

## **Recommendations submitted by VNRC, VPA, ANR/ACCD, VLCT**

### **1 Findings and Capability and Development Plan; Overarching Issues**

#### **1A Findings and Capability and Development Plan successful at meeting goals?**

##### **VNRC and VPA: Not successful**

#### **1B Changes since 1970 - demographics, business ownership**

#### **1C Possible revisions**

- Re-establish state land use and development policy as the framework for coordinated, comprehensive planning and Act 250 review. (VPA)
- Link planning goals of 24 VSA §4302, the statutory smart growth principles (24 VSA §2791(13)), and findings from the state capability and development plan to the Act 250 criteria. (VNRC)
- Update capability and development plan maps to identify state interests and use them in coordinated project review. (VNRC)
- Require review of regional plans for conformance with planning goals and planning statute; set up a review body that includes RPC peers and others, as well as an appeal process. (VNRC)
- Require that municipal plans receive approval from Regional Planning Commissions before they can be used in Act 250. Establish a process for municipalities and community members to appeal regional decisions about plan review. (VNRC)

#### **1C1 Climate change**

- Exactly how Act 250 can be updated to help Vermont mitigate and adapt to climate change requires greater analysis and consideration. To that end, we recommend the creation of an Agency of Natural Resources-led, “Lean”-like effort to identify current tools, programs and regulatory structures intended to mitigate and adapt to climate, and opportunities go further. Through this effort ANR should bring together diverse stakeholders to explore and make recommendations around how to update Act 250 vis-a-vis climate change. Those recommendations should focus on both mitigation and adaptation strategies. (VNRC)

#### **1C2 Ecosystem protection**

#### **1C3 Others**

### **2 Issues on Criteria**

- Update Act 250 criteria for clarity, internal consistency, conformance with current state land use and development policies (e.g., an updated Capability and Development Plan) and current state rules. (VPA)
- Update Criterion 8A to place the burden on the applicant to demonstrate that a development or subdivision will not destroy or significantly imperil necessary wildlife habitat or an endangered species. Today, a party opposing the application must prove

that a development or subdivision will destroy or significantly imperil necessary wildlife habitat or an endangered species. Placing the burden on a concerned party is unfair since mapping and data related to significant wildlife habitat has improved and is readily available to applicants through online ANR mapping tools. Since the applicant has control over the property and understands the nature of the proposed project, the applicant should have the initial burden. (VNRC)

- The technical definitions and criteria related to resources such as rivers, streams, headwaters, floodways, etc. were created 50 years ago and may not reflect the current state of science. ANR should be required to evaluate these criteria and make recommendations to the Legislature regarding changes that should be made as part of modernizing Act 250. (VNRC)

- Consider using Visual Impact Assessments (VIA- Federal tool) to help assess criterion 8 – aesthetics. (VLCT)

- **Update Floodways Protections** Changes to Criterion 1D are needed to better align Act 250's standards and definitions with ANR's, as set forth in the DEC Flood Hazard Area and River Corridor Protection Procedure. (Ex Agencies)

- Clarify project “conformance” with the Capability and Development Plan (Criterion 9) and municipal and regional plans (Criterion 10). (VPA)

## **2A Climate change**

- Update Criterion 1, Undue Water and Air Pollution. At minimum, this criterion should specifically add greenhouse gas emissions (GHG) among the items considered in application review and the revived professional Environmental Board should be required to provide guidance on steps that applicants can take to address the impact of a project on GHG emissions. (VNRC)

- Update Criterion 5, Transportation. Updates to this criterion should ensure that it better supports and expands transportation choices -- rather than simply accommodating more single occupancy vehicles. For example, Criterion 5A could be updated to explicitly consider the congestion and safety impacts of development on bicycle, pedestrian, and transit infrastructure in addition to highways, waterways, railways, airports and airways. This goes beyond the review of connectivity and transportation demand management in Criterion 5B. (VNRC)

- Update Criterion 8 as mentioned above to better maintain the integrity of forests, since forests play such an important role in storing and sequestering carbon. (VNRC)

- Revise Criterion 9F, from Energy Conservation to “Energy Efficiency and Conservation” to build on the success Act 250 has historically had ensuring that projects are energy efficient and conserve energy, while taking into account the programs Vermont has implemented to address these issues since the Act was enacted. (VNRC)

## **2B Settlement patterns**

- Update Criterion 9K, effects of development on public investment, to further define

“public investment” so that it includes the numerous programs established since Act 250’s inception (i.e., designation programs, certain tax credits, local tax stabilization, Vermont Housing and Conservation Board, etc.), and ensure that the public investment in designated growth areas is protected. (VNRC)

- Make explicit the need to reference maps in Criterion 10 review. (VNRC)

- Encourage more Development within State Designated Centers:... To better support Vermont’s traditional development pattern of compact centers surrounded by rural working lands, we recommend that Act 250 jurisdiction be removed from state designated downtowns, new town centers, growth centers, and neighborhood development areas (not village centers) provided the municipality meets the current requirements for designation, plus additional environmental protections. These additional environmental protections, which would be incorporated into an “enhanced designation,” include municipal flood hazard planning and river corridor protections for the entire municipality, design review standards (including historic preservation), wildlife habitat protections, water/wastewater capacity and policies, and coordinated capital investments. We also recommend new tax credits to help owners floodproof buildings within the designated center. A community-wide approach can strengthen our overall resilience and protect additional natural resources. (Ex Agencies)

