested giving ANR permits greater weight in Act 250 proceedings. Currently, many ANR permits and approvals give rise to rebuttable presumptions on certain criteria in Act 250 proceedings, *see* Act 250 Rule 19,[3] and a practical matter, Act 250 accepts many ANR permits as bases for making positive findings under relevant criteria. Because developers contend that they spend considerable time and money defending ANR permits in the Act 250 process, they suggest that ANR permits be treated as *dispositive* (not merely as rebuttable presumptions) in Act 250 review. However, because there is a relative lack of public process and transparency in the issuance of ANR permits under some programs, the public is denied the opportunity meaningfully participate in the ANR process in its initial

[3] In addition, technical determinations that ANR makes in issuing such permits and approvals are entitled to substantial deference in Act 250 proceedings.

stages. Were the public to be given a greater role in the issuance of ANR permits – ideally, in a manner that does not delay those permits or increase costs – such ANR permits could be dispositive in Act 250 proceedings, and relitigation of such permits before Act 250 could be avoided.

Professional Certification

Developer and consultant comments also favored increased professional certification in ANR permitting. This would shift more of the technical review to private professionals, such as engineers. It is already done effectively in several ANR permitting programs, such as the Construction General Permit for Stormwater Discharges, and in Wastewater permitting, both of which rely on engineer certifications. There was considerable discussion of the difficulty of policing professional competence, and the need for substantive review by the Agency. It is difficult to suspend a license for a certification error, and as a practical matter, very difficult to prove willful misrepresentation. However, there was considerable interest expressed in doing more with professional certification at ANR. On a related subject, some commenters suggested that ANR use its billback authority to allow applicants to pay for private experts to review and accelerate permit applications. ANR is interested in using this tool, but further legislative authority is required.

Greater Weight to Municipal Permits in Act 250

Several commenters suggested giving greater weight to municipal zoning and subdivision permits in the Act 250 process, with the condition that those municipalities that have adopted the Act 250 criteria and that have a sophisticated review process. Comments reflect that some communities are very sophisticated, have their own planning staff, rigorous and substantive review processes; whereas, other communities have difficulty applying their own bylaws in a consistent and procedurally sound manner. Act 250 currently provides that certain municipal decisions give rise to a presumption under certain Act 250 Criteria. See 10 V.S.A. § 6086(d). This presumption only applies to municipalities that have adopted the Municipal Administrative Procedures Act (MAPA) and a development review board (DRB) process. Currently, fewer than 10 municipalities have adopted MAPA, so the municipal presumption is underused.

Improve Municipal Permitting

Many comments were received about inconsistent quality and timing of municipal decisions, and the need for better training of municipal decision makers – not only on substance, but on ethics and process. What we heard is that some municipalities are so knowledgeable, resourced and sophisticated that their permitting processes rival Act 250, but many other municipalities struggle to get enough volunteers on their boards to review permit applications and lack staff and resources to handle those applications in an efficient and predictable manner. These are real issues affecting our municipalities,

developers and citizens. It is clear that the municipal permitting process remains a concern and requires further review.

Here are some of the suggestions we heard concerning the municipal permitting process:

- Better training for municipal zoning administrators and zoning board members. There was consensus that land use regulation and process has gotten very complex and difficult for part-time municipal officials and boards to administer effectively, properly and efficiently. State agencies such as ANR, ACCD, the NRB and the Secretary of State's Office can play a role in this training.

- Professional planning support for municipal zoning and planning boards. Providing a professional planner who would work for, and ride a circuit of specified municipalities. The planner could attend its municipalities' hearings to assist a DRB or planning commission with substantive and procedural issues and assure comprehensive decision making.

- Joint municipal/state hearings. See 10 V.S.A. § 6027(e). This idea was explored in some of the focus groups as a possible way to streamline the process and improve municipal decisionmaking. However, municipalities, Act 250 Commissioners and coordinators and others thought that there would be too many logistical difficulties because of differing scheduling, procedural and substantive requirements. Section 6027(e) has been in effect since 1970, and has only been used once or twice – without success.

