

ACT 47  
COMMISSION ON ACT 250

The Next 50 Years

Report Prepared by:  
The Executive Branch Working Group  
October 20, 2017



VERMONT



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# 1

## INTRODUCTION

Pursuant to Act 47: Sec.1 (c) an Executive Branch Working Group has developed a set of recommendations for consideration by the Act 47 Commission. The Working Group recognizes the value that Act 250 has offered to the State of Vermont over its 50-year history.

As Governor Deane Davis said in 1970:

Ask the average Vermonter what kind of Vermont he wants in 1980 or 1990. I believe he will tell you that while he wants good economic opportunities for his children, good schools, good highways and an opportunity to live his own life he will then tell you that the things he cherishes more than anything else are those sights which we see almost daily here in our Green Mountains—the deer playing in the field, the beautiful countryside we see as we ride the interstate between Montpelier and Burlington, the beautiful ride down the West River from Jamaica to Brattleboro, the view of the Green Mountain skyline from Morrisville or Johnson or the view of Lake Memphremagog when the sun comes up in the morning and Lake Champlain when it sets again in the evening.

These are the things that bring Vermonters back home after they have seen other parts of the world.... The question is, my friends, can we preserve it? Do we have the will to go about preserving it? Can we have economic growth without destroying the other part of our dream—the pastoral scene?

To that end, the various agencies and departments within the Executive Branch that have the greatest nexus with Act 250 have met on a regular basis over the summer of 2017 to explore Act 250's relationship with local, state, and federal permits and identify opportunities to improve the development review process. The working group included the following member agencies and departments:<sup>1</sup>

**The Natural Resources Board (NRB)** administers Act 250 through a staff of 10 District Coordinators. The District Coordinators assist approximately 60 local volunteers, who serve on the 9 District Environmental Commissions to issue permits. The NRB promulgates procedural and interpretive Rules to administer Act 250, and advocates in permit appeals in the Environmental Division of the Superior Court.

**The Agency of Natural Resources (ANR)** is party to any Act 250 proceeding that involves impacts to air, water, wildlife habitat, or other impacts to the natural environment, which is most applications. ANR provides comments, recommendations, and proposed permit conditions under more than half of Act 250's criteria and sub-criteria and is the most active state agency participant in the Act 250 process. ANR consists of three departments – Environmental Conservation, Fish and Wildlife, and Forest, Parks and Recreation. Technical staff and scientists from all three

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1. A more complete description of the role each agency and department plays in Act 250 is included as Exhibit A to this report.

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departments review Act 250 applications and work with ANR's Planning Office to compile agency comments and provide District Commissions evidence as to whether a project is in conformance with the criteria. Beyond ANR's role as a party, Act 250 District Commissions may also request technical assistance from Agency staff on specific natural resource issues, per NRB Rule 20.<sup>2</sup> Prior to the formal submittal of an Act 250 application, ANR staff often provide technical assistance to potential Act 250 applicants by attending site visits, reviewing draft plans, and providing guidance on how projects may be configured to comply with Act 250's environmental criteria. ANR is also at times an applicant to Act 250 for development on state land, including as co-applicant for ski area development located on land leased by the state.

**The Agency of Commerce and Community Development (ACCD)** is focused on creating vibrant economies and communities throughout Vermont. ACCD's Department of Economic Development often works with businesses that need Act 250 permits. The Community Planning and Revitalization Division administers the state's designation programs for downtowns, village centers, and other areas that are eligible for certain Act 250 exemptions because they have robust local land use planning. They also administer the annual grant and work program for Vermont's 11 Regional Planning Commissions, which help communities plan for economic development, housing needs, infrastructure, and environmental health. The Division for Historic Preservation participates as a party to Act 250 proceedings that may effects historic sites, providing comments, recommendations, and proposing permit conditions to mitigate adverse impacts when necessary. The Division for Historic Preservation does not have a separate permitting process, making Act 250 important to historic preservation efforts.

**The Agency of Agriculture Food and Markets (AAFM)** facilitates, and encourages the growth and viability of agriculture and agricultural businesses in support of the rural economy, in addition to keeping farmland accessible by being a party to many Act 250 proceedings. Through its participation it provides analyses, comments, and proposes permit conditions for the protection of "primary agricultural soils" as required by Criterion 9(B). The District Commission considers the input from AAFM and may incorporate conditions into the land use permit. Act 250 is the only permitting program in state government that protects farmland from development.

