

Testimony of Jeffrey A. Nelson
Strategic Advisor/Principal, VHB
Regarding Potential Act 250 Changes
February 5, 2020

Background

- See my bio provided during February 2019 testimony which summarizes my professional background.
- In my position with VHB, I have worked for many years with the Agency of Natural Resources, in particular with staff and regulations in areas of water quality, stormwater management, wetlands. I have been asked to participate in numerous VT stakeholder processes through my career as new or revised regulations have been considered.
- We are involved in preparing designs, analyses, and permit applications for a broad range of projects which require various permits in Vermont, including
 - Ski resorts
 - Utilities/Renewable Energy projects
 - Commercial developments
 - Transportation projects
- I have extensive Act 250 experience over 20+ years, on projects ranging from minor amendments of prior permits to large complex master plans, including:
 - Many cases before all nine existing district commissions
 - Numerous cases before the prior environmental board
 - Expert witness testimony in various Act 250 appeals before the environmental court
- Today I am speaking on behalf of the Vermont Ski Areas Association, a non-profit trade association with 20 alpine and 30 cross country member areas. Molly Mahar, the president of VSAA is best suited to the economic and demographic contributions of outdoor recreation and skiing to the State of Vermont, but in summary I will say that these industries bring in \$2.5B in consumer spending to VT annually, and directly employ 33,000 people. Thus, in your efforts to modernize Act 250, I encourage you to remember to consider both the needs of environmental protection and maintaining this critical economic driver for rural Vermont.

Themes from Commission on Act 250 Report

- Remove redundancies with other state regulations (Agency of Natural Resources permits)
- Review of Act 250 permit applications needs to be more consistent and fair across the state
- The process needs to become less complex and more streamlined for efficiency

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I think these are all critical concepts and if the committee and this legislature is truly going to be successful in the effort to modernize Act 250, these needs must be a strong part of the proposal.

In the time that has passed since the committee worked on Act 250 reform in 2019, the Administration and VNRC have come forward with a joint proposal that in my view goes a long way in addressing these needs.

I would like to touch on four areas as identified in the Committee comparison table dated 1/16/20:

1. Jurisdiction
2. Criteria Changes
3. Permits and Conditions
4. New Board/Appeals

(see VHB highlighted version)

Summary of Testimony

- Significant concerns remain unaddressed such as the proposed addition of habitat fragmentation as review criterion under Act 250 and shifting of burden of proof under criterion 8.
- Joint proposal otherwise provides a reasonable framework for addressing some of the identified issues to be addressed in modernizing Act 250
- In particular I believe that the joint proposal's framework for a professional board and it's duties as well as how specific cases are handled makes sense.
- Some concerns remain, but the joint proposal is a good step forward in looking at how to modernize Act 250.

Jurisdiction

- Committee proposal would result in blanket reduction in jurisdiction to 2000 feet vs. joint proposal to create new jurisdictional trigger for "ridgelines" above 1500 feet.
- Thinking about the needs stated above, I'm not sure that I see a clear necessity of adding either of these new levels of complexity to Act 250 based on my experience.
- However I think the joint proposal is a more realistic approach, provided that there is a clear and unambiguous resource-based definition that doesn't create wide-latitude for unreasonable interpretations of what could constitute a "ridgeline".

Criteria Changes

- Both committee proposal and joint proposal would add new review criteria to address forest habitat fragmentation, looking at "forest blocks" and "connecting habitat". Joint proposal includes mitigation opportunity. In addition both would change the burden of proof to the applicant for Criterion 8.

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- I see either of these proposals as a large and unknown expansion of review jurisdiction which have the potential to result in prohibition of new ski trails or lifts in Vermont, which I don't expect is what the committee is intending to do.
- I would propose that if it the committee chooses to go forward with this expansion of Act 250 authority, that this be done with a clear exclusion of lands within existing downhill and cross- country ski area boundaries, and a reasonable buffer around such areas. The intent here is to recognize the long-term planning and investment that resorts have made in these geographically limited areas of the state.
- In addition, it is critical that there be a clear and available opportunity for mitigation of potential impacts either through on-site or off-site means.
- Finally, I think that shifting the burden of proof is highly problematic, representing a shift in longstanding precedent, and not realistic since individual applicants don't necessarily have a full or complete information or understanding regarding larger overall ecosystems. This burden should remain as is, which typically means ANR assessing a particular project impacts.

Permits and Conditions

- Joint proposal adds a 30-day advance notice provision for major permit applications. While we see pre-application consultation with stakeholders as valuable, and we already do it for large projects, formalizing it in this way has the potential to create new delays for sound economic development. The Act 250 process as it is currently structured affords ample time and opportunity for consultation with anyone interested in a given proposed project.
- We believe that it is critically important that there be presumptions of compliance given to all ANR (and other) permits. When Act 250 was enacted, there were no rules, regulations or standards to address many technical issues. Today in Vermont, there are permits or formal review processes that address numerous areas of potential impact, including:
 - Stormwater runoff (construction and operational phase)
 - Wetland impacts
 - stream alteration
 - river corridor
 - dam safety
 - water withdrawal
 - water supply
 - wastewater disposal
 - air emissions
 - highway access
- I think that the joint proposal provides the a reasonable approach to ensure continued presumption of compliance for ANR permits which is appropriate given the technical reviews that currently occur outside the Act 250 process.

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New Board/Appeals

- Committee proposal would in essence re-create the former Environmental Board model in terms of additional appeal process steps, while the joint proposal would create a full-time professional board handling major cases and from which appeals would go directly to the Supreme Court.
- The joint proposal appears to be a reasonable solution to address the very real and ongoing challenges of inconsistencies, difficulty in addressing complex issues through very part time district commission model and providing an efficient and timely permit process. The joint proposal provides appropriate flexibility to handle simple cases efficiently without creating additional unnecessary and costly process.
- Some tweaking/additional refinement of this proposal may be appropriate to ensure that:
 - There is sufficient representation/input from regional members
 - Opportunities for consolidation of appeals are not lost
 - There is a clear and reviewable accounting for district coordinator decisions.

That concludes my remarks.

Thank you Chair Sheldon and Committee members for the opportunity to testify, and I'm happy to take any questions.