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H. 823 – Land Use and Act 250
Sandra Levine, Senior Attorney; April 3, 2014

Conservation Law Foundation **opposes passage of H.823**.

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)).