**The Agency of Transportation (VTrans or AOT)** plans, develops, and manages Vermont's statewide transportation network, including highways, bridges, railroads, airports, park-and-rides, bicycle and pedestrian facilities, and public transportation facilities and services. VTrans also administers significant state and federal grant programs for municipal transportation facilities that may be subject to Act 250 review. In proceedings in which VTrans is not an applicant, VTrans offers District Commissions expert testimony regarding Criterion 5, transportation. VTrans also alerts District Commissions as to the impacts proposed projects may have on Vermont's transportation system and offers suggestions regarding mitigation of those impacts. Further, VTrans works with the District Commissions on issues relating to transportation-impact fees and works with the District Commissions to ensure that Act 250 permits are consistent with right-of-way access permits that VTrans may issue for a project. VTrans is an applicant in Act 250 proceedings relating to its own transportation projects and may also act as a co-applicant for certain municipal transportation projects. When VTrans is an Act 250 applicant or co-applicant, VTrans offers evidence and argument on the full range of Act 250 criteria that the project may implicate.

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2. 10 V.S.A. §6024

# 2

## ADMINISTRATIVE ACTIONS

Jobs are scarce and the population is declining across all rural America, including in Vermont. These demographic challenges are the reason the Scott administration has several initiatives underway that aim to grow the economy and make Vermont more affordable. Included in that effort is a multi-faceted approach to improving the permitting system to make it easier to start or expand a business. Permit process improvement is a complex process, requiring patience, innovation and ongoing commitment from a broad range of partners. The administration is not waiting and has begun the process to break this challenge into manageable pieces.

Through the Governor's Program to Improve Vermont Outcomes Together (PIVOT), systems of continuous improvement are increasing efficiency, effectiveness, and accountability throughout state government. Specific examples of interest to the Act 47 Commission include the development of a unified environmental permitting entry point for applicants of ANR permits, public transparency for clean water pollution control projects, and coordinated State response to applicants on primary agriculture soils and other environmental permits.

One question posed by Act 47 is whether the Act 250 criteria adequately address climate change. Governor Scott's Executive Order 12-17 (7/20/17) created the Vermont Climate Action Commission (VCAC). The VCAC may be able to advise the Act 47 Commission on how Act 250 can contribute to addressing these issues.

Governor Scott's Executive Order 11-17 (6/20/17) established the Vermont Outdoor Recreation Economic Collaborative (VOREC), which encourages the construction of first-class biking and hiking trails statewide through public-private partnerships. VOREC may offer proposals for how those facilities are treated in the Act 250 process.

The NRB has focused significant energy on process improvement, starting with a week-long "Lean" event held in December of 2015. During this event, the application process was diagrammed and some problematic areas were identified, along with opportunities for improvement. The NRB is implementing the strategic plan developed at that time to continue the improvements. New management strategies, including sharing District Coordinator resources across districts, have improved consistency, predictability, and efficiency for permitting statewide.

The NRB is working on enhancing outreach and education. For example, the NRB has recently re-designed the Board's website, [nrb.vermont.gov](http://nrb.vermont.gov), and published a new [Act 250 information brochure](#).<sup>3</sup>

An ongoing priority for the NRB is to configure its data to the needs of applicants and administrative accountability. With support from Governor Scott and top IT leadership, the NRB is moving toward an online application process with automated permit tracking capacity by December 2018.

3. <http://nrb.vermont.gov/sites/nrb/files/documents/Act%20250%20Brochure-FINAL.pdf>

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Other notable steps include a recent listening tour by the ANR – with NRB Chair Diane Snelling, ANR Secretary Julie Moore, and ANR Deputy Secretary Peter Walke. Leadership heard the need for greater interagency coordination, consistency of decisions, upfront engagement, predictability in decision making, and less redundancy in the permitting process overall.

