P. O. Box 512
Montpelier, Vermont 05601
May 11, 2021

House Committee on Natural Resources, Fish and Wildlife
meeting virtually

Subject: H.120 - Updates to Act 250

Dear Committee:

Here are comments on H.120. I provide these comments as ways to improve the updates to Act 250 that you have chosen as your starting point.

A major interest of mine regarding proposals to amend Act 250 is to retain meaningful opportunities for individuals to participate in Act 250.

The comments here are presented in groups in the order in which you had your walk-through. A colored left margin indicates the broad categories as indicated on your schedules. These comments do not strictly follow the order of the bill. For example, forest blocks are covered in several locations. I have grouped comments on forest blocks together under "criteria". That grouping places the comments on forest blocks near each other.

I acknowledge that you are aware of some of the information I am presenting. I am providing it as context for the reasoning and conclusions behind my comments.

There are empty spaces at the bottoms of pages so that table blocks are not split between pages.

Please look at my comments carefully and use them to improve this bill..

Sincerely,
Thomas Weiss
resident, Montpelier

Capability and Development Plan

greenhouse gas emissions and climate change

Section 1, Greenhouse gas emissions and climate change

It seems to me that greenhouse gas emissions and climate change will fit better into finding 13 than as a stand-alone finding.

Section 1 would then be something like:

> Sec. 2. 1973 Acts and Resolves No. 85, Sec. 7(a)(13) is amended to read:
> (13) CLIMATE CHANGE AND CONSERVATION OF ENERGY
> (A) Climate change poses serious risks to human health and safety; to functioning ecosystems that support a diversity of species and economic growth; and to Vermont's tourism, forestry, and agricultural industries. The primary driver of climate change in Vermont and elsewhere is the increase of atmospheric carbon dioxide from the burning of fossil fuels, which has a warming effect that is amplified because atmospheric water vapor, another greenhouse gas, increases as temperature rises. Vermont should minimize its emission of greenhouse gases and, because the climate is changing, ensure that the design and materials used in development enable projects to withstand an increase in extreme weather events and adapt to other changes in the weather and environment.
> (B) Energy conversion and utilization depletes a limited resource, and produces wastes harmful to the environment, while facilitating our economy and satisfying human needs essential to life. Energy conservation should be actively encouraged and wasteful practices discouraged.

If you choose to retain this as a separate finding, I ask you to retain the three-part format of the capability and development plan. If you make it finding (20), then that makes it part of "Government facilities and public utilities". If it is its own finding, then I think it would be better as either finding (12A) or (13A), making it clearly part of "Resource use and conservation".

Interstate Interchanges

interchanges

Section 3, § 6086(a)(3)(A)(xi), Definition of development, Intersate interchanges

I fail to understand why this is limited to interstate interchanges. Interstate highways are only one form of limited access highway that we have in Vermont. Other limited access highways are super 7, U. S. 4 west of U. S. 7, routes 62 and 63 in Berlin and Barre, Route 289 in Essex, route 2 between Danville and St. Johnsbury, and probably more that I am unaware of.

If you choose to retain interchanges in H.120, I suggest that you expand it to all interchanges.

skills and diversity of the board

Section 3 § 6021, Board: vacancy, removal - skills and diversity

You had some discussion relating to the experience or skills for members of the board. Here are how two boards I am familiar with handle that. I am not saying that either model is suitable for Act 250. I am saying that there is precedent to specify a board in such a way as to ensure professional diversity. Or you might write into the statute that the board as a whole needs to have a wide range of the listed experience, expertise, or skills.

This is a paraphrase of 26 V.S.A. § 1171. Board of Professional Engineering

The Board of Professional Engineering has six members who are residents Vermont:
- one member of the public
- five licensed professional engineers: one civil; one mechanical; one structural; one electrical; and one from any of the other disciplines of engineering.

Three of the engineers must be in private practice.

Three engineers must have engaged in the practice of professional engineering at least 12 years.

The Governor shall request nominations from the various State engineering societies and may request nominations from other sources, but shall not be bound to select members from among the persons nominated.

This is a paraphrase of 26 V.S.A. § 1573. Vermont State Board of Nursing

The Vermont State Board of Nursing has eleven members who are residents of Vermont:
- six registered nurses, including at least two advanced practice registered nurses
- two practical nurses
- one nursing assistant
- two public members

Appointments of registered and licensed practical nurse members shall be made in a manner designed to be representative of the various types of nursing education programs and nursing services.

