



ACT 47
COMMISSION ON ACT 250

The Next 50 Years

Materials from the Natural Resources Board/Act 250

Commission on Act 250: The Next 50 Years

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7 CLIMATE CHANGE MEMO/ PETER GILL

*** CONFIDENTIAL MEMORANDUM ***
(Attorney-Client Privileged Document)

To: Diane Snelling, Chair of the Natural Resources Board
From: Peter Gill, NRB Associate General Counsel
Date: May 18, 2017
Re: Draft Outline for Discussion of Climate Change and Act 250

The following document was developed in 2012 and was intended to generate ideas and discussion about how Act 250 could be used to more effectively address climate change within the context of a broader state initiative. The document identifies thirteen Act 250 criteria and sub-criteria with the greatest potential to address this global issue. The document outlines each criterion's existing legal framework and provides a list of potential options to adjust or modify the legal framework or application of that framework. These changes include modifications to the Act 250 rules, statute, application Schedule B, and additional standard conditions. Not all of these proposed changes will warrant implementation and additional analysis and policy discussion would be needed to determine which ideas should be recommended for further action. In addition, because this outline was created in 2012, some of the recommendations may be outdated. For instance, recommendations and citations to Criteria 9(L), 5, and 9(F) may be inaccurate based on subsequent statutory changes. In general, this outline provides a potential framework for future discussion on Act 250 and climate change.

* Total penalties collected does not reflect outstanding payments not yet due or those penalties paid in 2017.

a. **Air Pollution (Criterion 1)**

Legal Framework:

Project “will not result in undue air or water pollution. In making this determination it shall *at least consider* the elevation of land above sea level; and in relation to flood plains, the nature of soils and sub-soils and their ability to adequately support waste disposal; the slope of the land and its affect on effluents; the availability of streams for disposal of effluents; and the applicable health and environmental conservation department regulations. 10 V.S.A §6986(a)(1).

“Undue” determined by:

- Nature and amount of pollution *Re: Pike Industries, Inc. and Inez M. Lemieux*, #5R1415-EB, FCO at 31 (6/07/05) [EB #853]
- Adverse health effects *Re: Pike Industries, Inc. and Inez M. Lemieux*, #5R1415-EB, FCO at 31 (6/07/05) [EB #853]
- “Undue” has been defined . . . to mean “that which is more than necessary—exceeding what is appropriate or normal.” In re: Rivers Dev. Act 250 Appeal, 68-3-07 Vtec, Decision on the Merits at 14-15 (3/25/10).
- With respect to pollution, Aundue" is not a relative term, and should not be defined only in relation to other projects or by weighing the public benefits against the risks. *Upper Valley Regional Landfill*, #3R0609-EB (revised 11/12/91; previous version 7/26/91). [EB #453R]

VT Air pollution Control Regulations:

"Air Contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof. *VT Air Pollution Control Regulations* 2001 5-101.

"Air Pollution" means the presence in the outdoor atmosphere of one or more *air contaminants* in such quantities, and duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life, or property. Such effects may result from direct exposure to *air contaminants*, from deposition of *air contaminants* to other environmental media, or from alterations caused by *air contaminants* to the physical or chemical properties of the atmosphere. VT Air Pollution Control Regulations 2001 5-101.

Applicable Cases:

“Under criterion 1, air pollution, the Environmental Board found that the emission levels from diesel engines from the Project will not result in undue air

pollution”...because, “the vehicles used by the Project must comply with state and federal vehicle emission standards or recommended levels.” “Additionally, the Board does not believe that emission levels will be ‘that which is more than necessary- exceeding what is appropriate or normal.’” Re: John A. Russell Corporation, #1R0489-6-EB, FCO at 44 (7/10/01), or at 2001 WL 789637.

