

Senate Committee on Natural Resources & Energy
Vermont Natural Resources Council's (VNRC) Comments on S.311 and H.687
Brian Shupe, Executive Director
April 12, 2024

A. Responses to Charlie Baker's testimony dated April 11, 2024 on behalf of VAPDA

1. VNRC supports amending the title and/or purpose statement
2. We support incorporating Sections 2-22 of S.311 into H.687 with important modifications, with the exception of Section 16 regarding bylaw adoption and Section 18 regarding appeals. With regard to the appeals provisions of S.311, we do not support altering who is entitled to appeal a municipal permit under Title 24, Chapter 117. S.311 alters the any ten persons (voters, residents and real property owners within a municipality) who sign a petition to appeal a municipal land use permit by changing 10 to 25 people or 3% of the population of the town. VNRC believes that we should create an efficient permitting and appeals system rather than limiting the right to appeal. We would support creating a Housing Board of Appeals to expedite housing appeals as a way to address any issues with the processing of municipal appeals. VNRC believes that the new ERB will help expedite Act 250 appeals.
3. We are very concerned that the draft temporary exemptions for housing development in S.311 are overly broad, excessive in scale, and have the likely potential result of adverse impacts to a number of natural and community resources. Should the Committee choose to include some variation of those exemptions, we encourage the Committee to adopt VAPDA's proposal for interim Tier 1A and Tier 1B, with the change that the exemption is capped at up to 50 units of housing per project on 10 acres or less within a ½ mile radius around Designated Downtowns and a ¼ mile radius around designated Village Centers, and in NDAs and Growth Centers, in communities that have zoning and subdivision regulations in place, until 2026.

This approach would ensure that the interim exemptions do not go beyond the long term exemptions that will be provided in the 1A and 1B areas and be based on sound planning principles to avoid the unintended consequences of unregulated development. The ½ and ¼ mile radius around Designated Downtowns and Village Centers respectively are based on sound planning principles and can serve as a proxy for mapping growth areas while the Tier 1A and 1B maps are being developed. These interim exemptions would double the housing exemption in S.100 in a wider area than provided by S.100 while adhering to sound planning principles.

We also support VAPDA's recommendation to extend the date that priority housing projects are exempted in Act 47 until the end of 2026 and to allow in designated Downtowns and Village Centers with zoning and subdivision regulations permanently.

Finally, it is important to note that H.687 incorporates several provisions of S.311 related to Act 250 jurisdiction over certain types of residential development, including:

- exemptions for ADUs;
- exemptions for the conversion of hotels to affordable housing and the conversion of commercial uses to up to 30 units of housing.

4. Page 7, Section 5, line 5: We agree that criteria 9 and 10 should not be included in the list of state and municipal permits.
5. Section 29. §6034 Tier 1A Area Status. Several witnesses, including VAPDA, have testified in favor of simplifying the requirements for obtaining Tier 1A status. We agree to a point, but not with all of the suggestions that have been made.

We believe the provisions of H.687 that require water and/or sewer for Tier 1A and 1B designations should remain as passed out of the House. While we acknowledge that state permitting would likely prevent substandard water supplies or wastewater disposal, areas allowing on-site systems may result in scattered, leap-frogging development patterns, while land within defined wastewater or water supply service areas would avoid this and would reinforce compact settlement patterns and the efficient use of infrastructure. This also reinforces the requirements of Act 47 (The HOME Act) that requires municipalities to plan for minimum densities and housing choices within those service areas.

VNRC does not support eliminating the regulatory requirements necessary to achieve Tier 1A status, but does support the following changes:

(E) Permanent zoning and subdivision bylaws that do not include broad exemptions that exclude significant private or public land development from requiring a municipal land use permit, **and that include the following provisions:**

- ~~(F)~~ **Urban design standards** ~~Urban form bylaws~~ for **development within** the Tier 1A area that further the smart growth principles of 24 V.S.A. chapter 139, adequately regulate the physical form and scale of development, **and provide with** reasonable provision for a portion of the areas with sewer and water to allow at least four stories, and conform to the guidelines established by the Board.
- ~~(G)~~ Historic preservation **standards** ~~bylaws~~ for established design review districts, historic districts, or historic landmarks pursuant to 24 V.S.A. §4414(1)(E) and (F) for the portion of the Tier 1A area that meet State historic preservation guidelines issued by the Department of Housing and Community Development pursuant to 24 V.S.A. chapter 139.

