Testimony to House Env and Energy - February 1st 2024

Charlie Hancock, Chairman Montgomery Selectboard / Consulting Forester
Thank you for the opportunity to speak with you today

I participated in NRB Report which has already been touched upon many times in your committee – and I believe this is solids framework upon which to build our work around Act 250 going forward. I'd also like to echo others who have pointed to that the NRB report is a **compromise** framework which addresses so many of the challenges we face and which we're discussing today. I want to emphasize compromise, as—for our vision to actually work—the various components within the report need to considered as a package. I also want to highlight that while the NRB report provides a solid framework it did not get us fully across the finish line on many specific parts of what reform would look like, acknowledging that this is (no surprise) really complicated and will require both greater data collection and synthesis (specifically where we talk about mapping), as well as buy-in from a broad and diverse set of stakeholders. Therefore, we should be deliberate and thoughtful in our next steps here, echoing what some others have said about not just getting it done, but making sure we get it done right.

- Montgomery, tucked way up here at the northern end of the state, is a rural community, like the majority of other towns in Vermont
- We have what I would consider robust zoning, but are currently working with our RPC to make our bylaws even stronger, addressing many of the challenges you're all aware of.
- We're also in the process of developing a municipal wastewater system for our Village Centers, a principal objective of which is to increase housing availability

As a smaller rural community our interaction with Act 250 looks a lot different than in larger communities which are addressing a scale of projects which are an order of magnitude larger, but it does have a significant in impact here.

Before I get into a discussion of Tiers 2 and 3, I briefly want to touch on Tier 1 (as these are all connected, and changes we make in one area will impact changes we look to make elsewhere)

When I think about our designated growth centers (what we'd call Tier 1 areas) I can point to 16-acre parcel in Montgomery Center, one of our two designated Village areas, where our Town plan and Zoning seeks to encourage dense, compact development, and which will be served by a municipal Wastewater project slated to break ground next spring. We have a local developer looking to create a mixed commercial and residential development on the parcel that will result in over **35 units of new housing**, specifically targeting workforce and seniors. The Tier 1 exemptions being put forward, or higher caps on jurisdiction outlined in the NRB report, would help remove one obstacle to making this project a reality as quickly as we're able.

I do have some concerns about the '*Planned Growth Area Designation'* regulations outlined in H.687. I think the intent behind them is spot on, but would need greater specifically around some of the language outlined here—specifically such as the capital budget and the municipal staff requirements; specific required uses such as the 6 story language; and reqs around how wildlife habitat bylaws for the planned growth area are crafted and applied. One important point that came up through the NRB process was that we want all communities to have access to designation status and a seat at the big kids table. I'm also not clear from the bill what would happen if a municipality couldn't hit all these marks. The NRB report

outlined a Tier 1A and 1B framework, making permit relief accessible for communities who don't get meet that highest bar, and would support a similar framework.

So, **looking at Tier 2** – and acknowledging that this will be the majority of the state as presented under the NRB Report framework.

Your committee has heard a lot about forest fragmentation and loss already (and I've been an advocate in this and other committees for incorporating forest fragmentation criteria in Act 250 for years...so this is a bit like déjà vu all over again), so I won't go into the specifics there about why all this is important.....but I do think in that context is important to highlight what we DON'T want housing development to look like in communities like ours, and since they say a picture is worth a thousand words... [refer to accompanying photos]

- 190-acre parcel in my own community of Montgomery
- This parcel, which was historically managed as a working forest, sits within both a Highest Priority Forest Block and Highest Priority Connectivity Area adjacent to Rt. 242.
- Serves and headwaters and flood storage on a critical tributary of the Trout River (which passes right through Montgomery Center)
- Subdivided into 15 building lots in a manner which leapfrogged the 10-5-5 jurisdictional trigger (initial subdivision, roads went in, second subdivision took place 6 years after initial subdivision).
    - No opportunity for review or opportunity to address design potential which would negate resource impacts
    - Now we have a road system totally approximately 3,500 ft. (or about .6 miles), 15 twelve acre lots which has managed to leapfrog any review under Act 250.

