



## **Supplemental Filing in Support of H. 492**

### **House Committee on Natural Resources, Fish, and Wildlife**

**February 14, 2022**

Dear Committee Members,

In response to your recent request for VPA's position on the core element of H.492 – the creation (re-establishment) of an Environmental Review Board to oversee and administer Act 250, and to hear Act 250 appeals, **our Executive Committee voted on Friday to support H.492**, as consistent with VPA's previous recommendations to the legislature, and as an advisor to the Act 250 Commission. VPA has long held that:

- Act 250 review should be maintained as an accessible, citizen-based, applicant- and participant-friendly development review process; and that
- The current appeals process under the Environmental Division of Superior Court, enacted to consolidate and expedite Act 250, state agency, and municipal appeals through a coordinated judicial review process, has not worked as intended.

As Peg Elmer Hough noted in her earlier testimony and notes, we understand and agree with the need for a more accessible and deliberative Act 250 review and appeals process. Given VPA's diverse membership, our organization has been open to a variety of options to improve the current process, as reflected in our recommendation to the Act 250 Commission for a task force to identify and evaluate acceptable alternatives. As suggested, this included options to either improve the accessibility and breadth of trial court review (e.g., through a judicial panel); or to return to a more deliberative, administrative citizen and professional board review, supported by legal and technical staff, as originally envisioned under Act 250, and proposed under H. 492.

While VPA did not participate in the discussions that resulted in current proposals to reform the Act 250 review process, based on our review of the five bills introduced this biennium specific to Act 250 review, VPA supports H.492 as most closely aligned with our previous recommendations, including provisions in the bill as introduced that would also, in effect:

*VPA is a non-profit advocacy and educational organization dedicated to the advancement of community planning in Vermont at the local, regional, and state level, to foster vibrant communities and a healthy environment. We are also an affiliate of the Northern New England Chapter of the American Planning Association.*

- **Provide for the more consistent interpretation and application of Act 250 criteria between District Commissions, and on appeal** – to include additional ERB rulemaking authority, and more comprehensive guidance for use by District Commissions, applicants, and other parties in addressing Act 250 criteria (e.g., Quechee Test), beyond legal precedents established only through case law.
- **Provide for a pre-application notice and review process for major applications, including neighborhood meetings**, to allow an applicant to receive and address local input and concerns on a proposed project in advance of the hearing, to help expedite the hearing process and reduce the need and basis for appeals. We understand that this was removed in the current draft, but still believe it's worth further consideration in association with rulemaking, or the Act 250 update report called for in the bill.
- **Provide for more accessible local and municipal participation, without the need for costly legal representation** – e.g., through a more participant-friendly administrative or modified on-the-record review process.
- **Limit frivolous (NIMBY) Act 250 appeals, and associated filings**, while respecting the need for due process, by generally requiring participation at the District Commission level as necessary to appeal a Commission decision, and by narrowing the scope of an appeal and associated filings.

**We also thank you for adding the reference to the Capability and Development Plan, as the basis in public policy for Act 250 review, under the reporting requirement included in Section 17 of the bill**, along with the transition to location-based jurisdiction – both key planning objectives that VPA supports:

- (1) **How to transition to a system in which Act 250 jurisdiction is based on location, which shall encourage development in appropriate locations and protected natural resources of statewide significance including biodiversity;**
- (2) **How to use the Capability and Development Plan to meet statewide planning goals.**

VPA very much appreciates the committee's offer to comment on H. 492 and looks forward to the outcome.

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