Hi Paul, Leland and Thomas

Thanks for the heads up on the potential vote tomorrow.

I am not sure if I am up to a trip up tomorrow, now that I am feeling a little better my wife is not doing well. She drove me up last week which made it a little easier. I would have to drive myself if I come. How important is my VOTE?

While I have not been present for the discussion I have been trying to follow the committees work and asking some of my trusted friends to comment on the progress being made. I was pleased to see the "critical natural resource" trigger removed from the bill leaving the Agricultural & Forestry Exemption in place.

I am sharing with you some comments shared with me by others. Please look them over, if you think they have merit please let me know your thoughts. The last two questions may be the easiest to answer.

Having read this today I am most likely a no vote. If you think that vote is important I will try to get there.

Thanks

As you requested, attached are my thoughts regarding the version of the ACT 250 bill noted above which you sent to me yesterday afternoon. These constitute my thoughts and I have not vetted them with anyone else.
My comments generally follow the numerical order of the bill. I will emphasize points as necessary to help create a priority. However, my most important issue lies in Comment 1 below.

Comment 1, P. 4, line 10. “These eco-system services are the state’s natural capital.”
line 15, “(C) Products of the land and the stone and minerals under the land as well as the beauty of our landscape are principal natural resources of the state.”
While these statements are largely aspirational, expressing the purpose behind the proposed statute, they also demonstrate the intent of the statute that I find most troubling. Legally, I would assert that the statements subtly mis-represent the current state of property law. As they are written, both statements imply that the State OWNS the eco-system services and OWNS the products of the land, the stone and minerals and the beauty of the landscape. I believe that is inaccurate. I would asset that the individual landowner still owns the land, the rock and minerals and the land’s products. The State, on the other hand, unless it has purchased the property outright and established ownership, has a legitimate interest in conserving and protecting certain important values and functions stemming from each individual’s property. The State exercises its interest through its police powers, to protect the health, safety and welfare of its citizens.
I point your attention to this this relatively subtle difference in phrasing because it has dramatic consequences over the extent of control the state is willing to exercise. As this bill asserts broad state ownership, it is written to maximize state control, rather than trying to balance the interest of the property owner with the public good it seeks to protect. This bias pervades the entire bill and, in my mind, makes it bad public policy.

The rest of my comments largely illustrate the logic of the comment made above.

Comment 2. Page 5, line 9-12, Purpose Construction. Rewrite: "The purposes of this chapter are to protect the State's interest in the environment and to implement the goals of … "
Comment 3, page 5 line 18. Are they really trying to create a new statewide Compatibility and development plan, or are they requiring the Agency of Natural Resources to create mapping layers depicting the extent and locations of the significant resources that the State is asserting its interest in protecting?
The Natural Resource Atlas already goes a long way towards doing the later. I would recommend that as the goal.

Comment 4, pg. 6 line 2, lowering the development threshold to 2,000 ft. is OK.

Comment 5, pg. 6, line 5, I do not have a strong opinion on the interchange language, other than to note that when most people drive the interstate, they intend to go from point A to point B as efficiently as possible. Services, directly associated with travel, fueling stations and restaurants, should be conveniently located to service the interstate.
Comment 6. Page 7, line 17. The Road Rule. I see no reason to bring this back again. It should not be a "development" threshold; I imagine the legislature has reams of testimony from the last time it removed this provision. I expect all those complaints will reappear.

Comment 7, Page 7, I believe you should try to get a companion provision to Act 143 into Act 250. An exemption to the definition of development for a small portion of a working for an accessory on farm business would be a good addition.

Comment 8, page 11 "Definitions". Definitions are hugely important. Connecting Habitat, Forest Block, Fragmentation and Habitat are very broadly written. None of the definitions as currently drafted contain any qualifying language like "important" or significant". A huge portion of Vermont is forested. Resources that the State chooses to exert its police power to protect should be tied to significant values. Just as wetland should be significant (Class II) to warrant protection, so should habitat and forest blocks. Deeryards are an example of forested habitat with a specific significant value, the shelter and food they afford to herds of deer in the winter. They can be reasonably defined. These broad definitions combined with the shift in the burden of proof from the intervenor to the applicant (See Comment 16) will have significant consequences for any applicant outside a previously developed area.