Additional measures that the Executive Branch intends to take to improve Act 250, and which do not require any legislative action to be implemented, include the following:

- » Continue to improve coordination between Act 250 and other state permitting processes, through the PIVOT effort and other means.
- » Enhance communication between the NRB and District Coordinators prior to the issuing of Jurisdictional Opinions (decisions on whether a proposed project needs an Act 250 permit) to ensure that decisions are consistent both across districts as well as with existing precedent or administrative priorities.
- » Explore opportunities to expand permit specialist assistance to guide and support applicants with the permitting process overall.
- » Clarify sequencing of permits to avoid, to the extent possible, conflicting mitigation requirements among agencies.
- » Explore ways to improve consistency in decision-making across the various Act 250 Districts, in terms of process, jurisdictional opinions, application of criteria, and decisions.
- » Improve the quality and completeness of application materials through a revamped application guide and questions, as well as additional pre-application engagement and coordination with applicants, NRB staff, and state agency staff.
- » Conduct education and outreach (in multiple formats and to multiple audiences) about how to navigate the Act 250 process: jurisdictional triggers, participation, expedited permitting (in designated areas), application requirements, expectations and timeframes, and compliance with existing Act 250 permit conditions, etc.



# 3

## RECOMMENDATIONS

- A. Jurisdiction
- B. Criteria
- C. Appeals

In addition to the work the Executive Branch is already engaged in to improve Act 250, the Working Group has a series of recommended potential changes to Act 250 that would require legislative changes and would, in our view, ensure that over the next 50 years Act 250 supports Vermont's economic, environmental, and land use planning goals. Our recommendations are gathered into three categories: jurisdiction, criteria, and appeals.

### A. Jurisdiction

An Act 250 permit is not required for every development within the state – only for those that meet certain jurisdictional thresholds based on size, use, and location. The purpose of Act 250's jurisdictional threshold is to focus Act 250 review on projects that have the greatest potential for significant impact due to their size or scope, or where other forms of adequate regulatory review do not exist (such as towns with no zoning). Over the years, Act 250's jurisdictional thresholds have been modified to respond to changing circumstances and concerns, while continually adhering to the state's land use goal of compact villages and urban centers separated by rural countryside.

#### State Designated Centers

Municipalities may obtain state designated status for downtowns, villages, growth centers, and several other discrete areas where future growth is planned for and anticipated. Except for village centers, the designation process reviews municipal bylaws and the capacity of a town to regulate the growth and development anticipated in these areas. Because most designated centers are already developed areas, the potential for adverse impacts on natural resources is generally less than in other parts of the state.

Therefore, we recommend that the Commission consider whether Act 250 jurisdiction should be applied in state designated centers where sufficient local planning, bylaws, and capacity exist to protect important natural resources. In determining the appropriate level of Act 250 jurisdiction within designated centers, we recommend the Commission consider:

- » Exempting projects from Act 250 jurisdiction in state designated centers.
- » Modifying the current standards for designation to ensure that the municipalities have the tools and resources to administer effective, local land use and environmental regulatory protections.
- » Reviewing the appropriateness of levying agricultural soil mitigation fees for projects in areas the state has designated for growth.

In conjunction with these proposed changes, we recommend that the state develop best practices in local zoning bylaws that would meet the requirements to obtain designated center status. These bylaws will not only incentivize the protection of state interests at the local level and promote consistency of regulations, but also create opportunities for consolidated permitting opportunities down the road.

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## **Landscapes with Unique Resource Values**

At the other end of the land use spectrum from state designated centers are areas of unique natural resource value where the potential for adverse natural resource impacts are high. These areas include contiguous blocks of primary agricultural soils, high-value forest blocks and high-value connectivity habitat. Beyond their ecological significance, these unique areas are critical to Vermont's farm and forest products economies, due to the scale and contiguity of these unique areas.

Recently, Act 171 amended the state's planning laws to allow towns and regional planning commissions to encourage stewardship of important forest blocks and habitat connectors. The new laws recognize the important role these resources play in the forest products economy, as the foundation for Vermont's recreation economy, and for wildlife survival and adaptation in the face of climate change. Although towns and Regional Planning Commissions may now plan for forest blocks and habitat connectors, the lack of other regulatory protections makes these areas a priority for Act 250 review. As with state designated centers, the Commission should consider whether these areas can be clearly defined, prioritized for their relative importance, and jurisdiction adjusted accordingly.