- Apply the Municipal Administrative Procedures Act (MAPA) to all municipalities; make it state law. There was considerable support for this in the planning community, to provide basic procedural guidelines in every municipality. Currently, fewer than 10 municipalities have adopted MAPA. This tool has been on the books for many years, but it is underused.

- Use the Development Review Board process in all communities; make this state law. Many in the municipal official and planning focus group supported this as a way to improve the municipal process.

- Ethics rules. Set a statewide ethics rule and establish a process for administering it. Provide training to municipal officials to avoid conflict of interest issues.

F. *Permitting*

The public comment period resulted in hundreds of comments on the environmental protection process. Overwhelmingly, the public shared their appreciation

and respect for the principles of Act 250 and the District Environmental Commission process. The comments reflected four common themes for improving the environmental protection process: efficiency, transparency, and effectiveness of environmental protection.

Efficiency

The public offered many suggestions to create a more efficient permitting system including the following:

- Improve the often redundant application process:
  - Allow online submissions
  - Use "smart" forms on applications to allow applicants to input their identification information (name, address, etc.) one time and let the system replicate the information for each state environmental application
  - Give the applicants the ability to upload required application forms and documents
  - Aspects of this initiative are already underway

- Encourage collaboration, consistency and cross-knowledge
  - Encourage applicants to discuss with regulators and neighbors before beginning the application process
  - Reinstitute the Act 250 club or a development sub-cabinet where interested agencies can meet regularly to discuss Act 250 and related applications
  - Increase collaboration and coordination among different ANR permitting programs
  - Reconcile any conflicting requirements between different permitting programs
  - Increase collaboration coordination among different state and federal agencies with jurisdiction over a project, and better coordinate state agency input into any federal NEPA process

- Use ANR discretion to give weighty "weather reports" on projects prior to submission of an application
  - Identify projects that would not succeed outright to save the applicants time and money in the long run
  - Focus the regulated community on feasible projects and not waste their time and money on projects with a low likelihood of success

- Restructure the appeals process and incorporate a professional board

  - Issue permits without remand to the commissions
  - Hear evidence on-the-record
  - Provide technical expertise
  - Decide multiple permit applications for the same project at one time
  - Appeal directly to the Vermont Supreme Court

- Give greater weight to municipal permits issued by more sophisticated municipalities with robust Act 250 review process

- Make ANR permits dispositive in Act 250 proceedings with improved public process at ANR

- Allow professional certification in ANR permitting

Transparency and Public Participation – Party Status

The public expressed concern about the transparency of the environmental protection process and suggested ways in which increased public participation and modifications of the procedural structure could improve transparency including:

- Increase ANR notice of permits and applications to a wider range of potential participants (including adjoiners and other interested persons)
- Provide better opportunities for public participation, particular prior to ANR's "investment" in a draft permit
- Provide prompt notice of the filing of applications to allow more time for the public to comment on the application, not simply a draft permit
- Clarify party status and "particularized interest" through either trainings or an amendment to the Act 250 rules
- Standardize notice and comment periods across all permits
- Make ANR permit applications, permits, and related documents more readable, user-friendly, and easily accessible on the ANR website
- Move ANR procedures toward a process that allows for on-the-record review
- Develop procedures to ensure notice and opportunity for public input into formal Act 250 Jurisdictional Opinions
- Develop a rule to allow the reconsideration of formal Act 250 Jurisdictional Opinions by either the Board executive director or general counsel

Interestingly, comments from diverse participants in this process recognized that limiting party status does not really prevent the "NIMBYs" or those that use an environmental issue for other purposes, and that the process needs to be open and

accessible for it to have credibility. Further, participants noted a "20-minute rule" – an applicant usually knows within 20 minutes whether it can address a party's concerns or whether the party's opposition is intractable. In short, further restricting party status may not effectively limit inappropriate appeals and other solutions, such as greater process efficiency, should be considered to cull such appeals from legitimate issues.