## **2C Forest fragmentation and protecting natural areas**

- As suggested in H.233, which passed the House last session, improve Criterion 8 to review whether a project has been designed to either avoid or minimize the fragmentation of forest blocks and wildlife connectivity areas through proactive site design. Forest blocks and wildlife connectivity areas could be delineated on a map and potentially even limited to the highest priority examples (for example, as delineated on the ANR forest block maps). Another option is to provide a definition for forest blocks and connectivity areas without mapping these features (similar to the approach for necessary wildlife habitat under Criterion 8(A)). (VNRC)

- If it is not feasible to avoid or minimize the fragmentation of forest blocks and connectivity areas through proactive site design, require mitigation, as with impacts to primary agricultural soils. (VNRC)

- Require that development outside of compact areas be designed to address impacts to important natural areas and working lands. (VNRC)

- Act 250 jurisdiction designed to protect critical habitats, wildlife corridors, and forest blocks outside of designated areas, while mindful of existing regulations, will help protect Vermont’s environment and would be most effectively addressed in a new criterion. (VLCT)

- Act 250 should be amended to include “forest blocks” and “connecting habitat” as part of Criterion 8. Due consideration should be given to the positive effect of enterprises that add value to forest-derived commodities. (Ex Agencies)

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## **2D Forest products processing, permit conditions**

- Create new guidance, application guide, and a permit template for forest economy projects (Michael Snyder)
- Establish a “conservation credit” for enterprises that add value to forest derived commodities in Criterion 9(B) and 9(C)
- Establish a “conservation credit” for enterprises that add value to forest derived commodities in Criterion 9(B) and 9(C)

### **3 Jurisdiction**

#### **3A Revising jurisdiction to achieve goals**

- Create an approach to jurisdiction that prioritizes compact areas while also ensuring more careful review of important natural resources in outlying areas. Compact areas include designated downtowns, neighborhoods, and growth centers that meet a higher standard for designation through a rigorous and accountable designation process. Important natural resources in outlying areas include forest blocks, wildlife connectivity areas, wildlife habitat, natural areas, primary agricultural soils, and floodplains. As gateways to communities, interchange areas also merit additional consideration. (VNRC)
- Limit Act 250 jurisdiction within areas designated and planned for development; and extend location- or resource-based jurisdiction outside of these areas to cover resources and facilities of statewide significance. Evaluate existing and proposed exemptions to determine if they serve a public purpose, and to ensure that associated impacts are otherwise addressed. (VPA)

#### **3A1 Promoting desired settlement patterns**

- Update select state designation programs (downtowns, growth centers, new town centers, and neighborhood development areas) so that environmental issues are evaluated in the designation process. This would make it possible to identify areas where development is most suitable, and where less Act 250 review may, therefore, be appropriate. As part of these updates, create an appeal process for all designation decisions in order to create accountability for designation decisions. (VNRC)
- Require Act 250 review, and context-sensitive design, around highway interchanges in order to ensure that roadway functions, aesthetics, and state investments in these important areas are not undermined by development. (VNRC)
- remove remaining Act 250 jurisdiction from development in designated areas. (VLCT)

#### **3A2 Protecting important natural resources**

- Require Act 250 to review, or lower the threshold that triggers review, in high priority natural resource areas. At the same time, allow for a more limited Act 250 review in areas deemed eligible under a revised state designation process.
- Reinstate the review of secondary impacts of utility lines to consider the impacts of development that connects to utility line extensions in priority forest blocks and connectivity areas.
- consider resource-based jurisdiction that heightens Act 250 review in priority forest blocks and connectivity areas. This could be done by either automatically

reviewing, or in the alternative, reviewing the creation of a smaller number of lots in these areas, versus the current jurisdictional triggers that result in very few subdivision proposals in forest blocks being reviewed.

- Update Criterion 9B, Primary Agricultural Soils, to clarify that areas deemed to have “appropriate circumstances,” which allows primary agricultural soils to be impacted if an applicant provides for off site mitigation, must be in clearly-defined smart growth, and not sprawl, locations.

