Senate Natural Resources and Energy Committee
Consideration of Multiple Act 250 Bills
Testimony of Ed Stanak
June 10, 2020

## Introduction

I am a resident of Barre City and was employed for 32 years as an Act 250 district coordinator. I was present at most of the hearings conducted by the House Natural Resources and Fish and Wildlife committee (HNRFW) during the 2019 session concerning H.926 . I indicated to the committee that , due to my experience in the administration of Act 250, I saw an obligation to serve as a resource person as it worked its way through consideration of the content of the bill and in that capacity I testified on three occasions and submitted multiple written analyses. With the advent of the 2020 session, my role changed to that of an advocate in opposition to deleterious changes to the bill which were brought forth jointly by the Scott Administration and the VNRC and I again testified before the committee and submitted written analyses. I also testified before the House Ways and Means committee during its consideration of H.926 and filed a written analysis. I further participated at the House Judiciary committee when it evaluated the bill. *My preference is that the Senate Natural Resources and Energy committee ( SNRE) take no action on Act 250 legislation during the balance of the 2020 session because of the severe restrictions on public participation necessitated by the Covid 19 pandemic***.** I offer the following testimony in light of the agenda items posted last week by the committee, noting that I am aware that the agenda is not limited to the specific content of H.926 .

### Increased Jurisdictional Exemptions

Over time, the General Assembly has carved out numerous jurisdictional exemptions for "development" that would otherwise be subject to the review of a district commission . The rationale behind these exemptions seems to be twofold : encourage development in the "right place " ( ie "downtowns" and other "designated"areas ) and reliance upon an assumption of enhanced quality of reviews by municipal development review boards. The advent of these exemptions date back to when I was still a district coordinator. The concern then, and now, is whether the exemptions have had the desired effect . Has development substantially increased in the "right places " and have the economic benefits been tangible ? What is the quality of the decisions of the municipal panels and were there less than desired outcomes without the concurrent review of a district commission ? Does anyone know ? The studies of Act 250 over the decades are voluminous. Has there ever been a study of the efficacy of the provisions of 24 VSA Chapter 117 as implemented by the municipalities ? Surely case studies can be performed of sample projects that have been processed under various exemptions . One example that comes to mind is the "hole" in downtown Newport . There are others. **Thus, before approving more jurisdictional exemptions the SNRE committee might consider including**

**a study requirement in any bill that would explore such questions .**

Having said all that , additional jurisidictional exemptions are the least of my concerns concerning proposed amendments to Act 250 . *More important are whether the provisions of 10 VSA Chapter 151 will be strengthened to address the 21st century land use challenges Vermont will face* - which I understand to have been the core charge of Act 47 of 2017 creating the legislative study commission which obtained extensive public input and then issued detailed findings and recommendations. Unfortunately, the content of H.926 fails to include meaningful provisions to implement those recommendations.

Forest Blocks and Fragmentation

The Act 47 study commission produced extensive documentation of the wide range of values present in Vermont's forest blocks as well as anticipated threats by the conversion of the forests to other land uses. Frankly, my experience in the 35 town District 5 region which I administered for Act 250 ( during my career I also worked at one time or another in all other eight districts ) was that the most significant threat to the forest functions and values is from the incremental subdivision of the large tracts of forested land . I saw this play out, for instance, in the towns of Waterville and Belvidere which did not have ( and may still not have ) any zoning or subdivision regulations. These towns are subject to growth pressures expanding out of Chittenden county and large forested mountainside tracts were being subdivided as residential lots in ways to avoid act 250 jurisdiction with resulting undue impacts .

The Act 47 commission recognized a need to protect lands above the 2,000 foot elevation. In reality, the 1,500 foot contour is a more prudent elevation to consider because the characteristics of lands above that elevation are finite natural resources which constitute compelling state interests already recognized under several statutory provisions: headwaters, aquifer recharge areas, necessary wildlife habitats and travel corridors, rare and irreplaceable natural areas and aesthetics . These lands also serve as essential carbon sinks . I provided substantial testimony to the HNRFW on the need for a 1,500 foot jurisdictional provision and my submittals are available on its web site. I attach a copy of a related memorandum discussing "Mountains" dated November 17, 2019 which I sent to Representative Peter Anthony as he and Representative Jim McCullough finalized H.633 .

Much has been said by many about the fragmentation of forest lands . I distill that to an algebraic formula : fragmentation = subdivision of land. *How will Vermont prepare for the types and volume of residential development which will inevitably result from climate refugee*

*migration into the Green Mountains ?* It is most probable that migrants with capital will purchase undeveloped mountainside tracts for the construction of residences and gated communities .

