



State of Vermont

Agency of Natural Resources – Office of Planning
1 National Life Drive – Davis 2
Montpelier, VT 05620-3901

[phone] 802-595-0900

Agency of Natural Resources

MEMORANDUM

TO: Act 47 Commission

FROM: Agency of Natural Resources and Agency of Commerce and Community Development

DATE: December 8, 2017

SUBJECT: Resource Based Jurisdiction

The concept of resource-based, or 'locational', jurisdiction is an approach to land use regulation where the jurisdictional trigger for a regulatory process is tied in whole or part to the location where a development activity is proposed. Under this approach, regulatory review would typically be more common for development in locations where the presence of or potential to impact significant or unique natural resources values is high, and regulatory review would be less common for development in areas where the presence of or risk to those resources is low.

Resource based jurisdiction, for instance, may require regulatory review for a relatively minor development – such as a single home – in sensitive areas, but allow the construction of several to many homes without review in areas where the risk to significant resources is less.

Currently, Act 250's most common jurisdictional triggers focus primarily on the size and scope of development, and rely less on resource based or locational jurisdiction triggers. The most common triggers for Act 250 review are:

- Construction of improvements for any commercial or industrial purpose on more than 10 acres of land; or on more than one acre of land if the municipality does not have both permanent zoning and subdivision bylaws.
- Construction of 10 or more housing units, or of mobile homes or trailer parks with 10 or more units, within a radius of 5 miles
- Subdivision of land creating 10 or more lots of any size within a 5-mile radius or within the jurisdictional limits of a District Commission within a continuous period of 5 years.
- Within a town that does not have both permanent zoning and subdivision regulations, subdivision of land creating 6 or more lots of any size within a continuous period of five years.

While the above triggers are primarily focused on the size and scope of development, some of these common triggers hinge on whether a town has adopted permanent zoning and subdivision regulations, which is a form of resource based or locational jurisdiction. Additional examples of resource based jurisdiction currently reflected in Act 250 include:

- All development above 2500' – regardless of size or scope – triggers Act 250 review.
- Logging, an activity that is otherwise exempt from Act 250 review, triggers jurisdiction when proposed above 2500'.
- Priority Housing Projects of a size and scope that would otherwise trigger Act 250 jurisdiction are exempt from review in certain state designated centers.

Resource based jurisdiction can also function to promote development in certain areas and discourage it in others. This was, in part, the General Assembly's intent when enacting Act 157, which exempted certain Priority House Projects from Act 250 jurisdiction in most state designated centers. In that example, jurisdiction over Priority Housing was lessened to encourage new housing in state designated growth areas – locations that tend to be fairly built out, where there are generally fewer significant natural resources than other parts of the state and where robust local protections exist for natural resources (the state designation process includes a review of the sufficiency of local bylaws).

This change in jurisdiction also helped to incent the development of Priority Housing in areas of the state with the greatest need for new affordable housing by reducing the regulatory burden on those developments. Resource based jurisdiction could similarly discourage some forms of development in more sensitive parts of the state if jurisdictional triggers were lowered from their currently levels in those locations. Act 250 could adjust triggers in sensitive areas in a number of ways, potential examples include reliance on maps of certain resource features to establish unique resources areas, with lower jurisdictional thresholds, statewide, or establishment of a rule making process to designate certain discrete, sensitive areas on a case by case or petition based bases.

Introducing additional elements of resourced based jurisdiction into the Act 250 framework may result in more targeted review that better matches the level of regulatory oversight with the relative risk and impact associated with individual projects.