Under criterion 1, air pollution, the Environmental Board found the emission levels from diesel trucks would not result in undue air pollution. However, because the Commission felt concerned about the emissions and relative lack of information regarding ambient levels, the Environmental Board imposed additional conditions on the project including the following: an operation plan to reduce idling, continued monitoring of emissions, and annual reports describing the phasing out CFCs in the trucks refrigeration units. L&S Associates, 2W0434-8-EB, FCO at 38-41 (6/ 2/93).

MA v. EPA, 549 U.S. 497 (2007).

Holdings:

“Because greenhouse gases fit well within the Clean Air Act’s capacious definition of “air pollutant,” we hold that EPA has statutory authority to regulate the emissions of such gases from new motor vehicles.”

States’ have standing to sue EPA’s denial of rulemaking petition to regulate greenhouse gas emissions from new motor vehicles. “That a first step might be tentative” or incremental “does not by itself support the notion that federal courts lack jurisdiction to determine whether that step conforms to law.”

“The Administrator shall by regulation prescribe...standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles... which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare...” 42 U.S.C. §7521(a)(1).

“Air pollutant” includes “any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive... substance or matter which is emitted into or otherwise enters the ambient air.” 42 U.S.C. §7602(g).

Options:

1. Create a section of Schedule B criterion 1(air) to address Greenhouse gas (CO₂ equivalents) emissions created by a project’s construction and operation.
2. Begin with educational component, which requires applicants to calculate the project’s carbon footprint. Suggest ways those emissions can be reduced, mitigated or

eliminated. For example, have applicants determine emissions based on the [EPA emissions calculator](#) or a similarly basic method.

3. Determine limits for the application of this section. Could limit this to projects over certain magnitude (i.e., based on total project cost or estimated emissions).
4. Require reasonably available steps to be taken to create a carbon-neutral (or significantly reduced emissions) project. Implementation could occur through the development of case law.
5. Require mitigation plan to reduce or eliminate total emissions via on-site engineering solutions or off-site mitigation (i.e., purchase forest land development rights).
6. Include Vehicle Miles Traveled (VMT) in a carbon footprint analysis where it makes sense to calculate (ie, earth extraction projects where calculate under criterion 5 anyways).
7. Create an Act 250 rule which defines the limits of greenhouse gas emissions (i.e., what is undue air pollution in terms of GHG emissions).
 - a. This could include a categorical limit (dependant on project type) or require all projects to be carbon-neutral based on the GHG sources captured in the analysis (which could also be limited to certain emission sources).
 - b. Alternatively, the rule could allow a percentage increase above carbon-neutral, and as the project size increases the tolerance above net-neutral decreases.

Conditions:

1. Prohibit idling from delivery trucks, patrons, employees; designate no idling zones;
2. Installation of anti-idling kiosks for ambulances, delivery trucks, etc;⁸
3. Require a Net-Zero project (both construction and operation- include source of electric and heating/cooling systems);
4. Require off- or –onsite mitigation to balance annual GHG emissions caused by the project;
5. Require parking space reduction plans, shuttle service, or alternative transportation routes (bike lane, sidewalks; include showers and changing areas to encourage alternative transportation);

¹ <http://www.bmhvt.org/wp-content/uploads/NEHES-Medi-Dock-Article.pdf> (Brattleboro Memorial Hospital installs first ambulance anti-idling kiosk for hospitals in the United States).

6. Require the purchase of development or silvicultural rights to forest lands as a GHG off-set;
7. Require light colored pavements (darker increases regional temperatures, adds to urban heat island affect);
8. Require green sides and green roof installations;
9. Require Mass transit stops at major businesses and/or require applicant to develop program to limit Single Occupant Vehicles (SOVs);
10. Incentivize car pooling; provide group transit (shuttle service);
11. Encourage roundabouts and other traffic design elements which reduce the amount of idling time in transit;
12. Require an analysis of the project to improve timing and efficiency of traffic flow through study and implementation, ideas available at:
<http://www.fhwa.dot.gov/congestion/toolbox/service.htm>
13. Require waste to be disposed in landfills where methane capture is being utilized;

b. Water Pollution (Criterion 1)

Legal Framework:

Project “will not result in undue air or water pollution. In making this determination it shall at least consider the elevation of land above sea level; and in relation to flood plains, the nature of soils and sub-soils and their ability to adequately support waste disposal; the slope of the land and its affect on effluents; the availability of streams for disposal of effluents; and the applicable health and environmental conservation department regulations. 10 V.S.A §6986(a)(1).

