House Natural Resources Testimony

4-12-18

Lyle P. Jepson, Executive Director Rutland Economic Development Corporation

Thank you for providing us with time to explain our support for and desire that H.665 be taken up as soon as possible in the future. To support the goal of protecting Vermont, it is essential that we grow the tax base upon which financial support can be drawn. We need strategic and incremental growth of business and industry, which in turn can contribute to maintaining the way of life to which we have become accustomed. We need a healthy tax base upon which to draw funding so that we can clean up our lakes and waterways, protect our air, and secure a healthy future for our grandchildren.

The Joint Policy Committee of Rutland Economic Development Corporation and Rutland Region Chamber of Commerce suggest that actions be taken to strengthen our state's and, in particular, the Rutland Region's ability to grow economically and to pay for our future.

H.665 proposes three simple yet far reaching and economically necessary steps. H.665 as introduced by the entire House delegation from Rutland County and others "proposes to require the District Environmental Commission under 10 V.S.A. chapter 151 (Act 250) to issue a decision on an application within 20 days following the close of a hearing, to allow them to grant land use permits on condition that other State approvals are received, and to direct that certain State and municipal permits and approvals constitute conclusive evidence on specified Act 250 criteria."

Why is making this change so important? The need for economic growth is completely intertwined and dependent upon growing our population and the resulting workforce. We hear a great deal about Vermont's population stagnation and decline. We hear a lot about how our population is aging. In fact, a recent Rutland Herald editorial pointed out that in three to four years, in every county but Chittenden County, there will be only one person working for every retiree, child or dependent in the state. One person who is working, for every three that are not. Unless we grow our population we are destined to increase taxes on fewer people. Our ability to protect Vermont's natural environment will be unsustainable.

Therefore, to help fuel a robust economy, each and every action taken by each and every legislative committee must be laser focused on supporting population growth. We ask that of this committee as well. Population growth can be supported by allowing businesses to grow and create high skill, high paying, high demand jobs, each of which will generate revenue for the state of Vermont.

Businesses and local leaders tell us that a leading contributor to limited private investment, job and wage growth, and productivity is the lack of predictable, timely, and cost effective permitting procedures. Our Joint Policy Committee has been and will continue to be participants in the "Commission on Act 250: The Next 50 Years" by providing recommendations and by attending Commission hearings. We are hopeful that recommendations will result from that review that will, in fact, result in highly predictable, timely and cost effective permitting procedures.

But there is no reason to wait. Today we come to you to support the elimination of untimely delays, to encourage the elimination of duplication of effort, and to inspire you to trust the agencies empowered to provide permits with the authority to do their jobs, thus allowing businesses to grow, jobs to be created, our population to grow, and funding to be made available to protect Vermont.

Blair Enman, from Enman Kesselring Consulting Engineers, will provide you with examples that have hindered such growth. Jim Goss from Facey Goss & McPhee Attorneys at Law, will provide specific opportunities for change. And Larry Jensen, President of the College of St. Joseph will point out how Vermont must come together and pull in the same direction for the benefit of the entire State.

Comments or questions can be directed to Lyle Jepson, Executive Director of Rutland Economic Development Corporation at lyle@rutlandeconomy.com or Mary Cohen, Executive Director of the Rutland Region Chamber of Commerce at mcohen@rutlandvermont.com.

House Natural Resources Testimony

Testimony of Blair Enman, PE
Past President and Founding Partner
Enman Kesselring Consulting Engineers
Rutland, Vermont

April 12, 2018

Chairman Dean and members of the House Natural Resources & Energy, thank you for allowing me to present testimony on H.665, a bill pertaining to Act 250, Conservation, and Development.

I am a Vermont Registered Professional Engineer and have been engaged in the Act 250 process since 1973. My first Act 250 application and hearing was for the Juster Mall, now Home Depot in Rutland. I have been involved in greater than 100 Act 250 decisions, most of lately, how to avoid Act 250.