- Designate Landscapes with Unique Resource Values (Jurisdiction): We also recommend a locally-driven process to petition for increased Act 250 jurisdiction for areas with unique natural resource value like contiguous blocks of primary agricultural soils, high-value forest blocks, and high-value connectivity habitat. Beyond their scenic and ecological significance as resource areas, maintaining these areas is critical to supporting Vermont’s farm and forest products economies. (Ex Agencies)

### **3B Exemptions – jurisdiction**

- Evaluate current and proposed exemptions under Act 250, including pre-existing (grandfathered) activities, to determine if they meet a public purpose or objective, are consistent with state land use and development policies, and associated impacts can be adequately addressed through other forms of regulation or review. (VPA)

#### **3B1 Relationship to Findings and the Plan - Ag, energy**

#### **3B2 Ridgelines - ability to protect**

### **3C Release from jurisdiction**

- Establish a parcel-based jurisdictional “release” provision for the development or redevelopment of parcels subject to previously issued Act 250 permits, e.g., for:
  - o A parcel on which permitted development was initiated, but never formally abandoned or completed;
  - o A change in use that otherwise would not require Act 250 review;
  - o Previously permitted development located in a state-designated downtown, growth center or neighborhood development area;
  - o Development on a parcel in a 1-acre town that was previously permitted under 10-acre town jurisdiction and would otherwise not require review. (VPA)

### **3D Projects in multiple towns**

### **3E Trails**

#### **Areas in need of clarification**

- Public purpose: There seems to be general support for more clearly establishing trails that are part of the Vermont Trails System to be for a public purpose and therefore

subject to higher jurisdictional thresholds that are applicable to state and municipal projects.

- **Involved Land:** A number of questions exist related to what is considered involved land when Act 250 is applied to trail construction including whether existing trails, other activities taking place on a parcel, and shared resources like parking areas and driveways are included for purposes of establishing Act 250 jurisdiction. Trails constructed by nonprofit organizations and volunteers, by nature, usually develop incrementally due to timing opportunities, funding, landowner preference, etc. While they may be part of a broader vision, a concrete plan is rarely pursued. There are lots of questions about the definition of a “plan” and whether a small incremental trail project is truly “part of a larger undertaking” in the context of Act 250 Rule 2(C)(5)(b) (Involved Land) Clarification of “incidental to” was also requested.

- **Definition of Trail:** Creating a definition of a “trail” may improve clarity for potential project applications and district commissioners when considering trail construction projects.

- **Area of Impact:** Determining the area of impact of a trail project, including the default corridor pursuant to Rule 71, may need further clarification and flexibility.

- **Removing Continuing Jurisdiction:** Stakeholders are supportive of the Commission’s examination of a process to remove jurisdiction when a permitted project moves to a new location. (Michael Snyder)

#### **4 Act 250 Process; interface with other permitting; appeals**

4A Application and review before District Commissions; role of NRB

4A1 Statistical analysis land use permitting

4A2 Evaluation of how well application, review and appeals are serving Vermonters and the environment; how to improve

4A2i Public participation before Commissions and in appeals; party status

#### **4A2ii Structure of the NRB**

- Require that District Commissioners have training or expertise in issues related to Act 250 such as environmental science, engineering, law, land use, or economics. (VNRC)
- Pay District Commissioners for service beyond a per diem. Consider making the Chair a part time job in recognition of the additional work a Chair must do. (VNRC)
- Better staff the District Commissions with enough District Coordinator support, administrative support, and legal support. (VNRC)
- Keep the District Commission process open and accessible to the public. (VNRC)
- Ensure that Act 250 remains a citizen-based, applicant and participant-friendly process. (VPA)

#### **4B Interface with other permit (planning) processes**

- Coordinate interagency review of Act 250 applications, to include utilization of the

capability and development plan maps in order to guide public investments, to evaluate the impacts of projects on existing state investments, and to guide state planning decisions. (VNRC)

- Establish a well-coordinated planning framework across jurisdictions in support of more effective planning and development review. (VPA)

- Better coordinate state agency planning between agencies and with Regional Planning Commissions. (VNRC)

- Evaluate and update municipal and regional planning statutes to ensure that the scope and focus of local and regional planning meets current and anticipated needs and circumstances. (VNRC)

- It is vitally important to ensure that jurisdiction assumed by Act 250 neither duplicates nor contradicts other regulations administered by state agencies or boards or by local governments which have enacted comprehensive plans and bylaws. (VLCT)

- Strengthen Presumptions of Other State Permits- To enhance the presumptive effect of certain state permits, we recommend limits on the evidence that can be used to rebut certain presumptive permits. This change will make the Act 250 process more efficient, predictable, and will not result in any substantive loss in the review of a project's impacts. (Ex. Agencies)

#### **4C Appeals**

- Establish a professional board to hear Act 250 appeals and administer Act 250. This would restore the substantive decision making of the former Environmental Board, but do it in a more efficient, streamlined fashion than the 9-member citizen Environmental Board currently does. This could be a 3-7 member Board with members from legal and other professional backgrounds, bringing a much broader perspective to Act 250 appeals than one judge.

- There could be hearing officers to hear smaller Act 250 disputes to reduce costs and move less complex appeals more quickly through the process. The Discovery and motion practice could be more targeted and focused, streamlined in an administrative tribunal with a hearing officer to reduce costs and the time it takes to process appeals. The professional Board would also oversee the District Commissions, restoring strong administration of the Act 250 program, providing clear guidance to District Commissions and applicants on how to address Act 250 criteria and creating greater consistency in Act 250 decision across districts.

#### **4Ciii De novo or on the record**

#### **4Civ Comparison of the history and structure of former E Board appeals with current E Division of Superior Court**

#### **4D Misuse of appeals**