

P. O. Box 512
Montpelier, Vermont 05601
June 24, 2020

Senate Committee on Natural Resources and Energy
in theory at the State House; in reality who knows
Montpelier (in theory) or who knows

Subject: An act relating to amending Act 250 in support of housing, planning, forest integrity, forest recreational trails, and the wood products Industry

Dear Committee:

I am a civil engineer with many years of experience dealing with land use permits at local, state, and federal levels. This experience has been preparing documents on behalf of owners in support of act 250 permits and other State permits; preparing federal National Environmental Policy Act documents; providing training on the NEPA process; serving on a municipal zoning board; and assisting non-statutory parties to act 250. I have experience as a hydrologist and hydraulics engineer, including developing some of the first maps used in the flood insurance program in Vermont. I have also worked on planning and design of wastewater collection and treatment systems.

The amendments to act 250 are important to me, to you and to the citizens of Vermont. It is necessary that you make the time to gather testimony as a committee. You will not be doing this important subject justice if you rely instead on your vague memories from years past and on hearsay and surmises as to what happened in the House. You cannot do justice to this by rushing this bill through your committee before your summer break.

This bill contains some items that I believe are in S.237 as it now lies. A request to move something from this bill is also a request to have it removed from S.237.

This bill likely will have little effect on increasing the supply of housing in Vermont or on reducing the cost of housing. Making it harder to develop in rural areas will not bring down the cost of housing in the already developed areas. Rather, this bill will contribute to increases in land prices in the developed areas. Reducing the supply of land for housing in rural areas will increase the demand for land elsewhere, driving up the cost of housing.

Removing Act 250 from downtown development districts and neighborhood development areas will have almost no effect on the cost of housing.

Act 250 has almost no effect on development in the downtown development districts and neighborhood development areas. If there is a regulatory problem, it is with the local process and the myriad of State permits needed for a project. Act 250 is actually more efficient, because it covers so much in its one permit.

I reviewed the act 250 database for projects that appeared on an agenda in 2019. It turned up 219 projects. Two were located in Winooski's downtown development district. One was a new 16-space parking lot. The other was a covered structure with retractable sides to expand the season of an existing outdoor dining area. Both permits were classified as minor, meaning no hearing was held. One permit was issued in 28 days; the other in 30.

A third project was partly in a downtown development district and partly in a neighborhood development area in Burlington. The project will merge 5 lots, demolish most structures, build a hotel, build senior housing, and build underground and surface parking. One act 250 hearing was held and a recess order was issued. The action then moved out of act 250 and to the City's development review board. Seven months after the recess order, the development review board issued its permit. Action then returned to act 250, which granted its permit 15 days later with no additional hearing. So act 250 did not delay or hinder this project. Most of the time between the act 250 application and permit was at the City's development review board with act 250 on hold.

If there are permit problems within downtown development districts or within neighborhood development areas, act 250 is not the cause. The Burlington project is an example: 2 1/3 months of action at act 250, bookending seven months for a permit from the development review board.

I ask you to retain jurisdiction of act 250 in downtown development districts and neighborhood development areas. Seeing what happened to Sen. McCormack's amendment on S.237, this seems a hopeless request. I have to make this request anyway.

The process for releasing land will be essentially the same as for an amendment to a permit.

Section 4 proposes a mechanism for release of land from act 250 permits and conditions under certain criteria. This process will not result in any savings to the permit holder. Also, those criteria are too broad and they are inadequate to protect the rights of non-applicant parties and of adjoining property owners.

So it seems like the process will work as follows. A permit holder will apply to a district commission for a release of land. With that application, the permit holder will need to provide information on how the change in use (or adoption of permanent zoning and subdivision bylaws; or being located in a downtown development district or neighborhood development area) will affect each and every criterion in act 250. That sounds pretty much like a normal permit amendment to me. No savings in cost or in time.

Placing conditions in a municipal permit then breaks the connection between the condition and the party whose efforts achieved the condition. That means the party will lose the ability to be notified of all future applications which might alter the municipal permit.

For these reasons, please remove section 4 of this bill and remove the content of S.237's section 8 from statute.

Limit municipal approval of connections to wastewater systems

Some municipalities have inadequate wastewater collection and treatment systems. I am referring to those systems that have sewage overflows. Those overflows endanger the health and safety of individuals and have an adverse effect on water quality. Those overflows have an adverse effect on our efforts to clean up our rivers and streams and lakes and ponds.

I ask that you change section 13 to prohibit a municipality from authorizing a connection to, or an increased discharge from, a wastewater treatment or collection system that is subject to overflows of municipal sewage or combined sewage. This can be done by adding a new subsection §1983(a)(7) as follows "(7) There are no overflows from the wastewater collection or treatment system.

Increased flood risk

Section 7 is designed to increase the danger to the health, safety, and welfare of the public in neighborhood development areas. This is due to allowing infill development in areas subject to flooding. The infill will cause flood levels to be higher than if the infill were not there. Increased flood elevations will cause increased damage to the existing buildings in the flooded area. For that reason, please remove from section 7 "except those areas containing preexisting development and areas suitable for infill development as defined in section 29-201 of the Vermont Flood Hazard Area and River Corridor Rule".