Effective Environmental Protection

Through the public comment process two suggestions emerged to increase the effectiveness of environmental protection:

- Develop additional training for Act 250 District Commissioners and their staff, ANR permit program staff and permit specialists, and municipal officials
- Increase environmental enforcement

VI. Initial Fiscal Analysis

A preliminary fiscal analysis is being prepared and will be made available.

VII. Conclusion

The bulk of comments reflect that: (1) Act 250, and in particular, the District Commission process works quite well; (2) ANR can improve some of its processes through internal changes, and (3) the appeals process needs major improvements. Options presented in this report, if properly resourced and implemented, will improve the environmental protection process. Consistent with the goals of JRH.19, these recommendations are "intended to maintain standards assuring the environmental quality so important to Vermonters while making Vermont's land use and environmental permit process more efficient, more effective, more user-friendly, more open, more predictable, better coordinated, and quicker for applicants and citizens." We look forward to assisting the Legislature in making its policy choices for improving the process.

No. R-264. Joint resolution supporting the administration's efforts to examine and provide recommendations for improving and increasing the effectiveness of Vermont's state and municipal environmental protection process.

(J.R.H.19)

Offered by: Committee on Natural Resources and Energy

Whereas, our environment is the sum of everything around us, our beautiful mountains and valleys, our streams and lakes, the air we breathe and the winter's snow and summer's green grass, and

Whereas, to date, Vermont has managed to preserve many aspects of the state's environment, but this protective process could be administered more effectively and with greater certainty and transparency, and

Whereas, since 1970, Vermont's system of state and municipal environmental and land use regulation has grown and changed, resulting in overlapping laws and programs under the administrative jurisdiction of multiple state offices that do not always share the same regulatory objectives or coordinate in an optimal fashion, and

Whereas, the state of Vermont and local municipalities should be encouraging appropriate development at specific locations, and

Whereas, for example, attempts to effectively enforce water quality standards in Lake Champlain, promote a settlement pattern of compact urban and village centers surrounded by a rural, working landscape, and reduce greenhouse gas emissions have not resulted in achieving compliance with

statutory goals and not infrequently have resulted in contentious disputes and litigation, and

Whereas, project developers and citizens concerned about projects often voice complaints expressing confusion about the specific permits required for a given project and objecting that the regulatory process can be expensive, daunting, and time-consuming and that it needs to be predictable, and

Whereas, Vermont must ensure that its permitting process appropriately utilizes the benefits of new technology to improve efficiency while simultaneously achieving protection of the natural environment, and

Whereas, Governor Shumlin has directed the chair of the natural resources board and the secretary of natural resources to review Vermont's environmental and land use permitting system and to provide recommendations for improving the system and increasing its effectiveness, and

Whereas, the General Assembly continues to propose policies that improve environmental permitting and ensure that development protects Vermont's working landscape and natural environment, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly supports the administration's efforts to examine and provide recommendations for improving and increasing the effectiveness of Vermont's environmental protection process, and be it further

Resolved: That the General Assembly requests that the chair of the natural resources board and the secretary of natural resources, in consultation with other state permitting officials including representatives of the agencies of agriculture, food and markets, commerce and community development, transportation, and the environmental division of superior court, and municipal permitting officials, and invite public input through public meetings, the use of the Internet, and other forms of outreach, and be it further

Resolved: That the General Assembly requests that the chair of the natural resources board and the secretary of natural resources regularly meet and consult with the chairs of the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources during this review process, and be it further

Resolved: That the General Assembly requests that the chair of the natural resources board and the secretary of natural resources develop recommendations intended to maintain standards assuring the environmental quality so important to Vermonters while making Vermont's land use and environmental permit process more efficient, more effective, more user-friendly, more open, more predictable, better coordinated, and quicker for applicants and citizens, and be it further

Resolved: That the General Assembly requests the chair of the natural resources board and the secretary of natural resources to report to the chairs of the House and Senate Committees on Natural Resources and Energy and the

House Committee on Fish, Wildlife and Water Resources by January 15, 2012 with recommendations to meet the intent of this resolution, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the chair of the natural resources board and the secretary of natural resources.