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House Committee on Natural Resources, Fish, and Wildlife
State House
Montpelier, Vermont

Subject: S.226, expanding access to safe and affordable housing

Dear Committee:

I am a civil engineer with experience in permitting of projects and in performing environmental reviews; and evaluation and design of sewer systems. I am also certified as a Class I designer under the Wastewater System and Potable Water Supply System rules.

My interest is to preserve and expand the ability of individuals to participate meaningfully in decisions that affect them and their surroundings. Act 250 is the only permitting process that I have seen or worked with that allows meaningful participation by individuals. So retaining jurisdiction under Act 250 is important to me.

Act 250 is not redundant. It covers the effects of a project broadly. The ANR permits are narrowly focused. They do not cover the entirety of the criteria that the district environmental commissions consider. Development review boards do not have the ability to condition permits on many of the Act 250 criteria.

These comments point out troubling aspects of this bill and provide recommendations for amending them.

Section 2 (neighborhood development areas)

Do not scrap existing flood hazard bylaws for an unfamiliar process
Section 1 adds unnecessary complexity in its proposals for municipal management of flood hazard areas.

The process that is familiar to municipalities is within Chapter 117 of Title 24. That familiar process:
- requires municipalities to include a flood resilience element in its municipal plans (§4382 (a)(12)).
- allows municipalities to regulate flood hazard areas and river corridors using zoning or freestanding bylaws.

S.226 instead proposes to require municipalities to develop bylaws using an unfamiliar process. That unfamiliar process uses the Agency of Natural Resources' Vermont Flood Hazard Area and River Corridor Rule. Those rules are found in chapter 29 of the Environmental Protection Rules. Those rules are designed to allow the State to regulate development that municipalities are prohibited from regulating.

This bill would penalize those municipalities that have already developed bylaws regulating flood hazard areas and river corridors. They will have to scrap their existing bylaws and start over to conform to the unfamiliar process.

In addition, the bill would require that "local bylaws shall contain provisions consistent with" the ANR rules. I'm not sure how to interpret that. I do not understand how municipal bylaws can be consistent with rules that cover activities that municipalities are prohibited from regulating.

The Agency of Natural Resources does have model bylaws for erosion and flood hazard areas. These bylaws are not based on the chapter 29 rules. The model bylaws are based on several sections in chapter 117. The only references to section 754 or chapter 29 relate to the exemptions in the model bylaws.

The two processes don't even use the same definition of infill. Municipalities have developed their neighborhood development areas around Chapter 76A's definition of infill.

> " 'Infill' means the use of vacant land or property within a built-up area for further construction or development."

S.226 would require municipalities to alter the definition of "infill" for flood hazard purposes within neighborhood development areas to be the one from the ANR rules"

> § 29-201 " 'Infill development' means, for the purposes of designated centers, construction , installation, modification, renovation, or rehabilitation of land, interests in land, buildings, structures, facilities, or other improvements in an area that was not previously developed but is surrounded by existing development. For the purposes of farm production areas, infill development means construction on a vacant area within the farm production area." [NOTE: How does one get a farm production area intoa designated center?]

Do not put individuals in harm's way by allowing infill housing in flood hazard areas

I have experience in hydrology, river hydraulics, and preparing flood maps and flood studies. This experience goes back to and before the earliest days of the National Flood Insurance Program. I worked at a company that created some of Vermont's first Flood Insurance Studies and the maps that defined what we now call flood hazard areas. My focus was the computer modeling, although I worked on all aspects of the studies.

Allowing infill development in flood hazard areas puts individuals in harm's way. Infill development does little or nothing to expedite housing or reduce its cost. On the contrary, it increases the cost of housing because of the extra expense of floodproofing. And damage to the infill structures increases the amount spent on recovery after a flood .