Trails

The trails people and landowners have been trying to resolve this how many years? I'm not convinced by this bill that they've resolved it yet.

This bill will give to the recreational trails relief from any pending legal or enforcement cases. (page 26, (z))

The parts of the bill that will regulate connecting habitat, and forest blocks and forest fragmentation will allow unchecked construction of Vermont Trails System trails in and through these areas. There will be no review to

determine if there will be any adverse effects or undue adverse effects caused by the trails.

Section 17 will allow up to 49% of a trail's use for the operation of a motor vehicle. Recreation trails should not be used for motor vehicles at all. I acknowledge that the Long Trail and other recreational trails use roads in some locations. However, where the trail is not along a road, motor vehicles should be prohibited from using the trail.

Please remove the provisions on trails from the bill.

The function of connecting habitat will be adversely affected.

Section 24 will allow recreational trails (think snowmobiles; think ATV's) in connecting habitat. This bill will allow improvements (think roads, think buildings, think clearing for farming) in connecting habitat. They have a high potential of destroying the ability to connect. Connecting habitat is often a narrower band allowing movement between two larger habitat areas, relatively easy to disrupt because of its narrower size.

Section 25 will allow mitigation of undue adverse impacts on connecting habitat. Undue adverse impacts on connecting habitat cannot be mitigated. Mitigation implies something happening elsewhere. Something happening elsewhere will not protect the connection that needs to be protected. Mitigation always results in the loss and reduction of the resource. If we are trying to protect the resource, we cannot allow its mitigation.

You are either for maintaining connecting habitats or you are not. This bill is not for protecting connecting habitat. This bill will allow the fragmentation of a connection and the possible complete destruction of the connection.

Please remove the possibility for mitigation for connecting habitat from the criterion (8)(C) and from the rulemaking for (8)(C).

The function of forest blocks will be adversely affected

Section 24 will allow recreational trails (think snowmobiles; think ATV's) in forest blocks. This bill will allow improvements (think roads, think buildings, think clearing for farming) in forest blocks. They have a high potential of fragmenting the forest block. The benefit of forest blocks to us, to the environment, is their size.

Section 25 will allow mitigation of undue adverse impacts on forest blocks. Undue adverse impacts on forest blocks cannot be mitigated. Mitigation implies something happening elsewhere. Something happening elsewhere will not protect the forest block in question. Mitigation always results in the loss and reduction of the resource. If we are trying to protect the resource, we cannot allow its mitigation.

You are either for maintaining forest blocks or you are not. This bill is not for protecting forest blocks from fragmentation. This bill will allow the fragmentation of a forest block and the loss of its functions.

Please remove the possibility for mitigation of fragmentation of forest blocks from criterion (8)(C) and from the rulemaking for (8)(C).

The waiver of conditions in the wood products section is too broad

The ostensible reason for this section is to allow loggers to get their logs out of the forest. And to allow deliveries of wood fuel nights, weekends, and holidays. Yet it allows waivers of permit conditions for much more than that.

Only the loggers and wood-fuel haulers need the waiver. Yet, the ability for the waiver is allowed for all wood products manufacturers.

A saw mill doesn't need to work those extended hours, except for the delivery of logs. That's why they have log yards, so they can stockpile logs during the harvesting period and process the logs all year long (or at least until

they have sawn all their logs. So the saw mill doesn't need the ability to work nights, weekends, or holidays..

A saw mill could set up a furniture factory using the boards from the mill. That would bring the factory into the definition of a wood products manufacturer. This bill will allow the furniture factory to operate outside the hours of its permit conditions. Yet, a furniture factory has no need of a waiver and waivers should not be allowed in such cases.

Deliveries of wood fuels seem to fall into two categories: smaller vehicles for residential use and larger vehicles for larger plants. There should be no need for the larger vehicles to operate outside of permit conditions, because of the storage capabilities where the fuel is used. And the smaller vehicles for residential use would not be covered by a permit condition anyway. So permit conditions for deliveries do not need to be waived.

Please remove the ability to waive permit conditions for deliveries of wood fuels.

Please allow the ability to waive permit conditions only to log deliveries

Conclusion and Summary

Please retain jurisdiction of act 250 in downtown development districts and neighborhood development areas.

Please do not allow the release of land from act 250 permits.

Please prevent municipalities from approving a connection to a wastewater system that experiences overflows.

Please do not allow infill within river corridors or flood hazard areas or fluvial erosion areas.

Please remove the provisions on trails from the bill.

Please remove the possibility for mitigation for connecting habitat from the criterion (8)(C) and from the rulemaking for (8)(C).

Please remove the possibility for mitigation for fragmentation of forest blocks from criterion (8)(C) and from the rulemaking for (8)(C).

Please remove the ability to waive permit conditions for deliveries of wood fuels.

Please allow the ability to waive permit conditions only to log deliveries

Thank you for taking the time to read this testimony.

Sincerely,
Thomas Weiss, P. E.