## **Working Lands**

As discussed above, thoughtful consideration of impacts to Vermont's working landscape is important for a viable rural economy. So too is the growth of enterprises necessary to add value to our local commodity base. The processing of farm and forest products has evolved over the past 47 years and changes have accelerated in the last 7 to 10 years as farm and forest product processors face economic challenges. More of these businesses and the associated entrepreneurial activities taking place have the potential to trigger review under Act 250. Any modernization of Act 250 should recognize that the processing of farm and forest commodities into higher value consumer goods is critical for rural economic growth and maintenance of an economically viable working landscape.

By necessity, these enterprises tend to be located outside state designated centers. They are often forced to operate differently than other businesses that are less dependent on weather or local commodity procurement. Specifically, conditions related to hours of operation, traffic, and noise can be particularly difficult for these enterprises to navigate. We recommend that the Commission explore strategies to assist these businesses in navigating Act 250's permitting framework, such as options for expedited permitting, or conditional waiver of certain jurisdictional triggers or criteria, development of standards and procedures that reflect the inherent contribution of this sector to continuation of Vermont's working and unfragmented landscape, such as waivers of agricultural soil mitigation requirements, or other approaches that support the sector in navigating the permitting process.

## **Business Enterprise Areas**

Not all commercial ventures can be located in our compact downtowns. If areas that are planned and well-suited for economic development projects, including larger-scale commercial operations or manufacturing facilities, can be identified through Act 250, we can facilitate economic development and improve economic opportunities for all Vermonters, while protecting our environment.

## **Transportation Projects**

We recommend that the Commission consider minimizing Act 250 review of federal-aid transportation projects, which are already subject to extensive state and federal permitting and

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review. Given the robust level of regulatory review performed at the state and federal levels for these projects, the Commission should consider the extent to which Act 250 offers these projects additional resource protection and whether Act 250 jurisdiction should be adjusted accordingly.

### **Recreation Trails**

Recreation trails that are part of the Vermont Trail System provide incredible recreational opportunities for Vermonters of all ages and draw thousands of visitors to the state each year. As the interest in recreational trails grows, so does interest in expanding trail networks. Although new trail development, including the development of parking, access areas and associated amenities such as bathroom facilities, should receive some level regulatory review, it is unclear whether Act 250's current jurisdictional structure is a good fit for trail projects. These projects often have a relatively small footprint but cross many individual parcels of privately owned land. In conjunction with administration efforts and the VOREC initiative, we recommend the Commission consider the most appropriate means to encourage and facilitate new trail development and provide sufficient and appropriate state regulatory oversight.

## **B. Criteria**

The “10 Criteria” of Act 250 frame our land use and development decisions. However, through various amendments, the NRB now administers approximately 32 criteria and sub-criteria.

During the time since Act 250 was enacted, various other land use and environmental protections have been created by federal and state laws. Some of those programs issue permits that may involve reviews similar to those conducted under Act 250's various criteria. In order to modernize and maximize Act 250's ability to provide additive value to the state's regulatory landscape, we offer the following recommendations:

### **Alignment with Other State Regulations**

We recommend that the Commission examine areas where Act 250 criteria overlap with or deviate from other state regulatory programs to better align the criteria with state rules, definitions, and permit programs. By doing so, the overall regulatory process could be more effective and Act 250 review could focus primarily on the areas that add value. Additional information regarding overlap in the permitting process will be provided to this Commission in advance of the November meeting. Criteria that are also regulated by existing ANR permits – most notably within the Department of Environmental Conservation (DEC) – may be redundant, and opportunities may exist to consolidate some criteria under one regulatory structure.

Notwithstanding any changes to existing criteria, Act 250 plays a critical “gate keeping” role in helping to organize, coordinate and sequence the review of all state permits that may be necessary for a given project. Act 250 also provides an opportunity for District Commissions to consider the project as whole, versus the narrower review afforded under other individual permits such as wetlands or stormwater. Therefore, we recommend the Commission, in conjunction with administrative agency efforts, consider how to retain these coordination and cumulative review functions, and further clarify the sequencing of permits to avoid conflicting mitigation requirements among agencies.

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## Modernize Criteria

The original criteria of Act 250 were developed to ensure economic development in concert with the purpose of the act. We recommend that the Commission evaluate all current criteria and any potential criteria relative to the outcomes Vermont aims to achieve through the Act 250 permitting process. As mentioned above, this should include consideration of climate change in Vermont and whether impacts to landscape-scale features such as forest blocks and connecting habitat are sufficiently addressed.

