

P. O. Box 512
Montpelier, Vermont 05601
March 30, 2021

House Committee on Natural Resources, Fish and Wildlife
meeting remotely

Subject: testimony on dr req 21-0956 miscellaneous natural resources and development subjects

Dear Committee:

As you are aware, Sections 21 through 27 of the draft were brought to you by the Natural Resources Board to ease implementation of their online application system. However, sections 24 and 25 also will remove barriers to implementing the governor's planned re-organization of the Board. Even though the Senate disapproved the executive order, I doubt that the governor will give up his plan for the re-organization. So I am requesting that you remove from your draft those provisions that will facilitate that re-organization. I share the concern that Rep. Lefebvre expressed two weeks ago on the provisions relating to Act 250 in this bill. I thank him for expressing that concern.

I request that you change sections 24 and 25 of the draft. And I request that you require some means of outreach to bring district commissions up to full strength and to keep them there.

Suggestions for Section 24

Section 24 proposes to amend 10 VSA § 6083, Applications. I see a need to amend only one part of that section. That is the number of copies of a plan to be submitted with an application.

Section 24 does two things that together work to support the re-organization proposed at the beginning of the 2020 session and then again at the beginning of this 2021 session.

- The section will remove the requirement that an application for a permit be filed with the district commission.
- It will require an application to "be filed . . . as prescribed by . . . other guidance that the Board may issue from time to time."

What I foresee happening is that the Board will issue guidance requiring that all applications be submitted to the Board. Guidance of course is easier and faster to create than rules. Having all applications go to the Board is one component of the re-organization plan.

The district commissions are a strength of Act 250. Report after report on Act 250 have been made. I have found six reports on how Act 250 is working and what changes might be made to improve how Act 250 functions. These six reports were issued 1977 through 2019. None of these six reports finds fault with the district commissions. None of them recommends alterations in the structure or responsibilities of the district commissions. The reports all point to the significance of the district commissions. The most recent report, that of the Commission on Act 250: The Next Fifty Years (of which two members of this committee were members) found that

"A key feature of the Act 250 program is that it consists of decision-making bodies composed of informed citizens drawn from the region that have supervisory authority and the final say on projects within their jurisdiction."

It is important to require that applications be filed with the district commissions as part of maintaining the strength of the district commissions. The Board's computer system can be set up to have applications go directly to the appropriate district commission. (According to the Board's annual reports, work on this system began in 2015.) As a comparison, the online applications for DEC's wastewater system and potable water supply permits are submitted by the applicant directly to the appropriate DEC regional office. I hope that the Board is setting up their on-line applications to do the same. If the Board is not setting it up that way, I ask that you require that applications go directly to the district offices. For your reference, DEC's permit system is at anronline.vermont.gov. The links to each regional office are at <https://anronline.vermont.gov/Home/83836795-4a4f-4915-bf44-2be0f8efd76e>.

Section (a) (first paragraph) I see removing the requirement that all applications be submitted to the district

commission as a step that removes a barrier to the implementation of the professional Natural Resources Board that the governor wants. Requiring that all applications go to the central office is part of his re-organization plan. Having all applications go to the central office concentrates power in the central office and diminishes the importance of the district commissions. Such a concentration of powers runs counter to the findings and recommendations of the reports I mentioned.

Allowing applications to be filed in accordance with guidance will also remove a barrier to implementation of the executive order. Guidance is easier and faster to create and has no oversight.

For these reasons, I request that this bill not amend (a) and that (a) remain as it exists in statute now.

Subsection (a)(1), as it now exists in statute, provides information on who the applicant is and where the applicant is located. I see no reason to remove this requirement from statute. Leaving the requirement in statute is a clear expression of the intent of the general assembly. For that reason, I request that this bill retain (a)(1) as it exists in statute now.

Subsection (a)(2) It will be quite some time until all parties to an Act 250 application are capable of going digital. As I stated earlier, one of my reasons for testifying is to keep Act 250 accessible to less-resourced applicants and non-statutory parties. Requiring the proceedings to be all-digital will make the proceedings less accessible to those who lack the capabilities to go all-digital. So, to preserve their access, I request that there be an allowance for paper documents. The ANR online portal offers one model for that access. It allows paper copies under three situations: when broadband internet is not available; when one lacks computer-aided design software; or when one lacks access to a large format scanner. Rather than eliminating the number of copies required, I request that you retain (a)(2) as it now is in statute with an addition to reflect that some parties are capable of all-digital while other parties are not.

Subsection (a)(3) There is no need to remove (a)(3) (Act 250 fee), because I am requesting that you not amend (a). That means that the requirement for the fee can remain in (a)(3).

