Vermont Chamber of Commerce
Testimony on S.220
February 26, 2014

Sect. 1

10 V.S.A. § 6001(**) is added [offered by the Administration]:

"Industrial park" means an area of land planned, designed and zoned as a location for one or more industrial buildings , that includes adequate access roads, utilities, water, sewer and other services necessary for the uses of the industrial buildings, and includes no retail or office use except that which is accessory or incidental to an industrial use, that is permitted under this chapter. and in existence as of January 1, [YEAR TO BE ADDED].

Policy consideration:

Whether to define "industrial park" as having "*no retail or office use except that which is accessory or incidental to an industrial use"* which would likely eliminate many if not most based on some of the comments below. It could be defined "*as consisting of a majority of industrial uses but does not include commercial or retail parks."* Recommend eliminating the *date of existence* since it would not apply to the creation of new industrial parks.

Comments on the definition:

A concern I would have is what about options for on-site childcare? Or other accessory uses that support the park? Wondering if some "accessory use" language could be inserted?

I would say end the sentence in the first underlined paragraph at "under this chapter." Keeping in the language about an industrial park in existence as of a certain date, defeats the purpose of the enterprise zone program which is to allow for financing the infrastructure of new parks.

Concern for the use of the words "no retail of office except when as an accessory to industrial use...." perhaps something like the majority of the use is not retail or office. If we get a standalone business that needs retail or office space we would not be able to lease them space in this area.

As I read the definition, an industrial park that already had an office use not associated with an industrial operation would not qualify. That would probably eliminate Tech Park, Meadowlands, and maybe leave Catamount subject to question. There are expense-sensitive office operations that cannot afford to locate in a downtown. Think of those that need 100 or more parking spaces at $60 a month minimum.

I understand the reasoning for excluding retail uses but I would NOT prohibit office, as this language does. Rather, I would rather leave it to the discretion of the local DRB which knows the community and the pertinent facts best. In my experience, different municipalities (VT and NH) handle office uses in Industrial Parks in various ways. For example, some exclude office entirely, Lebanon NH allows office for companies with 50 employees or more as a Special Exception and other towns are happy to see a less invasive occupants (noise, trucking, smoke, etc.) as a very good thing and welcome them. I can cite examples where office uses nicely complement industrial and heavy commercial tenants such as in Billings Farm in Wilder (Hartford), an Industrial Park that I had a hand in planning, developing and selling for (Idlenot/Agri-Mark) beginning in the early 90's. There are large production, distribution and testing buildings for King Arthur Flour, Advance Transit and Concepts-ETI respectively happily co-existing

with Billings Park (numerous small office condos) and CCVT. Olcott Park just up the road a mile has a more "industrial feel" than Billings but also mixes offices in several small and one large complex at the cul-de-sac.

Thus the definition could read:

10 V.S.A. § 6001(**) is added:

"Industrial park" means an area of land planned, designed and zoned as a location for one or more industrial buildings including adequate access roads, utilities, and other services necessary for eligible facilities. The park must be planned, designed and zoned to accommodate primarily industrial uses.

Sec. 2. 10 V.S.A. § 6001f is added:

§ 6001f. Regulatory incentives for industrial parks.

Master plan permit application. Pursuant to 10 V.S.A., chapter 151, any person or persons who exercise ownership or control over an area planned, designed and zoned for industrial uses, may apply for a master plan permit for that area to the District Environmental Commission pursuant to rules of the Natural Resources Board.[1] Municipalities making an application under this subdivision are not required to exercise ownership or control of the affected property. In approving a master permit, the District Environmental Commission may set forth specific conditions that an applicant for an individual project permit will be required to meet. Subsequent review of individual projects within a master permitted industrial park shall be conducted in accordance with the Board's rules on minor application procedures (see below) and, notwithstanding any other provision of law, shall not be subject to the jurisdiction or permitting requirements of 24 V.S.A. Chapter 117.

Note: An alternative would have the District Environmental Coordinator issue an "administrative amendment" to the master permit allowing an individual project to move forward in accordance with NRB 34(D)[2] which is not currently structured to authorize such

[1] *Prior to the adoption of formal rules, the NRB's Master Permit Policy and Master Permit Guidance Document would control.* http://www.nrb.state.vt.us/lup/publications/masterpol.PDF

[2] NRB Rule 34*(D) Administrative amendments to a permit.*
(1) A district commission may authorize a district coordinator to amend a permit without notice or hearing when an amendment is necessary for record-keeping purposes or to provide authorization for minor revisions to permitted projects raising no likelihood of impacts under the criteria of the Act. Applications processed under this section shall be exempt from the distribution, posting and publication requirements of 10 V.S.A. § 6084 and sections (E) through (G) of Rule 10 except that all parties of record and current adjoining landowners shall receive a copy of any administrative amendment. The chair of the district commission may authorize a waiver of personal notice of the issuance of the administrative amendment to adjoining property owners by the district commission provided that such waiver is based on a determination that the adjoining property owners subject to the waiver reasonably could not be affected by the proposed administrative amendment and that service to each and every property owner by the district commission would constitute a significant administrative burden without corresponding benefit.

action. This would place a lot of responsibility on the District Coordinator who would function as a zoning administrator in issuing a local permit for a "permitted use"and may be beyond what it required to provide substantial regulatory relief for the permitting of industrial uses. The minor application procedure below provides a proven avenue for timely permit issuance with all necessary safeguards in place. This would be the recommended choice.