Why? Because we cannot effectively advise a client if they will get a permit, how long it will take, and what it will cost to endure the process. The process is not predictable, timely, or economical. And as such, this is a job killer. The process must be predictable, must be expedited, and it must be cost effective.

The objective of Act 250 should be **to assist applicants in the permitting process** and **to issue permits**.

I support the draft bill H.665 as this will add to the predictably, timely administration, and help to contain the cost.

§ 6085 (f) *A decision of a Commission shall be issued within 20 days of the completion of deliberations …*

Simply stated, time is money, Vermont has a short construction season, and timely permit issuance will enable projects to commence. There is no reason that a permit should not be issued within 20 days of "*completion of deliberations*."

Sec. 2. 10 V.S.A. § 6086 is amended to read:
§ 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA 13

(c) Requirements and conditions. *The District Commission shall not delay issuing a permit under this chapter on the grounds that the development or subdivision has not received one or more other required State permits or approvals; however, it may include a condition that construction may not commence until such other required permits or approvals are received.*

This is the way Act 250 used to be, construction was deferred until some ANR permits were issued, but the Act 250 permit was issued.

The review of ANR applications and permit issuance is a time-consuming process. As engineers, we can generally advise an applicant on the probable duration for the ANR & VTrans approvals. Some of these permit reviews may span several months or more.

Most normally, ANR & VTrans permits are predictable; the rules are specific about what is allowed and what may not be permitted. To that end, when an ANR or VTrans application is submitted, we have a high degree of comfort that the permit will be issued.

Allowing the District Commission to issue an Act 250 permit with a condition, "*that construction may not commence until such other required permits or approvals are received",* will allow the applicant to proceed with construction negotiations, financing, contracting, all in anticipation of the issuance of the pending ANR & VTrans approvals.

(d) (1) Conclusive evidence. *The issuance and submission of permits and approvals identified in this subdivision shall constitute conclusive evidence that the improvement, discharge, emission, or other activity described and approved in the permit or approval is not detrimental to the public health and welfare and complies with the specific criterion or criteria that are identified in this subdivision.*

Compliance with Vermont's ANR regulations is sufficiently complex such that extensive education, training, experience, and licensing are mandated. The reviewers are employees of the state of Vermont, and educated and trained for compliance with the regulations.

The Act 250 District Environmental Commissioners are laypeople. These individuals routinely lack detailed knowledge of the ANR and other regulatory programs. That is why the issuance of an ANR or other permit should be ***CONCLUSIVE EVIDENCE,*** which the requirements of the state of Vermont regulations, developed to protect the health, safety, and welfare, of the state of Vermont and its citizens.

For many of the permits listed in H.665, I shave spent countless hours over decades trying to explain the regulations, design, permitting, construction, operation, and maintenance to a consideration that is most normally beyond those not licensed to design or permit systems.

Example: We were the engineers of record for a shopping center wherein nobody attended the hearing other than the applicant and commission. The applicant had a letter of intent from VTrans approving the access. The commission was not satisfied with the VTrans letter and conducted two additional hearings solely devoted to traffic. These hearings required the applicant to provide a team of professionals at an extensive expense (time and money).

Inasmuch as the commission was unable to comprehend the design and permitting criteria, the commission also retained their own traffic expert to listen to attend hearings and issue a professional opinion.

The independent traffic engineer, employed by the commission, found for the applicant.

Were this legislation in place, then the commission would rightly have concluded that the information presented by VTrans was conclusive.

(2) Rebuttable presumptions. This subdivision applies to State and municipal permits and approvals not set forth in subdivision (1) of this subsection.

(A) The Natural Resources Board may by rule allow the acceptance of a permit or permits or approval of any State agency with respect to subdivisions (a) criteria (1) through (5) of this section or a permit or permits of a specified municipal government with respect to subdivisions (a) criteria (1) through (7) and (9) and (10) of this section,

Significant portions of the Act 250 preparation, hearing, testimony, and findings of fact are derived from the testimony taken at the hearing. The reliance on the state permits would allow the applicant and the commission to know that the applicant has satisfied the burden with respect to the criteria.

