

From: "Martin, Trey" <Trey.Martin@state.vt.us>

Date: January 21, 2014, 6:27:49 PM EST

To: "rhartwell@leg.state.vt.us" <rhartwell@leg.state.vt.us>, Diane Snelling <DSnelling@leg.state.vt.us>

Cc: "O'Grady, Michael" <mogrady@leg.state.vt.us>, "Chapman, Matt" <Matt.Chapman@state.vt.us>, "Mears, David" <David.Mears@state.vt.us>, "Warren, Susan" <Susan.Warren@state.vt.us>

Subject: ANR Recommendations on H.526 Decision Points

Dear Chairman Hartwell,

Thank you for the opportunity to present this summary of our conversation this morning regarding key decision points in H.526. ANR appreciates everything you are doing to move a thoughtful and effective bill, balancing difficult political and practical questions. Although there are many issues left to consider in H.526, the following are issues we think will have critical impact on the final bill:

1. Municipal Delegation - ANR recommends authorizing delegation to municipalities with functionally equivalent bylaws that accomplish the goals of H.526. We believe it is necessary that ANR have the flexibility and discretion to enter into responsible partnerships with municipalities whose bylaws will achieve equivalent protection goals, even if those bylaws are structured differently than the statewide standard in the bill.

2. Non-Conforming Lots - ANR recommends against adding a discrete variance procedure to the bill. As currently drafted, the bill provides the discretion to ANR to engage with applicants in a best-fit analysis in cases where lot size, site conditions, or municipal setback requirements make conformance with the standards impossible.

3. Paths / Stairs - ANR recommends clarifying that the exemption for paths include stairs with reasonable landings and platforms. The ANR does not support expanding the exemption to 12 foot wide paths. If the Committee believes that such a path is necessary, it should be an act that requires an individual permit.

4. Shoreland Encroachment - ANR recommends that the bill provide limited exemption for projects permitted under the Title 29 Shoreland Encroachment program. Such an exemption should recognize that on lakes with naturally fluctuating water levels, an encroachment permit will permit a dock to be placed above the statutory mean water line. In those cases, the bill

should acknowledge ANR jurisdiction under the encroachment program and exempt activities related to construction of these docks from shoreland permitting jurisdiction.

5. Mosquito Control - ANR recommends that the public health emergency - mosquito control language in H.526 as passed by the House be added back into the bill.

6. Exemption for Railroads - ANR does not agree that a new exemption is necessary for railroads. Federal law regulating the activities of railroads would preempt any separate regulation under this bill.

7. Exemption for Section 248 Activities - ANR agrees with the recommendation from Vermont Gas that the bill be clarified to exempt activities receiving a CPG under 30 VSA Section 248, consistent with the exemption for activities permitted under Act 250.

8. AIS enforcement in the judicial bureau – ANR agrees that leaving the existing authority in the environmental court but expanding the persons who can issue civil complaints to law enforcement officers would address ANR and the Courts concerns.

9. Nonconforming lots with a structure – ANR believes that our intent may have not been clear and that changes made to section regarding nonconforming lots with a structure, 1445(a)(1)(B), should include a requirement to comply with the requirements of 1444(a)(2), (3), and (4).

Best,
Trey Martin

Trey Martin, Senior Counsel for Government Affairs
[phone] 802-505-0986
[email] trey.martin@state.vt.us

Agency of Natural Resources
Department of Environmental Conservation

Note: Written communications to and from state officials regarding state business are considered public records and, therefore, may be subject to public scrutiny.

To preserve, enhance, restore, and conserve Vermont's natural resources, and protect human health for the benefit of this and future generations.