

# VERMONT PLANNERS ASSOCIATION

---

Advisor Presentation  
Commission on Act 250  
November 15, 2017



# Advancing the Art and Science of Planning...

- Established 1988, 501(c)(3)
- Represents Vermont planning community:
  - Professionals (state, regional, municipal, private sector)
  - Volunteers (commissioners, board members)
  - Allied professions, interests
- Affiliated with the American Planning Association
  - Northern New England Chapter (VT, NH, ME)

<https://www.vermontplanners.org/>



# Related Experience

## Policy (Legislative Committee, Liaison/Lobbyist)

- Planning – state, regional, municipal (T.3; Ch.117)
- Permitting – **Act 250**, Section 248, permit reform
- State designations (Ch. 76A); seat on Downtown Board
- Land conservation, resource protection, hazard mitigation
- Land use, community development, housing, infrastructure

## Practice (Members)

- Act 250 administration
- Applicants
- Parties (municipal, regional, state agency)

# Act 47 Initiatives

- **VPA Act 250 Advisory Working Group**

- Municipal, regional, state agency planners w/ Act 250 experience

- **Research Intern** (VLS grad, attorney)

- Enabling statutes, state/local permitting processes

- **Resources**

- Network contacts, reports, specific examples/ stories

- **Outreach**

- VPA Listserv, member surveys (Commission Questions?)
- Fall Roundtable, Spring Act 250 Forum

# State Land Use & Development Act

*Act 250 as enacted was a planning law, providing the policy framework for state development regulation.*

- **Policies** – 1973 “Plan” (Legislative Intent, Findings)
  - *What state interests, land use/development goals*
- **Maps** – Capability & Development, Land Use
  - *Where development should happen*
- **Act 250 Criteria** – impacts, conformance w/plan
  - *How development should happen*

# Act 250 Outcomes

*Act 250, as applied to individual projects, prevents bad development but, absent a state planning or policy framework, doesn't promote good development...*

## Good ...

- Site layout, design
- Environmental impacts
- Infrastructure impacts
- Hazard mitigation
- Energy efficiency

## Not so Good ...

- Siting, location
- Development pattern
- Resource fragmentation
- Aesthetic impacts
- Secondary impacts
- Cumulative impacts

# Interest: State Land Use Policy

*Evaluate the degree to which Act 250 has been successful in meeting the goals set forth in the Plan...Plan revisions?*

- Evaluate state land use, development goals  
(also relevant to local, regional, state agency planning)
  - Capability and development plan (findings, intent)
  - State planning and development goals (Act 200, Ch. 117)
  - Smart growth principles (Ch. 76A)
- Define ***and map*** state interests  
(land, resources, infrastructure targeted by state for protection, investment, development)

# Interest: Emerging Trends

*Examine Act 250 criteria in relation to changes that have occurred since 1970...including climate change*

- Identify key demographic trends, changing development patterns since 1970.
- Help Identify emerging land use, development issues including, but not limited to climate change, e.g.:
  - Hazard mitigation – existing, new, relocated settlement
  - Energy – renewable energy development
  - New technology – autonomous vehicles (infrastructure, VMT)
  - Community – social media, health impact assessments
  - Economy – “lifestyle” vs. retail centers; infill, redevelopment
  - Government – capacity to plan for, finance, regulate development



# Interest: Jurisdiction

*Examine interface between Act 250, other permitting...  
Application to type and scale of development*

Evaluate jurisdiction in relation to significance (state, regional or local), magnitude of impact. Options?

- **Release provisions** – project vs. parcel-based
  - **State designations** (Ch.76A) – additional exemptions
  - **Expanded “Local Act 250 Review”**– criteria, presumptions, delegation to qualified municipalities
  - **Working lands, resource-based designations** – additional state review as justified (per clear state interests)
- *Is Act 250 the only, or best, tool in the toolbox?*

# Interest: Act 250 Criteria

*Examine Act 250 criteria in relation to development patterns (designated areas, compact centers, rural lands)*

Evaluate Act 250 criteria in relation to:

- Development policies – state, regional, local interests
- Development patterns – established, emerging
- Development impacts – land use, infrastructure, fiscal, health, aesthetic impacts (e.g., under 5,6,7,8,9)
- Identify shifts, gaps, redundancies

# Concern: Process

*Maintain Act 250 as a citizen-based, applicant and citizen-friendly process*

Consider:

- Accessibility to municipalities, other parties with no staff
- Return to administrative, quasi-judicial appeals board that hears, consolidates Act 250 and local permit appeals
- Limit more formal “on the record” review – e.g., where enacted locally, or as agreed to by all parties
- Options for/limits to negotiated mediation (alternative dispute resolution) between parties
- Limit right to appeal based on level of participation

# Concern: Use/Interpretation of Plans

*Projects must “conform” to the state capability plan (Criterion 9); municipal and regional plans (Criterion 10)*

- **Plans vary in content, quality** – no review for use in Act 250
  - **No plan, maps referenced under Criterion 9** – to evaluate location, pattern, cumulative impacts of development
  - **Reliance on policy language** – to exclusion of maps
  - **Court interpretation of plan language under Criterion 10** – increasingly legal, parsed (“should” vs. “shall”) – not consistent with intended use, interpretation
- Key Case: *In re B&M Realty, LLC* (2016)
- “Conformance with plan” as defined under 24 VSA § 4303?

# Vermont Reports

[Vision and Choice: Vermont's Future, The State Framework Plan \(1968\)](#) VT State Planning Council (Act 250)

[Gibb Commission Final Report \(1970\)](#) (Act 250)

[Report of the Governor's Commission on Vermont's Future: Guidelines for Growth \(1988\)](#) (Act 200)

History of Planning in Vermont (1999) VT DHCA (Act 200, Act 250)

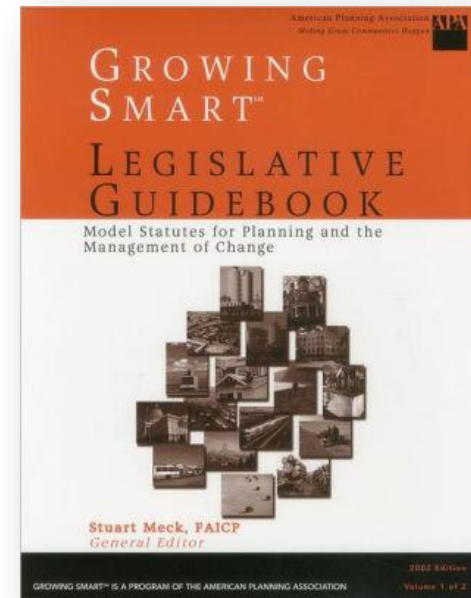
[Legislative Council Staff Report on Mechanisms to Address the Issue of Cumulative Growth \(2002\)](#) Al Boright, Legislative Counsel

[Vermont by Design: Challenges and Structures for Improving the Structure of Planning in Vermont](#) (2006). VT Council on Planning/  
Vermont Council on Rural Development.

# American Planning Association

## ***Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change*** (APA 2002)

<https://www.planning.org/growingsmart/>



### Selected Chapters:

4: State Planning

5: State Land Use Control

9: Environmental Land Development Regulations, Incentives

10: Administrative and Judicial Review of Land Use Decisions

12: Integrating State Environmental Policy Acts with Local Planning