Comment 9, page 15. Establishment of the Vermont Environmental Review Board. I do not understand the impetus for changing this model back to the original. I suspect that environmental groups do not like how the judges in the environmental court are interpreting the law (See Comment 1.)
Consolidating all environmental appeals, (municipal, agency, state) in one place makes sense. This bill attempts to allow for that to happen, but it is awkward an inefficient.

Comment 10, page 19. Retention of Personnel and fees. Allowing the Board to hire experts and charge the applicant will drive costs, increase risks, increase time and negatively impact any new development. In most of the State of Vermont Housing and economic development are the most important issues facing citizens. This bill will drive costs and hurt both.

Comment 11, page 26. Capability and Development Map. Where does the data for this map come from? Is it a natural resources atlas? If so, fine. If not, the content and what it controls is hugely important.

Comment 12, page 31. Generally, conflict of interest procedures are fine, but limiting former District Commissioners from advocating for a year will severely limit the quality of development professionals you get on district commissions.

Comment 13, page 34. This provision needs to be expanded to include growth centers and new town centers. Additionally, please clarify that village centers will be allowed to be included within Neighborhood development areas (They must be!) This is probably the second most important of my comments. This provision is the compromise the bills sponsors are purporting to use to expand jurisdiction outside developed areas. In its current form, it will be WORTHLESS to more than 75% of the municipalities in the State. This false promise has the potential to do more harm to small villages in Vermont than most of the rest of the bill. Currently, there are only 6 Neighborhood Development Areas in the State. Most in Chittenden
County. Requirements for a neighborhood development area include:
a. Location adjacent to either a Designated Downtown or a village center;
b. Municipal Water;
c. Municipal Sewer;
d. Zoning densities of at least 4 units/acre (Very hard to achieve without water and sewer)
e. Unified Development Regulations with criteria similar to and covering any Act 250 criteria to be exempted);
f. Other. I will complete this list later, for right now what you need to know it is a very high bar for most of our communities. Most small communities will never get there.
I would suggest that as part of this bill, the Agency of Commerce MUST change the qualification requirements for Neighborhood Development Areas to make them so this bill, as promised can serve as permit relief to all the small village centers in the State. Most of Vermont is already fighting economic headwinds. It is losing population and jobs, not gaining them. If Burlington get permit cost reduction through this, the rest of Vermont will only fall further behind.

Comment 14, P. 36-38. Lot's of additional fees.

Comment 15, p. 41 -48. Lot's of additional process.

Comment 16, p. 53, line 14. (Please also see Comment 8) Changes the burden of proof for these criteria from the intervenor to the applicant. P. 54-56 adds the additional forest related criteria.

Comment 17, p. 58, line 7. Environmental Justice. I understand what they are trying to do, but I fear its unintended consequences. Land use criteria should be the same for all applicants and abutters.

Comment 18, p. 61, line 15. Presumptions. Good.

Comment 19, p. 62, line 19 – p. 63, line 3. I do not understand this provision. How would it impact a permit, say a stormwater permit, in the Lake Champlain basin that is impaired by the TMDL for Phosphorus?

Comment 20, p. 77, Line 1. Consolidated appeals. Consolidated appeals are important. This unwinds the consolidated appeal to the Environmental Court, creates a new path of appeals to the Environmental Board for State and agency permits, leaves municipal permits with the environmental court, but provides a mechanism to allow consolidated appeals to include the municipal permits to the environmental board. It is messy, I expect twice as expensive (Concurrent systems operating) and complicated. What problem is it solving?

Two questions:

(dr req 19-0040 – draft 10.4) – Page 26, line 17: On line 17, "Critical Resource Areas" is referenced in the list of standards that Capability and Development Maps shall be updated to include. "Critical Resource Areas" is not defined in the bill and does not appear to be defined in other Chapters of Title 10. Is the inclusion of "Critical Resource Areas" in this section a drafting error and should be removed?

(dr req 19-0040 – draft 10.4) – Page 74, line 15 – 16: In this section "Critical Resource Areas" is used as a standard to which a "regional plan" shall be established to include. As 'Critical Resource Areas' are no longer defined in 10 V.S.A. § 6001 per this draft 10.4, should subsection G of this section be removed, is this a drafting error?

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