Vermonters for a Clean Environment

Report on Act 181

How's it going?

Implementation of Act 181 began in January, 2025 when the new five-member Land Use Review Board (LURB) began meeting. The LURB initiated the tasks required by the legislation: approval guidelines for Tier 1A; stakeholder groups for wood products, appeals, Tier 3, and Rulemaking for Criterion 8C; guidance on the Road Construction Jurisdiction; guidelines for Regional Plan approvals.

Monitoring the Process

Vermonters for a Clean Environment's (VCE) Executive Director, Annette Smith, has been monitoring the progress of the implementation of Act 181, attending the majority of the LURB's regular meetings, participating in all four stakeholder groups, attending all four Tier 3 public hearings, attending all the RPC draft plan site visit/public hearings, and following the recently-developed Act 181 Facebook page that now has thousands of followers with a great deal of activity expressing concerns about Act 181.

> *"While the intention behind Act 181 is to protect our natural resources, it fails to consider the knowledge and sustainable practices that many of Vermont's farmers have long employed. By emphasizing collaboration over regulation, we can find solutions that both preserve our environment and sustain our rural economy. We propose a revision of Act 181 with input directly from those impacted – the farmers and landowners themselves."*

VCE is providing this Report on Act 181 to inform decision-makers and the public about what is working and what is not working, as guidance on what makes sense to proceed with or discard.

Act 181: Modernizing Land Use Review

The Land Use Review Board (LURB)

The five-member LURB is a positive change from the Natural Resources Board. Each board member brings a different set of skills and expertise to the discussions. Public board meetings were twice-weekly at the beginning and are now mostly once a week. Topics are given sufficient time to weigh varying opinions and often result in board members revising positions based on input from others. It is refreshing to hear these conversations in public, and confirm that the restoration of a board to oversee Act 250 is a major improvement. Public participation is welcome.

Expertise of the 5 board members is weighted more in the area of planning and zoning (3) compared to Act 250 (2). If any changes in expertise were to occur, it would benefit the program to have more expertise in Act 250 and less in planning and zoning. In any case, the current board members who lack expertise in one area are learning from their colleagues.

Years of neglect of the Act 250 program has resulted in the need for the LURB to focus on personnel, training and program functioning. The numerous tasks required of the LURB by Act 181 are a distraction from the important work that needs to happen to rebuild the Act 250 program. The LURB appears to be more than capable of recognizing what needs to be done, and doing it. However, the legislation as enacted has not made the improved functioning of Act 250 a requirement.

Public education about what Act 250 is, how it works and what it has accomplished, and focusing the LURB on the Act 250 program itself should be raised up as a priority.

Wood Products Manufacturers Report (June 30, 2025)

The Wood Products industry is extremely good at assuring their interests are represented in every venue afforded the public, and the industry is well supported by the Department of Forests & Parks. The industry faces many challenges, from safety of workers, aging workforce, mechanization, increasing wet conditions, and changing market conditions. Logging in particular is important for the working landscape, but it can have serious impacts on water quality degradation. The industry is always focused on pushing for reducing regulation whenever possible, and that is not necessarily in the best interests of the environment.

The LURB is doing a good job balancing the interests of the wood products industry with environmental and community interests.

<u>Appeals Report</u> (November 15, 2025)

Through the appeals stakeholder group, important information was revealed. Statistics from the Environmental Division show that there are more appeals of municipal permits than Act 250 permits, and that is true for housing permits as well as overall municipal permits. Similar to what happens with the Public Utility Commission's permitting process, motion practice and discovery were identified as methods that skilled litigators use to slow the process.

One housing development case in Putney was presented as an example of neighbors abusing the legal process and slowing development by over-litigating. However, there is more to the story. In 2003, VCE conducted interviews with groups of citizens around Vermont who had participated in Act 250 cases that were heavily litigated. Delving into the history of those cases, the common factor was what happened at the municipal level, with inadequate notice, lack of adequate hearing time, and other issues that then led neighbors to engage in litigation. After researching the Putney case history, and noticing comments posted on Facebook, it has become clear that neighbors felt disenfranchised at the local review level:

> *What if the same person was the planning commission chair and changed zoning for the developer, also removed covenants, oh yeah then wrote the Neighborhood Designation area application. Oh but he was also the chair of the development review board and in that capacity he ran the meeting for the permit submission in the town, addressed the interested parties that their concerns would be addressed. Oh but that never happened and he asked the select board to reduce the board size while the permit was in process. Then 30 days later the permit was approved. No one's concerns were addressed.*

The right to appeal is important. Not all proposed development is appropriate. Not all denials are correct. The public and developers have a right to due process.