“Undue” determined by:

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Options:

1. Add section under schedule B, criterion 1 as follows: “Demonstrate that the project will not result in undue water pollution under increased storm events as projected by climate models.” ANR Storm water permits are referenced in Schedule B(1)(B)(J-L), can we work with ANR to include a similar analysis/language in their storm water permits?
 - a. Again, like 1(air) the limits of what type of project this applies to needs to be defined (i.e., based on size, total cost, type/category, acreage, impervious surface).
2. Require that stormwater calculations include a “climate multiplier” to account for increased storm events. As a starting place, the scientific literature predicts an 11% increase in winter precipitation by 2100.⁹ Incorporated ANR permits should also include this same multiplier (Stormwater Discharge, General, or Multi-sector General Permits).

Conditions:

1. Include conditions that require low-flow and automatic stop fixtures (showerheads, faucets, and toilets), composting toilets, waterless urinals, energy star appliances, rain gardens, green roofs, and grey water systems;
2. Require culverts and bridges to account for increased intensity rain events;
3. Require porous pavement and increase vegetated strips within paved areas;

c. Water Conservation (Criterion 1C)

Legal Framework:

Show the design considered water conservation, incorporates multiple use or recycling where technically and economically practical, utilizes the best available technology for such applications, and provides for continued efficient operation of these systems. 10 V.S.A §6986(a)(1)(C).

Options:

Impose conditions under criteria 1C (water conservation) in tandem with 9F (energy conservation). Not need revision as much as stronger implementation.

Conditions:

1. Installation of grey water systems, vegetated swales, rain gardens, rain barrels and retention ponds, water barrels, permeability of pavement (may have added benefit of increasing bio mass and cooling effect, ie, grass within pavement matrix);

⁹ Hayhoe, et.al. (2007): Past and future changes in climate and hydrological indicators in the US Northeast. *Climate Dynamics*, v. 28. Available at:
http://www.northeastclimateimpacts.org/pdf/tech/hayhoe_et_al_climate_dynamics_2006.pdf

2. Require the use of grey water (and retained rainwater) for low-quality needs. This saves water and conserves energy. Potential uses include: irrigating golf courses, washing cars, and snow making.
3. Encourage the implementation of porous paving options, including, open cell concrete block. Also, increase vegetated strips within paved areas.
4. Implement water saving technologies including: Low flush toilets and automatic sinks; energy star appliances, faucet aerators, low-flow or sensed faucets, low-flow showerheads, low-flush and composting toilets, low-flush or waterless urinals.¹⁰

d. Floodways (Criterion 1D)

Legal Framework:

Projects within the floodway cannot:

Restrict or divert the flow of flood waters, and endanger the health, safety, and welfare of the public or riparian owners during flooding, and

Projects within the floodway fringe cannot:

Significantly increase the peak discharge of the river or stream within or downstream from the area of development and endanger the health, safety, or welfare of the public or riparian owners during flooding. 10 V.S.A. §6086(a)(1)(D).

Act 250 defines “floodway” as “the channel of a watercourse which is expected to flood on an average of at least once every 100 years and the adjacent land areas which are required to carry and discharge the flood of the watercourse, *as determined by the secretary of natural resources* with full consideration given to upstream impoundments and flood control projects.” 10 V.S.A. 6001(6)(emphasis added).

Act 250 defines “floodway fringe” as “an area which is outside a floodway and is flooded with an average frequency of once or more in each 100 years *as determined by the secretary of natural resources* with full consideration given to upstream impoundments and flood control projects.” 10 V.S.A. § 6001(7)(emphasis added).

