House Natural Resources and Energy Committee
February 13, 2014
H. 823 Designation Program Incentives
Vermont League of Cities and Towns

Thank you for the opportunity to testify.

The Department of Housing and Community Development has worked hard to provide incentives for development to locate in designated areas and for municipalities to decide that seeking designation will be a fruitful endeavor for their communities. The incentives in H. 823 revolve around Act 250. H. 823 would amend Act 250 criteria generally and not just with respect to state designated areas. This is a discussion that has gone on for years and has been highly controversial.

We support the increased numbers of housing units that would trigger Act 250 jurisdiction in state designated areas and the proposal to count only units in those discrete projects - not projects outside of the designated areas.

Act 250 has jurisdiction over -

1) commercial or industrial projects involving more than ten acres within a radius of five miles of any point on any involved land in towns that have adopted zoning and subdivision bylaws (10 acre towns);
2) commercial or industrial projects involving more than one acre within a municipality that has not adopted zoning and subdivision bylaws (1 acre towns); or
3) commercial or industrial projects involving more than one acre in municipalities that have adopted zoning and subdivision and have also adopted an ordinance to have this Act 250 jurisdiction apply (one acre towns by ordinance).

Of those 24 municipalities with state designated downtowns, five are one acre towns. All of the municipalities with state designated growth centers are ten acre towns. Act 250 applies in those places on commercial or industrial projects of more than ten acres only and today has very limited jurisdiction in designated downtowns or growth centers.

We believe strongly that this threshold for Act 250 jurisdiction is appropriate. When a town has taken the trouble to adopt zoning and subdivision, they are implementing a land use plan that reflects the municipality's priorities and vision for the future. It also reflects the purpose of planning in Vermont. "It is the intent and purpose of this chapter to encourage the appropriate development of all lands in this state by the action of its constituent municipalities and regions, with the aid and assistance of the state…" 24 V.S.A.§ 4302(a)

Below please find a list of designated downtowns and Act 250 jurisdictional thresholds.

Designated Downtowns	**Act 250 applies for projects of more than:**	
Barre City	10 acres	
Bellows Falls	10 acres	
Bennington	10 acres	(also has a growth center)
Bradford	1 acre	
Brandon	1 acre by ordinance	
Brattleboro	10 acres	
Bristol	1 acre	
Burlington	10 acres	
Middlebury	10 acres	
Montpelier	10 acres	(also has a growth center)
Morristown	10 acres	
Newport City	10 acres	
Poultney	10 acres	
Randolph	10 acres	
Rutland	10 acres	
Springfield	10 acres	
St. Albans City	10 acres	(also has a growth center)
St. Johnsbury	10 acres	
Vergennes	10 acres	
Waterbury	1 acre by ordinance	
Hartford/WRJ	10 acres	(also has a growth center)
Wilmington	1 acre	
Windsor	10 acres	
Winooski	10 acres	

The proposal to exempt projects in a state designated downtown upon certification from various state agencies that there will be no undue adverse effect or significant impact on historic sites, transportation facilities, natural resources or primary agricultural soils is a very high bar and effectively means that the developer has to address all those issues with the relevant agency instead of Act 250. There does not seem to be consideration of tailoring those standards to encourage infill development in designated downtowns that might appropriately affect one of those attributes. However, there may not be many of

those projects that would be subject to Act 250 in any case, as we have just described.

H. 823 would delete Act 250's current definition of a "rural growth area" and replace it with "existing settlement", a definition that is significantly more constrained than "rural growth area" and raises the bar for all projects seeking Act 250 permits.

How will a district commission determine that an existing community center is "typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens"? What is typically? What if you don't have water and wastewater today? This definition could severely restrict development in areas outside the six growth centers and 24 designated downtowns or a village center that is also a neighborhood development area. Nor is there any provision for enterprise zones or industrial parks in this definition that we can envision. (page 9 of H.823 as introduced)

We note that there is always a long list of projects that anticipate using the state revolving loan funds for wastewater and water supply. The pressure on those funds will only increase as the total maximum daily loads (TMDLs) for Lake Champlain, the Connecticut River and Lake Memphramagog are implemented. At the same time EPA is cautioning municipalities to address climate change in their projects. And funds from the federal government are expected to decline overall. The federal agency was specific about the climate change issue in its January 17 letter to Vermont regarding the Lake Champlain TMDL, as follows.

> Include in each section a discussion of how the implementation approach will take climate change into account. Climate adaptation and flood resilience should be addressed for each major category of practices. The report should note the phosphorus increases projected in EPA's climate change analysis, and explain how BMP, AAP, AMP, and other management measures will be designed to be effective for higher intensity rainfall events and greater annual flow volumes. A stand-alone section should be added to the report to summarize the efforts Vermont has already undertaken to prepare/adapt to climate change (e.g., new culvert sizing specifications, etc.) and the additional things the state will be doing moving forward.

So it may or may not be the case that there is room for additional priority to be given to designated centers in the funding of projects eligible for the wastewater state revolving loan fund.

We note that the Agency of Natural Resources does indeed collect fees from project developers who are connecting to a municipal wastewater system. However the municipality issues the permit to connect and charges a fee. The agency provides no service in return for that fee and by their own admission, has not done so for some time because they don't have the human resources to permit every connection to a municipal system. In 2007 and every subsequent

opportunity we testified in the house Ways and Means Committee that those fees should be eliminated. We oppose the new language on page 23 that would condition the agency issuing a permit.

Thank you.

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