The licensed members shall have an active license to practice in Vermont, with at least five years of licensed experience.

The public members shall not be members of any other health-related licensing boards, licensees of any health-occupation boards, or employees of any health agencies or facilities, and shall not derive primary livelihood from the provision of health services at any level of responsibility.

staggering of appointments to the board	**Section 3 § 6021, Board: vacancy, removal - scheduling of appointments** Rep. Bongartz had concerns about lengths of terms and appointments. I believe he is right and there is a mismatch. The mismatch has a historical basis. In short, the board has a chair with no limit on the term. That seems to mean (in conjunction with 3 V.S.A. § 2004) that the chair can serve without re-appointment until the chair resigns or someone else is appointed. So there are only four members that need appointing on a regular basis. To correct the mismatch, one could move a clause as follows: (a) A Natural Resources Board is created. (1) The Board shall consist of five members appointed by the Governor, with the advice and consent of the Senate~~, so that one appointment expires in each year~~. In making these appointments, the Governor and the Senate shall give consideration to experience, expertise, or skills relating to the environment or land use. (A) The Governor shall appoint a chair of the Board, a position that shall be a full-time position. (B) Following initial appointments, the members, except for the Chair, shall be appointed for terms of four years, so that one appointment expires in each year. * * * This mismatch does not occur in §6026 (b). There, in each odd-numbered year, the governor appoints two: one two-year chair and one four-year non-chair member.
removal of district commissioners	**Section 3 § 6026 District commissioners** First. Having looked at 3 V.S.A. 2004, it seems that a counter to that statute needs to be introduced into § 6026(c). Otherwise district commissioners appear to serve at the pleasure of the governor. Please amend § 6026 (c) to read: (c) Notwithstanding the provisions of 3 V.S.A. § 2004, members ~~Members~~ shall be removable for cause only, except the,chairman who shall serve at the pleasure of the governor. I suggest this amendment so that it is clear that district commissioners have the protection of being removed for cause only. Second: Thank you for including the training and resources to district commissioners and co-ordinators. Third: A historical note: Alternates for district commissioners, two of them, were introduced in 1986. The number of alternates was raised to four in 1994. Now this bill proposes reducing the maximum to two. It is possible that the number was increased in 1994 because two were insufficient. Of course, appointment of alternate commissioners is optional, so there can be none.
powers	**Section 3 §6027, Powers** Thank you for including the supervisory authority, I think. I appreciate the court decision confirming that supervisory authority already exists. I just don't know whether it is better to leave that authority as a court decision or to put it into statute.
powers	**Section 3 §6027, Powers** H.400 proposes amending § 6027 (f) on publication of annotations and indices of decisions. The subdivision (f) was created in 1991 to cover decisions of the environmental board. Decisions of the environmental board and of the nascent natural resources board were dropped in 2004 with the transfer of appeals to the environmental court. H.400 proposes adding decisions of the natural resources board and the Supreme Court. I suggest that it also return decisions of the environmental board to the publication.

ethical considerations	**Section 3 §6031, ethical considerations** This amendment was not in the draft legislation prepared by the Commission on Act 250. It was not in the governor's 2019 proposal. So where did it come from? It came from a proposal for what became H.926. That proposal was incorporated into draft 10.4. It would have made district commission proceedings be on the record so that appeals would be on the record. I believe the thinking was that, with district commission proceedings on the record, there needed to be additional ethical considerations. The following draft (11.1) dropped the appeals on the record by moving the hearings to the governor's proposed three-member professional board. Your committee apparently did not realize that the proposed ethical considerations were no longer needed and should have been removed. The topic of e*x parte* communication is included in the ethics portion of the board's training manual for district commissioners. That training relies heavily on executive order 10-03 and on 3 V.S.A. § 813. I do not see how a district commission can retain the impartiality it needs if it is allowed to act as a mediator. I think that such mediation would weaken district commissions. Section 13 of Act 40 (2001) established a mediator pilot project until September 1, 2004. There were to be two interim reports and a final report. I have not yet found the final report. The second interim report (January 15, 2003) indicated that eight cases had been referred for mediation in the first 15 months of the pilot project. Two were successfully resolved; four were not resolved and remained in contested case proceedings; two were still in mediation. Other cases were settled without the need for formal mediation. As of the second interim report, the pilot project had another 20 months to go. The cost of the entire pilot program was $25,000. If mediation is to be provided under Act 250, then this model of an outside mediator seems to be appropriate. Because the hearings of district commissions will not be on the record, there is no need for this amendment. I suggest removing it from H.120.

notice of application

Section 3 § 6084 Notice of applications; hearings, commencement of review

This seems to be the same as part of what you took out of the bill that became H.446. Thank you for taking it from there so it can receive consideration as part of this larger Act 250 bill.