There are always larger floods than are protected by the design standards. After floods we too often hear things like "That's the third 500-year flood in the last ten years." With the increased and more intense rainfall that we are experiencing, a given flood depth will occur more often. The flood insurance program has always been more about letting people know that they are living or working in areas that flood frequently. And about requiring those building owners to have insurance to help pay for recovery. Getting people out of harm's way is mostly through a buyout program after repeated flooding.

Our long-range goal needs to be to move people and buildings out of the flood hazard areas. We should not, in the name of short-term expediency, be putting more buildings and people into flood hazard areas.

On-site sewage treatment allows uncompensated encroachment on a neighbor's property

S.226 proposes to allow on-site sewage treatment in neighborhood development areas. On-site sewage treatment requires isolation zones to function properly and to protect public health.

The intent of infill development is to allow more development in areas with small lot sizes. This can cause problems for neighbors, when isolation zones extend into a neighbor's property. Isolation zones restrict what can be done in them.

The rules for Wastewater System and Potable Water Supply Permits (WW permits) are in Chapter 1 of ANR's Environmental Protection Rules. They allow a permittee to encroach on a neighbor's property with no compensation to the neighbor. The only requirement is to send the neighbor a form that says, in effect: "The isolation zone for my on-site system will extend into your property. This notice gives you a chance to talk to me before the permit is issued. If I decide to make no changes, you cannot stop the WW permit." The notice indicates that the neighbor can build in the isolation zone. The notice doesn't point out that the isolation zone inhibits other uses on the neighbor's property. If the neighbor builds a cellar in the isolation zone, there is a

potential for leachate entering the cellar. The neighbor might not want to plant a vegetable garden or fruit trees in the isolation zone.

I am not asking in this bill that the entire system be changed. I am asking that you require that all isolation zones in neighborhood development areas be within the parcel containing the on-site system.

If you choose to put more people in harm's way by allowing infill development in flood hazard areas, then keep it simple. Require that municipalities work within what they already know: their chapter 117 instead of an unfamiliar chapter in a different title.

Section 5 (exemptions from Act 250 for priority housing projects)

This section proposes to raise the number of units in a priority housing project in communities with a population less than 3,000 people. The cap is now 25 and this will raise it another 25. There are 199 of these towns and their average population is 1200 people.

Permitting is an interrelated process. There are also municipal permits, ANR permits, and Fire Safety Division building permits. Permitting typically occurs in parallel. My research shows that removing Act 250 from the permitting process has a negligible effect on the time it takes for a project to receive all its permits.

The relevant factor is how long it takes between receipt of the last permit or other document needed by the district commission and the time that Act 250 issues its permit. The median time is 6 days.

The Natural Resources Board provided Senate Natural Resources and Energy a list of the 55 housing projects that received Act 250 permits, 2017 through 2021. There were five administrative amendments. Forty-one permits were issued without a hearing. Nine permits were issued after hearings.

The five administrative amendments were issued within 3 days of the receipt of a complete application. The median time was 1day.

There were 41 projects without hearings that received permits. The median time between a complete application and issuing the Act 250 permits was 60 days. I then looked at the 20 permits where the time between a complete application and the Act 250 permit exceeded the median. The median time between receipt of the last permit or document needed by the district commissions was six days for these projects. The maximum time was 34 days. Only six of the projects had a time more than 10 days. This shows that Act 250 does not delay housing projects.

The Act 250 database has insufficient information to evaluate projects with hearings. The database lacks key documents needed for that evaluation. So I can make no informed comment on projects with hearings. Most of the projects (75%) were without hearings.

The majority of last documents received in the cases studied were: ANR documents or permits.

stormwater permit (ANR)	8
historic preservation letter	3
Wastewater System and potable water supply permit (ANR)	3
water system construction permit (ANR)	2
development review board	2

One time each for: wetlands permit (ANR); municipal comments; revised site plans; resolution of location of bus stop with VTrans; ANR comments (ANR), construction waste reduction plan, planting

plan, and sign diagram. The total is more than 20 because multiple permits sometimes were received on the same day.