ANR is authorized to make a determination as to what constitutes a floodway or a floodway fringe, and the agency may utilize fluvial geomorphology to determine the presence of a floodway. Woodford Packers, Inc., 175 vt 579 (2003).

Options:

¹⁰ Water conservation techniques available at: <http://www1.eere.energy.gov/femp/pdfs/22799.pdf>

1. On the application Schedule B, change the focus from NFIP maps to flood erosion hazard areas (FEHA) as determined by ANR. Encourage applicants to include both NFIP and FEH maps.
2. Deny all projects within the floodway, unless the floodway function is unaffected by the project. As a practical matter this would mean that projects where floodway function is unrestricted, such as sports fields, trails, open space, etc. could be permitted, but all others (such as buildings, structures, etc.) could not be permitted.
3. Require culverts and bridges to be designed with an eye towards increased flood events.
4. Schedule B should reference ANR technical guidance.
5. Expand Act 250 jurisdiction in regards to floodways and floodway fringes for municipalities that do not participate in NFIP and have not adopted NFIP minimum standards.
6. Modify “floodways” statutory definition to align with the impacts to floodplains that are regulated under the NFIP and the impacts that ANR considers when reviewing Act 250 Applications.

Conditions:

See above as Criterion 1(c) provides ways to reduce peak discharge of streams- rain gardens, green roofs, pervious pavements, etc.

e. **Streams (Criterion 1E)**

Legal Framework:

Development on the banks of a stream, *whenever feasible*, must maintain the natural condition of the stream, and cannot endanger the health, safety, or welfare of the public or adjoining landowners. 10 V.S.A. §6086(a)(1)(E).

Options:

1. Encourage commissions to require culvert and bridge sizing reflects peak flows as predicted by climate change models.
2. Strengthen language in statute to address the “whenever feasible” standard.

Conditions:

1. *See Floodways above.*

2. Connected with floodways, similar conditions to account for fluvial geomorphology when peak flows and earlier spring flows will be the norm.
3. Proper sizing of culverts and bridges will need to accommodate potential increase in flow as a result of climate change

f. Wetlands (Criterion 1G)

Legal Framework:

The project “will not violate the rules of the board [secretary], as adopted under this chapter, relating to significant wetlands.” 10 V.S.A. §6086(a)(1)(G).

Significant wetlands equal Class I and II wetlands, as mapped or as determined by ANR.

Vermont Wetland Rules require the following default Buffers: 100 ft around class I wetland, 50 ft around class II wetland. They also require limited uses within significant wetlands and their buffers.

Options:

1. Increase buffered area of wetlands to factor in the amplified value of these ecosystems as flood protection in light of climate change.
2. Include carbon sequestration as a Functional Criteria for Evaluating a Wetland’s Significance under section 5 of the Vermont Wetland Rules.
3. Under section 5 of the Vermont Wetland Rules heighten the weigh given to a wetland’s ability to function as a flood management tool.

g. Erosion (Criterion 4)

Legal Framework:

The commission must find that the project will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result. 10 V.S.A. §6086(a)(4).

Options:

1. Under Schedule B, criterion 4, include a question that asks whether and how the project erosion plan has accounted for increased intensity rain events in combination with short term drought.

2. Encourage commissions to ask about flood events and get projected weather patterns on the record. Similarly, ask how the project is equipped to withstand these events and not cause undue erosion.
3. Under criterion 4, review and improve ANR’s “Erosion Prevention and Sedimentation Control Plan Checklist” to include more robust suggestions in light of climate change.

Related Facts/Conditions:

1. Encourage vegetative slope stabilization, rather than “hard armored” techniques (see similar additional techniques suggested under criterion 1).
2. Require matting and seed for slopes of X% or more (define X).
3. Require a description of how the project’s erosion control measures address climate change.

h. Productive Forest Soils (Criterion 9C)

Legal Framework:

Project must not reduce the potential for commercial forestry or not significantly interfere with forestry on adjoining lands. Also, there must be no other lands owned by the applicant available that are suitable for development, and innovative land use design must be considered so remaining forest soils are preserved. However, designated growth centers are excluded. 10 V.S.A. §6086(a)(9)(C).