A framework such as the jurisdictional trigger of a Road Rule, as well as the added Forest Fragmentation criteria, both described in the NRB report would address this

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Further regarding Tier 2, I do have some questions about some specifics in H.687 and the new Jurisdictional Criteria which would apply there:

- The bill outlines what I would understand to be a 500' road rule. The 2000' framework outlined in the NRB report was an important compromise, and I worry that reducing this to such a degree outlined here would blow up the consensus that was reached.
- Also want to flag the new definition of Development as it applies in Tier 2 areas, which would trigger jurisdiction for "4 or more units of housing in a rural or working lands area", and the revised definition of Subdivision—dropping the jurisdictional trigger to 4 lots (from 10 lots) in Tier 2—seems too restrictive, and could be in conflict with the incentive for compact development which the road rule would provide. To me it's not the number of lots which is the concern, it's the impact of the lots themselves, and that often depends on design
- Also, the new definition of "development" as being "within 25 ft. of a critical resource area" (which I understand to be Tier 3 as described in the NRB report) could be problematic and a potential area of confusion. I'd suggest that we just define the resource area as including a buffer.

Moving onto Tier 3 – my understanding is that this is what we're calling 'critical resource areas' in H.687

I do have some concern around how this is defined in the bill, and I'm also still not entirely clear how this definition will intersect with the mapping work and associated process outlined elsewhere in the bill. Regarding the definition offered, this would drop the automatic jurisdiction from 2,500 to 2,000 ft. I'd need to see a better GIS analysis of exactly how much land this would bring under jurisdiction, but my recollection from past number crunching is that it's frankly a lot. While there was broad agreement in the NRB study committee that Tier 3 areas require special attention under this framework, the expectation from the group that worked on the NRB report was that Tier 3 would only apply to a small area of the state. I this there's importance here in being deliberate in what we identify, and I worry that the elevational trigger seems like it could be too arbitrary. Again, I'd need to see more analysis.

I also have concerns about including the language around "*any amount of prime agricultural soils*" in the definition, and how that would be applied in practice given how soils are mapped, how a vast diversity of soils show up on any given parcel, and how this would be applied in practice.

I think the definition in the bill is a great staring point, but by this definition we may be bringing more land into Tier 3 than we intend, while also leaving out other areas that do warrant greater resource protection out. As the NRB report says, *any designation of specific Tier 3 areas will require further analysis based on good science, careful mapping, and public engagement.* I'm really glad to see that you have Eric Sorenson and Liz Thompson coming to speak with the committee. Vermont Conservation is a fantastic starting point, but it is just that – a starting point. We'll need additional mapping support from ANR here, and the opportunity for RPCs develop a process to assist in the development and mapping of these areas, through a uniform process founded upon the principal of public engagement.

So, **big picture**, I'm in full agreement that we need to advance a balance like what's proposed in the NRB report, with exemptions in designated areas, and resource protection (or at least the simply opportunity for review) in other critical areas, and H. 687 as currently drafted is a great starting point, but like most things the devil is in the details, and there's some details that need to be worked out.

Lastly, I'd be remis if I didn't take a moment to highlight the connection between economic development and housing in communities like ours, and the critical need to address permit relief for Working Lands Businesses such as farm and forest enterprises. Act 250 has been critical in maintaining our land base, but I'd like to highlight that it's the success of these enterprises themselves which is also foundational to maintaining the landscape that Act 250 seeks to protect, and the rural communities like Montgomery's which depend on them. These working lands are what define us as a state, and frankly there are some days when I fear we're forgetting that.

We speak so often of Resilience, and Resilience in this context means Economic Viability

In order for farms and forest enterprises to continue to feed communities and steward the lands for the multitude of benefits these provide, they must be economically viable.
This means:

- Supporting diversified income streams
- Adding value through secondary processing

- Building infrastructure to increase efficiency of operations and embrace the opportunity for these enterprises to be partners as we consider natural climate solutions.

Act 250 often stands in the way of this.

NRB Report included a recommendation for a shift to a 1:1 ratio for Ag Soils mitigation for forest processing operations (the same as we currently offer industrial parks). This is great start, but more is needed, and I would welcome the opportunity to discuss that further with you.

I'd also advocate for a shift in how we address harvesting at an elevation over 2,500 ft. – as this currently requires an Act 250 permit. We have an opportunity to move this out of jurisdiction and under a framework similar to how we handle the enrollment of Ecologically Significant Treatment Areas in UVA. While we couldn't get that over the finish line in the NRB committee, but I think we had a foundation on which to reach consensus.

So, if we're going to pop the hood on Act 250, I'd love to see some work included around these issues facing working lands businesses.

Thank you for allowing me the opportunity to speak with you all today.