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Commission on Act 250 (Act 47)

October 8, 2018

Via E-mail

Act250Comments@leg.state.vt.us

Re: Forest Products Processing

Dear Commission,

These comments are made to inform the Commission on Act 250 of my experience with Act 250 over many years. The impact of Act 250 on the forest products processing economy has had long term effects on Vermont's forests. Please consider these comments as you hopefully work to help protect Vermont's forests in your deliberations.

These comments are made by me as a private citizen. They do not represent the opinion of any group, organization or the landowners I assist. I am a self-employed private consulting forester, working with private forest landowners in Vermont. I have been working as a forester in Vermont for the past 40 years. I have worked for the federal government, state government, forest industry, and as a private independent forester. My career includes serving as the Commissioner of the Department of Forests, Parks and Recreation and as the Secretary of the Agency of Natural Resources. I have had experience with Act 250 from several aspects.

Vermont's vast forest resource is a critical part of what defines our state. It is important as an ecological, economic, social and spiritual part of all of our lives. The work that you do to shape the next 50 years of regulatory influence on the forests of Vermont will be critical in the long-term health, viability and the very existence of the forest. A viable forest product processing economy at the most local level possible is essential for affordable private forest land ownership.

Act 250 has been a great asset to our state in guiding development and helping to protect valuable public resources including the forest. It has also unfortunately been an unreasonable burden to the forest products production industry. During my career I have had experience on many sides of the Act 250 System. I am willing to share my negative experiences, but I suspect many folks with active projects will not do so out of a real fear of retribution by regulators.

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I spent 20 years of my career as an industrial forester for a mid-sized sawmill in northern Vermont. Bell-Gates Lumber Corporation closed its operations in 2004 after well over 100 years of operation. The company employed about 20 fulltime workers and more importantly provided a high value local timber market for forest landowners. Bell-Gates specialized in high quality hardwood lumber marketed all over the world. The sawmill produced hardwood lumber that was used in fine musical instruments including Steinway pianos as well as many brands of guitars, violins and mandolins. It also provided quarter-sawn hard maple lumber originally used in the production of rotor-blades for helicopters deployed for the Vietnam War. That specialized technology is still in use today in modern helicopters. Unfortunately, despite of its high end products, part of why Bell-Gates Lumber Corp. is not in business today is because of the regulatory burden and expense of Act 250.

As part of an efficient small business my role at Bell-Gates not only included managing the thousands of acres of company timberland but also log procurement from private loggers and landowners, as well as log scaling and grading. In addition I was tasked by the owners with handling all of the regulatory compliance for the sawmill facility. This included all of the Act 250 permitting for plant operations and improvements.

Bell-Gates was a commercial operation occupying more than one acre in a town with no zoning. Even though the sawmill pre-dated Act 250 by many, many decades the plant was quickly taken under jurisdiction as plant improvements and modernization took place over the years. That jurisdiction meant that virtually any change needed to go through the Act 250 process for review. Sometimes this was a simple process that only required minimal paperwork, a hearing process and associated fees. Other times this was a prohibitive process resulting in the abandonment of the project due to costs and time. There was very little predictability in how a project was to be treated. The following are a few memorable examples of my interactions with Act 250.

The company chose to invest in a co-generation system to utilize the plants waste products of bark and sawdust to generate heat and electricity. At the time this was fairly innovative and an early example of now common systems. This installation required a lengthy and costly planning and permitting process. I will not go into full detail of all the twists and turns we went through here but I will focus on one of the Act 250 issues. The co-generation system burned wood-waste in a boiler that needed an air pollution operating permit. Complicated, but achievable with the right pollution control systems installed. When Act 250 was reviewing the installation of the air pollution control system permitted by the Agency of Natural Resources, the Act 250 District Coordinator decided he did not “like” the aesthetics of the smoke stack design. This was simply the personal opinion of the Act 250 Coordination with no negative comments from any interested party. His personal opinion alone halted the entire project. The Act 250 Coordinator wanted major modifications to the pollution control system. These modifications ANR could not allow due to the associated reductions in air pollution control. We were stuck in the middle.

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This placed the company where we could not satisfy one regulatory agency because it would not satisfy the other. This was true bureaucratic catch-22 that would be laughable if not for the expense and frustration. The Issue was finally resolved, at greatly increased cost, with changes to the aesthetics but also with decreased air quality protections. As a final insult to injury, the Act 250 District Coordinator requested a fee based on the full value of the entire facility, not just the requested smoke stack modification. An appeal of that demand was finally resolved in favor of Bell-Gates, but only after additional legal costs and further delays.

Act 250 requires the participation of state agencies as statutory parties, if they request that participation. Bell-Gates purchased an adjacent house and land for the needed expansion of the log storage yard. The house had been abandoned by the owner after flood waters had inundated the property several times. The house was (unfortunately for Bell-Gates) on the very edge of the Village of Jeffersonville. Jeffersonville is listed on the National Register of Historic Places. Act 250 required the permission of the Vermont Office of Historic Preservation to sign off on the demolition of the house. That was denied, because, although abandoned and in a flood plain, the house was a “good example of a bungalow style of which there are only about 2000 examples in Vermont”. We operated the log yard, around the abandoned house, for many years until a subsequent flood again inundated the structure. This flood brought a visit to the village by government officials, including the members and staff of the congressional delegation. State officials were so embarrassed by the explanation of the house’s story (as told, standing in flood water, to all present, by the owner of Bell-Gates) that they relented and allowed for its ultimate demolition. We never calculated the full costs of “the house” but they were significant.

