

IV. TASK GROUP 1: THE FINDINGS AND THE CAPABILITY AND DEVELOPMENT PLAN; OVERARCHING ISSUES

A. Successful or unsuccessful in meeting goals

1. *Charge*

Act 47, Sec. 2(e)(2)(A) – “An evaluation of the degree to which Act 250 has been successful or unsuccessful in meeting the goals set forth in the Findings and the Plan.”

2. *Facts/Background*

In Act 47, “the Findings” means the four findings adopted in the eponymous “Act 250,” that is, Sec. 1 of 1970 Acts and Resolves No. 250². Act 47 also defines “the Plan” to mean a series of 19 further legislative findings adopted in 1973, which the General Assembly stated constitutes the Capability and Development Plan called for by the 1970 legislation.³

In summary, the Findings from 1970 concluded that:

- unplanned and uncontrolled land use has resulted in development that may be destructive to the environment and unsuitable to the needs of Vermonters,
- comprehensive planning is necessary to guide the use of land,
- it was necessary to establish State commissions with authority to regulate the use in the State of the land and the environment, and
- the use of the land and the environment must be regulated to ensure that those uses are not unduly detrimental to the environment, promote orderly growth and development, and are suitable to the needs of Vermonters.

These findings were included verbatim in Act 47, which is attached in Appendix [letter or no. to be filled in].

The 19 legislative findings from 1973 that constitute the Plan are more detailed and address the following topics:

- the capability of the land to support development;
- the use of natural resources, including agricultural and forest productivity, mineral resources, conservation of the recreational opportunities, and protection of the beauty of the landscape;
- public and private capital investment, including the demands placed on public services by development;

² 2017 Acts and Resolves No. 47, Sec. 1(a)(3).

³ *Id.*, Sec. 1(a)(4); 1973 Acts and Resolves No. 85, Sec. 6.

- planning for growth, including the issues of strip development and keeping village and town centers vital;
- seasonal home development;
- general policies for economic development;
- specific areas for resource development;
- planning for housing, including housing for residents of low or moderate income;
- resource use and conservation, including those resources protected under Act 250's Criteria 1 (air and water pollution) and 9 (capability and development plan);
- preserving the value and availability of outdoor recreational opportunities;
- protecting special areas, such as sites of historic, cultural, or archaeological value;
- controlling adverse effects on scenic resources;
- encouraging energy conservation;
- taxation of land;
- planning government facilities and public utilities based on reasonable growth projections;
- public facilities or services adjoining agricultural or forestry lands;
- planning for transportation and utility corridors;
- planning for integrated transportation systems; and
- planning for waste disposal.

The General Assembly also stated that the findings that constitute the Plan "shall not be used as criteria in the consideration of applications . . ." ⁴ A copy of the Plan is attached in Appendix [letter or no. to be filled in].

On the settlement patterns issue discussed later in this report, the Plan found that strip development and scattered residential development have economic and environmental costs, including costs to government and loss of agricultural land. It also found that village and town centers should be renovated for commercial and commercial and industrial development, where feasible, and that residential and other development should be located off the highways, near the village center.⁵

Act 250's ability to achieve the goals contained in the Findings and the Plan is necessarily limited because its jurisdiction is limited.⁶ It is estimated that about 75 percent of development in Vermont is not subject to Act 250.⁷

With respect to planning goals enunciated in the Findings and the Plan, Act 250's authority to perform land use planning was repealed in 1984.⁸ Its ability to facilitate

⁴1973 Acts and Resolves No. 85, Secs. 7,10.

⁵ Id., Sec. 7(a)(4)(A),(B).

⁶ 10 V.S.A. § 6001, 6081.

⁷R.M. Sanford and H.B. Stroud, "Evaluating the Effectiveness of Act 250 in Protecting Vermont Streams," Journal of Environmental Planning and Management. Vol. 43, No. 5 (2000).

⁸ 1984 Acts and Resolves No. 114, Sec. 5.

achieving planning goals is primarily through a review criterion that requires conformance with local and regional plans.⁹

Given Act 250's limited planning and regulatory authority, it is difficult to pinpoint the program's effectiveness in achieving the goals of the Findings and the Plan. However, the following facts relevant to those goals can be noted:

- Vermont land was developed at approximately 2.5 to three times the State's rate of population growth between 1982 and 2003 .¹⁰
- The overall miles of Vermont rivers and streams impaired for one or more uses was reported as 311 in 2004 and 365.2 in 2016.¹¹
- From 2004 to 2016, 8,645 new parcels between zero and 10 acres in size were created in Vermont.¹²

⁹10 V.S.A. § 6086(a)(10).

¹⁰Vt. Forum on Sprawl, Exploring Sprawl, Issue 6 at 2 (Aug. 1999); V. Bolduc and H. Kessel, Vermont in Transition: A Summary of Social Economic and Environmental Trends at 36 (Dec. 2008).

¹¹Vt. Dept. of Environmental Conservation (DEC), 2004 Water Quality Assessment Report (305b Report) at 27; 2016 Water Quality Integrated Assessment Report at 28. The 2018 Vermont water quality assessment or 305b report is not readily comparable to the 2004 305b report because the 2018 report: (a) is based on a splitting of one former aquatic use into separate uses and a renaming of several other uses and (b) does not state overall impairment data for rivers and streams. DEC, State of Vermont Water Quality Integrated Assessment Report 2018 at 25, 26.

¹²J. Fidel and K. McCarthy, Tracking Parcelization Over Time: Updating the Vermont Database to Inform Planning and Policy (Phase III Report) at 17 (Sep. 2018).