

Testimony of Jeffrey A. Nelson
Strategic Advisor/Principal, VHB
Regarding Potential Act 250 Changes
June 12, 2020

Background

- My professional background includes BS in Geology, MS in Civil Engineering both from UVM. Have worked as a consulting environmental scientist in Vermont since 1980s.
- In my position with VHB, I have worked for many years with the Agency of Natural Resources, in particular with staff and regulations in areas of water quality, stormwater management, wetlands. I have been asked to participate in numerous VT stakeholder processes through my career as new or revised regulations have been considered.
- We are involved in preparing designs, analyses, and permit applications for a broad range of projects which require various permits in Vermont, including
 - Ski resorts
 - Utilities/Renewable Energy projects
 - Commercial developments
 - Transportation projects
- I have extensive Act 250 experience over 20+ years, on projects ranging from minor amendments of prior permits to large complex master plans, including:
 - Many cases before all nine existing district commissions
 - Numerous cases before the prior environmental board
 - Expert witness testimony in various Act 250 appeals before the environmental court
- Today I am speaking on behalf of the Vermont Ski Areas Association, a non-profit trade association with 20 alpine and 30 cross country member areas. Molly Mahar, the president of VSAA is best suited to speak to the economic and demographic contributions of outdoor recreation and skiing to the State of Vermont, but in summary I will say that these industries bring in \$2.5B in consumer spending to VT annually, and directly employ 33,000 people. As you are likely aware the recreation and tourism sector has been very hard hit by the economic fallout of the current pandemic.
- My testimony focuses on the language proposed regarding fragmentation of Forest Blocks and Connecting Habitat. We see significant issues with the addition of this review criterion under Act 250 as well as the shifting of burden of proof under criterion 8.

Current Proposal

- The proposal that the Committee is considering would amend Act 250 to prohibit development in “forest blocks” or “habitat connector” unless “fragmentation” of such areas is avoided or sufficiently mitigated. In addition the burden of proof would shift to the applicant for Criterion 8.

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Comments

- The impetus for this proposal is a desire to address “rural sprawl” of residential subdivision that is presently not reviewed under Act 250.
- However, what I see with the current proposal is a large and unknown expansion of review jurisdiction which have not been fully thought out and will have substantial unintended consequences.
- I’m not sure if the Committee members have looked at mapping of where all of these forest blocks and connected habitat are, but they comprise **over 72% of the land area in Vermont**, including **all** of the alpine and Nordic ski areas in Vermont (see VHB map dated 6/11/20), so this instantly becomes a major issue for any project being proposed by these businesses.
- For example, I could see this as having the potential to result in prohibition of new or upgraded ski trails, lifts or other facilities at existing ski areas in Vermont, which is not the stated reason for this proposal.
- We believe there needs to be a fundamental consideration by the Legislature of what constitutes a forest block that should be regulated under Act 250, including the technical basis and data used to define forest blocks and connector habitat. In the meantime it is problematic to include such language as an Act 250 requirement without making sure the science is right and that there are not major unintended consequences that would have substantial economic impact.
- Finally, shifting the burden of proof would be highly problematic, representing a reversal of longstanding precedent which is not realistic since individual applicants don’t necessarily have full or complete information or an understanding of the larger overall ecosystem context. This burden should remain as is, which typically means ANR experts assessing the impacts of a particular project in a regional context.
- Therefore, on behalf of VSAA, I recommend that the Committee not include the habitat fragmentation criteria in the proposed legislation until it can be more fully defined, understood and assessed.

Thank you for your time today.