

B. Settlement patterns and the criteria:

1. *Charge*

Act 47, Sec. 2 (e)(2)(C)(ii) – “Whether the criteria support development in areas designated under 24 V.S.A. chapter 76A, and preserve rural areas, farms, and forests outside those areas.”

2. *Facts/Background*

a) *Overview*

Vermont statute and policy seek to maintain a pattern of compact village and urban centers surrounded by countryside because of that pattern’s contribution to the character of the State and its economic and environmental benefits when contrasted with development that is scattered across the landscape. For example, the Department of Housing and Community Development (DHCD) has provided an estimate that the total annual cost to a Vermont town to provide services to a household is \$1416 in a downtown as opposed to \$3462 in rural and suburban areas.¹⁷

DHCD also has provided estimates showing that median annual household vehicle miles decrease significantly for residents of designated downtowns and neighborhoods and those living within a half mile of downtowns.¹⁸ One can therefore infer that promoting this settlement pattern avoids fossil fuel emissions such as greenhouse gases.

Vermont has long recognized the importance of settlement patterns. As described above, the 1973 Capability and Development Plan included findings directly relevant to this issue. Further, in 1988’s Act 200, the General Assembly adopted a goal for regional and municipal planning to support Vermont’s historic settlement pattern of compact village and urban centers surrounded by countryside.¹⁹ As subsequently amended, this goal includes encouraging intensive residential development in areas related to community centers, discouraging strip development along highways, and encouraging economic growth in existing village and urban centers and in designated growth centers.²⁰

b) *State Designation Program*

In 1998, the General Assembly adopted a designation program under 24 V.S.A. Chapter 76A, which states a purpose to support the State’s historic downtowns and villages

¹⁷ C. Cochran and D. Azaria, Powerpoint: State Designation Programs (Dec. 13, 2017)

¹⁸ *Id.*

¹⁹ 1988 Acts and Resolves, No. 200, Sec. 7, amending 24 V.S.A. § 4302.

²⁰ 24 V.S.A. § 4302(c)(1).

through the designation process and its benefits and to encourage a large percentage of future growth in designated growth centers.²¹

The program provides for designations of downtowns, village centers, new town centers, growth centers, and neighborhood development areas. It seeks to provide incentives, align policies, and give Vermont communities the technical assistance needed to encourage new development and redevelopment in compact, designated areas. The program's incentives are for both the public and private sector within the designated area, including tax credits for historic building rehabilitations and code improvements, permitting benefits for new housing, funding for transportation-related public improvements and priority consideration for other state grant programs.²²

To obtain designations under the program, the municipal planning process for the relevant town must be confirmed by the regional planning commission as consistent with the planning goals of § 4302.²³

As of 2017, the program had designated 23 downtowns, 124 village centers, two new town centers, six growth centers, and five neighborhood development areas.²⁴

c) *Act 250 and State Designation Program Interface*

Act 250 currently interfaces with the State designation program in several ways. First, Act 250 provides for offsite mitigation of primary agricultural soils if the project is in a designated downtown district, growth center, new town center designated on or before January 1, 2014, or neighborhood development area associated with a downtown development district.²⁵

Second, in 2014, the General Assembly created a settlement patterns criterion within Act 250 that states a goal to promote Vermont's historic settlement pattern. This criterion, known as Criterion 9(L), requires Act 250 projects outside "existing settlements" to make efficient use of land, energy, and infrastructure and to show that they will not contribute to strip development. The statute defines "existing settlement" to include areas designated under the State designation program as well as other existing compact centers.²⁶ 10 V.S.A. § 6001 states in relevant part:

(16)(A) "Existing settlement" means an area that constitutes one of the following:

(i) a designated center; or

²¹ 24 V.S.A. § 2790(b)(1), (d)(1).

²² 24 V.S.A. chapter 76A; <https://acd.vermont.gov/community-development/designation-programs>

²³ 24 V.S.A. §§ 2793(b)(3), 2793a(a), 2793b(b)(1), 2793c(c)(3), 2793e(a), 4350.

²⁴ DHCD, State Designation Programs Overview (2017).

²⁵ 10 V.S.A. §§ 6086(a)(9)(B), (9)(C).

²⁶ 2014 Acts and Resolves No. 147, Secs. 1 and 2, amending 10 V.S.A. §§ 6001(16) and 6086(a)(9)(L).

(ii) an existing center that is compact in form and size; that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other; that has significantly higher densities than densities that occur outside the center; and that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens.

