

P. O. Box 512
Montpelier, Vermont 05601
February 13, 2019

House Committee on Natural Resources, Fish, and Wildlife
State House
Montpelier

Dear Committee:

These comments apply to draft 5.2 of the proposed bill to amend Act 250. These comments deal with other areas than the critical resources on which you have spent so much of your time on this bill.

I appreciate that this draft retains the provisions relating to participation by citizens in proceedings before the District Commissions.

I believe that the proposed appeals process can be altered to provide more encouragement for participation by ordinary citizens. Suggestions for amendments to the proposed appeals process are grouped together.

The other group of suggestions apply to areas where I think that the bill can be tightened or its intent can be made more clear.

Appeals

Pages 61 and 62. §8403(a)(1). Please put the provisions that may be appealed under this section into sequential order.

page 63, lines 8 and 9. Please clarify who may be party to an appeal filed before the end of the District Commission proceeding. Sometimes an appeal might be filed on an act or decision made before the end of the District Commission proceeding. Thus, it seems appropriate to include all who are parties at the time of the appeal. The text might be ". . . notify all parties who had party status at the time the appeal is filed and all friends . . ."

Page 63, line 11. Please extend the period for publication in a newspaper of general circulation to at least 15 days. I believe that some newspapers of general circulation are weeklies, and a ten-day period will be tight for getting the notice to the newspaper with publication deadlines.

Page 64, lines 16 and 17. Please clarify who may be party to an appeal filed before the end of the District Commission proceeding. This is the same issue of party status for an appeal filed before the end of the District Commission's proceeding. See the comment for page 63, lines 8 and 9.

Page 64, lines 12 through 18. Please clarify whether a party by right, such as a municipality, may appeal without having participated before the District Commission.

Page 65, lines 8 through 11. Please strike this limitation on the right to appeal an ANR permit. The requirement to have commented seems biased against ordinary citizens. In order for to prohibit appeals without comments, there needs to be one-stop notice of all agency permit proceedings on the agency's internet site in one, easy-to-find location. All permits within the agency must be listed on this one site. One-stop and easy-to-find, because most citizens will be unfamiliar with multiple sites to check (*e.g.*, each of the three departments). If a citizen is to be prevented from appealing because of non-participation, then the citizen must be given a chance to learn about the permit. I believe that the agency lacks a list of permits in process showing comment periods and upcoming public meetings. Thus it will be almost impossible for an ordinary citizen to learn about a permit in time to write or to attend a meeting. When I checked the homepage of the Agency of Natural Resources

(anr.vermont.gov) on February 11, I found no quick link to a comprehensive list of permits on which the agency is working. Even using the search box from that page, I found no listing. If the requirement to comment or lose the ability to appeal remains as in draft 5.2, then the bill needs to be amended to require a comprehensive listing on the ANR page. If there is no such listing, or if a particular permit is not in the list, then that is an automatic procedural defect (page 66, lines 4 through 6).

Page 67, beginning on line 16. Please consider the effect of the form of appeal process on accessibility to ordinary citizens. I do not know enough about how the two forms (on the record or de novo) might affect citizen participation to recommend one over the other.

Page 68, lines 5 through 8. Please strike this limitation on the right to appeal a District Commission decision. This comment is similar to the one for page 65, lines 8 through 11. The Natural Resource Board's site can provide a listing of pending permits. It is not clear if that list includes all pending permits for which a hearing will not be held. An ordinary citizen needs to have the ability to find out about such a permit in time to request a hearing.

Page 69, line 3. Please amend this to include those who have party status at the time of the appeal. The text might be something like ". . . appeared as a party in the action appealed from and has party status at the time of filing the appeal"

Page 69, lines 3 through 8. Please add a fifth condition for intervention. This would allow intervention for a person who submitted or made comments in a case involving the Secretary.

Other clarifications

Pages 3 and 4, sec. 1. Please consider a different location for the plan element "GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE". The findings in the 1973 act are placed into three major groups. (1) through (8) are in "PLANNING FOR LAND USE AND ECONOMIC DEVELOPMENT". (9) through (14) are in "RESOURCE USE AND CONSERVATION". (15) through (19) are in "GOVERNMENT FACILITIES AND PUBLIC UTILITIES". As written, this draft will place "GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE" into the category of government facilities and public utilities. A better fit might be in one of the other two categories as either (8A) or (14A).

Pages 24 and 25, §6030. Please consider moving the section on capability and development maps into subchapter 3. It is not clear why the section on Capability and Development Maps has been put here, which is in subchapter 2 on administration. (other than that it might have seemed convenient to substitute one set of maps in §6030 with this set of maps).

Pages 24 and 25, §6030. Please provide a more specific reference to the 1971 maps. Are these perhaps the four statewide maps (A, B, C, and D) in the "Adopted Interim Vermont Land Use Plan" approved by Deane Davis, governor on March 8, 1972? Those four maps were prepared by the State Planning Office in 1971. Or perhaps the reference should be to the sets of county maps which I believe were prepared at the same time?

Pages 24 and 25, §6030. Please explain why the maps are to be created and how they are to be used. Are they advisory?, regulatory?, mandatory?, voluntary?, Act 250 only?, regional plans?, municipal plans?

Page 26, lines 11 through 15. Please expand this prohibition to all chapters. It seems just as unethical that a Board member with significant income from a chapter other than water pollution control be allowed to hear an appeal relating to permits under that other chapter.

Page 29. §6081(1)(4) Please require neighbors of slate quarries to be notified before registration, not after. This section will allow the owner of a slate quarry to delay providing notice of to neighbors of registration of a slate

quarry until after the owner has registered the quarry. That provides the neighbors no opportunity to challenge the registration until the registration is a done deal. It seems it would be more useful to the neighbors if they were notified much earlier in the process.

Page 38. §6086(a)(8)(A)(ii) (lines 11 and 12). Please consider changing the wording of these two lines. In order to match the change on lines 4 and 5 of this page, it seems that lines 11 and 12 should be ". . . species have been applied, or, if not already applied, will be applied . . ."

Page 40, line 13. Please consider changing "center" to "centerline" to be more protective of the connecting corridor. If the connector is long and narrow, then the farthest point from the center likely would be along the centerline at one end of the corridor or the other.

Page 52, line 15. Please consider changing "adjacent geographic area" to "same geographic area". This change would be more protective of the forest block that is actually adversely affected by the development. An adjacent geographic area might be the next valley over and not provide the intended mitigation.

Page 78, lines 15 and 16. Please define how often the development cabinet should meet. Or it should be written differently. Regularly need not be often. A meeting of the development cabinet once every six years can be considered as being regular (unless there is one of those odd, obscurely located, statutory definitions of "regular"). Perhaps something like "The Development Cabinet shall meet at least once per calendar quarter, or more often if needed, in order to carry out the purposes of this section."

Thank you for taking the time to read these comments. I ask you to consider them and make changes to the bill to improve the

Sincerely,

Thomas Weiss