This proposal will have the affect of reducing participation by individuals by eliminating paper copies through requiring all applications and all documents to be electronic. Not all of the parties listed in § 6084 will have the capability to handle electronic copies. The required capability includes the hardware, software, and broadband needed to view and manipulate the application and all its accompanying documents. And of course, later, many of the additional parties (adjoining landowners and those with a particularized interest), will lack the ability to handle the electronic documents.

The proposal will remove the requirement to send a copy of the application with the notice. So, the statutory parties will be given notice of the application and then each of them, somehow, will need to actually dig up the application. Making each statutory party look up the application (instead of just sending them the application) is a waste of time. It might save whoever sends the notice a smidgen of time. It will take the recipients of the notices collectively much more time to retrieve the documents than whoever sends the notice saved.

Apparently there will no longer be physical copies of applications or documents associated with an application. That is a serious problem. I have found that documents on the internet go missing or are made really difficult to find or impossible to find. Links are broken. I cannot find documents on the Act 250 database because of what appear to be broken links. I cannot find ANR reports, probably because they just aren't there: they go away, or disappear, or are at a new location that is not indexed. There is also the very real possibility of malefactors invading the system and altering or destroying documents. I do appreciate that the Senate's version of the budget allocates $500,000 dedicated to digitizing more land use records.

There are some situations that will require applications and notices by conventional means. It is quite likely that neither the applicant nor district commission would have e-mail addresses for landowners who are not the applicant. Some applicants might not have the capability to submit digitally.

I suggest you amend subsection (a) to be:

> a) On or before the date of filing an application with the District Commission, the applicant shall send notice and a copy of the application to the owner of the land if the applicant is not the owner; the municipality in which the land is located; the municipal and regional planning commissions for the municipality in which the land is located; the Vermont Agency of Natural Resources; and any adjacent Vermont municipality and municipal and regional planning commission if the land is located on a municipal or regional boundary. <u>The notice and application shall be sent by electronic means when the applicant has such addresses. Otherwise, the applicant shall send the notice and a copy of the application by conventional means.</u>

Criteria

avoid, minimize, mitigate	**Section 3 § 6086(a) Avoid, minimize, mitigate** I begin this portion on criteria with a general discussion of the process of "avoid, minimize, and mitigate". I provide specifics on this process as I come to each of the criteria that use this process. Act 250 allows mitigation in only one criterion: primary agricultural soils. Mitigation does not prevent adverse effects (undue or not). Mitigation permits the adverse effect in the hope of preventing a future adverse effect somewhere else. Act 250 already requires an "avoid and minimize" standard for almost all other criteria. A project needs to avoid or to minimize to get to the state of having no adverse effect or no undue adverse effect. It is very difficult, well nigh impossible, to compensate for those adverse effects by mitigation elsewhere. And the very criteria proposed for mitigation are those that are least likely to be mitigated successfully. H.120 proposes to allow mitigation in three more criteria: Greenhouse gas emissions, forest blocks, and connecting habitat. I'll cover the specific cases of "avoid, minimize, mitigate" in sequence as they appear in the bill. As written, one will be able to mitigate if there is no avoidance and no minimizing. If one uses a process of avoid, minimize, mitigate (which I think is inappropriate) I suggest that the process needs to be written along the lines of : "Avoid any adverse effect. If one cannot avoid an adverse effect, then minimize the adverse effect. Only when the adverse effect is minimized, may the project consider mitigation. Mitigation may only be used for what could not be minimized and the effect after the mitigation will be subject to the standard of no undue adverse effect at and near the location of the project."
criterion 1, air pollution	**Section 3 § 6086(a)(1)(A), Air contaminants** This subcriterion conflicts with the insertion of supervisory authority into § 6207. It allows the district commission no latitude. The commission must check the box if the emission meets the requirements of the federal and Vermont air pollution laws. That makes those permits non-rebuttable. The language of the bill does come from the commission on Act 250. I suggest the following changes to bring this subcriterion into line with the other criteria. - remove reference to the federal Clean Air Act, because I believe we have the authority over that Act delegated to us. - change the reference to the Vermont regulations. Instead refer to one or more specific permits and make those permits rebuttable.
criterion 1, air pollution	**Section 3 § 6086(a)(1)(B), Greenhouse gas emissions** Greenhouse gases have perhaps the broadest geographic effect. So one might try to argue that the mitigation could be allowed at a great distance. In one of your discussions, you mentioned the California market. You also mentioned forest regeneration and soil sequestration as mitigating offsets. I suggest that: - the "avoid, minimize, mitigate" process that I outlined above (getting to no adverse effect) be used here - mitigation must take place in Vermont. That gives the multiple benefit of increasing our resilience while providing additional income to support those who own and work on farms and in forests. - the criterion for greenhouse gas emissions be amended to ". . . the location, construction use, . . ." This is where we need our plans, to help define the locations.

