Memorandum

To: House Natural Resources, Fish and Wildlife Committee

FROM: Jon Groveman, VNRC Policy and Water Program Director

RE: H.704

DATE: March 17, 2022

To aid the Committee in its deliberations on H.704, below is the excerpt from the legal briefs filed in *In re Snowstone*, the recent Act 250 Vermont Supreme Court case that addressed using a one acre disturbed land standard to determine Act 250 jurisdiction over commercial and industrial uses, that I referenced in my testimony yesterday.

The excerpt details why using a disturbance of land standard would result in legal disputes and uncertainty about how much land would be disturbed by a project and whether jurisdiction is triggered:

Excerpt from *Snowstone* Brief

4. "[E]normous practical and administrative difficulties" that would "overwhelm the administrative process" will arise from use of the disturbed-land standard, which the legislature did not intend

In *McDonald's, supra*, the Board explained why the legislature intended the jurisdictional boundary to be one acre of tract size. The legislature foresaw that there would be "**enormous practical and administrative difficulties**" if the disturbed-land standard were to be used. *Id.* at 8 (emphasis added). The Board described what these difficulties would be:

If such a rule were to be implemented, the jurisdictional process itself would **overwhelm the administrative process**. The Environmental Board and the District Commissions would be forced to convene extensive fact-finding hearings merely to discover whether the jurisdiction of the Act would apply in a given case. These hearings would necessarily explore the merits of the proposed project just to reach the question of how much of the tract of land being built upon is involved in the project. Their findings might well require, and could well turn on the results of detailed, and expensive surveys of the square footage of land affected or utilized by the project. *Id.(*quoting *G.S. Blodgett,* Declaratory Ruling #122 [May 18, 1981])(Emphasis added.)

In the *G.S. Blodgett* decision, the Board had described in detail the problems that would plague the Board were it to adopt a land-disturbance standard. That matter involved a ten-acre municipality, and the applicant had claimed the project involved only 9.43 acres of disturbed land.

Upon detailed questioning, the Board discovered that this figure excluded the access road and landscaping areas, located on the same tract of land, and obviously directly related to the construction of the facility. If we accepted petitioner's argument, the square footage of these areas and many other factors—e.g. proposed lawns, and

drainage areas—would have to be calculated precisely in order to answer the jurisdictional question. This is not an easy task. For example, in this case, the petitioner's architect indicated an area of involved land for this project on the site plan; this area may encompass anywhere from 9 to 11 acres. Precise calculation would require much more thorough analysis and perhaps even an on-site survey.

G.S. Blodgett, supra at 3.

The Board concluded that "We do not believe that the legislature intended to introduce this high degree of uncertainty and cost into the determination of acreage jurisdiction under Act 250." Instead, "Jurisdiction turns on the acreage of the tract of land upon which construction occurs; **this 'bright line' rule is administrable, reasonable, and it is reasonably well crafted to serve the purposes of the Act**." (Boldface added.)