We agree that section (H) that references “wildlife habitat planning bylaws” should be deleted. Threatened and endangered species are currently covered under state law, and

S.213 anticipates a permitting program for river corridors. In order to consider significant natural communities, we recommend the provision in Section 26 of the bill that defines “Tier 3” should be amended as follows: (26) “Tier 3” means an area consisting of critical natural resources which may include river corridors, headwaters streams, habitat connectors **or natural communities** of statewide significance, and as may be further defined by the Board.

Other requirements in the bill are reasonable expectations for a basic municipal planning and land use regulation program and should remain unchanged.

B. Additional comments for the Committee’s consideration, which align with the NRB Necessary Updates to the Act 250 Program Report:

- Beyond the comments above, VNRC strongly supports the concept of creating Tier 1 to incentivize compact development and housing in smart growth locations.
- **VNRC strongly supports the creation of Criterion 8(C) to address forest blocks and habitat connectivity.** The need for such a criterion has been recognized in multiple legislative reports and studies including the most recent NRB Necessary Updates to the Act 250 Program Report, which included the consensus recommendation to have a functioning criteria for forests. More specifically, the Legislature commissioned three different reports on this issue, including a seminal 2015 Vermont Forest Fragmentation Report submitted by the Agency of Natural Resources (ANR), which recommended updating Act 250 to moderate the impacts of development on critical forest blocks and connectivity areas across the state. The suggested forest blocks and habitat connector language in H.687 passed the Vermont Legislature as part of S.234 in 2022 and H.926 in 2020 and is the result of a nine-year legislative effort to encourage good site design and address forest fragmentation in Act 250.

New 8(C) criterion would not prohibit development. It would encourage proactive site design to avoid or minimize undue adverse fragmentation impacts, and if that is not feasible, rulemaking would determine if mitigation is allowed, and if so, how it would work (on-site versus off-site mitigation, etc.). The criterion is very much designed to encourage proactive site design to minimize forest fragmentation versus prohibiting development. A rulemaking would determine the standard for avoiding, minimizing, or mitigating impacts so there is not an undue adverse impact. The rulemaking would develop design standards to minimize the fragmenting impact of development.

- **VNRC strongly supports the establishment of the “Road Rule.** Under H.687, Tier 2 would be the bulk of our state, and the only jurisdictional improvement in this category would be the addition of a road rule, which would essentially bring back a jurisdictional approach that used to exist in Vermont. The old road rule used to review roads that were over 800 feet in length; however, it did not work very well because driveways were not covered which created a loophole. The proposed road rule would bring back the review

of an 800 foot road, but also add the review of a combination of roads and driveways that equal 2,000 feet, which is close to a half mile.

- **VNRC strongly supports including Tier 3 rule making process to achieve the goal of protecting critical statewide resources through locational Act 250 jurisdiction. In regards to the Tier 3 working group on page 48 or H.687, we suggest the following slight rewording to recognize that all three departments in the Agency of Natural Resources shall participate in the working group:**

(b) On or before January 1, 2025, the Board shall convene a working group of stakeholders to provide input to the rule prior to pre-filing with the Interagency Committee on Administrative Rules. The working group shall include representation from regional planning commissions, environmental groups, science and ecological research organizations, woodland or forestry organizations such as the Vermont Woodlands Association and the Professional Logging Contractors of the Northeast, the Vermont Housing and Conservation Board, the Vermont Chamber of Commerce, the League of Cities of Towns, the Land Access and Opportunity Board, the Vermont Ski Areas Association, the Department of Taxes, Division of Property Valuation and Review, the Department of Forests, Parks and Recreation, the Fish and Wildlife Department, the Department of Environmental Conservation, and other stakeholders., ~~such as the Vermont Ski Areas Association, the Department of Taxes, Division of Property Valuation and Review, the Department of Forests, Parks and Recreation, the Vermont Woodlands Association, and the Professional Logging Contractors of the Northeast.~~