criterion 2, water pollution	**Section 3 § 6086(a)(2)(D), Flood hazard areas; river corridors** The addition of (9)(M) on climate adaption seems to require additional change here and perhaps in the chapter governing river corridors and fluvial erosion and flood mapping. How many times have we heard here in Vermont and nationwide something like "we've had several 500-year floods (or 1,000 year floods) in the last year". As an interim measure, we could consider floods larger than the flood of 1% annual probability. The flood insurance program also maps floods with a 0.2% annual probability. (These are the zones B and X(shaded)). I suggest using that larger flooded area as part of our considerations in chapter 32 and in Act 250. I suggest the following: - change the definition of "flood hazard area" in § 752 to read "(3) "Flood hazard area" shall have the same meaning as "area of special flood hazard" under 44 C.F.R. § 59.1 plus the zones B and X(shaded)."
criterion 2, water pollution	**Section 3 § 6086(a)(2)(G), Wetlands** This subcriterion now conflicts with the insertion of supervisory authority into § 6027. As written,the criterion allows the district commission no latitude. The commission must check the box if the wetland meets the requirements of the Vermont wetlands laws. That makes those permits unable to be rebutted. Wetlands are a relatively late incorporation into Act 250: 1985. Wetlands were added to the criteria at the same time and in the same bill as the wetlands permits were created. This is another example to refute the false claim that Act 250 is redundant. Rather, it has been recognized, since the beginning of Act 250, that district commissions are not bound by other permits. Please make the wetlands permits rebuttable by altering the language to ". . . development or subdivision will not have an undue adverse effect on significant wetlands."
criterion 8	**Section 3 § 6001 (39), Definition of forest block** I fail to see how the integrity of existing forest blocks can be maintained when they are disrupted by *new* recreational trails and *new* improvements constructed for farming, logging, or forestry purposes. These disruptions can have a significant adverse effect, yet they are defined in H.120 as being benign. Regarding new recreational trails: I think of moving at a speed too fast to avoid the small wildlife trying to cross the trail. I think of openings in the forest canopy allowing suitable conditions for invasive plants. Regarding new improvements: I think of roads, buildings, clearing for farming. I suggest removing the second sentence of the definition. It seems that the definition automatically gives those uses a pass. By removing those uses from the definition, the applicant will have to prove that they won't have an adverse effect. (Or if you insist on retaining the process of "avoid, minimize, mitigate", those uses will also have to go through that process.)
criterion 8(B), forest block	**Section 3 § 6001 (40), Definition of fragmentation** I fail to see how the purpose determines whether fragmentation has occurred or not. A new farmhouse will not fragment the forest block. A new residence that is not a farmhouse will fragment the forest block. The concept of the second sentence (that the purpose determines whether it is fragmentation or not) is not needed in this definition. The concept is adequately covered in the definitions of forest block and connecting habitat; and in the criteria on forest blocks and connecting habitat. This comment comes from my experience with contracts: say it once. If you say it twice, and they are not exactly the same, then it has two meanings and you're in for trouble. I suggest removing the second sentence to avoid the repetition and to eliminate the possibility of confusion.