Options:

1. Develop maps, objective list, and definition of productive forest soils to assist in wider use of this criterion.
2. Re-write Schedule B to require applicants to identify Productive Forest Soils.
3. Require applicants to re-plant or maintain trees on identified productive forest soils. When tree removal is necessary to a project, the removal should strive to retain the canopy and large trees.
4. Vigorously apply 9C (productive forest soils) as a mechanism to encourage the preservation of lands that naturally sequester carbon dioxide, provide flood mitigation, and other environmental benefits. Additionally, this criterion, unlike 9B (Prime Agricultural Soils) does not have a statutorily prescribed on-site and off-site mitigation scheme.

i. Energy Conservation (Criterion 9F)

Legal Framework:

The planning and design of the project must reflect principles of energy conservation and incorporate Best Available Technology. 10 V.S.A. §6086(a)(9)(F).

Residential Building Energy Standards:

“(d) Role of RBES in Act 250. Substantial and reliable evidence of compliance with RBES established and updated as required under this section shall serve as a presumption of compliance with 10 V.S.A. § 6086(a)(9)(F), except no presumption shall be created insofar as compliance with subdivision (a)(9)(F) involves the role of electric resistance space heating. In attempting to rebut a presumption of compliance created under this subsection, a challenge may only focus on the question of whether or not there will be compliance with the RBES established and updated as required under this subsection. A presumption under this subsection may not be overcome by evidence that the RBES adopted and updated as required under this section fail to comply with 10 V.S.A. § 6086(a)(9)(F).” 21 V.S.A. §266(d).

Commercial Building Energy Standards (CBES):

Do not create a presumption under 10 V.S.A. §6086(a)(9)(F). 21 V.S.A. §268.

Options:

1. Update Schedule B to reflect changes to 2005 PSD guidelines that are now out-of-date.
2. Develop trainings to keep commissions abreast of updates to the RBES and CBES, which are updated every three years.
3. Work with PSD to shrink gap between the building codes (RBES and CBES) and the Best Available Technology.
4. Strategize with the PSD as to the best body to review Act 250 projects for energy efficiency (PSD, Efficiency Vermont, Burlington Electric Department, Vermont Gas Systems, etc.)
5. Legislatively change 21 V.S.A. §266 to remove the presumption created. This would remove the limitation on 9(F) review. Project review could then be based on BAT, which may be more restrictive than the RBES and CBES.
6. Modify Schedule B, 9F (Energy) to include a question asking if the applicant has contacted Efficiency Vermont or an independent firm for an energy conservation analysis of the project.
7. Criterion 1 (Air), 1(B) (Waste Disposal), and 9(F) (energy conservation) could be used to require methane (greenhouse gas) capture for either wastewater treatment facilities

or landfills. Use a policy document or question on Schedule B to encourage commissions to require this.

Conditions:

1. Require energy star appliances, Low-Impact Development (LID) designs, LED lighting, building system manager training, recycled and re-used materials, real-time energy usage monitoring equipment, and elements of LEED certification.
2. Require noncontiguous developments to include electric vehicle chargers and/or provide public and alternative transportation options to connect the development with other existing settlements.

j. Cost of Scattered Development (Criterion 9H)

Legal Framework:

A permit is granted if additional public services and facilities caused directly or indirectly by the proposed development do not outweigh the tax revenue and other public benefits of the development (increased employment opportunities, needed housing and balanced housing accessible to existing or planned employment centers). 10 V.S.A. §6086(a)(9)(H).

Options:

1. Create a policy requiring Commissions to include a condition in all permits for projects that cause an increase of vehicle miles travelled. The condition would require CO_{2e} offsets to compensate for the vehicle miles travelled as a result of the project. Tie this into the permit through conditions under criteria 1 (Air), criteria 5 (traffic), and 9H (cost of scattered development).
2. Statutorily remove the economic balancing test under criterion 9H and strengthen the language of the statute to further discourage scattered development, which increases the vehicle miles travelled of the state. Rather, require an analysis which encourages projects which decrease the vehicle miles traveled and discourages those which do not.

