Thomas Weiss, P. E.
P. O. Box 512
Montpelier, Vermont 05601
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House Committee on Natural Resources and Energy
State House
Montpelier, Vermont

Subject: H.704, regulation of accessory on--farm businesses

Dear Committee:

Thank you for taking the time to hold a hearing on this bill in this hectic cross-over period.

I am a civil engineer with experience in permitting of projects and in performing environmental reviews. I bring my experience reading, understanding, and working with contracts, plans, specifications, rules, and statutes to this testimony.

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.

Also, we need to preserve our farms and the land on which they depend. You have likely heard testimony on the pressures to our rural resources due to: climate and COVID immigration; economic development initiatives to bring more people into the state; transportation problems that inhibit bringing food into Vermont. Then add in testimony on the urgency of preserving these resources. Thus it is necessary to retain in Act 250 its present capabilities to require agricultural mitigation and conservation of farmland.

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

Suggestions
I acknowledge that some of my suggestions might need to be altered to conform to the parliamentary options available to the committee now.

Sections 1 and 2 (accessory on-farm businesses) together remove the ability of District Commissions to evaluate the impacts of proposed projects on agricultural soils and other Act 250 criteria. My suggestion is to replace sections 1 and 2 with a study as proposed in S.234, which is on today's Senate notice calendar.

Section 3 (no agricultural mitigation at State-owned airports) is redundant and is not needed. Act 250's definition of "primary agricultural soils" already allows consideration of agricultural potential when determining whether a mapped soil unit is a primary agricultural soil. Thus, section 3 should be removed from H.704.

Section 3 (no ag mitigation at airports)
This section proposes to exempt State-owned airports from having to mitigate for conversion of primary agricultural soils. This section is not needed because it is redundant. It is also possible that this section is not germane.

Not necessary because redundant
I have heard all the testimony on this section of this bill in the House and on the counterpart bill in the Senate. All the testimony focused on criterion (9)(B), Primary agricultural soils. None of the testimony considered the definition of "primary agricultural soil". That definition is equally important

Criterion (9)(B) requires a finding that "the subdivision or development will not result in any reduction in the agricultural potential of primary agricultural soils, or" . . . What comes after the "or" is not relevant to my testimony.

A definition of "Primary agricultural soils" was added to Act 250 in 1973. That was part of the first amendments to Act 250. Those amendments put into statutes decisions that the Environmental Board had decided in the first three years of Act 250. The definition was amended twice (2006, and 2014).

Act 250 10 VSA §6001 (15)(A) now defines primary agricultural soil as "an important farmland soils map unit . . . of prime, statewide, or local importance, unless the District Commission finds that the soils within the unit have lost their agricultural potential." That "unless" clause is important.

One way to lose agricultural potential is "(i) impacts to the soils relevant to the agricultural potential of the soil from previously constructed improvements"

Another way to lose agricultural potential is "(iii) the existence of topographical or physical barriers that reduce the accessibility of the rated soils so as to cause their isolation and that cannot be reasonably overcome"

There are two considerations here.
- Parcel on which the airport exists. An applicant ought to be able to make a reasonable case before the District Commission that the mapped soil unit is not primary agricultural soil because it no longer has agricultural potential. Thus, no mitigation would be required, because there are no primary agricultural soils to be considered under criterion (9)(B).
- Parcels later acquired by the airport. (Or maybe already acquired by the airport, given the notwithstanding aspect of 1 V.S.A. §214.). If this land has primary agricultural soils, then the mitigation requirements of Act 250 need to apply.

Is it germane?
H.704 was introduced as a short-form bill on February 2, specifically to allow sections 1 and 2 to bypass H.581, rural economic development. The purpose of H.704 is specific to on-farm accessory businesses. If one can apply that purpose to section 3, then section 3 is not germane.

> "Statement of purpose of bill as introduced: This bill proposes to clarify the definition of "accessory on-farm business." It would prohibit regional and municipal plans from banning accessory on-farm businesses. It would remove the requirement for the business to be subordinate to the farm, provided gross sales from the business do not exceed $200,000.00 annually. It would exempt water from the calculation used to determine if products are principally produced on the farm. To be exempt from Act 250, it would limit the amount of land used by an accessory on-farm business to one acre and set the maximum size of new buildings to 4,000 square feet."

Suggestion
Remove section 3 from H.704.

Section 2 (amendments to the definition of accessory on-farm businesses)
Sections 1 and 2 relate to the vital subject of viability of farms. They affect how Act 250 applies to farms and to commercial activities on farms. However, there are many unasked questions. How would they be implemented within Act 250? What are the consequences on the resources covered by Act 250? Why should those consequences not be considered by District Commissions?