This will allow the commission to respect the wishes of ANR, *create a presumption that the application is not detrimental to the public health and welfare with respect to the specific requirement*, expedite the drafting of the findings of fact, and draft/issuance of the Act 250 permit.

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TO: **The Honorable Members of the House Committee on Natural Resources, Fish and Wildlife**

FROM: **James P.W. Goss, Esq.**

DATE: **April 12, 2018**

RE: **H.665**

I appreciate the opportunity to offer my comments on H.665, a bill which proposes some modest changes to the Act 250 process which may have great benefit to applicants proceeding through that process. By way of background, I am an attorney practicing in Rutland, Vermont. For the past 34 years the majority of my practice has involved representing applicants in our various state and local permitting processes, including local zoning approvals, various Agency of Natural Resources permitting programs and Act 250. Probably 60% or more of my practice has specifically been representing applicants in the Act 250 process. Over my career, I have represented dozens of applicants before the Act 250 Commissions, the former Environmental Board, the Environmental Court and Vermont Supreme Court.

My office represents people and businesses pursuing commercial and industrial projects in Vermont from "beginning to end," including contract negotiation, title clearance, permit due diligence, project design consulting, permitting/appeals, financing and final conveyancing of land. My particular interest in supporting H.665 evolves from a change that I have seen in the potential clients who have approached me regarding permitting new projects over the last 3 years or so. Previously, a potential applicant would come into my office with a concept and would seek guidance on how to navigate their way from contract to actually breaking ground. However, in recent years, I have found that when new clients come into my office, the first topic of conversation has been the reputed onerousness of Vermont's permitting regime. In several recent circumstances, I have found myself having to do a "selling job" to try and allay "stories" that potential applicants have heard anecdotally regarding that process. Matters have now developed to the point where for every applicant which I take through the permit process, 1 or 2 others have elected to go elsewhere exclusively because of the reputation that the process has acquired. This phenomenon is not reflected in the much vaunted statistics showing how many

Act 250 Permits are granted, versus how many are denied, or how many are treated as Minor Permits that are granted without ever having a hearing. These are circumstances where a permittee never pursues a project to begin with simply because of the reputation, deserved or not, which the process has.

In light of this fact, it behooves all persons involved in the process, from legislators, to agency appointees, to State employees, to eliminate as much inefficiency and redundancy from the process as possible. Two particular aspects of H.665 accomplish this and I believe are worth the Committee's attention. The first of these concerns the way certain other Agency of Natural Resources permits are treated in the Act 250 process. Presently under Act 250 Rule 19, a number of State permits establish presumptions of compliance with certain of the Act 250 Criteria. Thus, a project which has received an Air Pollution Control Permit from the Agency is presumed to comply with Criterion 1, Air Pollution. A project which has received a Wastewater Disposal and Water Supply Permit from the Agency is deemed to have an adequate water supply and to adequately dispose of waste and therefore complies with Criterion 1B, Waste Disposal, and 2, adequate water supply. A number of other Agency permits create similar presumptions of compliance under other Criteria. However, the way Act 250 is presently structured, these presumptions are rebuttable. That is, even though an Agency permit on one of these subjects may be final and unappealed, a party to an Act 250 proceeding in which the permit is being considered can attempt to attack it collaterally by claiming it was improvidently issued.

The foregoing is problematic for two reasons. Firstly, the Agency permits and the regulations which they implement by and large are highly technical in nature. The applications for those permits are prepared by engineers and others with highly specialized training and are considered by technical professionals within the Agency with similar training who have no dog in the fight other than to comply with the regulations. Those regulations also are the product of juried, nationally accepted science in areas such as air pollution, erosion control, water pollution and water supply.

