

P. O. Box 512
Montpelier, Vermont 05601
June 14, 2020

Senate Committee on Natural Resources and Energy
Nominally at the State House; in reality who knows
Nominally in Montpelier; in reality could be anywhere in the world

Subject: Act 250 amendments in S.237

Dear Committee:

I am a civil engineer with many years experience in permitting of projects at the local, state, and federal levels. Part of my experience has also been in hydrology: flood studies, stream flow analysis, and developing the early maps used for the flood insurance program in Vermont.

I offer the following suggestions for amendments to your draft 3.1.

A major part of my testimony to the commission on the future of act 250 and to the house, was to preserve public access to the act 250 proceedings. Portions of S.237 and portions of your draft amendment will reduce that public access. My testimony today focuses on maintaining public access.

And no, I did not present this information to the committee on economic development, housing and general affairs. It never dawned on me that such a major change to act 250 would be contained in a bill titled "promoting affordable housing", particularly when so much emphasis was being placed on amending act 250 in the house. By the time I found out about act 250 in S.237, the committee was on its final vote on S.237.

Points guiding my reasoning

I give here relevant points from my written testimony to you on June 11, 2020. These points guide my reasoning on proposed amendments to S.237.

- Act 250 does not hinder development in downtown development districts and neighborhood development areas based on my review of projects in 2019. My review found only 3 projects in those districts and areas. The permit delay in the one project with a delay was caused by a municipal permit.
- Municipal regulations do not require considering many of the resources / potential impacts included in act 250 criteria. Nor will consideration of them be required in the chapter 76A entities proposed for removal from act 250. Thus municipal regulation is not a substitute for act 250 in the larger projects to which act 250 now applies.
- Other State permits are not the equivalent of act 250 and are not a substitute for act 250. This has been reaffirmed consistently, from the beginning of act 250 and through subsequent amendments. Other State permits narrowly focus on one resource and do not cover all resources in the act 250 criteria.
- Act 250 invites citizens to become parties and treats them with respect. Other State permits do not do that.
- The review under act 250 is comprehensive and considers all effects simultaneously, in one process. That makes act 250, with its one permit, more efficient than the multitude of other State permits required for a project.
- Municipal permits, other state permits, and federal permits in their collective entirety do not provide that same comprehensive review of a project.
- Infill development in flood hazard areas and fluvial erosion zones increases the risk of flood damages to other structures.

My suggestions for changes to your draft

Fourth: Section 6 of S.237. I suggest deleting the section in its entirety. Act 250 has an important, albeit limited, role in the chapter 76A entities. However the proposed Fourth is less problematic than leaving S.237 alone.

Fifth: Section 8 of S.237. I suggest that section 8. be amended using a modified version of your proposed amendment (addition of 10 V. S. A. §6090(c), page 2 of 23, line 16 through page 4, line 10 of your draft).

My reasoning. The concept of having district commissions review act 250 permits under certain conditions is less problematic than having a municipality do that.

However, the proposed amendment is too broad. Thus, my suggested revision to (1)(A).

I suggest striking the reference to 6086(a) in (3) because the decision of major or minor is not based on the act 250 criteria. The district commission's decision for handling an application as a minor one is based in 6084 and the Natural Resources Board's rules.

The proposed amendment does not require a district commission to notify all non-applicant parties to the permit of the application to release the land or conditions. As you are aware, conditions are added to permits based on the testimony of parties to the proceedings. The draft lacks any requirement that all parties be notified of the application to release land from the conditions of the permit. This means that a non-applicant party might lose the benefit of conditions added to the permit without even knowing that the land was being released from the permit or its conditions. This lack of notice is disrespectful and in effect disfranchises a party who managed to have conditions placed into a permit. For similar reasons, current adjoining landowners should receive notice, too. Thus I suggest adding a notification requirement in (3). I also suggest requiring a District Commission to find that there are no conditions in a permit resulting from testimony of a non-applicant party before releasing land from a permit in an added (1)(D).

