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March 13, 2024

House Committee on Environment and Energy  
State House  
Montpelier, Vermont

Subject: H.687, Ambiguity between §6001(3)(A)(xii) and §6001(3)(A)(v)

Dear Committee:

Please remove what appears to be a total exemption from Act 250 jurisdiction for VTrans' road construction. Or please resolve an apparent conflict between two subdivisions of the same definition of development.

Section 24 proposes to add to the definition of development what roads and driveways are subject to Act 250 jurisdiction. This definition would be §6001(3)(A)(xii). It would place single roads greater than 800 feet under the jurisdiction of Act 250. It would also exempt State or municipal roads from this part of the definition of development.

There appears to be a conflict with §6001(3)(A)(v) which brings the construction of State (and other) improvements on more than 10 acres of land under the jurisdiction of Act 250. If VTrans' (or a municipality) is proposing construction of a road more than 800 feet long on more than 10 acres of land, which condition governs? Exemption because it is more than 800 feet long? Or under jurisdiction because it involves more than 10 acres of land)

VTrans has been trying to become exempt from Act 250 since at least the hearings on the Commission of the Future of Act 250. VTrans has been denied every time. VTrans' claims have been based on spurious claims that the combined other permits are equal to Act 250 and that the National Environmental Policy Act is equal to Act 250.

VTrans has submitted as testimony a list of all the permits it needs for highway construction. I compared the permits to the Act 250 criteria and found that the permits failed to consider almost half the Act 250 criteria. I compared the National Environmental Policy Act to Act 250 and found that NEPA's environmental reviews also do not cover many of Act 250's requirements. In addition, NEPA does not protect resources. Rather, NEPA requires that adverse effects be identified so that we know what the adverse effects are. I testified to that effect in 2018 to the Commission on the Future of Act 250. I testified also to that effect at Senate Natural Resources and Energy in 2021.

Request: Please amend Section 24 to clarify that §6001(3)(A)(xii) does not supersede §6001(3)(A)(v) when construction involves State or municipal roads and driveways.

I apologize for not having caught this earlier.

Sincerely,  
Thomas Weiss, P. E>