Our Act 250 Commissions, although composed of dedicated individuals, are by and large populated by lay people who do not have the scientific training or understanding to truly assess whether highly technical permits have been properly issued or not. In one recent case where an Air Pollution Control Permit was submitted in the underlying Act 250 proceeding to show that a project would not result in undue air pollution, two Agency professionals and their lawyer attended multiple evening hearings endeavoring to defend proper issuance of a permit which was already final and unappealed. I would submit that this is a poor use of State resources and totally unnecessary where a comprehensive review has already occurred in the Agency permit process itself.

Formerly, the argument was that individuals in the vicinity of a project would not be aware of consideration of the subordinate State Agency permits and that the Act 250 hearing would be the first opportunity where they would have a chance to challenge them. As the Committee is aware, the Vermont legislature recently passed a comprehensive overhaul of how applications for ANR permits are noticed to the general public and how approvals of those

permits are handled. Thus, potential opponents to a project now have ample opportunity to challenge State permits in the course of the Agency permit proceeding itself rather than in Act 250. Given this fact, it makes sense now to make final Agency permits conclusive proof of compliance as to the Act 250 Criteria that they pertain to. This is a goal which H.665 accomplishes and which I believe is well worth the Committee's time to consider.

The second aspect of H.665 which I believe merits special attention has to do with the mechanics of issuing an Act 250 Permit. As noted above, most projects proceeding through the Act 250 process also require one or more subordinate ANR permits. As a general matter, even though the Agency of Natural Resources permits may be applied for prior to the Act 250 Permit, they often do not issue until many weeks after the Act 250 hearing has essentially concluded due to workload and other reasons within ANR. As a consequence, issuance of the Act 250 Permit is held up until the subordinate State permits are issued, which can sometimes be many weeks after all of the Act 250 proceedings have concluded.

The foregoing creates a serious logistical issue for projects as generally a bank will not even consider an application for financing for a project until its Act 250 Permit has been issued; there is less emphasis on the subordinate ANR permits which are also required. H.665 affirmatively allows a District Commission to go ahead and issue an Act 250 Permit, subject to receipt of other needed State permits after the fact. While seemingly a distinction without a difference, this has the effect of issuing the Act 250 Permit which lenders wish to see before considering financing and so allowing project applicants to proceed with that financing. It has no practical effect on the environment as construction of the project itself cannot proceed until all of the subordinate State permits are in hand. However, it at least allows a potential permittee to proceed with obtaining their financing and moving their project along while waiting for the Agency to issue the other State permits.

The foregoing two changes to Act 250 proposed in H.665 should be supported by persons on all sides of the environmental and natural resources debate. In the case of the Agency permit presumptions, it keeps arguments about subordinate Agency permits where they belong, within the Agency itself, without having Act 250 Commissions with little technical training or expertise second guessing Agency decisions when a full permit review has already occurred. In the case of issuance of Act 250 Permits pending receipt of other Agency permits, again no construction will occur until those Agency permits are issued. However, an applicant's financing application will not be delayed weeks or months simply due to the fact that the Act 250 Permit for a project has not been issued.

While there are other changes proposed in H.665 which I believe would also benefit the process, I would urge you to particularly consider the foregoing as I believe it would promote greater efficiency in the process without causing any concomitant harm to natural resources. I would respectfully thank the Committee for its attention and consideration of these comments.

JPWG:clk

Vermont State House of Natural Resources, Fish, and Wildlife
C/o Representative Dean, Chair
115 State Street
Montpelier, VT 05633-5301

April 19, 2018

Dear Members of House Natural Resources, Fish, and Wildlife,

I want to thank you for making time for the delegation from Rutland to make our presentation to your Committee on Thursday, April 12th.

Representative Ode asked me a question after the presentation about "priorities" when the environment and the economy appear to be at odds with one another when Act 250 decisions are being contemplated. I know I am paraphrasing the question, but I believe I understand the essence of it. I did not answer with a good explanation of my beliefs and I ask for your indulgence while I revisit the question.

I do not believe that the Act 250 process is designed to set environmental standards. I believe the Act 250 process is in place to see that applicants have addressed our environmental standards and that their plans are in compliance with those standards. The provisions of Bill S.665, which we were addressing, have no stipulations which in any way weaken or erode our environmental guidelines. The bill addresses ways in which the Act 250 process can be more efficient and predictable.