If conditions are moved to a municipal permit, the municipality will not know who the parties are. And in subsequent amendments to the municipal permit, the original parties will not be notified. This also disfranchises non-applicant parties. That is why I suggest striking that ability from (4).

I suggest that the proposal in the draft be modified as follows.

10 V.S.A. § 6090

(c) Change to nonjurisdictional use; release from permit.

(1) On an application signed by each permittee, the District Commission may release land subject to a permit under this chapter from the obligations of that permit and the obligation to obtain amendments to the permit, on finding each of the following:

(A) ~~One of the following is true:~~

- (i) The use of the land as of the date of the application is not the same as the use of the land that caused the obligation to obtain a permit under this chapter;
- (ii) ~~or the municipality where the land is located has adopted permanent zoning and subdivision bylaws, but had not when the permit was issued;~~
- (iii) ~~the land is located in a designated downtown or neighborhood development area that is exempt from this chapter.~~

(B) The use of the land as of the date of the application does not constitute development or subdivision as defined in section 6001 of this title and would not require a permit or permit amendment but for the fact that the land is already subject to a permit under this chapter.

(C) The permittee or permittees are in compliance with the permit and their obligations under this chapter.

(D) There are no conditions in the permit that resulted from the testimony of a non-applicant party to the permit.

(2) It shall be a condition of each affirmative decision under this subsection that a subsequent proposal of a development or subdivision on the land to which the decision applies shall be subject to this chapter as if the land had never previously received a permit under the chapter.

(3) An application for a decision under this subsection shall be made on a form prescribed by the Board. The form shall require evidence demonstrating that the application complies with subdivisions (1)(A) through (C) of this subsection. The application shall be processed in the manner described in section 6084 of this title and may be treated as a minor application under that section. ~~In determining whether to treat as minor an application under this subsection, the District Commission shall apply the criteria of this subsection and not of subsection 6086(a) of this title. In addition to those required to be notified by section 6084, the District Commission shall send notice at the same time to all other parties to the permit and to all~~

current adjacent landowners.

(4) The District Commission shall evaluate the conditions in the permit and determine whether the conditions are still necessary to mitigate impacts under the criteria of section 6086(a). If the District Commission finds that conditions are still necessary, it shall deny the application ~~or approve the application on the condition that the necessary conditions are added to the land's municipal permit.~~

Seventh: Section 12 of S.237. I suggest deleting the amendments that would allow infill development in flood hazard and fluvial erosion areas in a neighborhood development area. This means not amending the existing §2793e (c)(5) on p. 20 of 44, lines 8 through 11; and not amending (c)(5)(A) on p. 21 of 44, lines 1 through 12. By "not amending", I mean leaving those portions as they are in current statute.

Ninth: Section 30 of your draft proposes a report with recommendations on recreational trails. The proposed stakeholders group lacks the ability of the public to participate in the group. The group will benefit by having members who actually use and maintain trails. I suggest that the Agency of Natural Resources be required to reach out to users and maintainers to be part of the stakeholder group. That can be done by amending lines 10 through 13 on page 13 to read: "The Agency of Natural Resources shall consult with stakeholders on the proposed program, including trail users, trail maintainers, the Vermont Trail Alliance, the Forest Partnership, and the Vermont Agency of Transportation. The means used by the Agency of Natural Resources to invite participation by users and maintainers shall include press releases and newspaper notices."

Ninth: Section 34 of your draft proposes that the Natural Resources Board adopt rules for criterion 8(C), convening a working group to do this. Again I believe that the group will benefit from including members of the public. I suggest that the Board be required to reach out to the public to become part of that working group. That can be done by adding the following at the end of (b) on page 17, line 11. "The Board shall invite members of the public to participate in the working group. The means used by the Board to invite participation by the public shall include press releases and newspaper notices."

Thank you for taking the time to read this testimony. I hope that you find my testimony (here and from June 11) compelling and make these changes.

Sincerely,

Thomas Weiss, P. E.
resident of Montpelier