Subsection (a)(4) As I explain under Section 25, the electronic application system can be set up to send notices when the application is submitted and there is no reason to have district commissions take over that function. And because some notices will need to be by conventional means, there will still be a need for a certification that notices have been filed. This means that (a)(4) will still be needed.

The only part of §6083 that might need amending for the Board's online applications is (a)(2), to express an explicit legislative intent that online applications must not limit access to any parties or potential parties. As shown by the ANR online system, the computer program can be set up to submit applications directly to each district commission and to accommodate those parties who lack the capability to go all-digital.

The change to §6083 that I am requesting will accommodate online applications while recognizing an exception for paper copies. I also see no need to leave so much up to the discretion of guidance as is requested by the Natural Resources Board. I request that section 24 be modified to read as follows:

§ 6083. Applications

(a) An application for a permit shall be filed with the District Commission as prescribed by the rules of the Board and shall contain at least the following documents and information:

(1) The applicant's name, address, and the address of each of the applicant's offices in this State, and, where the applicant is not an individual, municipality or State agency, the form, date, and place of formation of the applicant.

(2) Four copies of a plan of the proposed development or subdivision showing the intended use of the land, the proposed improvements, the details of the project, and any other information required by this chapter, or the rules adopted under this chapter. If the application is filed online, then only one copy is required with the application. The applicant will make paper copies available to all parties who lack the high-speed connections, hardware, or software to participate effectively within a digital system.

(3) The fee prescribed by section 6083a of this title.

(4) Certification of filing of notice as set forth in 6084 of this title.

Apparently there no longer will 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. I find that links to documents on the Act 250 database and ANR and DEC sites no longer work. I cannot find NRB reports or ANR reports. Maybe they were never there. Or they were removed, 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 strongly recommend that paper copies be made and retained for archival purposes.

Suggestions for Section 25

Section 25 proposes to amend 10 VSA §6084, Notice of application; hearings; commencement of review. in several ways. The most significant change is with who sends the notice that an application has been submitted. If the application system is set up properly, it can send notices with the application to the required parties at the same time as the applicant submits the application. Thus it will be just as easy for the applicant to send those notices. The same "submit application" button will submit to the district commission and to the other parties required to receive notice.

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. Thus exceptions will need to be added to the draft to allow notice to be sent by conventional means in these situations.

I request that two sentences be inserted after the first sentence of §6084 as it exists in statute. The remainder of Sec. 25 would remain as printed in the draft 1.1.

(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. The notice 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.

Suggestions for bringing district commissions to full size.

I am not sure how to require outreach for vacancies and expired terms. I ask that you find a way to require that outreach.

The nine district environmental commissions should have 27 members. There can also be up to 4 alternate members each (for a maximum of 36 alternate members). However, the Board shows that there are now only 11 members with current terms, including chairs. The other 16 positions have expired terms or are shown as vacant. There are only 7 alternates with current terms. District 4 (Chittenden County) is the only district with a full roster of commissioners and alternates. District 5 (Washington, Lamoille, and a sliver of Orange Counties) is the only other commission that can seat a full commission of three at public hearings. The other seven district commissions each have only one member with a current appointment.

It seems that neither the Board nor the governor actively solicits applications for appointment. The Board passes the buck on vacancies by stating "All commissioners are appointed by the governor." There is no link to the governor's appointments page. The same Board page does provide a list of commissioners and alternates for each district and whether vacant or the expiration date. Some expired as far back as January 31, 2017.

The governor's page on appointments is found by going to the governor's home page; clicking on "Boards and Commissions" down near the bottom. That goes to a page with an "APPLY NOW" button and a list of all boards and commissions. The list does not indicate that there are any vacancies. Clicking on the District #8 Environmental Commission, as an example, one finds a list of the seven positions by name and the date the term expires. District #8 has one term expiring January 31, 2023; and 6 that have expired on January 31 of 2019, 2020, or 2021. (It appears that all terms of district commissions expire on January 31 in accordance with the requirement that the governor make appointments in the month of February. §6026(b)) There is no indication

that the governor is seeking appointments for any of them.

I think the Board will generate more applicants if its page provides a link to the governor's page. And the Board's page should state something like "The district commissions have 9 vacancies, 36 positions with expired terms, and 4 positions with terms that will expire on January 31, 2022. If you are interested in being a district commissioner or alternate, please apply at governor.vermont.gov/boards-and-commissions".

The governor's site would generate more applicants if it had the same kind of listing as I proposed for the Board's page. Also, I think it would be easier to apply if the link to "APPLY NOW" is also on the page for each individual board or commission. (Rather than making an applicant go back one page to find the application button.)

In conclusion, I ask that you amend sections 24 and 25 as I have indicated. I also ask that you require outreach for bringing district environmental commissions up to full strength and keeping them there.

Thank you for taking time to read this testimony.

Sincerely,
Thomas Weiss