criterion 8(B), forest block	**Section 3 § 6086(a)(8)(B), Forest blocks** H.120 is ambiguous on the importance of forest blocks. The bill declares that forest blocks are so important that they need to be added to the criteria now. At the same time, it declares that their value is so low that we can afford another year of losses to forest blocks before the district commissions can actually consider them. H.120 allows forest blocks to use the process of "avoid. minimize, mitigate". Projects can damage a lot of forest blocks in the year or two until the criterion becomes effective. That loss without review by Act 250 is needless. The forces that lead to adverse impacts to forest blocks are increasing due to the rising influx of climate refugees and COVID refugees into Vermont. I suggest that: - the "avoid, minimize, mitigate" process, getting to no adverse effect, that I outlined above be used here - forest blocks be brought into the criteria now without rule-making. - you change "adjacent geographic area" to "same geographic area".
criterion 8(B), forest block	**Section 3 § 6094, Mitigation of forest blocks** There is no need for the rule-making specified in §6094(b). H.120 requires that only two items be determined by the rule: the ratio of preserved acreage to affected acreage; and other compensation measures than the two in the bill. The only other place in Act 250 that allows mitigation of a criterion is § 6093 (mitigation of primary agricultural soils). Section 6093 specifies directly the ratio of preserved acreage to affected acreage, without having gone through rule-making. That ratio is 2:1 to 3:1 outside certain areas. It is unlikely that forest blocks would be located inside those certain areas. Section 6093 gives no authority for other compensation measures through rule-making. As I point out below when commenting on connecting habitat, I don't see how connecting habitat can be mitigated. Thus, I suggest that § 6094 be limited to forest blocks and fragmentation of forest blocks. I suggest amending the bill so that § 6094 will be: * * * (b) Suitable mitigation for the conversion or fragmentation of forest blocks necessary to satisfy subdivision 6086(a)(8)(B)(i)(III) of this title is as follows. (I) The acreage ratio of forest block to be preserved in relation to the forest block affected by the development or subdivision is no less than 2:1 and no more than 3:1. The ratio shall be based on the quality and character of the forest block affected and such other factors as the Commissioner of Forests, Parks and Recreation may deem relevant, including, the block's accessibility; tract size; existing silvicultural operations; water sources; drainage; slope; the presence of ledge or protected wetlands; existing infrastructure; habitat value; and the NRCS rating system for Vermont soils. (A) and (B) will have reference to connecting habitat removed; otherwise they will remain the same as in H.120. (C) will be removed.
forest blocks	**Section 10, Rulemaking** Please remove § 6094 from this section on rule-making. As I point out above, there is no need for rule-making. The other section on mitigation, § 6093, was implemented without rule-making. The two are so similar, that there should be no need for rule-making. The criterion on forest blocks should be brought into Act 250 as soon as possible, without waiting for rule-making.

criterion 8(C), connecting habitat	**Section 3 § 6001 (38), Definition of connecting habitat** I fail to see how the integrity of connecting habitat can be maintained when disrupted by *new* recreational trails and *new* improvements constructed for farming, logging, or forestry purposes. These disruptions can have a significant adverse effect, yet they are defined here as being benign. Regarding new recreational trails: I think of moving at a speed too fast to avoid the small wildlife trying to cross the trail. I think of openings in the forest canopy allowing suitable conditions for invasive plants. Regarding new improvements: I think of roads, buildings, clearing for farming. I suggest removing the second sentence of the definition. It seems that the definition automatically gives those uses a pass. By removing those uses from the definition, the applicant will have to prove that they won't have an adverse effect. (Or if you insist on retaining the process of "avoid, minimize, mitigate", those uses will also have to go through that process.)
criterion 8(C), connecting habitat	**Section 3 § 6086(a)(8)(C), Connecting habitat** H.120 is ambiguous on the importance of connecting habitat. The bill declares that connecting habitat is so important that it needs to be added to the criteria now. At the same time, it declares that its value is so low that we can afford another year of losses to connecting habitat before the district commissions can actually consider them. H.120 will apply the process of "avoid, minimize, mitigate" to connecting habitat. My primary objection to the mitigation portion is that connecting habitat cannot be mitigated by conserving land elsewhere. Connecting habitat allows species to move between areas that they occupy. Summer range and winter range. Breeding grounds and living grounds. Connecting habitat is often a narrower band allowing movement between two larger habitat areas, relatively easy to disrupt because it is narrower. When the connecting habitat is adversely affected, cannot move as they need to move in order to live. The definition of connecting habitat goes a long way to ensuring that connecting habitat will be adversely affected. The definition will allow recreational trails and improvements for farming. Species really don't care about whether a new house that is disrupting their connecting habitat is a farmer's or someone else's. The effect on the connecting habitat is the same. Either a project allows the connecting habitat to function or the project severs the connecting habitat. If a project severs the connecting habitat, then no amount of mitigation elsewhere will protect the populations whose survival depends on the connecting habitat. I suggest that the criterion for connecting habitat really needs to be, in its entirety, something like "(C) *Connecting Habitat.* A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision of land within connecting habitat will maintain the connection and its functions for those species which use the connecting habitat."
criterion (9)(B)	**Section 3 § 6093(c)) Mitigation of primary agricultural soils** The mitigation ratio of primary agricultural soils is reduced in order to encourage projects in certain areas. I do not think we should be encouraging sawmills, veneer mills, pulp mills or pellet mills on primary agricultural soils. I suggest removing this proposed amendment.

