Vermont Natural Resources Council
Testimony of Brian Shupe, FAICP, on S.234
February 8, 2022

Section 1: VNRC does not oppose the provision to allow river corridor areas in NDAs in accordance with the draft bill. This provision:

- Only allows development in areas where existing development already exists, in accordance with DEC model regulations that allow for infill in instances where the development is adjacent to existing buildings and would not allow new development to encroach further into the river corridor than existing buildings already encroach; and
- Adds a requirement that the municipality adopt river corridor bylaws that will limit development in river corridors townwide, thereby increasing river corridor protection.

Section 2: VNRC does not oppose this change. We do, however, categorically oppose the New Town Center designation. Of all of the designation programs, this has been the most problematic and should be eliminated.

Section 3: VNRC is comfortable with this provision to make the expiration of conditional use and site plan approvals consistent across the state.

Section 4 DEFINITIONS:

- VNRC understands the desire to increase the cap on the number of units comprising priority housing areas in NDAs in light of the current housing crisis, the importance spending ARPA dollars prior to January 1, 2027, and the need to accommodate an expected influx of climate migration in a manner that supports smart growth and avoids sprawl and resource fragmentation. An important consideration to us is that NDAs, unlike most other designations, includes environmental protection criteria and municipal land use regulation requirements to qualify for designation. That said, the increase from 25 to 50 units in the smaller communities is a concern. Based on my understanding of Senator Bray's comment yesterday, however, we are relieved to learn of his intent to sunset this provision and determine whether it should be extended indefinitely.
- I don't have an opinion regarding the definition of Mixed Income Housing and would defer to our colleagues in the affordable housing community.

Section 5: VNRC supports this provision that would update the criteria to reflect contemporary science.

Section 6: VNRC supports requiring municipalities to respond to applications in a timely manner.

Section 7-13: Jamey Fidel testified at length in support of these provisions so I will skip over them, but I would be glad to answer any questions if members of the committee have any.

Section 11: While Jamey also testified in support of this provision, I'd like to expand on his testimony regarding the encroachments, or road, rule. The committee should be aware that a variation of the road rule existed between 1982 and 2002, when it and the 10-acre loophole were eliminated. Support for the road rule was mixed at that time. That version was flawed because jurisdiction was triggered by any single road (i.e., a road serving three or more houses), which proved counterproductive at times as developers configured subdivisions to avoid it by building multiple 790 'roads and excessive driveways. This version addresses that flaw by triggering jurisdiction based upon the cumulative development of all roads and driveways that, in combination, measure 2,000 'or greater. That is just under 4/10th of a mile. This is important to address resource fragmentation, serving as a companion to the fragmentation criteria proposed in Section 8 of the bill. Several years ago, VNRC conducted research that looked at land subdivision in 22 Vermont communities. We found that, between 2003 and 2009, out of 925 subdivisions creating 2,749 lots and affecting a total of 70,827 acres, only 2% of the subdivisions triggered Act 250.

We believe this new road rule will be an important tool not to prevent residential development, but to encourage residential development that is clustered and does not encroach into forest blocks, farmland and other natural areas. And unlike the old road rule, which was easy to circumvent, developers wishing to avoid jurisdiction can do so by choosing not to encroach into forest blocks. Further, the majority of road construction in the state consists of private development roads, and in many if not most towns the hydrologic impacts of road and driveway construction is not well regulated. A long driveway up a steep hill can result in significant water quality issues and can have a profound impact on the ecological values of forest blocks.

Section 14: VNRC. Supports this provision that would correct the ruling in the recent Snowstone decision that reversed over 50 years of Act 250 precedent, although we hope that the Court will reverse this decision in the near future making this change unnecessary.

Section 15: I only saw this for the first time yesterday afternoon and would like to listen to testimony before weighing in, although we have long felt that Act 250's protection of prime agricultural soils — a finite resource — has been inadequate and this does raise some concerns.

Section 16: VNRC has no concerns about providing the Court with additional capacity on a temporary basis.

Section 17: VNRC supports this provision.

Section 18: As noted earlier with regard to New Town Centers, VNRC supports changes to the designation programs and agrees that an objective study could inform what those changes should be. We have two suggested changes to the study:

- With regard to the consultant's charge, we suggest you add to (E) -- (page 23, line 20) apply regulatory and nonregulatory incentives, and mechanisms for addressing potential environmental impacts resulting from new, incentivized, development in the designation process.
- Adding another charge, (I), to address how the designating body could be held accountable in the event that designations are granted for applications that do not comply with designation criteria. While the Downtown Board has generally done a good job during the Scott and Shumlin administrations in sticking to the legal requirements for designation, there have been instances in which the Board – which is dominated by administration officials, granted designations that egregiously violated clear standards and there was no process for appealing that decision. I am sensitive to the administration's concern that the Board not become a regulatory body, but if their decisions are resulting in removing development from the requirement they comply with existing regulations, there should be some means of holding them accountable to potentially impacted parties.