Projects have a schedule that is controlled by the permitting process in its entirety. Removing one permit from the process does not expedite a project.

If the permit fee is a concern, then consider reducing or waiving the fee for the Act 250 permit.

Sections 21 and 22 (permits for municipal wastewater connections)

Recommendation: Remove sections 21 and 22 from the bill. This means retaining Wastewater System and Potable Water Supply permitting at the State for all projects involving connections to municipal water and sewer systems.

These two sections fail to meet the purpose of S.226. They neither increase the supply of affordable housing nor promote homeownership nor broaden housing opportunities.

I commented in 2021 on these two sections. And I appreciate that you removed them from S.101. These comments present new information.

Assertions were made during the 2021 legislative session ,and again this session, that having the State issue Wastewater and Potable Water Supply Permits in municipalities with both water and sewer is a barrier to housing. The asserted barriers are that the State permitting is time-consuming, expensive, duplicative, and provides no value to the individual. Those who made the assertions never attempted to prove their case.

Following the end of the 2021 session, I did my own summer study. I looked into the effect of the Wastewater System and Potable Water Supply permits (WW permits) on housing projects. A copy of the report on that study is on your internet site at January 5, 2022.

My research refutes those assertions. The report shows that the WW permit program is not a barrier to housing that connects to municipal water and sewer systems. Permitting of 16 projects in four municipalities was evaluated. Fees are not large, particularly compared to costs of other permits. The permitting program might have delayed a project in one of the sixteen projects. Retaining this permitting at the State has benefits. Eliminating the WW permits in these cases will not expedite permitting and will not make housing affordable.

The research involved a limited sample of sixteen wastewater and potable water supply permits in four municipalities that have both water and sewer systems. Most of the selected permits are within the last five years, to evaluate recent experience. All projects involve housing. Some are all housing, others are mixed use. Some are new construction, most are renovations of existing buildings. The municipalities are:

Montpelier, it is where the investigator lives. (five projects)
Northfield, it is near where the investigator lives. (two projects)
Brattleboro, it testified to the legislature about recent, successful housing projects. (four projects)
Rutland City, testimony from there supported eliminating WW permits for connections. (five projects)

There are other benefits of retaining the WW permits for systems connecting to municipal water and wastewater systems.

The WW program provides a single repository for permits and the supporting documents.

The program provides uniform permitting. Uniformity was one of the reasons why the Wastewater

System and Potable Water Supply permits were transferred to the State. This uniformity will be lost if some municipalities choose registration and others do not. The proposed registration process has different requirements than does the WW permit program. For example, the WW permit program requires the permit to be filed in the land records. The proposed registration program only requires a certification of completion to be filed in the land records.

The proposed registration program means that records for some projects will be maintained by the State. Records for other projects will be maintained by the municipalities.

The program finds errors in allocations and designs. One of the projects had requested an incorrect allocation from the municipality. The municipality allocated the amount requested. The same incorrect flow was included in the application for the WW permit. The review by the regional engineer caught that error. In addition the State review found that the water service needed to be in a different location because it was proposed to be too close to the sewer service. Changing the design on paper was less expensive than discovering the error in the field.

Recommendations:

Section 2 (neighborhood development areas)

- Leave §2793e(c)(5) as it is now in statute.
- Do not repeal §2793e(c)(6). If you choose to allow an alternative for on-site systems in neighborhood development areas, then add §2793e(c)(6)(C) along the lines of: "(C) an on-site system where the isolation zone for the system is totally contained on the parcel containing the on-site system."

Section 5 (exemptions from Act 250 for priority housing projects)

- Do not change the caps. Act 250 does not hinder projects.
- If cost is a concern, then perhaps waive or reduce the Act 250 fee for priority housing projects.

Sections 21 and 22

Remove these sections

I hope that you find these recommendations worthwhile and that you will amend S.226 to implement them.

Thank you for taking the time to read this letter.

Sincerely,
Thomas Weiss, P. E.