

# H.926- FOREST PRODUCTS INDUSTRY LANGUAGE

Ellen Czajkowski, Legislative Counsel, June 5, 2020

- New definitions in 6001
- (47) Forest-based enterprise means an enterprise that aggregates forest products from forestry operations and adds value through processing or marketing in the forest products supply chain or directly to consumers through retail sales. Forest-based enterprise includes sawmills; veneer mills; pulp mills; pellet mills; producers of firewood, woodchips, mulch and fuel wood; and log and pulp concentration yards. Forest-based enterprise does not include facilities that purchase, market, and resell finished goods, such as wood furniture, wood pellets, and milled lumber, without first receiving forest products from forestry operations.
- (48) Forest product means logs, pulpwood, veneer wood, bolt wood, wood chips, stud wood, poles, pilings, biomass, fuel wood, maple sap, and bark.

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- New language in 6086(c)
- (2) Permit conditions on a forest-based enterprise.
  - (A) A permit condition that sets hours of operation for a forest-based enterprise shall only be imposed to mitigate an impact under subdivision (a)(1), (5), or (8) of this section.
  - (B) Unless an impact under subdivision (a)(1) or (5) of this section would result, a permit issued to a forest-based enterprise shall allow the enterprise to ship and receive forest products outside regular hours of operation. These permits shall allow for deliveries of forest products from forestry operations to the enterprise outside of permitted hours of operation, including nights, weekends, and holidays, for a minimum of 60 days per year.
  - (C) In making a determination under this subdivision (2) as to whether an impact exists, the District Commission shall consider the enterprises role in sustaining forestland use and the impact of the permit condition on the forest-based enterprise. Conditions shall impose the minimum restriction necessary to address the undue adverse impact.
- (3) Permit conditions on the delivery of wood heat fuels. A permit issued to a forest-based enterprise that produces wood chips, pellets, cord wood, or other fuel wood used for heat shall allow shipment of that fuel wood from the enterprise to the end user outside permitted hours of operation, including nights, weekends, and holidays, from October 1 through April 30 of each year.
- (4) Forest-based enterprises holding a permit may request an amendment to existing permit conditions related to hours of operation and seasonal restrictions to be consistent with subdivisions (2) and (3) of this subsection. Requests for condition amendments under this subsection shall not be subject to Act 250 Rule 34E.

# CURRENT LAW

- 6086(c) states:
- **A permit may contain** such requirements and **conditions** as are allowable proper exercise of the police power and **which are appropriate** within the respect to subdivisions (a)(1) through (10) of this section, including those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and the filing of bonds to insure ensure compliance. The requirements and conditions incorporated from Title 24 may be applied whether or not a local plan has been adopted. General requirements and conditions may be established by rule of the Natural Resources Board.
- 6084(g) states:
- When an application concerns the construction of improvements for one of the following, the application shall be processed as a minor application in accordance with subsections (b) through (e) of this section:
  - (1) a sawmill that produces three and one-half million board feet or less annually; or
  - (2) an operation that involves the primary processing of forest products of commercial value and that annually produces:
    - (A) 3,500 cords or less of firewood or cordwood; or
    - (B) 10,000 tons or less of bole wood, whole tree chips, or wood pellets.

# CURRENT LAW- ACT 250 CONDITIONS

- 10 VSA 6087(b) reasonable conditions and requirements allowable in subsection 6086(c) of this title may be attached to alleviate the burdens created by a development or subdivision
- When a person applies for an Act 250 permit, the permit may be granted, denied, or granted with conditions.
- Before issuing a permit, the District Commission must make affirmative findings under all ten criteria.
- If it has determined that a proposed project causes undue adverse impacts under a criterion, the District Commission must impose reasonable conditions to ensure the project complies with the criterion or deny the application.
- A District Commission decides on a case-by-case basis whether to impose mitigating conditions and which conditions to impose.
- The District Commission will deny a permit if permit conditions cannot be drafted to alleviate the undue adverse impact.
- The District Commissions have broad authority to tailor permit conditions to reduce project impacts, as long as there is an appropriate relationship to the criterion involved.
- Conditions must be “reasonable” and “appropriate.”
- A District Commission has no authority to require permit conditions without a finding that it is necessary for compliance with any of the ten criteria. Conditions that have been added allow the permit to be approved and the project to move forward.

# CURRENT LAW- ACT 250 CONDITIONS

- Conditions are compulsory and must be abided unless changed the District Commission
- Act 250 Rule 34
- Rule 34(A) requires a permittee to seek an amendment when there is a material change to a permitted development
- Rule 34(E) governs process when there is a material change; it codifies the Stowe Club Highlands test for when permit conditions can be modified- balances flexibility and finality
  - Goal- to ensure that the grant of an Act 250 permit is not merely a prologue to continued applications for permit amendments

# RULE 34(E)

- Application for amendment of permit conditions that will be a material change:
- 1<sup>st</sup> – whether the applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of the permit
- 2<sup>nd</sup> - If so, the District Commission must consider whether the applicant is merely seeking to relitigate the permit condition or to undermine its purpose and intent.
- 3<sup>rd</sup> - The District Commission weighs the competing goals of permit finality and flexibility. The balancing is done by looking to the following list of factors in Rule 34 (E)(3):
  - (a) changes in facts, law, or regulations beyond the permittee's control;
  - (b) changes in technology, construction, or operations which necessitate the amendment;
  - (c) other factors including innovative or alternative design which provide for a more efficient or effective means to mitigate the impact addressed by the permit condition;
  - (d) other important policy considerations, including the proposed amendment's furtherance of the goals and objectives of duly adopted municipal plans;
  - (e) manifest error on the part of the District Commission, the Environmental Board, or the Environmental Court in the issuance of the permit condition; and
  - (f) the degree of reliance on prior permit conditions or material representations of the applicant in prior proceeding(s) by any party, the District Commission, the Environmental Board, the Environmental Court, or any other person who has a particularized interest protected by 10 V.S.A. Ch. 151 that may be affected by the proposed amendment.
- If the factors weigh in favor of flexibility, the condition can be changed.

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- New language in 6093- Mitigation of Prime Ag Soils
- (c) Mitigation and offsets for forest-based enterprises.  
Notwithstanding any provision of this chapter to the contrary, a conversion of primary agricultural soils by a forest-based enterprise permitted under this chapter shall be entitled to a ratio of 1:1 protected acres to acres of affected primary agricultural soil.
- Mitigation for prime ag soils depends on location of project.
  - In designated areas and industrial parks, pay fee based on 1:1 ratio of protected acres to impacted acres.
  - Outside designated areas, on site mitigation. Calculate between 2:1-3:1 ratio of protected acres to impacted acres.