

Senate Energy and Natural Resources Committee

Max Taylor 271-1403

SB 110-FN, relative to terrain permitting.

Hearing Date: February 4, 2025

Time Opened: 10:33 a.m.

Time Closed: 11:21 a.m

Members of the Committee Present: Senators Avard, Pearl, McConkey, Watters and Rosenwald

Bill Analysis: This bill raises the threshold for alteration of terrain permitting from 100,000 square feet to 200,000 square feet.

Sponsors:

Sen. Lang

Sen. Pearl

Rep. Moffett

Who supports the bill: Senator Timothy Lang (Senate District 2), Marc Brown (Owl's Nest Resort), John Morzoka (Horizons Engineering), Matt Mayberry (New Home Builders Association), James Sununu (Waterville Valley Resort), Alexx Monastiero (The Grove Group Real Estate, LLC), Robert Johnson II (NH Farm Bureau)

Who opposes the bill: Meredith Hatfield (The Nature Conservancy)

Who is neutral on the bill: Phil Trowbridge (NHDES)

Summary of testimony presented in support:

Marc Brown

Vance Government Affairs/Owl's Nest Resort

- Mr. Brown testified in support of the bill on behalf of Owl's Nest Resort, a large-scale real estate development in Thorton and Campton.
- Mr. Brown explained the resort's project includes hundreds of residential housing units, hotels, event spaces, restaurants, convenience stores, EV charging stations, and includes access to the nearby lake.
- Mr. Brown indicated that their support for SB 110 is based on challenges developers face with the current system.

John Morzoka

Horizons Engineering

- Mr. Morzoka explained the complexity and time commitment of alteration of terrain (AOT) permit applications. He noted that even basic applications require 100+ engineering hours, with more complex projects taking significantly longer.
- He emphasized the need for predictability in the permitting process, stating that delays and uncertainty cause budgeting and scheduling issues for developers.
- Mr. Morzoka supported raising the AOT permit threshold to 200,000 square feet to reduce unnecessary permit requirements for minor projects.
- He emphasized regulatory efforts should be focused on more complex projects rather than relatively minor ones.
- The current “10-year lookback rule”, which requires new AOT permits for any land disturbance within 10 years, should be modified to avoid unnecessary permits for small-scale improvements.
- Senator Avard asked if expanding the permitting threshold would provoke the EPA to get involved.
 - Mr. Morzoka stated the EPA’s role is separate and the federal requirements apply to stormwater pollution prevention plans for projects over one acre. However, these are much simpler than AOT permits and do not involve direct regulatory review.
- Senator McConkey asked if Mr. Morzoka could suggest any language to adjust the 10-year lookback rule.
 - Mr. Morzoka explained currently, developers informally consult DES on whether a new AOT permit is needed, leading to subjective decisions. He restated that defining clearer guidelines would improve consistency and predictability for small projects.
- Senator Watters asked if developers are looking for clarity on the permitting process while maintaining environmental standards.
 - Mr. Morzoka responded that the goal of developers is to simplify and define the process without lowering standards.
- Senator Rosenwald asked if shifting AOT reviews to municipalities would increase costs and reduce predictability.
 - Mr. Morzoka explained costs vary by town, some municipalities have strict stormwater rules and already conduct their own reviews. However, others do not require peer reviews for minor projects, meaning added costs wouldn’t apply universally.

James Sununu

Waterville Valley Resort

- Mr. Sununu stated his support for SB 110-FN, particularly the increase in the AOT permit threshold from 100,000 to 200,000 square feet.
- He argued the current AOT rules add significant costs to projects without improving stormwater management, making housing projects financially unviable.
- Mr. Sununu emphasized raising the threshold would help encourage development, particularly housing projects in northern New Hampshire.

- Mr. Sununu explained that Waterville Valley Resorts is developing a 21-unit housing project. Initially, the project did not exceed the AOT threshold and they proceeded under standard local and state regulations. However, when expanding the project it crossed the 100,000 square feet threshold, requiring developers to apply for AOT permits. The permit application process has resulted in months of delays, as well as tens of thousands of dollars in additional engineering costs and hundreds of thousands of dollars in site costs for stormwater compliance. Mr. Sununu argued stricter AOT rules did not meaningfully improve stormwater management but added substantial costs.
- There is currently no multifamily housing in Waterville Valley.
- Developing multifamily housing is already financially difficult due to construction costs, and stricter stormwater requirements under AOT adds tens of thousands of dollars per unit, making projects financially unviable.
- Increasing the threshold to 200,000 square feet would reduce unnecessary barriers while still ensuring appropriate environmental protection.
- Mr. Sununu noted that state agencies continually introduce new regulations, each adding significant costs to development, and called for a more rigorous cost-benefit analysis of new rules before implementation.
- Senator Watters asked how the EPA stormwater compliance requirement for projects over 43,000 square feet related to Mr. Sununu's concerns.
 - Mr. Sununu stated the AOT rules add significantly more complexity beyond EPA requirements.
- Senator Avard asked if increasing the threshold to 200,000 square feet created conflict with EPA regulations.
 - Mr. Sununu stated he was not aware of any issues since EPA requirements apply at 43,000 square feet. Federal rules would still ensure stormwater compliance.
- Senator Watters asked if there could be a compromise where projects under 200,000 square feet would still require AOT permits but only if DES could justify the need.
 - Mr. Sununu stated flexibility is needed for smaller projects where additional costs could be prohibitive. He added that larger projects can absorb these costs more easily, but smaller housing developments often cannot.