One of the key goals of Act 250 is to preserve Vermont's traditional settlement patterns. The criterion most specifically involved in this aspect of Act 250 is Criterion 9(L). This criterion was modified most recently in 2014. We recommend the Commission consider whether the current iteration of Criterion 9(L) is serving its intended purpose, or whether additional modifications to other criteria (such as 9(A) – impact of growth or 9(H) – cost of scattered development) in conjunction with 9(L) would better serve this goal.

## C. Appeals

The system of appeals, and the time for cases to be heard by the Environmental Division of Superior Court, can be unduly burdensome to everyone involved. The NRB has collected data regarding the processing time of applications by district, the number of appeals of permit decisions, the average time to resolve these appeals, and the number of appeals of jurisdictional opinions and the average time to resolve these appeals. This information will be provided to this Commission in a separate document.

We recommend that the Commission explore the balance between the rights of intervenors and their capacity to delay projects for tactical rather than substantive reasons. Act 250 was developed with a premise of local decisions, and the opportunity for the individuals impacted to participate. We recognize the tension between public input and local control on the one hand, and the desire for consistency and efficiency on the other. Further, we acknowledge that gaps in existing rules and statute allow for the continuation of tactical appeals that are inconsistent with the spirit, intent, and often the requirements of Act 250.

For these reasons, we recommend the Commission explore the following areas within the appeals process:

- » Evaluate party status requirements and eligibility to obtain party status under enumerated criteria for those who could be considered “market competitors.”
- » Evaluate whether the number of judges in the Environmental Division of the Superior Court is appropriate and/or identify other appeal processes to alleviate Environmental Court case load.
- » Evaluate the NRB Jurisdictional Opinion reconsideration process.
- » Explore the potential for “on the record review” for appeals to the Environmental Division of the Superior Court, as an alternative to the existing *De Novo* review.

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## CONCLUSION

This report is a starting point for the Act 47 Commission and the administration of Governor Phil Scott to discuss how Act 250 can be strengthened and modified to uphold our Vermont values in a changing world. For almost fifty years, Act 250 has protected Vermont's quality of life, environmental resources, and economic opportunities. Together, the Legislature, the Administration, and Vermonters must plan for a sustainable future through wise stewardship and smart growth. As members of the Advisory Group to the Commission, the agencies and the NRB look forward to providing additional facts and data that support the Commission's work.