criterion (9)(F) energy conservation and efficiency	**Section 3 § 6086(a)(9)(F) Energy conservation and efficiency** The proposed amendment to this criterion (9)(F) comes from the Commission on Act 250: The Next Fifty Years. I believe that the amendment is inadequate to our needs regarding climate change and energy efficiency. Building codes are already out of date by the time they are implemented. They are developed by a multi-year consensus process. That means that codes are unable to implement the cutting edge, leading technologies that we need for energy conservation and efficiency. A little history. Criterion (9)(F) was added in 1973 and amended in 2013. The amendment in 2013 weakened the standard of the criterion. The underlined portion is what was added in 2013. 6086 (a)(9) **(F) Energy conservation.** A permit will be granted when it has been demonstrated by the applicant that, in addition to all other applicable criteria, the planning and design of the subdivision or development reflect the principles of energy conservation, including reduction of greenhouse gas emissions from the use of energy, and incorporate the best available technology for efficient use or recovery of energy. An applicant seeking an affirmative finding under this criterion shall provide evidence that the subdivision or development complies with the applicable building energy standards under 21 30 V.S.A. § 51 or 53. Before the amendment in 2013, the subdivision or development was required to "incorporate the best available technology for efficient use or recovery of energy." The standard was weakened by adding what is now the last sentence. Building codes can never incorporate the best available technology. Thus, reliance on compliance with building standards can never meet best available technology. Buildings built now under the building energy standards will be around hopefully 100 years or more, like many of our existing buildings. We know now that energy codes are inadequate to our future needs. I hope, that if this amendment goes through, that people in 20 or 30 or 50 years will be appalled that we allowed such wasteful buildings to be built. I suggest that (9)(F) be returned to the standard of best available technology by removing the last sentence of (9)(F). I also suggest leaving the phrase on greenhouse gas emissions in (9)(F).
criterion 9(M) climate adaptation	**Section 3 § 6086(a)(9)(M), Climate adaptation** I do not understand the purpose of including this as a separate subcriterion in Act 250. I suggest that climate adaptation be an integral part of Act 250 and our other statutes. You have heard estimates that Act 250 covers somewhere between 5% and 30% of all projects in Vermont. This concept of resilience needs to be applied to all projects, not just those in Act 250. The proposed amendment covers three aspects specifically and others through the catch-all of climate change. - extreme temperature events (heat and cold). Their effects can be considered under the criteria on water supply (2); on burdens on municipalities (6) and (7); and energy conservation (9)(F). - wind. Resilience to wind will be more broadly achieved by altering the portions of our building codes relating to design for winds. - precipitation (large amounts and droughts) can be considered under many of the water criteria: (A), (D), (E), (F), and (G). Also under (3), (4); (7). The phrase "reasonably projected at the time of application" likely will be the subject of much controversy. I do not think that we as a state have come to a common understanding of what is a reasonable projection. I suggest that climate adaptation not be added as a new subcriterion. Instead I suggest that the existing criteria, as noted above, be relied on to assess resilience and climate adaptation. I suggest removing section (9)(M) and amending some of the sections I've noted.

criterion 10(B) plans	**Section 3 § 6086(a)(10)(B), Local and regional plans** As written, this seems to place the district commissioners in the awkward position of trying to decide if someone in opposition to the plan is of inferior intelligence. I suggest omitting (B) and relying on the supervisory authority of § 6027.
effective dates	**Section 12, effective dates** Please have the criteria on forest blocks and connecting habitat take effect on passage. There is no need for rule-making for them when you amend the bill as I have suggested.