Conditions:

1. Require transportation models to non-contiguous sites (alternative transportation, bike paths, and shuttle services) to reduce vehicle miles traveled.
2. Require showers and changing facilities for employees who bike/ walk to work.
3. Review development designs for local food vendors and other amenities nearby to reduce the need for additional travel (ie, cafeteria within business complex).

k. Public Investments (Criterion 9K)

Legal Framework:

A permit is granted if the development adjacent to public investments (including parks, hiking trails, forest, game lands, schools, etc.) will not unnecessarily or unreasonably endanger (safety, enjoyment of, function of) the public investment. 10 V.S.A. §6086 (a)(9)(K).

Options:

1. This criterion could be used to encourage conditions which require larger culverts, bridges, more effective stormwater systems, etc. to address the increased flood events as a result of climate change. Not creating these additional protections leaves our public investments vulnerable in light of climate change.

Conditions:

1. Encourage the use of this criterion to increase the holdings of public lands.
2. Use this criterion to reduce impacts to carbon sequestering lands (parks, hiking trails, forests, game lands).
3. Create stronger more resilient infrastructure which will not result in damage to public investments.

I. Conformity with Regional/Municipal Plans (Criterion 10)**Legal Framework:**

The project must be in conformance with any duly adopted local or regional plan. 10 V.S.A. §6086(10).

To be enforceable the language of the plan must be both mandatory and specific. In re Appeal of Times & Seasons, LLC., 183 Vt. 336 (2008).

Options:

1. Collaborate with towns and regional planning commissions to develop model language to address climate change, which could be adopted by towns and RPCs.

Conditions:

1. Depending on the specific language of the plan, this criterion may be used to deny projects where:
 - Forested areas are unprotected
 - Agricultural lands are unprotected

- Energy efficiency standards are not met
- Compact settlement patterns are not observed
- Riparian and shoreline setbacks are insufficient
- Any other requirement or restriction mandated is unambiguous

m. Jurisdictional Expansion

Legal Framework:

The word “development” does not include:

- (i) The construction of improvements for farming, logging, or forestry purposes below the elevation of 2,500 feet. 10 V.S.A. §6001(3)(D).

Options:

Modify this definitional limitation to expand the jurisdiction of Act 250 to include some forestry and agricultural operations below 2,500 feet.

8 COMMENTS COLLECTED AT COMMISSION MEETINGS, MUNICIPAL PLANNERS, MUNICIPAL DAY PRESENTATIONS

SECTION A: MEETINGS HELD BY THE NATURAL RESOURCES BOARD IN WHICH DISTRICT COMMISSIONERS AND, ALSO PLANNERS SHARED THEIR THOUGHTS ON ACT 250

Thoughts and Comments from meeting:

- Make it simpler, faster, remove delays in appeal process.
- Look at how many appeals are there per year?
- Look at Environmental Court topics.
- Should we change de novo?
- Should we return to the E-Board?
- Sit with engineering firms and ask - What would make it easier?
- Meet with neighbor groups who opposed projects to understand their perspective.
- How can we help people see the difference between agencies?
- There are a host of criteria that only Act 250 regulates!
- What did Act 250 preserve?
- Our program has saved hundreds of resources... kilowatt hours, buffer strips, habitats...
- Where does light pollution protection fit?
- How have we protected resources?
- A good permit is well written and supported with maps, etc.
- **CRITICAL:** Act 47 Commissioners should be required to attend an Act 250 hearing.
- Take permit and walk the Act 47 Commission through it by breaking it down. Ask, why? What does it mean?
- Look at the cumulative effects of the past 47 years.
- Put emphasis on encouraging applicants to consult with Efficiency VT.
- Abysmal job with climate change.
- Consider the relevance of environmental issues now; Things are not the same as those from 50 years ago.
- Invasive species - emerged in the last 50 years. How to handle? What to do?
- Not as nimble in terms of climate change.
- Phosphorus- current issue, not included 50 years ago. How to handle? What to do?
- Criterion does not evaluate a project's carbon footprint. Consider this change.
- Good job with energy efficiency, but do we need to push it?
 - Not necessarily Act 250's responsibility and could be more appropriate at a local level.
- Has the state looked at impacts in the next 30-50 years?
- Look to other resources for current information.
- 9(l): Question is not broad enough.