NRB Rule 51. Minor Application Procedures

(A) Qualified projects. Any development or subdivision subject to the permit requirements of 10 V.S.A. § 6081 and these rules may be reviewed in accordance with this rule as a "minor application" if the district commission determines that there is demonstrable likelihood that the project will not present significant adverse impact under any of the 10 criteria of 10 V.S.A. § 6086(a). In making this determination, the district commission may consider:

(1) the extent to which potential parties and the district commission have identified issues cognizable under the 10 Criteria;

(2) whether or not other State permits identified in Rule 19 are required and, if so, whether those permits have been obtained or will be obtained in a reasonable period of time;

(3) the extent to which the project has been reviewed by a municipality pursuant to a by-law authorized by 24 V.S.A. Chapter 117;

(4) the extent to which the district commission is able to draft proposed permit conditions addressing potential areas of concern; and

(5) the thoroughness with which the application has addressed each of the

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(2) In particular, administrative amendments may be authorized to transfer a previously unrecorded permit to a new landowner, to incorporate a revision in a certification of compliance, or approve minor changes to a permitted project when such revisions will not have any impact on the criteria of the Act or any finding, term, conclusion or condition of prior permits. Prior to the filing of an appeal to the environmental court pursuant to Chapter 220 of Title 10, any party, affected adjoining landowner, or prospective party shall file a motion to alter relating to any contested administrative amendment pursuant to Rule 31(A). Denial of a motion to alter an administrative amendment may be appealed to the court pursuant to Chapter 220 of Title 10.

10 criteria.

(B) Preliminary procedures. The district commission shall review each application to determine whether the project qualifies for treatment under this Rule. If the project is found to qualify under section (A), the district commission shall:

(1) prepare a proposed permit including appropriate conditions; and

(2) provide written notice and a copy of the proposed permit to those entitled to written notice under 10 V.S.A. § 6084; and

(3) provide published notice as required by 10 V.S.A. § 6084; the notice shall state that:

(a) the district commission intends to issue a permit without convening a public hearing unless a request for hearing is received by a date specified in the notice which is not less than seven days from the date of publication; and

(b) the preparation of findings of fact and conclusions of law by the district commission may be waived; and

(c) any person as defined in 10 V.S.A. § 6085(c)(1) may request a hearing; and

(d) any hearing request shall state the criteria or subcriteria at issue, why a hearing is required and what evidence will be presented at the hearing; and

(e) any hearing request by a person eligible for party status pursuant to 10 V.S.A. § 6085(c)(1)(E) must include a petition for party status under these rules.

(C) No hearing requested. If no hearing is requested by a party by right or a person eligible for party status pursuant to 10 V.S.A. § 6085 (c)(1), the proposed permit may be issued with any necessary modifications unless the district commission determines to schedule a hearing, on its own motion. The district commission may delegate the authority to

sign minor permits which have been approved by the district commission to the district coordinator or the assistant district coordinator;

(D) Hearing requested. Upon receipt of a request for a hearing, the district commission shall determine whether or not substantive issues have been raised under the criteria and shall convene a hearing if it determines that substantive issues have been raised. If the district commission determines that substantive issues have not been raised, the district commission may proceed to issue a decision without convening a hearing. If a hearing is convened, it shall be limited to those criteria or sub-criteria identified by those afforded party status pursuant to 10 V.S.A. § 6085(c)(1), or by the district commission unless the district commission, at its discretion, determines before or during the hearing, that additional criteria or subcriteria should be addressed.

(E) Party status petitions. The district commission shall rule on all party status petitions prior to or at the outset of the hearing.

(F) Findings of Fact. The district commission need only prepare findings of fact and conclusions of law on those criteria or sub-criteria at issue during the hearing. However, findings of fact and conclusions of law may be issued with a decision to address issues identified and resolved during the minor application process, even if no hearing is held.

(G) Material representations. Upon issuance of a land use permit under minor application procedures, the permit application and material representations relied on during the review and issuance of a district commission decision shall provide the basis for determining future material changes to the approved project and for initiating enforcement actions.

Sec. 3. PRIMARY AGRICULTURAL SOILS: INDUSTRIAL PARKS

10 V.S.A. § 6093(a)(4) is amended to read:

(4) Industrial parks.

(A) Notwithstanding any provision of this chapter to the contrary, a conversion of primary agricultural soils located in an industrial park as defined in this chapter ~~subdivision 212(7) of this title~~[3] ~~and permitted under~~ subject to jurisdiction under this chapter ~~and in existence as of January 1, 2006~~, shall be allowed to pay a mitigation fee computed ~~according to the provisions of subdivision (1) of this subsection, except that it shall be entitled to~~ in accordance with a ratio of 1:1, protected acres to acres of affected primary agricultural soil and a "price-per-acre" value, which shall be based on the amount that the Secretary of Agriculture, Food and Markets has determined to be the recent, per-acre cost to acquire conservation easements for primary agricultural soils in the same geographic region as the proposed development or subdivision.

~~If an industrial park is developed to the fullest extent before any expansion, this ratio shall apply to any contiguous expansion of such an industrial park that totals no more than 25 percent of the area of the park or no more than 10 acres, whichever is larger; provided any expansion based on percentage does not exceed 50 acres. Any expansion larger than that described in this subdivision shall be subject to the mitigation provisions of this subsection at ratios that depend upon the location of the expansion~~.

(B) In any application to a district commission for a permit amendment ~~expansion of an existing industrial park, compact development patterns shall be encouraged that assure~~ the most efficient and full use of land shall be allowed consistent with all other applicable criteria. ~~and the realization of maximum economic development potential through appropriate densities~~. Industrial park expansions and industrial park infill shall not be subject to requirements

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[3] ***10 V.S.A. § 212. Definitions [affecting VEDA]***

As used in this chapter:

(7) "Industrial park" means an area of land planned and designed as a location for one or more industrial buildings, including adequate access roads, utilities, and other services necessary for eligible facilities;

established in subdivision 6086(a)(9)(B)(iii) of this title, nor to requirements established in subdivision (9)(C)(iii).