Other issues

purpose	**Section 3 § 6000, Purpose; construction** I suggest using part of the original Act 250 as this purpose and construction section. Section 1 of Act 250 is headed "Findings and declaration of intent". I find the last whereas section and the therefore section to be relevant still; and suitable for this purposes clause. > It is necessary to regulate and control the utilization and usages of lands and the environment to insure that, hereafter, the only usages which will be permitted are not unduly detrimental to the environment, will promote the general welfare through orderly growth and development and are suitable to the demands and needs of the people of this state. > In order to protect and conserve the lands and the environment of the state and to insure that these lands and environment are devoted to uses which are not detrimental to the public welfare and interests, the state shall, in the interest of the public health, safety and welfare, exercise its power by creating a state environmental board and district environmental commissions conferring upon them the power to regulate the use of lands and to establish comprehensive state capability, development and land use plans as hereinafter provided. As the clauses from 1970 show, Act 250 was never solely about protecting the natural environment of the State. If it were, there would have been fewer criteria, it seems to me. The legislative findings of 1973 (Act 85) reinforce that Act 250 is not solely about the natural environment. Those 19 legislative findings, now the capability and development plan, are divided into three segments: - PLANNING FOR LAND USE AND ECONOMIC DEVELOPMENT (1 through 8) - RESOURCE USE AND CONSERVATION (9 through 14) - GOVERNMENT FACILITIES AND PUBLIC UTILITIES (15 through 19)
purpose	**Section 3 § 6001 (47), Definition of environmental justice** I suggest changing "people" to "individuals". That is because the definition of "people" includes impersonal entities that should not receive the benefits of environmental justice. It is many of these impersonal entities (defined as "people" in §6001 (14)) that create the need to include environmental justice in Act 250.

mapping	**Section 3 § 6081 (l) (6), Permits required; exemptions; slate quarries** Please remove the requirement to add registered slate quarries to the Natural Resources Atlas. Adding a specific requirement here for a layer in the Natural Resources Atlas seems inappropriate to me. I am reacting to this as I would if I saw this in a construction contract or a contract for engineering services. It just doesn't belong. And leaving out of chapter 151 all the other desirable layers would cause major problems if it were in a contract. That is because intent doesn't count in a construction contract. I've been told that intent does matter in statutes, but I can't shake the feeling that this requirement for one data layer does not belong here. I present an alternative when I get to section 4 of this bill.
mapping	**Section 4, § 127, Resource mapping** Please do not start a laundry list in this section. The data layers are used for many purposes by many bodies. Rather than enumerating specific data layers I suggest a broad approach: identifying users and uses instead of identifying layers. This approach might look something like: (a) ~~On or before January 15, 2013, the~~ The Secretary of Natural Resources (the Secretary) shall complete and maintain resource mapping based on the Geographic Information System (GIS) or other technology. The mapping shall identify natural resources and other information throughout the State, ~~that may be~~ including those that are relevant to the Agency of Natural Resources, the Agency of Commerce and Community Development, the District Environmental Commissions, the Public Utilities Commission, municipalities, and regional planning commissions ~~the consideration of energy projects~~. The Center for Geographic Information shall be available to provide assistance to the Secretary in carrying out the resource mapping. If you choose to name specific layers, I suggest you add them in session law, to the effect of "This act adds requirements for forest blocks to chapter 151 of title 10. The general assembly finds that it is important to know the locations of registered slate quarries. For these reasons, the Secretary shall add a layer on forest blocks and a separate layer locating registered slate quarries to the natural resource mapping."
non-response	**Section 3 § 6087(d)** Act 250 is already improperly accused of taking too long. I suggest shortening the time until a permit is denied because of a non-responsive applicant. What happens when the response is made in the allocated time and the response is something like "I cannot complete my application. I am waiting for: a report from my consultant; a permit from ANR; or a permit from a municipality." Then the report or permit is not issued until the indicated time has expired.
burdens	**Section 3 § 6088, Burden of proof; production and persuasion** I suggest that the last word of (c) be changed to "criteria". I acknowledge that the dictionary I use supports your use of the word "standard". As an engineer, I think of standard as being more specific and more detailed than what is in the criteria.

