

From: Shems, Ron
Sent: Thursday, January 12, 2012 9:39 AM
To: MacLean, Alex
CC: Markowitz, Deb; Recchia, Chris; Mears, David; Kehne, Melanie
Subject: Bullets.OTR&EDprocess
Attachments: Bullets.OTR&EDprocess.docx

Hi Alex,

Suggested features of an enhanced Environmental Court are attached.

I also took the liberty of suggesting basic features for on-the-record review. We have the opportunity to set the standard for on-the-record review and need to have a standard in mind to help formulate a bill.

David Mears's thoughts are incorporated into the attached.

Please let me know if you have questions.

--Ron

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Improved Environmental Division process:

- Add at least one magistrate:
 - Adds *decision-makers* who can address motions and/or particular cases
 - Allows for rigorous case management
 - Allows for rigorous and case-specific alternative dispute resolution
- Limit discovery and make greater use of pre-filed testimony and exhibits (when evidence is taken)
- Rigorous case management

On the record review:

- Record consists of all documents, materials, exhibits, testimony and other information reviewed or considered by ANR or District Commission
- Applies to Act 250 and ANR
- ANR will provide earlier public notice and generally improve process
- Further District Commission training and assure adequate audio-visual record
- Standard:
 - Additional evidence allowed for good cause (avoids unnecessary remands and provides flexibility (e.g. tailor project to address concerns)
 - Deference to ANR technical determinations
 - Deference to agency interpretation of its rules and statutes
 - Otherwise, Environmental Division applies independent judgment
- Burden on Appellant
- Apply Rules of Appellate Procedure