The same property purchased for the log yard expansion that contained “the house” also required an Act 250 Amendment for use as a log yard. This process involved permitting for a log sprinkler system to keep the logs wet in the summer months to avoid spoilage. The Agency of Natural Resources required a discharge permit for the discharge of well water into the adjacent Lamoille River. That water ran from the log plies into a drainage ditch that ran along Vermont Route 15. Act 250 required coordination with and permission from the Agency of Transportation for use of the company’s own land. That permission was granted (hurray)! The discharge permit required that the well-water be treated with a vegetated discharge ditch maintained by the landowner (Bell-Gates). All went along fine, with all required sampling of the discharged well water within all permit standards and the ditch functioning fine, until, one day, with no notice, the Agency of Transportation decided to do roadside ditch maintenance. They dredged the entire ditch down to bare mineral soil eliminating all “vegetation” and sending Bell-Gates into immediate violation of both the ANR discharge permit and the Act 250 permit. What fun. Without doing anything wrong, we were under enforcement and in the catch 22 world of conflicting state agency actions while hundreds of thousands of dollars of high grade hardwood logs baked, un-watered in the sun.

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There are many more stories I could relate that are very similar to these examples. My point is to demonstrate the need to provide regulatory relief for forest products processing facilities. Small tweaks to the law will not fix the systemic problems. These problems continue to exist today. Act 250 is well suited to regulate many types of development. It seems to be well understood and functions in a reasonable way for large-scale subdivisions and housing projects. Ski area development is somewhat more problematic and unpredictable, but the industry has adapted to the system. For small scale commercial business the expense and unpredictability can be intimidating but an industry of consultants seems to help guide the way, for a price. Most projects seem to get through if they persevere and have planned for the time and expense.

The major problems do to come not from the basic framework of Act 250. They come from when too much power is allocated to the technicians or regulators in the process. When the ability to manipulate approval is given to a few with little oversight or accountability the system can become unpredictable or even corrupt. This has become more common than it should in the Act 250 process. The basic criteria and review is sound but the process has become more convoluted over time. Major changes in Act 250 are not needed but certain industries that have real value to our state and whose success is closely aligned with the goals and purpose of Act 250 should be treated differently. The negative impacts of the system should be evaluated and mitigated. This is clearly the case for agriculture and forestry. Those original exemptions were sound and forward thinking. The working landscape is what defines Vermont.

The forest products processing industry is particularly unsuited to the framework of Act 250. Some type of exemption process seems to be the only solution. Bell-Gates Lumber and many other sawmills are gone; the logs now go to Canada. Skilled workers with good paying local jobs have been mostly replaced with seasonal tourism jobs. Local forest landowners now get less for their timber due to the elimination of local markets. Increased transportation costs and less competition have decreased the return to landowners for forest products while at the same time land management costs and property taxes have increased. We cannot expect forest landowners to keep their land forested when they cannot afford to do so anymore. Other land uses bring far higher returns.

Forest product processing is discouraged under the present regulatory environment. Vermont has transitioned into a third world country economy of raw material export and the loss of natural resource based value added processing. This is not good for the long-term viability of the forest. Local markets and value added facilities are a critical economic incentive to keeping forests as forests. Conservation is best achieved when forests have an economic return to the landowner.

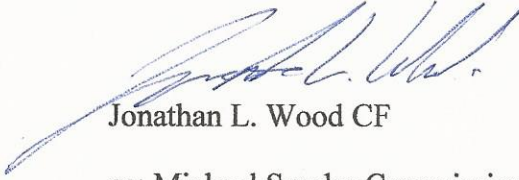
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Act 250 is an important asset to help keep Vermont a sustainable rural culture. But the regulatory burden of Act 250 is real. The costs and implications of the permit system are part of the loss of local primary and secondary forest product processing. That is now resulting in the loss of forests themselves. Without local log markets the value of forest land is often higher when converted to other uses. These impacts can be mitigated with some common sense reductions in the regulatory burden on these essential natural resource based processing facilities.

Vermont's forests need your help to survive into the future. How Act 250 impacts forest products processing for the next 50 years will make a big impact on what percent of Vermont stays forested for the next 50 years, and beyond.

Thank you for the opportunity to comment and thank you for your service to Vermont.

Sincerely,



Jonathan L. Wood CF

cc: Michael Snyder Commissioner, Vermont Department of Forests, Parks and Recreation

Sam Lincoln Deputy Commissioner, Vermont Department of Forests, Parks and Recreation

William Coster Director of Planning, Agency of Natural Resources

Senator Richard Westman Lamoille County

Zak Mayo Candidate for State Representative Cambridge and Waterville

Lucy Rogers Candidate for State Representative Cambridge and Waterville