

## VERMONT WOODLANDS ASSOCIATION

### **Testimony to the Vermont House Natural Resources, Fish and Wildlife Committee concerning Act 250 Commission Recommendations and proposed Legislation version 5.2**

**13 February 2019**

My name is Alan Robertson. I'm a retired engineer and own 60 acres of well- managed forest in Sheffield, Vermont. I've been a member of VWA for over 25 years and have been the Secretary for over 15 years; I have also been the Co-Chair of the Vermont American Tree Farm System program for over ten years. I'm honored and pleased to provide the following testimony on the Act 250 Commission's Recommendations and Committee Bill version 5.2.

Perhaps the most important aspect- to forestland owners- of the Committee's recommendations and legislation concerns the problem of forest fragmentation in Vermont. The VNRC report on fragmentation lays out a legitimate concern over this problem and the need to find solutions to stop the erosion of the integrity of large forest blocks. I and, I believe VWA support the effort, the fragmentation recommendations, and the specific legislative proposals dealing with forest fragmentation. We do, however, have very serious concerns over other related commission recommendations, language, and committee legislative content in version 5.2.

The Commission's mandate included the assessment, "to the extent feasible, the positive and negative outcomes of Act 250's implementation from 1970 to 2017". That assessment included the historical problems experienced by the forest products industry **but did not identify any environmental or development problems caused by landowners, foresters, or industry with respect to the management, harvesting, or processing of forest products.**

The Commission also looked at the, "interface between Act 250 and other current permit processes at the local and State levels and opportunities to consolidate and reduce duplication. This examination shall include consideration of the relationship of the scope, criteria, and procedures of Act 250 with the scope, criteria, and procedures of Agency of Natural Resources permitting."

With respect to our concerns regarding Act 250 issues endangering the economic viability of harvesting operations and wood products industries (hours of operation, delivery times, mitigation of impacts of facility siting, etc.) the Commission said, "The Commission has not received statistics that demonstrate and quantify negative impacts to forest processing operations specifically caused by Act 250 permit conditions. The Commission **has received anecdotal testimony regarding those impacts...**" "The issues facing Vermont's forest industries are broad market issues that are interstate and international in scope. **They are not the result of Act 250 regulation**"....

In our view this is an unacceptable attitude of avoidance of the realities in the forest products industry where little effort was made to investigate and document issues. Commissioner Snyder, like VWA, also feels there is a problem, as outlined in his 7 November letter to the Commission (and wasn't even included in the report appendices!) and it needs more serious attention, especially with respect to redundant permitting, as outlined below in our concerns with combined heat and power (CHP) facilities. There is a great deal of similarity between this issue and last year's work in the legislature in passing the "Right to Practice Forestry" legislation because much of the problem deals with local residents coercing district commissions to place restrictive rules on companies and operations.

The Commission was also charged with looking at Act 250 exemptions, and, finally, climate change was also added to the mix of the review. The suggestion is made that climate change, as well as water quality is a contributing factor to the removal of the farming/forestry/logging exemption based on degradation of critical resource areas, but the Commission provides no evidence for this theory with respect to forestry and logging. The Commission recognized Required Agricultural practices (RAPS) as a serious way to mitigate aspects of water quality in farming and how that

shows meaningful regulation of farming, but failed to even mention FPR's successful launch of new forestry and logging Acceptable Management Practices (AMP's), which also show the ability of FPR to successfully provide any needed regulation to forestry and forest management. Nevertheless, one of the final recommendations includes, "The repeal of the exemption for farming, logging, and forestry below 2,500 feet when these occur in areas that have been designated as critical resource areas." Critical Resource Areas (CRA's) are not defined.... **Yet nowhere in the report is there an explanation for why "logging and forestry" are included in this repeal, or how they relate to the degradation of CRA's**

#### **Specific Concerns with Version 5.2 of the legislation:**

- **Page 2/81- "Repealing the exemption for farming, logging, and forestry when those activities take place in critical resource areas (CRA's)."** As previously mentioned, this is not justified based on the Commission's report, and is even more restrictive than the report as the elevation in the Commission's report was 2500'; the CRA elevation limit is set at 2000'. It should be noted that the science behind the justification for lowering the elevation to protect ecologies at higher elevations suggests the opposite is happening because of climate change. That is, on western peaks higher elevation ecologies are disappearing and being replaced by lower elevation ecologies because the weather at higher elevations is changing towards the direction of the lower elevations. If that is the case then the legislative effort to protect another 500' of elevation makes no sense.
- **Page 12/81: Critical Resource Areas (CRA's) are defined** and the language, "land at or above 2,000 feet, and land characterized by slopes greater than 15 percent and shallow depth to bedrock" is completely unjustified and poorly worded. In my case, my 60 acres in Sheffield, at about 1700'-1800' of elevation would totally be a CRA, based on slopes of 15% and shallow depth to bedrock. This unjustified, expansive definition would place extensive acreages of Vermont under new rules and permitting, further eroding our ability to conduct necessary management activity. We believe that the Act 250 exemption for forestry and logging, better described as forest management activities, should **NOT** be repealed. **If the Commission feels forest management between 2000' and 2500' deserves closer scrutiny the Vermont Department of Forests, Parks and Recreation (FPR) should be tasked with the investigation of the problem, and should be the state entity tasked with developing any needed rules.**
- **Page 25/81- Ethical Standards:** The new legislation contains no public, internal, or third-party review of the performance or conduct of the district commissions or personnel. All federal departments and offices have this requirement in one form or another and the inclusion of some form of review would help eliminate the public perception, and somewhat reality, of the fallibility of the Act 250 process. In simpler terms, what do you have to fear by including this in the legislation?
- **Missing Legislation:** While the Act 250 Commission report mentioned duplicative aspects of permitting in energy production it did not make any recommendations. Unfortunately there is a further niche in energy production involving biofuels that does need some permitting simplification and elimination of duplicative permitting. That niche is the construction and operation of advanced wood heat or "combined heat and power" (CHP) facilities. Advanced Wood Heating generally refers to very high efficiency (>90%) wood boilers, pellet stoves and furnaces. It also includes combined heat and power facilities. Combined Heat and Power (CHP) systems utilize biomass (wood in this case) to generate electrical power and utilize the waste heat from that process to power a secondary process such as wood kiln drying facilities, wood pellet manufacturing facilities, and community heat systems. CHP facilities represent the highest and best, most efficient use of low quality wood resources for wood energy. (See the sites: <https://www.biomasscenter.org/> and <http://www.revermont.org/> ) CHP facilities constructed in Vermont would also represent very large users of low wood resources and would reduce long-distance trucking of low grade wood to out of state industries. But to build such a facility in Vermont one would have to undergo both a Section 248 permitting process with the Public Utility Commission AND an Act 250

process. This very expensive duplicative permitting journey eliminates the possibility of such facilities being constructed in Vermont (as mentioned in the Commission report...). VWA urges the Committee to include CHP permitting reform in their efforts to improve the Act 250 process.

Respectfully submitted,

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Alan M Robertson  
Secretary, Vermont Woodlands Association  
1619 Berry Hill Road, PO Box 31  
Sheffield, VT 05866  
(802) 626-3590  
[pfalz@kingcon.com](mailto:pfalz@kingcon.com)