The recurring topic of "on the record" appeals versus "de novo" was discussed, identifying problems with "on the record" while noting that starting afresh with an appeal is problematic, too. The idea of sending the record from down below to the appeals body and enabling parties to supplement the record is beneficial to developers and neighbor appellants and can result in a more efficient process.

The appeals report recommends minimizing motion practice and discovery, which the Environmental Division judges already can do but apparently do not.

At this time it makes sense to keep appeals of municipal permits with the Environmental Division. Appeals of Act 250 Jurisdictional Opinions and Act 250 permits are best heard by the LURB, when they are ready to hear appeals.

Regional Plan Approval Guidelines

There is a need for higher level review of Regional Plans. Act 181 does not address that need, while creating new problems.

Having served for more than a dozen years on a Regional Planning Commission and half a dozen or more years on a municipal planning commission, these observations are well informed, especially when combined with assistance to Vermonters in participation in regulatory proceedings at Act 250 and the PUC where plans have a regulatory role.

RPCs throughout Vermont operate differently. VAPDA does not require consistency or in any way address the lack of consistency. Some RPCs meet monthly, some every other month. Some have Project Review Committees and participate in reviews of Act 250 and PUC applications and provide recommendations, others do not. Some regional plans are written with regulatory language “must” and “shall” and some regional plans are intentionally written to not be regulatory.

Rutland, Chittenden County, Northwest, Lamoille County, Addison County, Mt. Ascutney RPCs have met with the LURB, with in person or virtual site visits, input from the LURB, input from State Agencies, and input from the public. All draft Future Land Use Maps are reviewed during those public meetings.

The process of developing the FLU maps appears to be inconsistent, depending on which RPC is doing the work. The goal is robust public outreach and meaningful public engagement. These goals are not being met. Few people have any awareness of this major change in land use designations, and those who do, such as planning commission and select board members, are pushing back on numerous fronts. RPCs present municipalities with maps that have designations different from the Future Land Use Maps contained in municipal plans. The terms “commercial” and “industrial” are gone, and those areas are called “enterprise” zones, and may merge with other uses. Some RPCs are mapping entire parcels while some are fragmenting parcels.

Reports from some areas of the state are that RPC staff are being aggressive in pushing towns to change their future land use maps, and pressure to apply for Tier 1B status is often unwelcome. Housing targets are seen as unreasonable and unrealistic.

From a regulatory perspective, municipal plan future land use maps that conflict with regional plan future land use maps are going to result in confusion, especially when those designations become relevant in regulatory proceedings and court.

What is the purpose of the Act 181 FLU maps? Looking at the statute, it appears to be to enable RPCs to approve Tier 1B designations. None of this makes any sense. It is overly complicated, not well explained or understood by planners, and is going to result in confusion and litigation.

Tier 1A Approval Guidelines (January 1, 2026)

Act 181's goal to reduce regulatory barriers to enable more new housing to be built relies on municipal zoning and planning. This may be a flawed premise.

Statewide zoning was under serious consideration in 1969, but conservationists felt 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 people who created Act 250 were truly brilliant in developing a system that insulates decision-making from local conflicts of interest that are inevitable in such a small state where boards are often filled with members of the development community.

Compared to Act 250 with its well-thought-out criteria, municipal zoning by-laws (Land Use Development Regulations, LUDRs) are often lengthy, complicated, and lacking clear directives. A project could be approved or denied depending on the portion of the by-law a board chooses to apply.

Model by-laws and model housing designs can only go so far in addressing the impacts of housing developments. A cookie cutter approach does not necessarily incorporate the specific environmental issues presented by the site. The Agency of Natural Resources can become involved in some issues on the municipal level, but cannot engage on other issues unless Act 250 is the permitting agency.

It is likely that the few municipalities that have the capacity to achieve Tier 1A approval will experience more appeals, not fewer. Act 250's District Commission process often results in better projects because people can work together and identify problems, resulting in beneficial changes to the project.

Tier 1A is available primarily to Vermont's largest cities. Municipalities give up benefits of Act 250 when choosing a Tier 1A designation. Most by-laws do not address impacts to groundwater, traffic, municipal and educational services, wildlife habitat or forests. Most towns do not have budgets to participate in appeals or enforce permits, while Act 250 does. Many municipalities struggle to fill paid and volunteer positions.