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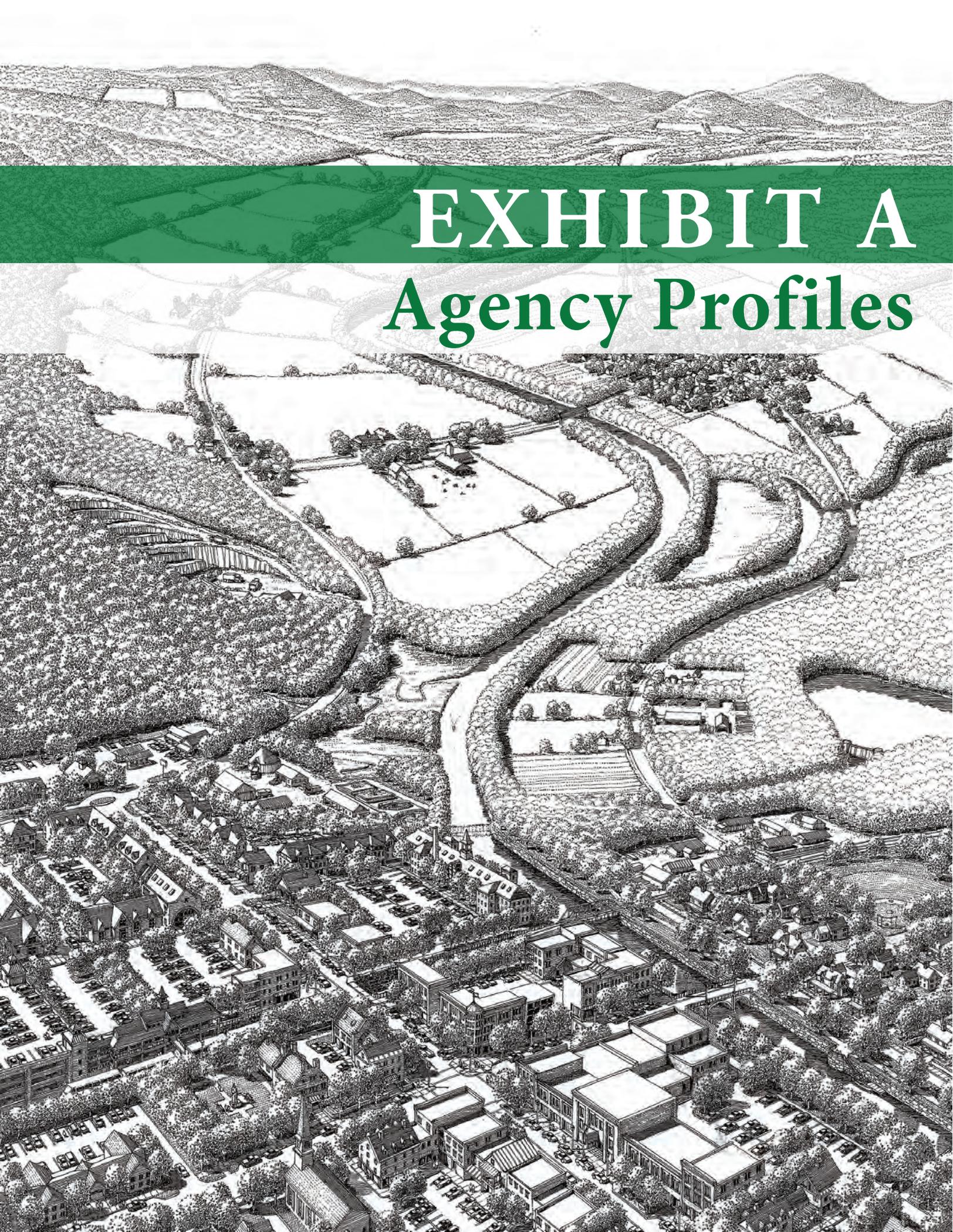
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VERMONT



# EXHIBIT A

## Agency Profiles

Act 250 was created in 1970 to guide development and protect the environment as a statewide land use regulatory system when Vermont's population was steadily increasing during migration patterns away from urban centers to more rural centers. Permits are issued after review according to a set of criteria that consider adverse impacts to the environment, the landscape, traditional settlement patterns, and the people.

The Natural Resources Board (NRB) has a valuable perspective on development that is informed across many projects by seeing the cumulative benefits and impacts to Vermont. This big picture perspective, integrated with partner agencies' input, ensures careful growth that not only considers complex scientific, engineering, and infrastructure issues, but, also honors local characteristics and the deep emotional connections of residents to their communities.

As a regulatory system, Act 250 works best in collaboration with planning. With over 29,000 permits issued over 47 years, the NRB has not only protected Vermont's environment, but also touched every community in the state. The system has helped towns preserve their unique characteristics and collectively foster distinctive communities with a strong sense of place.

The NRB administers Act 250 through a staff of 10 District Coordinators assisting approximately 60 local volunteers, who serve on the 9 District Environmental Commissions to issue permits. The NRB promulgates procedural and interpretive Rules, and advocates in the Environmental Division of the Superior Court.

The NRB sees our role as a critical component in balancing the needs of local economies for continued development and ensuring that development occurs in a sustainable manner. The NRB acknowledges the need for reviewing Act 250's 10 criteria, and looks for expert advice and robust discussion by the Commission on this topic. We have the ability to engage in productive conversation at a local level for how best to integrate the latest knowledge from our partners, where to preserve important natural resource features to protect communities, and support growth in our economy, which will create more opportunities for Vermonters.



# AGENCY OF NATURAL RESOURCES

The Agency of Natural Resources (ANR), is party to any Act 250 proceeding that involves impacts to air, water, wildlife habitat, land use and the natural environment, which is typically any application filed with a District Commission. ANR provides comments, recommendations and proposed permit conditions under more than half of Act 250's criteria and sub-criteria, and is the most active state agency participant in the Act 250 process.

