

H. 823 – Land Use and Act 250

Sandra Levine, Senior Attorney; February 19, 2014

Conservation Law Foundation **opposes H.823 as introduced.**

The bill fails to provide meaningful or effective protections for natural resources that are the hallmark of Act 250. Instead, the bill relies on **creating new and broader exemptions** from Act 250, reduces protections for important agricultural resources, and reduces citizen participation. To the extent there is a problem, it arises from the **implementation of existing Act 250** standards and does not require changing the substantive criteria as proposed.

Foundation of Act 250 provides for **development to conform to the natural resources** on which we all rely and to provide for objective, citizen oriented environmental review of major development projects. Act 250 includes citizen participation, both in the make-up of the district commissions and in the participation in the proceedings. H.823 removes some decisions from the District Commissions and creates exemptions that preclude interested persons from participation.

H.823 **fails to provide incentives for development in appropriate locations** and instead relies on expanding Act 250 exemptions, which eliminates review.

Previous reviews and changes to Act 250, including the growth center legislation in 2006, held firm in **not changing the substantive criteria of Act 250**. There is broad acceptance and benefit from the substantive criteria and they should not be altered.

Proposed provisions regarding **strip development already exist in Act 250** case law and do not provide new or additional protections. See *In re Waterbury Shopping Village*, #5W1068-EB (July 17, 1991).

H.823 **reduces protections for agricultural resources**. Allows more instances where a lower ratio for off-site mitigation can be used and expands practice of off-site mitigation contrary to existing law and Act 250 cases that provide for **off-site to be used only as a last resort**. See *Southwestern Vermont Health Care Corp.* #8B0537-EB at pg 44 (2001) (“Thus, *Mitigation Agreements should be used only as a last resort – only when an applicant has seriously attempted, but failed, to meet the subcriteria.* ... if efforts to reduce the impacts of a project are not even attempted, then Mitigation Agreements will be seen as no more than a cost of doing business.” (emphasis in original)).

Specific comments based on Overview provided by Aaron Adler February 11, 2014

Regulatory Benefits:

- Act 250:
 - Increasing jurisdictional thresholds – This **excludes more projects** from Act 250 review. Historically good projects do not need exemptions and can meet the Act 250 standards.
 - Exemption for downtown development from substantive Act 250 review – This **transfers oversight from Act 250 District Commissions to State Agencies**. Act 250 will only serve a ministerial role. Eliminates the citizen board review that is part of Act 250 and subjects agencies to increased political pressure to approve projects.
 - Reduced level of service for traffic criterion in downtown areas – This makes sense and can likely be **implemented through rulemaking** or individual cases.
 - Expands areas where reduced off-site mitigation is allowed – **Reduces protections for agricultural resources** by reducing the mitigation ratios for areas outside of growth centers. **Fewer acres will be protected** at a time when agricultural resources are threatened. Changes in mitigation practices in 2006 growth center legislation specifically limited to growth centers. Reduces case-law protections that mitigation should be used only as a “last resort” to avoid mitigation payments becoming a cost of doing business and allowing more conversion of agricultural resources to development. Mitigation itself does not “protect” resources. It allows overall reduction of Vermont’s agricultural resources.
- ANR rule change regarding sewer funding – Statute does not need to change to amend an ANR rule. Contrary to current rule would **expand to sprawl locations** areas for prioritizing spending for sewer infrastructure.
- ANR wastewater permits – **Eliminates ANR review**.

Land Use and Natural Resources Provisions

- Replaces 9(L) rural growth areas with existing settlements – **Definition of strip development already exists in case law** and has been used to deny Act 250 permit under Criteria 8 (aesthetics) and 10 (regional plan)
- Traffic criterion – **Good to expand to include non-vehicular** forms of transportation. Act 250 currently mostly focused on automobile transportation.