

P. O. Box 512
Montpelier, Vermont 05601
November 21, 2018

Commission on the Future of Act 250
State House
Montpelier, Vermont

Dear Commissioners:

This letter addresses and rebuts VTrans' testimony relating to the growth of additional approvals needed in the years following the enactment of Act 250 (1969 adj. sess.).

My point is that most of those permits preceded Act 250 (or were implemented at the same time in other acts). Those who developed and enacted Act 250 acknowledged that **those other permits were and are not a substitute for Act 250's comprehensive review of all criteria simultaneously. Act 250 was uniquely designed to provide individuals who have an appropriate interest to become parties and to make their case for protection of resources.** These two features are the **keystone** that has **empowered local groups and individuals** to protect natural resources in their communities.

VTrans provided in its testimony (posted on the commission's internet site for November 8, 2018) a two-page document listing permits and clearances required. I here present the State approvals required and how they relate to the resources covered by Act 250. These comments are based on my research into the various statutes as they existed at the time Act 250 was enacted, as they exist now, and as Act 250 evolved over the years. I have documented my findings and can send you them, if you wish.

Resources intended to be covered by both Act 250 and another process by explicit action

Approvals required before the implementation of Act 250.

The following approvals were required before Act 250 was enacted. Yet the resources covered by the approvals were included in the criteria for Act 250. This inclusion indicates to me that the creators of Act 250 were aware of the coverage of resources by two processes and chose to retain the two processes. The requirements for some of these approvals were modified in other bills of the same session as Act 250, also indicating an intent to have the resources covered by both processes.

- Discharges to waters of Vermont. These approvals in Vtrans' list involve such discharges.
 - 1272 Order (portion relating to discharges to waters)
 - NPDES Construction General Permit
 - Construction Stormwater Individual Permit
 - Construction General Permit #3-9020
 - VTrans Erosion Prevention and Spill Containment Plan
 - Storm Water Discharge Permit
 - Municipal Separate Storm Sewer System General Permit 3-9014
 - Transportation Separate Storm Sewer System General Permit
- Stream Alteration Permit
- Stream Alteration Permit Consultation with ANR
- Stream Obstruction Permit
- Lakes and Ponds Permit
- Dam Construction Permit
- Flood Hazard Areas (as part of municipal zoning)

Approvals created at the same time as the resource was added to Act 250

Wetlands were added to Act 250, to the 1272 order, and in new statutes by the same bill, also a clear intent that wetlands were to be covered by the three processes.

- 1272 Order (portion relating to wetlands)
- State Wetland Permit
- Agency of Agriculture

Resources added to Act 250 following the creation of approval outside Act 250

These are approvals that were created after Act 250 and then later added to Act 250, also indicating an intent to have the resources covered by both processes..

- Threatened and Endangered Species Permit
- Underground Injection Permit

Resources intended to be covered by both Act 250 and another process by implicit action

The coverage of these items by both processes is implicit because the resources involved were not excluded from coverage by Act 250.

Approvals implemented after Act 250 and that are covered by Act 250

Hazardous Waste

Insignificant Waste Management Event

Scenic Roads

River Corridor Permit

Shoreland Protection Permit

VTrans Historic Preservation & Archaeological Officers. Historic resources had been covered by direct consultation with the federal government, beginning in 1966, preceding Act 250. The Vermont Division of Historic Preservation was created in 1975 in order for the State to be delegated authority to run the historic preservation program that had existed before Act 250.

Conclusion

My research, presented here, shows that most of the approvals presented by VTrans have been explicitly included in Act 250 because:

- the need for those approvals precedes Act 250
- the approvals were created at the same time as Act 250 was given jurisdiction over the resource
- Jurisdiction over the resources was given to Act 250 after the need for the other approvals was enacted

The other approvals are implicitly intended to be covered by Act 250 as well. That is because the committees that develop the bills are well aware of Act 250. Because the committees chose not to remove jurisdiction of the resource from Act 250 in those bills, I believe that they have implicitly agreed to have Act 250 continue to have jurisdiction over those resources.

Act 250 provides a comprehensive review of environmental resources. Act 250 provides that review **in a way that cannot be matched by relying on individual permits and approvals** made over a period of time by individually agencies with little or no understanding of how the effects on the various resources interact.

Act 250 is designed to provide individuals who have an appropriate interest to become parties and to make their case for protection of resources. Individuals lack that ability in all of the other approvals listed by VTrans.

Thank you for taking the time to read these comments. I ask that you retain Act 250's jurisdiction over federally assisted highway projects. If you have any questions, please let me know.

Sincerely,

Thomas Weiss, P. E.