ANR consists of three departments – Environmental Conservation, Fish and Wildlife, and Forest, Parks and Recreation; technical staff and scientists from all three departments review Act 250 applications and work with the Planning Office to compile comments and provide District Commissions evidence as to whether a project is in conformance with the criteria. Beyond ANR's role as a party, Act 250 District Commissions may also request technical assistance from ANR staff on specific natural resource issues, per NRB Rule 20.<sup>4</sup>

Prior to the formal submittal of an Act 250 application, ANR staff often provide technical assistance to potential Act 250 applicants by attending site visits, reviewing draft plans and providing guidance on how projects may be configured to comply with Act 250's environmental criteria. On larger projects, staff may work for over a year with an applicant to assess and resolve natural resource issues prior to the actual submission of an Act 250 permit application. This work consumes significant staff resources, but ANR sees support for Act 250 as mission critical, and prioritizes involvement notwithstanding the associated workload.

Projects that require an Act 250 permit, often must also obtain a number of environmental permits from ANR such as state wetlands, stormwater, and air permits. Some of these permits provide a rebuttable presumption of compliance for certain Act 250 criteria, per NRB Rule 19(E); however, as ANR programs have expanded and evolved over the past 50 years, their relationship to the Act 250 criteria has shifted in some instances. As detailed in the body of this report, ANR's top priority for the Act 47 process is to better align Act 250 with existing permit programs and to reduce redundant review where appropriate.

In addition to reviewing Act 250 applications, ANR is also at times an applicant or co-applicant. ANR manages many state parks, forests and wildlife management areas across the state and regularly obtains Act 250 permits for projects at those locations. Several of the state's largest ski areas also lease state forest or park land, so ANR is a co-applicant for major development projects at those locations.

An important role played by ANR is to coordinate with NRB staff throughout the application process. ANR's Planning Office serves as a liaison with the NRB and meets regularly with NRB staff and leadership to discuss evolving policy, project and appeal-related issues.

Finally, given the overlap between many Act 250 criteria and ANR permits, ANR is often involved in appeals of Act 250 permits because those appeals are often on environmental grounds and thus implicate permits issued by ANR.

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4. 10 V.S.A. §6024

The Agency of Commerce and Community Development (ACCD) is focused on growing our economy, facilitating job creation, and supporting vibrant and resilient communities.

ACCD hears from its economic development partners that Act 250 could be modernized in a variety of ways, including but not limited to:

- » Making the process easier to navigate.
- » Ensuring that both process and outcomes are more predictable.
- » Creating incentives for projects in areas designated for development while enhancing and focusing efforts to protect critical landscapes.
- » Better aligning criteria with state rules, definitions, and permit programs and eliminating redundancy with other state permitting processes.
- » Reviewing and improving the appeals process.

ACCD's Department of Economic Development works with project proponents to facilitate navigating Act 250 and other state permitting processes. ACCD is working with other state agencies to improve and standardize how the state handles the initial contact with permit applicants, regardless of where or how the permit applicant enters the permitting system (through the NRB, ANR, other state agency, or municipal permitting process). This initiative is being coordinated as part of the Governor's Program to Improve Vermont Outcomes Together (PIVOT).

ACCD manages the state designation programs – Downtowns, Village Centers, New Town Centers, Growth Centers and Neighborhood Development Areas. These programs work together to provide incentives, align policies and give communities the technical assistance needed to encourage new development and redevelopment in our compact, designated areas. The program's incentives include exemption from Act 250 for certain mixed income housing projects and a simplified Act 250 process for any development in a designated downtown. Developments in certain designated areas are also eligible for reduced Act 250 permitting fees. These exemptions and alternative procedures are justified by robust local land use planning and permitting that is required to obtain the designation.

ACCD's Division for Historic Preservation participates in the Act 250 process by providing comments to the District Commissions and working with Act 250 applicants to ensure that development will not have an undue adverse effect on historic resources. The Division for Historic Preservation is also asked to participate in Act 250 enforcement proceedings when the Act 250 enforcement office is concerned that an applicant has not complied with Criterion 8 (historic sites). Unlike most other state agencies that provide comments on Act 250 proceedings, the Division for Historic Preservation does not have a separate permitting process, making the Act 250 process important to historic preservation efforts.