For instance, assuming that a permit from the Agency of Natural Resources is sufficient to meet the requirements of the Act 250 process, we are placing that decision in the hands of the experts and have limited the adjudication of that decision to one process. Doing so does not erode our standards in any way. It makes the process more timely and gives the applicant assurance that once he or she had received an agency permit that he or she can assume that the matter had been settled.

The State of Vermont should have, and does have, stringent environmental standards. As one who has sailed on Lake Champlain every summer for over 25 years, the quality of its waters is important to me. I made the decision to continue to live in Vermont, as opposed to taking another opportunity, because of the value that I place on that experience. I want to see that nothing denigrates the condition of one of our most beautiful Vermont resources. I support S.665 because I believe it aids in job creation without diminishing our environmental standards.

Thank you for your consideration of my explanation of my position on this matter.

Sincerely,

Lawrence G. Jensen

Lawrence G. Jensen
Chair of the REDC/Chamber Public Policy Committee
President of the College of St. Joseph

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H.665

Introduced by Representatives Fagan of Rutland City, Burditt of West Rutland, Canfield of Fair Haven, Carr of Brandon, Chesnut-Tangerman of Middletown Springs, Cupoli of Rutland City, Gage of Rutland City, Harrison of Chittenden, Helm of Fair Haven, Howard of Rutland City, Keefe of Manchester, McCoy of Poultney, Norris of Shoreham, Potter of Clarendon, Scheuermann of Stowe, Shaw of Pittsford, Sullivan of Dorset, and Terenzini of Rutland Town

Referred to Committee on

Date:

Subject: Conservation and development; State land use; Act 250

Statement of purpose of bill as introduced: This bill proposes to require the District Environmental Commissions under 10 V.S.A. chapter 151 (Act 250) to issue a decision on an application within 20 days following the close of a hearing, to allow them to grant land use permits on condition that other State approvals are received, and to direct that certain State and municipal permits and approvals constitute conclusive evidence on specified Act 250 criteria.

An act relating to changes to Act 250

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 10 V.S.A. § 6085 is amended to read:

§ 6085. HEARINGS; PARTY STATUS

* * *

(f) A hearing shall ~~not~~ be deemed closed ~~until a~~ after the Commission provides an opportunity to all parties to respond to the last permit or evidence submitted. Once a hearing has been closed, a Commission shall ~~conclude deliberations as soon as is reasonably practicable. A decision of a Commission shall be issued within 20 days of the completion of deliberations~~ issue a decision within 20 days. Failure of the Commission to issue a decision within this period shall be deemed approval.

Sec. 2. 10 V.S.A. § 6086 is amended to read:

§ 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

(a) Criteria. Before granting a permit, the District Commission shall find that the subdivision or development:

* * *

(b) Partial findings. At the request of an applicant, or upon its own motion, the District Commission shall consider whether to review any criterion or group of criteria of subsection (a) of this section before proceeding to or continuing to review other criteria. This request or motion may be made at any time prior to or during the proceedings. The District Commission, in its sole

discretion, shall, within 20 days ~~of the completion of deliberations~~ after closing its hearing on the criteria that are the subject of the request or motion, either issue its findings and decision thereon, or proceed to a consideration of the remaining criteria.

(c) Requirements and conditions. A permit may contain such requirements and conditions as are allowable proper exercise of the police power and which are appropriate ~~within the~~ with respect to subdivisions (a)(1) through (10) of this section, including those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and the filing of bonds to ~~insure~~ ensure compliance. The requirements and conditions incorporated from Title 24 may be applied whether or not a local plan has been adopted. General requirements and conditions may be established by rule of the Natural Resources Board. The District Commission shall not delay issuing a permit under this chapter on the grounds that the development or subdivision has not received one or more other required State permits or approvals; however, it may include a condition that construction may not commence until such other required permits or approvals are received.