Concerns have been raised through the various stakeholder processes about eliminating Act 250 from downtowns, including ANR no longer participating in review of Special Flood Hazard Areas, the potential loss of green space with development filling up all available lands, the environmental protection of wetlands, wildlife corridors, and Rare, Threatened or Endangered species which exist in downtowns.

The interim exemptions will provide a better understanding of the effectiveness of eliminating Act 250 from development review in spurring new housing development while protecting the environment through municipal regulation.

Tier 3 Rulemaking & Report (February 1, 2026)

The Tier 3 stakeholder group reviewed all the areas listed in Act 181, and additional areas. The legislation constrains the protection of significant ecological areas by limitations on how much of the state a Tier 3 designation can be applied to, and that "no municipality or region is disproportionately impacted by Tier 3 designation that would limit reasonable opportunities for Tier 1 or Tier 2 designations."

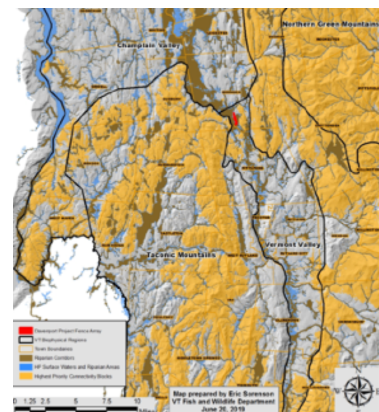
More problematic, though, is the reliance on mapping. Ed Stanak, former District Coordinator, reminds us that Vermont Supreme Court decisions require "bright lines" in statutory jurisdictional standards. The maps of the various resources are far from bright lines. Rather, they are pixelated and easily challenged through litigation.

The stakeholder group determined early on that Tier 3 would not occur in Tier 1 areas, which makes no sense. Important natural resources exist at all elevations and within populated as well as unpopulated areas.

Specific Issues with Tier 3 Mapping:

—Headwater streams used an algorithm that resulted in the image (right), eliminating an entire watershed headwater. The algorithm was changed and the headwater now shows on the maps. However, ecologists noted during the meetings that many miles of streams are not mapped. The headwater mapping is subject to interpretation and error.

—Significant natural communities rely on mapping done with agreement of landowners who were told the maps would not be used for regulatory purposes. Landowner permission will be required to use the mapped significant natural community. Ecologists recommend flexibility such that areas identified in the future can be added to the maps. Instead, the LURB intends to fix the maps at the time Tier 3 is in place. Some areas of Vermont have been studied, others have not. This issue needs a map of the areas of the state that have not been mapped.



— Habitat connectivity road crossings. The area in red on the right is an important pinch point in Brandon for connectivity between the White and Green Mountains to the east and Taconic and Adirondack Mountains to the west. The road next to it is not mapped as a habitat connector. Upon inquiry it was explained that the connectivity mapping is for forests. The pinch point is agricultural fields, not part of the mapping.

Tier 3 is not going to work. These resources can be protected through existing or modified Act 250 criteria.

Road Construction Jurisdiction

In theory, the Road Rule makes sense. In practice, is there evidence that it did or will do what is expected — to minimize fragmentation of forests and habitat?

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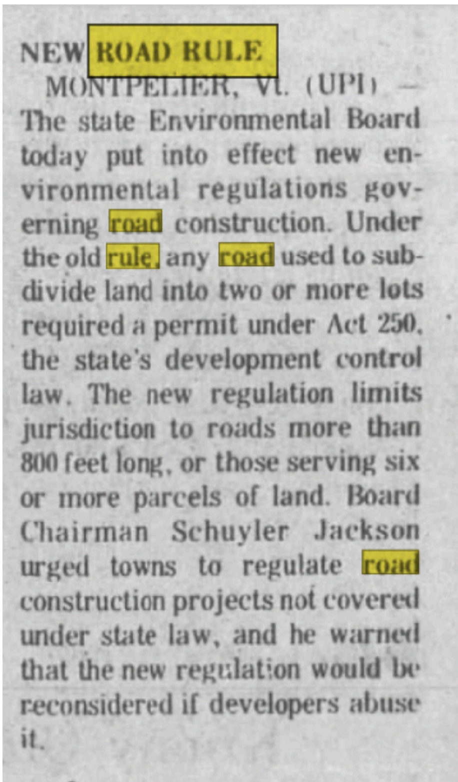

NEW ROAD RULE

MONTPELIER, Vt. (UPI) — The state Environmental Board today put into effect new environmental regulations governing road construction. Under the old rule, any road used to subdivide land into two or more lots required a permit under Act 250, the state's development control law. The new regulation limits jurisdiction to roads more than 800 feet long, or those serving six or more parcels of land. Board Chairman Schuyler Jackson urged towns to regulate road construction projects not covered under state law, and he warned that the new regulation would be reconsidered if developers abuse it.