The Agency of Agriculture Food and Markets' (AAFM) mission is to facilitate, support and encourage the growth and viability of agriculture while protecting the working landscape, human health, animal health, plant health, consumers and the environment. AAFM maintains an Agricultural Development Division dedicated to providing agricultural business support with funding, marketing and production assistance, business planning and market research. Supporting the agricultural industry includes keeping farmland accessible by being a party to many Act 250 proceedings. AAFM provides analyses, comments, and proposed permit conditions for the protection of soils that qualify as "primary agricultural soils" as outlined in the law and considered under Criterion 9(B). The District Commission considers the input from AAFM and may incorporate into the issued land use permit. Act 250 is the only permitting program in state government that protects farmland from development.

When primary agricultural soils are present on the site of development, district coordinators encourage applicants to contact AAFM directly for a review prior to submission of a complete application to the District Environmental Commission. AAFM review primarily consists of commenting on whether the site of development contains soils that meet the definition of "primary agricultural soils," and, if yes, analysis of the direct and indirect impacts to the soils and required mitigation for the impacts. Analysis and comments are shared with the District Commission, which ultimately makes the decision. Although many applicants do contact AAFM before submitting an Act 250 application for development on primary agricultural soils, not all do. In these instances, to ensure that impacts to soils are considered, AAFM may file a notice of appearance and a request for a hearing to adequately address the 9(B) Criterion.

AAFM communicates with District Coordinators during the Act 250 project review process, participates in discussions about evolving issues or policies affecting primary agricultural soil, and collects and shares information about the protection/conservation of primary agricultural soils achieved through the Act 250 permitting process. AAFM also works with the NRB to resolve violations resulting from failure to obtain permits or meet permit conditions relative to primary agricultural soils.

Farming, which requires a large land base and is currently exempt from Act 250 review, makes up a portion of the state's rural economy. It is important to note that offsite mitigation, which can be a condition of development, is part of the portfolio of funding that conserves Vermont's working landscape, and supports access to farmland by existing and new/beginning farm operators. Vermont's rural landscape, including those lands occupied by the agricultural industry, also supports other economic sectors, and lends to the quality of life that makes Vermont a great place to live and work.

# A5 AGENCY OF TRANSPORTATION

The Agency of Transportation (VTrans or AOT) plans, develops, and manages Vermont's statewide transportation network, including highways, bridges, railroads, airports, park-and-rides, bicycle and pedestrian facilities, and public transportation facilities and services. VTrans also administers significant state and federal grant programs for municipal transportation facilities that may be subject to Act 250 review.

VTrans offers District Commissions expert testimony regarding Criterion 5, transportation. VTrans also alerts District Commissions as to what type of impacts, if any, a proposed project may have with respect to Vermont's transportation system. If any such impacts are noted, VTrans will offer the District Commission advice on the appropriate level of mitigation.

VTrans assists the District Commissions on issues relating to transportation-impact fees. In addition, VTrans works with the District Commissions to ensure that Act 250 permits are consistent with right-of-way access permits that VTrans may issue for a project.

VTrans is also an applicant in Act 250 proceedings. In this role, VTrans supplies project proposals to the District Commissions for their review. VTrans and the NRB have an MOU, which is currently being updated, to coordinate various issues between the agencies.

The transportation projects for which VTrans is responsible are typically constructed with federal aid, which is administered by the Federal Highway Administration (FHWA), the Federal Aviation Administration (FAA), or other federal agencies. Federal aid subjects these projects to a breadth of federal environmental regulations. Municipal projects that VTrans supports with federal funds are also subject to federal regulatory controls.

Numerous state laws may apply to federal-aid projects, including laws governing wetlands, operational and construction stormwater discharges, stream alterations, hazardous material disposal, historic preservation, and endangered species. Federal-aid transportation projects are subject to extensive planning requirements, which include the opportunity for public input. The many state and federal regulatory programs that now robustly protect the environment from transportation projects did not exist or existed only in nascent form when Act 250 was originally enacted in 1970.

VTrans questions whether Act 250 significantly protects the environment from transportation and other projects that are already comprehensively governed by state and federal regulations. The Commission may therefore wish to consider whether Vermont's federal-aid transportation systems, and possibly other federal-aid facilities, require Act 250 review. To the extent Act 250 adds significant environmental protection to federal-aid projects that other state and federal programs do not or could not cover themselves, VTrans could be subject to limited Act 250 jurisdiction or address these matters through programmatic agreements with other state agencies. The transportation network is analogous to designated areas under Act 250 that are subject to limited or no Act 250 controls.



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