



## MEMORANDUM

Date: November 15, 2017

To: Commission on Act 250

From: Karen Horn, Director Public Policy & Advocacy

Re: Relevant Information from Act 250 Advisors

Thank you for the opportunity to offer my experiences with Act 250 and the interface between Act 250 and local or state agency regulation and planning from the perspective of local governments.

**Personal Background.** I have worked for the Vermont League of Cities and Towns (VLCT) for 30 years. My introduction to the Vermont Legislature was when we defended the authority of cities and towns to address land use and called for flexibility in the debate that resulted in Act 200 in 1988. Since that time, legislation addressing Act 250 and local land use planning and regulation has been both introduced and debated in every biennium. Efforts to spur economic development have likewise been frequently debated. In my experience the two conversations seldom meet in any meaningful way. We believe it is imperative to consider the goals of growing our local economies and tax base, appropriate development for the Vermont landscape and effective protection of the environment together. This Commission offers that opportunity.

**Vermont Municipal Governance.** Vermont is one of five pure Dillon's Rule states. The others are Alabama, Mississippi, New Hampshire, and Virginia.) These states subscribe to the position Iowa Supreme Court Justice John Dillon espoused in 1872: Municipal corporations may exercise only those powers specifically granted to them in statute or governance charter, or those powers "that are necessary and essential to the declared purposes of the municipal corporation." Vermont statutes specifically grant municipalities the authority to carry out certain endeavors, mandate them to carry out a list of responsibilities that expands every year, and pre-empt them from addressing other issues.

Thus, the 213 of Vermont's 246 cities and towns that currently have adopted plans and land use regulations created them in accordance with the provisions of Title 24 Chapter 117, the Municipal and Regional Planning and Development Act. They are developed, adopted, and implemented by 2,300 planning and zoning commission and development review board members, most of whom volunteer their time and expertise. As of 2016, 204 cities, towns, and incorporated villages had adopted zoning bylaws to implement those plans; 150 cities, towns, and incorporated villages had adopted subdivision bylaws; and 120 cities, towns, and incorporated villages had replaced zoning boards of adjustment with development review boards.

A host of additional statutes direct municipal action with respect to transportation, water quality and flood protection, public health, emergency management, hazard mitigation,

*Sponsor of:*

VLCT Employment  
Resource and Benefits  
Trust, Inc.

VLCT Municipal  
Assistance Center

VLCT Property and  
Casualty Intermunicipal  
Fund, Inc.

environmental protection, renewable energy and efficiency, and code enforcement, all of which have implications for land use.

**Municipal Land Use Regulation.** Municipal regulatory authority predates Act 250. The Vermont Planning Act was adopted in 1921 and Vermont legislation authorizing zoning was enacted in 1931, seven years after model legislation was provided by the U.S. Department of Commerce in 1924. Local zoning regulation has grown more robust and sophisticated over the course of the decades since it was enacted, and particularly since 1969, when Act 250 was enacted. The mapping and design tools available to assist with municipal planning and zoning bylaw and ordinance adoption and enforcement are far more sophisticated today than ever before. Citizens’ understanding of the issues involved in land use regulation – public health and safety, protection of water quality, targeting growth to appropriate sites out of areas prone to flooding, avoiding development of greenfields or ridgetops that contribute to stormwater runoff and in compact settlement areas with access to transportation alternatives – has grown exponentially. And, as mentioned above, the list of requirements for municipal plans expands every year, most recently to include an economic development element, a flood resilience plan, and an expanded energy plan (24 V.S.A. §§ 4382 (9), (11), (12)).

**Smart Growth Principles.** One state planning goal is to have development undertaken in accordance with the following ten smart growth principles:

- Mix land uses
- Take advantage of compact building design
- Create a range of housing opportunities and choices
- Create walkable neighborhoods
- Foster distinctive, attractive communities with a strong sense of place
- Preserve open space, farmland, natural beauty, and critical environmental areas
- Strengthen and direct development towards existing communities
- Provide a variety of transportation choices
- Make development decisions predictable, fair, and cost effective
- Encourage community and stakeholder collaboration in development decisions

*The Municipal Plan – State Planning Manual, April 2017*

**Act 250 and Municipal Land Use Regulation.** Municipal officials dedicate massive amounts of time to visioning, vetting, developing, and adopting comprehensive plans and the regulatory regimes that implement them. Act 250 jurisdiction that is applied to the same projects largely duplicates the local process, even if the criteria and standards are different. This creates additional expense for developers, municipalities and interested parties, lengthens the time taken up with permitting, increases the opportunities for opponents, and often produces contrary permit decisions. Additionally, developers must comply with a host of environmental regulations administered by various departments and sections of the Agency of Natural Resources.

In towns with both zoning and subdivision regulations, Act 250 jurisdiction applies to any commercial project on ten or more acres of land within a radius of five miles of any point on any involved land, as well as any subdivision creating ten or more lots within a radius of five miles of any point on any involved land within a continuous period of five years. The number of housing units in a priority housing project that may be built before triggering Act 250 is tied to a municipality’s population. In this regard, the legislature has already made the determination that cities and towns that have adopted land use regulations have demonstrated capacity, and even are of a certain size and have sole jurisdiction over projects affecting their communities.

Vermont must ensure that all state agencies and their divisions communicate regularly with one another to eliminate redundant oversight of municipal projects, thereby expediting the permitting process, and tailor project review to the size and impact of the proposal. Given the demonstrated expertise of many Vermont local officials, we believe it is time to delegate responsibility of Act 250 decisions to those municipalities with adopted and approved plans and zoning and subdivision bylaws, and that professionally demonstrate the ability and willingness to assume responsibility for its administration.

We understand that there are issues to be sorted out if such a change is made, not the least of which is defining the “local” and “regional” impact of a project . VLCT is committed to working with the legislature and administration to resolve these issues. In a high tax state that is seeking economic growth opportunities – particularly in downtowns and compact settlements that want to attract young Vermonters to both live and play here – it is crucial for us to address the issue of redundant, time consuming, and expensive permitting *now*.