

William Burke
Act 250 District Coordinator
February 12, 2020

Testimony to the House Natural Resources, Fish and Wildlife Committee Re:
[DR 19-0040, Draft 1.2, 2-11-2020, Hybrid Board Amendment](#)

Chair Sheldon and Members of the Committee-

My comments are my own and not reflective of any official NRB policy.

I write to urge you not to adopt the “Hybrid Board Amendment” published today. Because time appears to be of the essence, my remarks below are necessarily brief and are not comprehensive.

The Hybrid Board Amendment Should Be Rejected Because:

- 1. It appears to add additional time and potential delay by adding a District Commission “meeting” during which issues are identified and, if resolved, the application proceeds as a minor. This work is ordinarily accomplished right now in preapplication meetings between the Applicant and Coordinator or by the Commission in a Prehearing Conference already available under our Rule 16. Accordingly, the procedure is functionally duplicative.**
- 2. If a hearing is required, it’s now conducted by a new, Montpelier-based Board and that hearing would necessarily be an “on-the-record” hearing (OTR). If you make the initial merits hearing on a project and OTR hearing, it will necessarily be more formal, complicated and potentially expensive for both applicants and parties. Accordingly, citizen access to and participation in the initial hearing is made less likely, rather than more likely.**

- 3. The problem proposed to be solved by adopting this new procedure is not defined with any specificity. If the original concern was to spare the applicant from a “step” (Commission - E-Court - Supreme Court to Board - Supreme Court), it fails to eliminate the step by adding a new “meeting” with the Commission prior to submitting the application. These more formal meetings are rarely needed, and, if needed, can be convened as a “Prehearing Conference” under existing Act 250 Rules. If the goal is to work harder to resolve issues, the Committee could create an option for facilitated negotiations between the applicant and parties following a merits hearing and before the final decision is rendered.**
- 4. Summary: Given the fact that very few Act 250 Commission decisions are appealed, this new structure would layer on additional delay and expense to a process that currently achieves “minor” treatment in over 80% of the cases.**

Thank you very much for the opportunity to comment.

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