

P. O. Box 512
Montpelier, Vermont 05601
April 19, 2021

Senate Committee on Transportation
meeting virtually

Subject: H.433 the Transportation Program and miscellaneous changes to laws related to transportation

Dear Committee:

Please do not add sections 28a and 28b to H.433. Also please do not adopt Sen. Parent's proposed amendment. I acknowledge that Act 250 is not part of your committee's jurisdiction and that you have asked Senate Natural Resources and Energy to review the proposed exemptions.

I am a civil engineer who has participated in both Act 250 and NEPA permitting.

Effects of a project are based on total disturbance

As you are aware, secs. 28a and 28b propose to reduce the area of involved land of a transportation project that receives any federal aid. (The amount of involved land is what counts toward the 10 acres required for jurisdiction.) They would do this by not counting the area that was previously disturbed by a transportation facility. VTrans claims that such projects are adequately covered by all the other permits the project needs and by the review required by the National Environmental Policy Act. The other permits and NEPA are not comparable and are not complete. Such an exemption will reduce the effectiveness of act 250.

Exempting those projects means abutters and other parties lose their ability to participate in the permit process. And VTrans testified that they expect half of their projects that now need an Act 250 permit would be exempt under this provision. Public participation under NEPA is not the same as being a party to an Act 250 case. I have participated as a member of the public in Act 250 hearings and in the NEPA public comment process. Public participation under NEPA is typically limited to one-way communications at specific times in the process, usually after the review is done. There is no direct interaction. There might be a public hearing, and my experience is that public hearings do not lead to dialogue. The public submit comments and get no direct feedback. Some time later there will be a summary of the comments and what, if anything, about the project was changed as a result of the comments.

Some effects of a transportation facility are based on the entirety, not just the incremental part. Air quality, runoff, water quality, aesthetics, scenic or natural beauty, and habitat connectivity are examples of criteria that depend, in part, on a highway's total width and total area.

During construction, the previously disturbed areas usually are disturbed again. The impacts during construction, also considered under Act 250, include runoff, erosion, and water quality and will be based on the total area disturbed, not just the incremental area.

If this exemption is granted to transportation facilities, other types of projects receiving federal assistance will want the exemption, too. Granting exemptions to those other types of projects will reduce further the effectiveness of Act 250.

Other permits are not a substitute for Act 250

The Agency of Transportation has testified that all the other permits it needs to get are an adequate substitute for Act 250. The agency provided you with a permit matrix on March 17 listing the act 250 criteria and subcriteria. It then lists the applicable permits that AOT claims are adequate substitutes.

The matrix shows to me something different than what VTrans claimed. There is no other permit that applies to almost half the criteria and subcriteria. Other permits fail to adequately apply to other criteria. One example is for the criterion on productive forest soils (criterion 9C): the only permit cited is from the Green Mountain National Forest, which does not apply to the vast majority of Vermont's forests outside the National Forest. A second example is waste disposal (criterion 1B): one of the permits cited is for an underground injection permit when the criterion specifically prohibits injection of hazardous or toxic materials into groundwater or injection wells. A third example is water conservation (criterion 1C): the criterion requires using the best available water

conservation technology; the rules for the cited permit do not require that best available technology.

As the Commission on Act 250: The Next 50 Years rightly pointed out, the environmental review under the National Environmental Policy Act is not a permit. I quote from the commission's final report.

In addition, VTrans in part relies on the National Environmental Policy Act (NEPA) for its argument on federal scrutiny. But NEPA is an environmental analysis requirement and not a process that results in a permit or approval with enforceable obligations. Under NEPA, as long as the requisite analysis is done, the project may move forward, even if there are environmental concerns.

Another case of placing blame on Act 250 for problems with other permits.

Too often, Act 250 is blamed for problems with other permits. One example is interchange 17 on I-89. I choose this one because VTrans used it as an example in its testimony on March 17, 2021.

VTrans testified that Act 250 had delayed the project 18 months and \$100,000. However, Act 250 has not delayed the project. The record shows me that VTrans and the Department of Environmental Conservation have delayed Act 250 in its function. And right of way issues are still in court.

Some dates:

VTrans submitted the Act 250 application on October 17, 2019. The permit was issued October 8, 2020. Almost one year you say? It's more like seven days.

The last document from VTrans received by the district commission was on October 1, 2020. This means that the Act 250 permit was issued 7 days after VTrans made its last submission. That last submission was the draft transportation management plan, dated September 30, 2020.

The next-to-last document received was the Vermont wetlands permit on July 21, 2020. VTrans did submit its application for the wetlands permit October 8, 2019. DEC determined that the application was not technically complete until May 8, 2020.

When asked the status, VTrans responded that there are right-of-way issues being resolved in court.

So it appears that even had Act 250 been issued late in 2019, there are other issues that VTrans needs to resolve. Thus, I fail to see how Act 250 truthfully can be blamed for delaying the project.

Given what I found relating to the permit matrix and to the Act 250 permit schedule, I would want a lot more information before accepting that the Act 250 permit cost \$100,000.

Reasons to exclude Sen. Parent's proposal from H.433

I do not know what you plan to do about Sen. Parent's proposed amendment. As you are aware, Sen. Parent's proposal would exempt State-owned airports from having to mitigate impacts on primary agricultural soils.

I believe that we need to maintain our agricultural soils. We cannot afford to allow their agricultural value to be destroyed by development or subdivision. Look at the last year. One year ago we were concerned about food shortages. Many staples were missing from grocery shelves. Other stocks were thin. We were concerned about an inability to bring in food from away.

During the last year we have seen an influx of people to Vermont for multiple reasons, putting further pressure on our agricultural soils.

Our resilience and sustainability require that we maintain our agricultural land.

Conclusion

For these reasons, I ask that you do not adopt Sen. Parent's amendment and that you do not adopt the proposed exemption for transportation projects based on the amount of new project area.

Thank you for taking the time to read this testimony.

Sincerely,
Thomas Weiss
resident. Montpelier