(B) Strip development outside an area described in subdivision (A)(i) or (ii) of this subdivision (16) shall not constitute an existing settlement.

The same statute also defines “designated center” to mean “a downtown development district, village center, new town center, growth center, Vermont neighborhood, or neighborhood development area designated under 24 V.S.A. chapter 76A.”²⁷

Third, an Act 250 project that is not physically contiguous to an “existing settlement” as defined above must meet the criterion on the costs of scattered development, known as Criterion 9(H). This criterion requires the applicant to show that the direct and indirect public costs of the project do not outweigh its public benefits including tax revenue and employment opportunities.²⁸

Fourth, development in a designated downtown district that is subject to Act 250 may seek findings of fact and conclusions of law in lieu of issuance of a permit or permit amendment using an expedited process that does not require an application fee.²⁹

Fifth, a municipality may seek findings of fact and conclusions of law under Act 250 from the Natural Resources Board (NRB) for a designated growth center within the municipality. A master plan permit also may be sought for all or part of a growth center.³⁰

Sixth, projects in a designated neighborhood development area that are subject to Act 250 pay 50 percent of the otherwise required application fee.³¹

Finally, the Act seeks to encourage mixed income housing and mixed use development in designated areas through its “priority housing project” provisions. These provisions exempt priority housing projects located in designated downtowns and several of the other available designations if the municipality has population of 10,000 or more, and reduce Act 250 jurisdiction over priority housing projects in designated areas located in smaller municipalities.³²

²⁷ 10 V.S.A. § 6001(30).

²⁸ 1- V.S.A. § 6086(a)(9)(H).

²⁹ 10 V.S.A. § 6086b.

³⁰ 24 V.S.A. § 2793c(f), (i)(5).

³¹ 10 V.S.A. § 6083a(d)

³² 10 V.S.A. § 6001(3)(A)(iv), (3)(D)(viii), (27), (28), (29), (35).

As of 2017, DHCD estimated that the “priority housing project” provisions supported the development of 586 housing units, saved an average of \$50,000 in permit fees per project, and reduced permit timelines an estimate average of seven months.³³

d) *Outside Designated Areas*

DHCD indicates that the areas designated by the State designation program comprise 1/400th of the total area of Vermont.³⁴

The NRB has provided a map entitled “Vermont Act 250 Permit Distribution.” When compared to a map of areas designated by the State designation program, the NRB’s map indicates significant distribution of Act 250 permits outside the designated areas. The NRB’s map also indicates scattered distribution of Act 250 permits across the State, with linear distributions that appear to correspond to highways or valley locations and clusters in and around various parts of the State that are more urbanized.³⁵

Two of the Act 250 criteria specifically address development outside the areas designated by the State designation program: Criterion 9(H) on the costs of scattered development and Criterion 9(L) on settlement patterns criterion. Each of these criteria applies if a project subject to Act 250 is outside an existing settlement, and the term “existing settlement” includes the areas designated by the program.³⁶

When Act 250 has jurisdiction over a project outside the designated areas, other criteria may act to provide protection to farms and forests affected by the project as well as the rural qualities of the project area, if any. These criteria include wetlands, scenic beauty and aesthetics, rare and irreplaceable natural areas, necessary wildlife habitat, primary agricultural soils, and productive forest soils.³⁷

When Act 250 does not have jurisdiction over a project outside the designated areas, the Act 250 criteria do not apply, although a municipality may choose to adopt them for conditional use review.³⁸

[NEEDED, IF AVAILABLE: MORE DATA ON EXTENT OF DEVELOPMENT OCCURRING OUTSIDE AREAS DESIGNATED BY STATE PROGRAM AND/OR “EXISTING SETTLEMENTS”]

³³C. Cochran and D. Azaria, Powerpoint: State Designation Programs (Dec. 13, 2017)

³⁴Id.

³⁵Vt. Natural Resources Board, map. “VT Act 250 Permit Distribution (produced Aug. 30, 2017); Vermont Planning Atlas Map, Designation Layer (generated Oct. 24, 2018).

³⁶10 V.S.A. §§ 6001(16), 6086(a)(9)(H), (9)(L).

³⁷ 10 V.S.A. §§ 6086(a)(1)(G), (8), (8)(A), (9)(B), (9)(C).

³⁸ 10 V.S.A. §§ 6001, 6081, 6086; 24 V.S.A. § 4414(3)(C).