(d) Other state and municipal permits. In this subsection, "criterion" means a subdivision of subsection (a) of this section under which the District Commission must make a finding before granting a permit. For example,

"criterion (1)(B)" means subdivision (a)(1)(B) of this section regarding waste disposal.

(1) Conclusive evidence. The issuance and submission of permits and approvals identified in this subdivision shall constitute conclusive evidence that the improvement, discharge, emission, or other activity described and approved in the permit or approval is not detrimental to the public health and welfare and complies with the specific criterion or criteria that are identified in this subdivision.

(A) With respect to undue water pollution under criterion (1) and to criterion (1)(B) (waste disposal), each one of the following:

(i) A wastewater system and potable water supply permit pursuant to chapter 64 of this title and the rules adopted under that chapter.

(ii) A discharge permit or authorization of a discharge under a general permit issued pursuant to chapter 47 of this title and the rules adopted under that chapter for a wastewater treatment facility owned or controlled by the applicant that will be used by the development or subdivision.

(iii) An approval issued by a pollution abatement facility that is permitted under chapter 47 of this title and is in compliance with its permit, authorizing the connection of the development or subdivision to the facility. In this subdivision, "pollution abatement facility" shall have the same meaning as set forth in section 1251 of this title.

(iv) A sewer line extension permit pursuant to chapter 47 of this title and rules adopted under that chapter.

(v) An underground injection permit for the discharge of non-sanitary waste into an injection well pursuant to chapter 47 of this title and rules adopted under that chapter.

(vi) A solid waste or hazardous waste certification pursuant to chapter 159 of this title and rules adopted under that chapter.

(vii) An underground storage tank permit pursuant to chapter 59 of this title and the rules adopted under that chapter, with regard solely to the substance to be stored in the tank.

(B) With respect to whether dust and odor from a development or subdivision will create undue air pollution under criterion (1) or have an undue adverse effect on aesthetics under criterion (8): an air pollution control permit pursuant to section 556 of this title and rules adopted under that section.

(C) With respect to criteria (2) (sufficient water available) and (3) (existing water supply), each of the following:

(i) a wastewater system and potable water supply permit pursuant to chapter 64 and rules adopted under that chapter;

(ii) an approval issued by a public water system pursuant to chapter 56 of this title authorizing the connection of the development or subdivision to the system;

(iii) a public water system construction permit pursuant to chapters 48, 56, and 61 of this title and rules adopted under those chapters; and

(iv) a public water system operating permit issued by the Agency of Natural Resources pursuant to chapters 48, 56, and 61 of this title and rules adopted under those chapters.

(D) With respect to undue water and air pollution under criterion (1) and criteria (2) (sufficient water available) and (3) (existing water supply): a permit for the application of herbicides to maintain and clear rights-of-way pursuant to 6 V.S.A. chapter 87 and rules adopted under that chapter.

(E) With respect to criterion (1)(G) (wetlands): a permit or authorization under a general permit pursuant to chapter 37 of this title and rules adopted under that chapter for activities in a significant wetland as defined in chapter 37 or its associated buffer zone.

(F) With respect to whether a stormwater discharge during construction will cause undue water pollution under criterion (1) or complies with criteria (1)(B) (waste disposal) and (4) (soil erosion): an individual construction stormwater discharge permit or authorization under a general permit for stormwater discharges from construction sites issued pursuant to chapter 47 of this title and rules adopted under that chapter.

(G) With respect to the impacts of a development or subdivision on a State highway under criteria (5) (traffic) and (9)(K) (public investments): a

letter of intent issued by the Agency of Transportation confirming that the Agency has reviewed the proposed development or subdivision and is prepared to issue an access permit pursuant to 19 V.S.A. § 1111.

(H) With respect to the conformance of a development or subdivision with the plan of the municipality under criterion 10 (local and regional plans): a municipal land use permit as defined under 24 V.S.A. § 4303 issued by the municipality for the development or subdivision.