release from permit	**Section 3 § 6090(c), Change to non-jurisdictional use; release from permit; general comments** I am not sure that I approve the concept of releasing land from Act 250 permits. I am sure that the process presented in H.120 is inadequate to do the job of releasing land. I present here many concerns with implementation as included in H.120. If release is authorized, it needs to be done in a way that protects the interests of all original parties and that does not reward scofflaws. H.120 does the opposite: it fails to protect the interests of all original parties and it does protect scofflaws. The process for releasing land from a permit would be neither easy nor fast. The conditions of a permit are not well defined and not easy to determine. Yes, the Land Use Permit itself has a list of conditions; some standard and others specific to the project. Those conditions bring in the findings of fact, the conclusions of law, the plans, the exhibits, possibly several state permits. Those all have to be carefully reviewed before determining which conditions in them might be removed and which need to be retained. The framers and amenders of Act 250 never considered other State permits to be a substitute for Act 250. Thus it is inappropriate to rely on conditions in other permits as successors to conditions in an Act 250 permit. A change in the use of the land without an amendment should not be a condition for release of the land. That benefits scofflaws. If the use of the land has changed, then the permittee or permittees are not in compliance with the permit. To be in compliance, they would have had to obtain an amendment for the change in use. If the use has changed without an amendment, it seems that there should be an enforcement action, not a release from permit. You have received no testimony on, and do not know, how many permits might be eligible for review. You do not know whether the district commissions have the capacity to handle these reviews. The State does not monitor Act 250 permits for compliance after they are issued. So no one knows how many permittees are out of compliance. And when a permittee is found to be out of compliance, there has been no testimony that the Natural Resources Board has the capacity to initiate and complete an enforcement action. No one knows how many permits might be eligible by changed definitions of development and subdivision; how many changes of use have occurred. H.120 does not indicate what happens to the permit. Is it ripped up and thrown out? Is it kept for the historical record? Does the release of land become the final amendment of the permit and all are retained? What happens to the permit in the land records? Obviously the permit in the land records remains there. I think H.120 should require another document indicating the release of land.

release from permit	**Section 3 § 6090(c), Change to non-jurisdictional use; release from permit; protecting the interests of all parties** If release is authorized, it needs to be done in a way that protects the interests of all original parties. H.120 fails to protect the interests of all original parties. My comments on this section are from the viewpoint of a party to the permit whose participation in an Act 250 proceeding resulted in conditions placed in the permit. I think that those parties should have the right to participate in the process considering release of land from those conditions. H.120 does not require a district commission to notify all non-applicant parties to the permit of the application to release the land or conditions. A non-applicant party would 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 to a party who managed to have conditions placed into a permit. For similar reasons, current adjoining landowners should receive notice, too. I also suggest requiring a District Commission to maintain conditions in a permit resulting from testimony of a non-applicant party before releasing land from a permit. An example of a condition that needs to be maintained might be a screening requirement. Even if the screen has been built and maintained, whatever it was screening is still there. I would think that the condition requiring the screen needs to be maintained. Continuing to require that screen protects the interests of the party who obtained that condition.

release from permit

Section 3 § 6090(c), Change to non-jurisdictional use; release from permit, possible amendment

Here is a suggestion for an amendment that protects the interests of parties who obtained conditions and that does not reward scofflaws. Additions and deletions are based on the proposal in H.120 as introduced. This suggested amendment provides placeholders for some of the areas that have a broad range of options.

(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 permit amendments, on finding each of the following:

(A) 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.

(B) The use of the land as of the date of the application ~~does not constitute~~ no longer constitutes 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) The permit has no conditions imposed by a court or a court order.

(E) There is no condition that needs to be maintained to protect the interests of any 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) (A) 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)~~ (E) of this subsection.

(B) 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, if there had been no hearing on the original permit or any amendment in the same permit series. If there had been a hearing, then the application shall be treated as a major application. ~~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.~~

(C) All parties to the permit, including subsequent amendments, shall be granted party status and shall receive notice of the application and of any hearing.

(D) The initial burden of production, to produce sufficient evidence for the District Commission to make a factual determination, shall be on the applicant with respect to subdivisions (1)(A) through (E). The burden of persuasion, to show that the application meets the relevant standard, shall be on the applicant.

(4) (A) [NOTE: This will describe how the physical (or digital) permit is handled after release.]

(B) [NOTE: This will describe how the release gets into the land records.]

Section 8, Vermont regional and municipal planning review

I fail to understand the make-up of the group doing the review. The group is really only one person: multiple aspects of the governor.

I suggest a broader representation on the review group. And I suggest that public involvement be allowed from the beginning. Not allowing the public into the review before a draft report has been published deprives the public of an opportunity for meaningful public input.

I agree with previous testimony that the study should be "how"; not "whether".