Senate Natural Resources and Energy Committee
Comments on Proposed Amendments to S.237 Should They Be Included in H.926
Testimony of Ed Stanak
June 24, 2020

What follows are comments on the " release from permit" portion of the committee's proposed amendments to S.237 as found on pages 906-907 of the June 19, 2020 Senate Journal. It is my understanding that the committee may move to insert these provisions into H.926 during today's committee meeting.

I am dissatisfied with my comments – they are a "seat of the pants" analysis as I struggle to keep up as much as feasible with the committee's expedited proceedings . As previously communicated to the committee, I do not understand the urgency to produce Act 250 legislation during the 2020 session and the effort to conduct legislative business as usual via remote methods . I would prefer to have been able to provide more substance to my comments but cannot do so per time constraints imposed by the SNRE committee agenda scheduling.

Release from Jurisdiction [10 VSA 6090(c)]

The proposal sets out a smorgasbord of standards that a district commission must apply to an application seeking the release of land from an existing land use permit . The immediate shortcoming that is clear is that the proposal is primarily concerned with releasing the tract of land from jurisdiction ; there is no substantive weight given to consideration of the effects on finite natural resources which may have been safeguarded (in some instances for decades) by the terms or conditions of a permit – although subsection 6090(c)(C) (4) is an anemic provision to do so. Similarly, there is no substantive weight given to the effects of a release from jurisdiction on individuals who may have been admitted as parties to the underlying case – even though subsection 6090(c) (C) (3) requires notice to such parties .

A few specific comments:

Subsection 6090(c)(1)(A) sets out three tests of eligibility for release from jurisdiction. A permittee would only have to demonstrate factually that one of the tests is "true" . In subsection (A)(i) an applicant only needs to show that the current "use" is not the same as the use that required the permit . Among several "what ifs" that come to mind , could a new commercial use on the tract under a "ten acre town" jurisdictional trigger different from the original commercial use "one acre town" jurisdictional trigger qualify for the exemption ? What about the conversion of a formerly permitted earth extraction project to a 9 lot subdivision ? Would subsection (A)(ii) open flood gates for hundreds of projects to seek release in the many towns that may have been "one acre towns" for decades and now have adopted regulations ? Subsection (A)(iii) once again raises questions concerning the effectiveness over the years of such exemptions for projects "in the right place" : how much growth been situated in these

"right places" ? What is the quality of review by municipalities alone of such projects ? Does anyone know ? Is it all based on hopeful conjecture by development advocates and optimistic planners and municipal officials ?

Subsection6090(B) is problematic . What about subdivisions permitted under the former 800 foot "road rule" ? Many of those residential subdivisions were located in rural settings and higher elevations.

Subsection 6090(C) (sic) (It appears that a (1) was omitted from the text) indicates that permittees must be in "compliance" with existing permits. What does "compliance " mean ? No existing adjudication of a "violation". Is the applicant left to an "honor system" representation of compliance ? Would the NRB compliance staff undertake review of all such permits and their underlying records ? Would NRB staff conduct an inspection of each such project tract ?

Subsection6090(C)(2) if the district commission issues, one supposes a memorandum of decision or findings of fact and conclusions document affirming a release from jurisdiction, where does the enforceable "condition" referenced in the statutory provision appear ?

Subsection 6090(C) (4) in effect sets up a potential process for the relitigation of final decisions and some cases were hotly contested in the original reviews including possible appeals before the Environmental Board and/or the courts. **This subsection could very well prove to be an administrative nightmare , a "lawyers' delight" and an expensive undertaking for admitted parties as well as state agencies who may have raised significant issues under the criteria resulting in permit conditions.** And if I could find a bookie I would bet on a spike in appeals to the Environmental Division of the Superior Court .

I request that this testimony be added to the committee's record per Senate rules 28 and 29 .