**If the General Assembly has the substantive will to protect the above referenced finite natural resources and state interests , Act 250 would be amended to require the review of the proposed subdivision of tracts above the elevation of 1,500 feet into two or more lots over any 5 year period.**

Recreational Trails

*Who doesn't like trails through the woods ?* They are excellent ways to stay in shape, have access to nature and experience spiritual renewal . They can also provide economic benefits to the towns and regions from incidental spending by trail users. However, the construction and use of recreational trails are not always benign. Trail advocates – state agencies, some environmental organizations and private interests – contend that they apply sound design criteria to ensure appropriate siting, construction and use of the trails – and that Act 250 reviews are unnecessary, burdensome and expensive .

The NRB has done a poor job over the last 15 years in setting up an efficient process for the processing of trail projects . Act 250 Rule 71 is anemic and serves to largely exempt trails that are designated as part of the "Statewide Trail System" (SWTS) while expressly confining the scope of jurisdiction over the land to the trail itself and not, as has been erroneously claimed by some , thereby exposing the entirety of the landowner's tract to Act 250 jurisdiction. Because some trails are so old they're "grandfathered" (and exempt) from Act 250, and some trails are exempt as part of the SWTS, the jurisdictional posture of "new" extensions to old trails has fallen into an opaque legal quagmire riddled with confusion, controversy, and litigation.

*Existing Act 250 decisions have documented the value of district commission oversight for trail projects* – even those designed by state agencies and experienced recreational trail organizations. A good example is the Phen Basin trail network in Fayston : trails built by VAST and the CTA on lands owned by the Department of Forest, Parks and Recreation and through a critical black bear habitat . Except for conditions in the district commission's permit for this "as built" project, a trail segment would not have been relocated to prevent undue adverse impacts on the habitat. . [ See Findings of Fact and Conclusions of Law 5W0905-7 ( 2004) and 5W0905-7-EB (2005 ) . ] It should be noted that VNRC strongly supported Act 250 jurisdiction over this project .

*Act 250 has consistently identified concerns for "secondary growth impacts" over the last 50 years and this position was integral in getting master plans for ski resorts and other large*

*developments. And yet a blind eye is turned to the secondary growth impacts from recreational trails.* Consideration of the Lamoille Valley Rail Trail ( LVRT ) project is instructive.

The original LVRT design submittals from VTRANS and VAST for funding purposes were clear in defining multiple phases – such as trailhead areas - for the project involving more than just the trail corridor . But the developers denied that there were any plans for later phases when it came time to determine Act 250 jurisdiction. Much ( this is a significant understatement) can be said about the LVRT case – and I have heard extensive misinformation about it in House and Senate committee rooms . Suffice to say that Act 250 jurisdiction was determined to apply to the project, that the developers dropped an appeal of that determination and that a permit was issued for the phase one trail segment with conditions to mitigate substantial noise, odor and littering impacts during the winter months on the interests of two residents whose home was mere feet from the trail.

Years later bureaucratic gears turned to "dissolve" Act 250 jurisdiction over the project in a settlement agreement among VTRANS, VAST, the NRB and the Office of the Attorney General. A public comment period was provided relative to the draft agreement and legal counsel for VNRC, former legal counsel for the Environmental Board and myself filed detailed analyses why "dissolution" was without a basis in law ( VTRANS and VAST could have sought exemption from jurisdiction at least for later trail phases from the General Assembly but did not want to proceed through a public vetting about the wisdom of such an exemption). Less than 24 hours after the public comments were filed, the agreement was issued in final form without change or modification to the draft ( The settlement agreement and public comments remain available for review on the NRB web site ). When I subsequently filed a request under the provisions of 1 VSA 315 et seq for the documents upon which the state entities and VAST relied in reaching their decision, the AG, NRB and VTRANS denied the request under the cloak of "attorney client communications".

We now have, or will have, trail networks from Brattleboro to Newport and White River Junction to Vergennes . Miles of these trails have already been constructed and/or await funding while being exempt from Act 250 jurisdiction simply by being included in the Vermont statewide trail system ( For many years all that required was a few sentences and not much more than a magic marker route drawn on a map) . But these are not trails that Thoreau would walk since many trails are being built for use by a mix of mountain bikes , electric bikes , snowmobiles and , likely eventually, ATVs .

**I ask that the SNRE committee give material consideration, pursuant to Senate Rules 28 and 29 , to this testimony in its consideration of amendments to Act 250 . If preferred and helpful, I am willing to testify remotely before the committee .**