

# VERMONT PLANNERS ASSOCIATION

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## **Commission on Act 250**

VPA Advisor Presentation

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October 26, 2018



# Act 47 Initiatives

- **VPA Act 250 Advisory Working Group**

- Municipal, regional, state agency planners w/ Act 250 experience
- Subcommittees: State Policy, Criteria, Jurisdiction, Appeals
- Research Intern (VLS grad) – enabling statutes, state/local permitting processes

- **Outreach**

- Act 250 Conference, May 2018 (Report)
- VPA member survey

- **Resources**

- Overview, reports, capability and development plan, maps

# Ch. 151: State Land Use & Development Plans

*Act 250 as enacted provided the policy framework for coordinated planning and development review.*

- **Plans** – Legislative Intent/Findings, Policies
  - *Define state interests, development objectives*
- **Maps** – Capability & Development, Land Use
  - *Indicate **where** development should occur in relation to mapped constraints, state interests, objectives*
- **Development Review** – Act 250 Criteria
  - *Regulate **how** development occurs, in conformance with plans*

# 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
- Settlement patterns
- Resource fragmentation
- Aesthetic impacts
- Secondary impacts
- Cumulative impacts

# State Land Use Policy

*Recommendation: Re-establish state land use and development policy as the framework for both planning and Act 250 review*

- ***Reinstitute the Capability and Development Plan***  
including policies and maps, for use in Act 250 (10 V.S.A. § 6042)
  - ***Require*** plan consistency with state land use, development and smart growth goals (24 V.S.A. § 4302, as referenced)
  - Integrate relevant state agency planning, plans
  
- ***Clearly define and map statewide interests***  
(resources, infrastructure, areas targeted for conservation, investment, development)
  - Update Capability and Development Plan maps for reference in Act 250 review (specifically under Criterion 9)

# Act 250 Criteria

*Recommendation: Update Act 250 criteria for clarity, internal consistency, conformance with the Capability and Development Plan and current state rules.*

- ***Update criteria to address “emerging” issues, e.g.:***
  - **Climate change** – mitigation, adaptation strategies, related hazards identified in energy, climate action, hazard mitigation plans
  - **Alternative transportation** – infrastructure, “complete streets”
  - **Planned settlement patterns**, supporting infrastructure, services
  - **Resource fragmentation** – forest blocks, wildlife habitat/connectors, ridgelines, working farm and forest land
  - **Context-sensitive siting and design**
- ***Related Considerations:***
  - Is Act 250 the best “tool” to address this issue?
  - Statutory update required – or address in related guidance, rules?

# Jurisdiction

***Recommendation: Limit Act 250 jurisdiction within areas designated or planned for development; extend jurisdiction to resources, areas of statewide significance.***

- ***Evaluate Act 250 jurisdiction in relation to project location, size, significance and impact (state, regional or local), e.g.:***
  - Update state designation standards for exemptions from Act 250
  - Extend resource-based jurisdiction to areas of critical state interest
  - Establish standards for municipal, regional mapping of “existing” and “planned” settlements for consideration in Act 250 (Criterion 9)
  - Define in relation to “Development Tiers” (MD, DE)
- ***Reconsider “1Acre/10-Acre” (municipal capacity), e.g.:***
  - Expanded “Local Act 250 Review” (24 VSA § 4420)
  - Consider delegated jurisdiction to “qualified” municipalities
  - In relation to exemptions, expanded resource-based jurisdiction

# Exemptions

***Recommendation: Evaluate existing exemptions to determine if they serve a public purpose or objective, and associated impacts are otherwise addressed.***

- ***Enact parcel-based jurisdictional “release” provisions from previously issued permits, e.g., for:***
  - *A parcel on which permitted development was never built*
  - *A change in use that would not otherwise require Act 250 review*
  - *Previously permitted development located in a state-designated downtown, growth center or neighborhood development area*
  - *Development in a 1-acre town that was previously permitted under 10-acre jurisdiction, and would otherwise not require review*
- ***Re-evaluate “grandfathered” uses under Act 250, e.g.,***
  - *Define in relation to documented use, level of activity as of a specified date*



# Process

***Recommendation: Ensure that Act 250 remains a citizen-based, applicant and participant-friendly process***

- ***Re-institute coordinated interagency development review***
  - Development Review Cabinet (3 V.S.A. § 2293); agency staff, attorney
- ***Provide additional guidance, training for more consistent interpretation and application of Act 250 criteria, e.g.,***
  - Protocols for resource identification, required impact assessments
  - Guidance re accepted site development, mitigation strategies (9L)
- ***Allow for other forms of engagement, dispute resolution, e.g.,***
  - Pre-application neighborhood meetings (conceptual designs, concerns)
  - Mediated, issue-focused design charrettes that include all parties
- ***Evaluate alternatives to current court appeals process, e.g.,***
  - Options to improve court appeals (more judges, resources, time limits)
  - Return to more administrative, quasi-judicial board review

# Use/Interpretation of Plans

*Recommendation: Clarify how projects must “conform” to the state capability plan (Criterion 9); municipal and regional plans (Criterion 10)*

- ***Require that, for consideration in Act 250, local and regional plans must include required elements and be consistent with state land use and development policy, e.g.,***
  - Allow only regionally “approved” municipal plans to be considered under Criterion 10
  - Re-institute a process to review and approve regional plans
  - Consider plan certification process similar to that established for municipal and regional energy plans under Section 248
- ***Define standard for “conformance with plan,” e.g.,***
  - *In re B&M Realty, LLC (2016)*
  - “Conformance with plan” as defined under 24 VSA § 4303
  - Model enabling statutes, examples from other states

# Planning Framework

*Recommendation: Establish an effective , well-coordinated, planning framework across jurisdictions*

- ***Review, update planning requirements under the Planning and Development Act (24 VSA Ch. 117), e.g.,:***
  - State land use and development goals and policies
  - Required plan “elements” (goals, policies, maps, implementation)
- ***Re-establish a “State Office of Planning Coordination,” e.g., to:***
  - Staff Development Cabinet, provide Act 250 technical support
  - Produce maps, data, projections (population, housing, employment, land use, etc.) for use in local, regional and state agency planning
  - Coordinate state agency planning and development review
  - Review regional, state agency plans for consistency with state land use and development policy

# Short-term (1-2 Years)

- Incorporate current state land use and development policies (24 VSA § 4302) in Act 250 (T.10)
- Re-institute and update the Capability and Development Plan, associated maps, for consideration in Act 250
  - Map resources, areas, facilities of critical state interest as referenced in Act 250
  - Consider defining development areas or “tiers” related to location/resource-based Act 250 jurisdiction (as a substitute for 1-Acre, 10-Acre jurisdiction)
- Re-establish a formal, coordinated interagency development review process – e.g., as a responsibility of the Development Cabinet
- Provide/publish specific guidance for interpreting, meeting Act 250 criteria
- Limit conformance requirements under Criterion 10 to regionally “approved” municipal plans
- Allow for alternative forms of engagement, dispute resolution
- Address jurisdictional release provisions

# Long-term (2+ years)

**Suggestion:** Establish an *interagency task force or working groups* – to include legislators, staff, representative organizations and individuals with knowledge, expertise – to more comprehensively evaluate the following:

- **Act 250 criteria** – recommend updates
- **Jurisdiction** – recommend triggers, exemptions
- **Process/Appeals** – recommend alternatives, improvements
- **Planning Framework** – recommend statutory updates, e.g.,
  - Municipal, regional planning – required elements (24 V.S.A. Ch. 117)
  - State planning – planning office, agency plans (3 V.S.A. Ch. 64)

# 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)

[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.