

To: Commission on Act 250
From: Diane Snelling, Chair, Natural Resources Board
Peter Walke, Deputy Secretary, Agency of Natural Resources
Anson Tebbetts, Secretary, Vermont Agency of Agriculture Food and Markets
Michael Schirling, Secretary, Agency of Commerce and Community Development
Joe Flynn, Secretary, Vermont Agency of Transportation
Date: October 25, 2018
Re: Modifications to Act 250

The Natural Resources Board and the Agencies of Natural Resources, Agriculture, Commerce, and Transportation are pleased to propose a package of proposed modifications to Act 250. This package builds upon [Executive Branch Report](#) submitted to the Commission on Act 250 last fall. We look forward to providing additional information and details, including proposed legislative language, to support this package as the Commission completes its report.

- 1. Encourage more Development within State Designated Centers (Jurisdiction):** Construction in Vermont’s walkable, designated centers tends to be more expensive than building in auto-oriented greenfields due to higher land costs, heightened local regulation, contaminated soils, and other factors. When a permitting process treats development in these centers the same as development in a farm field or forested area, it tips development decisions away from the 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.
- 2. 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.
- 3. Address Forest Fragmentation (Criteria):** Recent studies document that land parcelization trends continue to reduce the size of Vermont’s larger tracts of land. This has the potential to negatively impact the forest products sector, the recreation economy, forest health, habitat protection, water quality, flood hazards, and our ability to mitigate and adapt to climate change. To address this emerging challenge, 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 (see 6b, below).

4. **Update Floodways Protections (Criteria):** Flooding presents a significant risk to Vermont's economy and people. 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](#). Updating the language of Criterion 1D will increase predictability for the regulated community.
5. **Strengthen Presumptions of Other State Permits (Process):** Since Act 250 was enacted in 1970, the State's other environmental laws and regulatory review have expanded significantly in breadth and capacity. While Act 250 serves an important role in reviewing the impacts of development, many of the impacts once reviewed only by Act 250 are now also addressed by permits issued by other state agencies. In addition, ANR/DEC regulatory programs were improved in 2016 with the passage of Act 150, which increased transparency through the new environmental notice bulletin and expanded opportunities for public engagement and comment in the permitting process. 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.
6. **Support Rural Economic Development Priority Areas:** These issues are currently being reviewed through parallel processes established through Act 194. Formal recommendations on these topics will be presented to the Commission soon for inclusion in the overall package of changes to Act 250.
 - a. **Industrial Parks:** Responding to the need to increase rural economic development opportunities, the Act 194 Industrial Park Working Group recommends a simplified master plan process for obtaining construction approval of already permitted projects and defining when reduced permit fees may be appropriate. The working group's final recommendations are due to the legislature on December 15.
 - b. **Forest Products Value Adding Enterprises:** A robust forest products marketplace supports landowners keeping private forests forested and the many benefits and values forests provide society. A strong and modern forest economy is the most effective way to keep forests as forests. There are unique challenges associated with forest products enterprises, and the administration looks forward to making recommendations to the Commission at the November 8th meeting.
 - c. **Recreational Trails:** The state's year-round outdoor recreation opportunities underpin our economy and the growing network of trails benefit residents and draws thousands of visitors to the state each year. The Act 194 Recreational Trails Working Group recently completed its survey and will gather additional input from stakeholders when it meets on November 1st. The Working Group will report its recommendations to facilitate trail development with appropriate regulatory oversight to the Commission at its November 8th meeting.
7. **Other Issues:** In addition to the changes discussed above, the Agencies of Transportation and Agriculture would welcome the opportunity to attend a future Commission meeting to discuss the following Act 250 modifications:
 - a. **Update Permitting for Transportation Projects (Jurisdiction):** Given the vigorous level of regulatory review performed at the state and federal levels for large transportation projects, we ask the Commission to consider the extent to which Act 250 offers these projects additional resource protection and whether Act 250 jurisdiction should be adjusted accordingly.

- b. Support On-Farm Accessory Businesses (Jurisdiction):** To ensure that the next generation of Vermonters enjoy the many benefits our working farmlands provide to our culture and economy, changes to Act 250 are recommended to support accessory on-farm business.