The Road Rule was not part of the original Act 250 law. As explained in this article (right), initially any road used to subdivide land into two or more lots required a permit under Act 250. Field staff found administration was difficult and most roads were minor.

The Road Rule was in place for 25 years. It was eliminated in 2001 and has not been in place for 25 years. Therefore, it should be possible to evaluate the effect of the Road Rule. No evidence has been presented about the effectiveness of the Road Rule.

The image below is an example of a development that avoided Act 250 while the Road Rule was in place in 1989. A 66 acre parcel was subdivided into 5 lots. The 1000 foot driveway (red) to an existing home was lengthened by 799 feet (blue) to serve 4 new homes. The road extension plus new driveway lengths (yellow) total 962 feet. When added to the existing 1000 foot driveway, the total is under 2000 feet, which the proposed new Road Construction Rule would allow. The Road Rule did not and will not avoid, minimize or mitigate forest and habitat fragmentation.

In 2001, Ed Stanak gave a presentation to the legislature showing how developer consultants produced detrimental subdivision designs just to avoid the Road Rule.

The Road Rule is not defensible.

Forest Block & Habitat Connector (criterion 8C) Rulemaking (June 15, 2026)

This stakeholder group is at the stage where the discussion is about "avoid, minimize and mitigate." Act 181 calls for "no undue adverse impact." However, using the "avoid, minimize and mitigate" approach, the goals are unlikely to be achieved.

As seen in the example above (p.6) with the pinch point for habitat connectors, the project received a permit from the Public Utility Commission, which evaluates impacts to Forest Blocks and Habitat Connectors using its "no undue adverse effect on the natural environment" statute, but uses "avoid, minimize and mitigate" to decide.

VCE supports this additional criterion in lieu of Tier 3's habitat connector mapping, with rule making resulting in effective habitat protection.

Common Themes:

The Public: VCE has been a representative of the Public during these meetings. Apparently, groups met prior to the legislative session when Act 181 was enacted, including home builders, VLCT, environmental and conservation groups and many others. VCE was not included. Missing from the discussion were the people who live here and are affected by this extremely complicated and extensive change in zoning, planning, and environmental regulation of land uses. This lack of public involvement also happened with the first Renewable Energy Standard (RES) and the updated RES.

It was observed when VCE first came into existence in 1999 to address gas power plants and pipelines that "the deer and bear have more protections than the people who live here." This is still true. Legislators need to consider the interests of Vermonters.

Permit Specialists: The loss of Permit Specialists in Act 250 was identified in every stakeholder group as a major issue that has resulted in more difficulty for applicants in navigating the permitting process.

The Rural Backlash

Act 181 was adopted without traditional public hearings in the statehouse, without public outreach, and with very little citizen testimony in legislative committees. The legislation makes massive changes to zoning, planning, and regulation of private property. Volunteer planners are being presented with maps created by state entities, which are perceived as forcing state agendas on small communities. It is the antithesis of how Vermont has planned. While the intention is for this planning effort to have robust public outreach and input, in practice, hardly anyone knows about it.

Landowners are rightly objecting to mapping that may require costly regulatory permitting. The impact of the rural backlash is not to be underestimated.

Recommendations

Tier 3, the Road Rule, Regional Plan Future Land Use Maps and LURB Approvals should be repealed. These aspects of Act 181 are detrimental to environmental protection and invite litigation. They are resulting in calls to repeal Act 250 altogether.

Start over with the input of the public.

Increased environmental protection can be achieved through adjusting existing Act 250 criteria.

Act 250 is a good law. The continuing diminishment of its application by shifting permitting to municipalities is the wrong direction for Vermont's environment and development.

After years of neglect and hostility towards what is essentially a good process and law, the administration of the Act 250 program needs to be prioritized to improve its functions and ease permitting of development by restoring Permit Specialists, restoring district offices with District Coordinators in each office, creating an Ombuds Office to assist all parties with participation to reduce costs, reduce conflicts, and assure appropriate development that protects the environment.

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