Alexx Monastioro

- Ms. Monastioro stated she supported raising the AOT permit threshold because current regulations delay small residential projects unnecessarily.
- She emphasized the financial burden of permit delays, stating that indirect costs far exceed any potential increase in permit fees.
- Residential subdivisions are already reviewed at multiple levels. Developers hire civil engineers to ensure compliance with state and local regulations, and towns hire third-party engineers to verify designs before sending projects to DES for additional review.
- AOT reviews significantly extend project timelines, often delaying housing projects by a year or more.

- Factors that contribute to cost increases for developers, include higher construction loan interest, loss of contracted road crews, and more expensive replacements for delayed work. These costs are ultimately passed on to homebuyers, making housing less affordable.
- Increasing the threshold would allow smaller projects to proceed faster and mitigate cost increases.

Robert Johnson

New Hampshire Farm Bureau

- Mr. Johnson stated his support for raising the AOT permit threshold due to the financial burden it places on small farms.
- There have been only a few farms that have been impacted over the years, but those affected experienced significant hardship.
- Farmers sometimes unknowingly trigger AOT requirements, leading to unexpected costs and regulatory challenges.
- Members of the Farm Bureau generally find that DES is reasonable in working with them on compliance issues. However, the permitting process still causes significant stress and financial hardship.

Summary of testimony presented in opposition:

Meredith Hatfield

The Nature Conservancy

- Ms. Hatfield expressed concerns about raising the AOT permit threshold due to potential impacts on water quality and the environment.
- She acknowledged the need for more housing, but emphasized the importance of protecting water resources.
- She supports exploring fees to help fund the state agencies handling environmental reviews.
- Senator Avar asked what parts of the bill would affect water quality.
 - Ms. Hatfield explained that raising the AOT threshold could lead to increased environmental impacts by allowing more projects to proceed without permits and oversight. She expressed concerns that the impact would extend beyond endangered species and habitats to public health risks, including drinking water.
- Senator Watters asked if past cases of runoff pollution have led to well contamination and other serious water quality issues.
 - Ms. Hatfield stated there have been issues in the past due to runoff issues. Additionally, she highlighted the importance of ensuring new developments can support proper water and sewer infrastructure.
- Senator Watters inquired if nitrogen runoff should also be a point of concern.
 - Ms. Hatfield confirmed that nitrogen runoff is a significant concern, particularly in areas with sensitive water systems.

Neutral Information Presented:

Philip Trowbridge (Manager of Land Resources, Department of Environmental Services) & Amy Clark (Bureau Administrator, Alteration of Terrain Program, Department of Environmental Services)

- DES is opposed to raising the AOT permit threshold to 200,000 square feet due to potential stormwater pollution and flood risks.
- Mr. Trowbridge stated stormwater pollution is the leading cause of water contamination in New Hampshire, impacting drinking water, lakes, rivers, and infrastructure.
- The current 100,000 square foot threshold has been in place for 35 years and is already more than double the federal requirement.
- DES supports maintaining permit requirements for projects that could impact water quality, storm management, and sensitive natural areas such as the White Mountains and Great Bay.
- The current permit process ensures large developments follow best practices for managing stormwater and minimizing environmental impact.
- Restoring property damage from poor stormwater management is far more expensive than permitting up front.
- Small projects can still have big impacts, and the state has seen cases where unregulated construction led to major environmental and infrastructure problems.
- Senator Watters asked if there is a way to craft legislation that allows flexibility without eliminating oversight.
 - Mr. Trowbridge stated DES is open to discussing adjustments, such as allowing some projects to move forward while keeping environmental protections in place.
 - Additionally, DES could explore clearer rules for when AOT permits are required based on project location, water sensitivity, and potential stormwater impacts.
- Senator McConkey asked if DES could find a way to balance concerns about cyanobacteria and stormwater pollution with housing needs.
 - Mr. Trowbridge agreed that cyanobacteria and nutrient pollution are serious concerns. However, DES would be willing to discuss measures to improve efficiency while ensuring water quality protections remain strong.

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Date Hearing Report completed: February 7, 2025