LAKE CHAMPLAIN REGIONAL
CHAMBER OF COMMERCE

February 19, 2016

Chairman Bray and Committee Members
Senate Natural Resources Committee
State House

Dear Chairman Bray,

The Lake Champlain Regional Chamber of Commerce appreciates the time the Senate Natural Resources Committee has taken to fully understand the Department of Environmental Conservation permitting regime and the potential areas for improvement. Several of our members have testified on earlier drafts of the bill – Kathy Beyer with Housing Vermont, Ernie Pomerleau with Pomerleau Real Estate, and David White with White + Burke. Their comments have all carried common themes: the desire for predictability, a frustration with duplication and redundancy in proceedings, and the support for a strong public process coupled with a concern about litigants who use late entry into the appellate process as a way to delay and obstruct the permitting process rather than as a means of reaching a positive or agreeable outcome on a proposed piece of development.

As you are aware, recent drafts of the bill have met with general support from the development community but with some questioning the need for and effectiveness of an additional administrative hearing process. The newest draft strikes a better balance both for the development community and the public. Requiring an appellant to have participated during the DEC permitting process in order to file an appeal at the Environmental Court ensures that the public, the Department, and the developers engage in a robust conversation early on, when all parties are better able to make changes to potential plans before moving forward. This requirement would also bring DEC permit appeals in line with Act 250 permit appeals, where appellants are already required to obtain party status before a district commission in order to appeal to the Environmental Court. Only allowing appellants to appeal those issues that they raised below is standard public policy across numerous courts and litigation processes because it encourages parties to address concerns at a less-costly and less-time consuming stage rather than needlessly using up limited court resources.

Shifting the burden of proof in Environmental Court appeals from DEC permits is a common sense modification of the current process, where an applicant is placed in the position of demonstrating that the permit they have already been issued by DEC is valid and should be granted by the Environmental Court. Under this system, the appellant has only to raise their hand and suggest an issue before the applicant is forced to spend significant time and money after an already-lengthy permitting process. Fairness suggests that appellants should be required to take an active role in objecting to previously-issued permits.

I regret that I will not be able to join you for this morning's discussion on the recent draft of S.123 in your Committee, but please accept this written testimony as our support for the work your Committee is doing and for Draft No 3.1 of the bill.

Thank you,

Katie Taylor