- Applicants do not know how to answer the question.
- Lack of clarity has made it challenging and confusing, more definition is needed.
- Beef up question with more standards and explanations.
- 9(l): Prevents strip development, but it does not prevent sprawl. Need to review?
- On collision course with 10-acre limitation...Growth over the next 50 years will increase the number of communities that reach this threshold.
- 6068(b): It's lack of jurisdiction- all that doesn't go through Act 250
- Small towns make development in town centers more difficult.
- Affordability for smaller communities
- No trade off
- Forest fragmentation is not addressed under 9(c)
- Rely heavily on the State of Vermont
 - 80% is forested, isn't this OK?
- Working lands and farms need consideration.
- We are preserving soils and offsite mitigation is a *good* thing
- Housing Conservation gets put to good use.
- Every town has a CSA now.
- Need to get banker in to talk to the Commission.
- Food is a matter of National Security!
- Land needs to be kept open.
- Act 250 does not have tools.
- Town and regional plans
- Have conversation with towns and cities.
- Local Act 250 review 6/7/10 (not abdicating current authority) looking for better local information.
- #2/6/8 Exemption from jurisdiction
 - Zoning and DRB end up with decision making
 - This type of analysis is not what Act 250 would do
 - NRB and town could end up at odds with one another and nothing gets applied
- Eliminate jurisdictional exception.
- Ask Districts/Commissions for pictures to identify Act 250 and non Act 250. Compare.
- Entire areas are becoming monocultures, but thinning could reduce species
 - Encourage multispecies
- How do you use primes agriculture mitigation?
- Better rules = No exemptions
- Took permitting of cell towers from Act 250 and, now, there are ugly towers all over
- 10-acre zoning is making a mess and aesthetic diversity is complicating every siting
- Hesitant to see Act 250 encumber farmers
- Eliminate exemption number one of cities and towns- recraft

- Wish- applicants *want* an Act 250 review
- Designate acreage as Commercial District and not have to deal with Prime Ag
 - Not just in downtowns?
- Identify Carbon Footprint benchmark.
- Pump storage for extra energy storage
 - Ski industry- use H2O storage ponds
 - Aesthetic unchanged?
 - Virtually free energy
 - i.e. Mount Equinox
- Revise 100-year flood standard or create 1,000-year flood standard!
- Change reference from flood plain to river corridor.
- Preserve prime wind or prime solar areas?
- Can't enforce aspirational language – change!
- Misperception between Act 250 and ANR
 - Delays at ANR due to lack of staff
- Denials and what does not happen can be a *positive* act for Vermont.
- Recognize and acknowledge that Act 250 sometimes invites solutions.
- Neighbors are an important component.
- Distinguish between substance and procedure.
- What would applicant go through if they did not take advantage of resources available? (i.e., coordinators)
- Common App for all state applications could be illuminating.
- Number of permits approved is not best measure of value- it can be misread.
- Is it a good permit when you get it?
- Handbook on Act 250
 - Guide on how to apply
- Examples of incomplete applications to show legislators/Commission members.
- Appeal process should be reviewed.
- Mandatory pre-application process.
- PSB- New/Trial? Explore...
- Communications/Media:
 - Create process for notifying Districts and Commissions into being put out (press releases, etc.)
- Very few appointees that have direct experience in process.
- Best kept secret: much voice Adjoiner/abutters have in process.
- Advance notice instead of 21 days .
- A lot of business in the state to protect Vermont's brand in order to be successful
- Helps different areas maintain their distinctive character

SECTION B: 2017 MUNICIPAL DAY PARTICIPANT COMMENTS ON DISCUSSION OF ACT 47

Comments were provided by registrants for this presentation at three different Municipal Day events: National Life location, and the St. Johnsbury and Rutland Mini-Muni Days.