An understanding of Section 2 will help in understanding section 1. Section 2 proposes to amend 24 V.S.A. §4412(11). This is *a subsection* on bylaws in the chapter on municipal and regional planning and development.

Section 2 contains the entire text of the existing subsection (11). Its components (which I'll not try to summarize) are:
- a prohibition on bylaws prohibiting accessory on-farm businesses at the same location as the farm.
- a definition of accessory on-farm business
- a definition of farm
- a definition of farming (referring to Act 250's definition)
- a definition of qualifying product
- a definition of the rules on Required Agricultural Procedures (referring to AAFM's statutes)
- eligibility as an accessory on-farm business
- allowing accessory on-farm businesses to take place in new or existing buildings or on the land itself
- allowing municipalities to do site plan reviews of accessory on-farm businesses
- allowing municipalities to adopt less-restrictive requirements on accessory on-farm businesses
- requiring AAFM to provide training on accessory on-farm businesses.

Regional plans and municipal plans
Statute now prohibits municipalities from having a bylaw that prohibits accessory on-farm businesses at the farm. This amendment would also prohibit regional plans and municipal plans from prohibiting them.

This proposal has implications for criterion (10) of Act 250, which is about conformance with local or regional plans. How those plans cover accessory on-farm businesses affects the evaluation of an application by the District Commission. Plans are valid eight years, so the Environmental Review Board will need to provide training to District Commissions on implementing this in the interim until the plans catch up. You have had testimony on the decline in training under the Natural Resources Board.

Amending the definition of farming
The Act 250 definition of farming is used for accessory on-farm businesses in subsection (11). That definition has eight parts, any one of which is farming. Three of them require being "principally produced on the farm".

Section 2 proposes to amend the definition of farming for the purposes of municipal bylaws. The proposal would not allow water (presumably "added water") to be used in the determination of whether something is principally produced on the farm.

This proposal has implications for Act 250, if the concept of accessory on-farm businesses is added to Act 250. It also creates a conflict between the definitions of farming in Act 250 and in municipal planning and zoning.

Section 1 (converting commercial activities to farming activities merely because they are located on a farm)
Section 1 proposes to exempt accessory on-farm businesses from Act 250 when three conditions are met.

First condition, accessory on-farm business
The first condition is that the proposed improvements are for an accessory on-farm business as covered in 24 V.S.A.§4412(11). Testimony taken during other hearings for H.704 is that these businesses can include farm-stay cabins, warming huts for a network of ski trails on the farm, farm stands, and food processing.

Second condition, Required Agricultural Practices
The second condition is that the farming operation is subject to the Required Agricultural Practices. Subject to them. Not in compliance with them.

What is a farming operation? Act 250 neither defines nor uses the term "farming operation." Act 250 does define "farm" and "farming" How does a "farming operation" relate to the two definitions?

Third condition, Physically altering land
The third condition is that the improvements constructed for the accessory on-farm business do not physically alter more than one acre of land.

You have heard testimony previously on the difficulties and expense of determining how much land is physically altered. Needing a detailed set of plans. How to ensure that the limit is not exceeded during construction.

This condition allows a farm to have multiple on-farm businesses, each physically altering up to one acre of land. A farm stand. Then a relish making facility. And a cheese-making facility.

Removing these accessory on-farm businesses from the definition of development means that the conversion and mitigation of farmland are not considered.

Suggestion
The concerns I have presented can be evaluated either by more testimony or by asking for a report. The report requirement could be put into H.704. Or H.704 could be abandoned and the report would then go into H.492. This possible language for the report is from S.234, on the Senate's notice calendar today. I am also optimistic and have changed to the Environmental Review Board (S.234 uses Natural Resources Board).

> Sec. xx. REPORT; ACT 250 JURISDICTION OVER AGRICULTURAL BUSINESSES
> On or before January 15, 2023, the Environmental Review Board shall submit to the General Assembly a report with recommendations on how Act 250 jurisdiction should be applied to agricultural businesses, including those located on properties already operating as farms. The report shall address the current land use planning requirements for farms and farms with accessory on-farm businesses and whether different types of businesses associated with farms and farming require different levels of review. The report may consider whether or not the location of such businesses is relevant and may consider the designation or adoption of agricultural business innovation zones with different levels of review.

Conclusion
I hope that you find these recommendations worthwhile and that you will implement them.

Thank you for taking the time to read this letter.

Sincerely,
Thomas Weiss, P. E.