(I) With respect to impacts to the municipality under criterion (6) (educational services) or (7) (governmental services) and conformance with the plan of the municipality under criterion (10) (local and regional plans): a positive determination concerning the development or subdivision issued by a development review board pursuant to 24 V.S.A. § 4420. Such a determination shall constitute conclusive evidence only with respect to those criteria described in this subdivision for which the review board has issued a positive determination.

(2) Rebuttable presumptions. This subdivision applies to State and municipal permits and approvals not set forth in subdivision (1) of this subsection.

(A) The Natural Resources Board may by rule allow the acceptance of a permit or permits or approval of any State agency with respect to ~~subdivisions (a)~~ criteria (1) through (5) ~~of this section~~ or a permit or permits of

a specified municipal government with respect to ~~subdivisions (a)~~ criteria (1) through (7) and (9) and (10) ~~of this section~~, or a combination of such permits or approvals, in lieu of evidence by the applicant. ~~A District Commission, in accordance with rules adopted by the Board, shall accept determinations issued by a development review board under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review of municipal impacts.~~

(B) The acceptance under rules adopted pursuant to this subdivision (2) of ~~such~~ an approval, ~~positive determinations,~~ permit, or permits shall create a presumption that the application is not detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. In the case of approvals and permits issued by the Agency of Natural Resources, technical determinations of the Agency shall be accorded substantial deference by the Commissions.

(C) A District Commission, in accordance with rules adopted by the Board, shall accept negative determinations issued by a development review board under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review of municipal impacts. The acceptance of ~~negative~~ such determinations ~~issued by a development review board under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review of municipal impacts~~ shall create a presumption that the application is detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. Any such

determinations~~, positive or negative, under the provisions of 24 V.S.A. § 4420~~ shall create presumptions only to the extent that the impacts under the criteria are limited to the municipality issuing the decision.

(D) ~~Such a~~ A rule issued under this subdivision (2) may be revoked or amended pursuant to the procedures set forth in ~~3 V.S.A., chapter 25,~~ the Vermont Administrative Procedure Act. The rules adopted by the Board shall not approve the acceptance of a permit or approval of such an agency or a permit of a municipal government unless it satisfies the appropriate requirements of subsection (a) of this section.

(e) Temporary improvements; film and television. This subsection shall apply with respect to a development that consists of the construction of temporary physical improvements for the purpose of producing films, television programs, or advertisements. These improvements shall be considered "temporary improvements" if they remain in place for less than one year, unless otherwise extended by the permit or a permit amendment, and will not cause a long-term adverse impact under any of the 10 criteria after completion of the project. In situations where this subsection applies, jurisdiction under this chapter shall not continue after the improvements are no longer in place and the conditions in the permit have been met, provided there is not a long-term adverse impact under any of the 10 criteria after completion of the project; except, however, if jurisdiction is otherwise established under

this chapter, this subsection shall not remove jurisdiction. This termination of jurisdiction in these situations does not represent legislative intent with respect to continuing jurisdiction over other types of development not specified in this subsection.

(f) Stay of construction. Prior to any appeal of a permit issued by a District Commission, any aggrieved party may file a request for a stay of construction with the District Commission together with a declaration of intent to appeal the permit. The stay request shall be automatically granted for seven days upon receipt and notice to all parties and pending a ruling on the merits of the stay request pursuant to Board rules. The automatic stay shall not extend beyond the 30-day appeal period unless a valid appeal has been filed with the Environmental Division. The automatic stay may be granted only once under this subsection during the 30-day appeal period. Following appeal of the District Commission decision, any stay request must be filed with the Environmental Division pursuant to the provisions of chapter 220 of this title. A District Commission shall not stay construction authorized by a permit processed under the Board's minor application procedures.

Sec. 3. EFFECTIVE DATE; IMPLEMENTATION

This act shall take effect on July 1, 2018 and shall supersede any contrary rules of the Natural Resources Board (Board). On or before September 15,

2018, the Board shall file proposed rule amendments with the Secretary of State to conform its rules to this act.