- What role, if any, will Act 250 play in looking at energy and transportation issues?
- Will municipal staff members have an opportunity to speak to the issues? How can we participate and communicate with the Act 47 Commission? How would we find out about the Act 47 Commission and potential opportunities to participate?
- Looks like it would be advantageous for the NRB to undertake some “benevolent marketing” of opportunities for local commentary and participation in public outreach.
- Interaction with local businesses, community-based organizations could be helpful.
- More reliance on existing mapping should occur in the Act 250 process.
- Act 250 should increase community/local engagement to create awareness and understanding of the Act 250 process. Students should be educated about Act 250 and its benefits.
- Look at how Act 250 and local planning can eliminate redundancies that occur between permitting processes.
- Has the science behind Act 250 been updated over its history?
- Why look forward to the “Next 50 years”? Everything is moving at a much faster pace than it did in the last 50 years. Seems as if the next check-in should be sooner to capture and respond to changes. It should be *Act 250: the 25 years* - at least.
- Can ACT 250 reconcile competing and conflicting priorities between State Agencies?
- Could Act 250 have components that “give credit” to projects that contain beneficial aspects or project components?
- How is it that Act 250 is considered an environmental process when Act 250 does not focus on natural resources more than land use?
- There is a desire by Vermonters to live in a “walkable” community. Act 250 should incentivize this option.
- Require identification of critical components/areas/overlays and require that they are incorporated into local plans.
- There’s too much wildlife criteria. In particular, there is too much focus on game animals and not enough focus on biodiversity and natural systems. (May want to look at ANR’s watershed approach.)

- There's not enough attention given to access roads and/or transmission lines. Act 250 should be looking at regional and state issues of both of these and the effects on wildlife corridors.
- Why aren't we seeing increased siting of solar arrays in at large projects like a Walmart where there are buffers around the project? Can we require through Act 250 siting of renewable energy?
- Act 250 should have input into climate change policy there will be a need for on-site mitigation. Vermont is likely to experience migration of climate change refugees...How will the State handle this?
- Act 47 should survey local commission members in towns throughout the State in order to understand the capacities of cities and towns.
- There should be clear standards for what is expected of applicants.
- Act 250 should be able to explain how value judgements are made in local matters.
- Farmland should be cost-effective.
- Consider the context when reviewing Ag soils. Clearer guidelines are needed for land set aside for Ag uses.
- There should be a requirement that before a project goes to local zoning, applicants must get a Permit Review Sheet.
- Explain why Act 250 gets involved where permitting exists in other State entities.
- Aesthetics should be an Act 250 component.
- Substantial regional conflicts present an opportunity for Act 250 to step in.
- Give people a predictable process. Need written guidelines.
- Need to give the Act 47 Commission a document that begins.... This is Act 250 who brought you....and then identify the quintessential vistas, local character, historic structures, etc. that have been protected, preserved, rehabilitated....
- Clarify when is a permit amendment needed? This threshold seems to have shifted in more recent years.
- Now that there's history to be considered, there should be thought of what can be "released" from Act 250.
- Look at how Act 250 has evolved over years since the envisioned statewide plan did not come to be.

- Is it possible that Act 250 has created more fragmentation?
- There should be design standards at the Act 250 level in order to create the types of places where people want to live – sidewalks, small town feel, individual homes, not large complexes.
- Model where things are built that people want to live in.
- Why does Act 250 look at tiny/small changes?
- Increase Act 250’s clarity and predictability....” I have to do all this and I don’t know if I am going to be approved!”
- Energy siting – local vs. state. How close is it to where its being used? Is the level of review by the PSB sufficient?

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