

Comments of David Mears

(The views and opinions below are mine alone)

Opportunities to Improve Act 250:

1. Jurisdiction in Critical Areas: The lack of evaluation of cumulative impacts of development for projects below the jurisdictional threshold is the single most important gap in Act 250. For instance, the damage to floodplains, wetlands, wildlife corridors and forest blocks as a result of piecemeal development is significant and a growing problem. Vermont should consider significantly lowering the jurisdictional triggers for development in or impacting these critical areas below the current trigger of ten lots or ten acres. The recent state report on forest fragmentation by the Department of Forests, Parks and Recreation does a good job of explaining the substantial and accelerating impacts of development in ecologically significant forest blocks. With regard to floodplains and wetlands, it should still be fresh in most Vermonters' minds the public safety impacts of allowing development to impinge on the ability of wetlands and floodplains to protect downstream communities from flooding.

2. Designating Critical Areas: A related point is that Act 250 should require or at least strongly incentivize communities to designate the critical areas in which the lowered jurisdictional thresholds would be triggered. These critical areas should be designated as part of a regional planning process involving municipal governments and led by the regional planning commissions. The critical area designations should be required to meet minimum state criteria to be developed by ANR.

3. Regional Plans: Building on the recent Vermont Supreme Court decision relating to the proposed development at Exit One, Act 250 should be further strengthened to require that Regional Plans include enforceable standards to guide development and prevent sprawl. Regional plans adopted by Regional Planning Commissions should be subject to approval by the Natural Resources Board to ensure that the Regional Plans meet this requirement. The Natural Resources Board should be authorized to take responsibility for developing and enforcing Regional Plans if Regional Planning Commissions fail to adopt plans meeting minimum state requirements for enforceability.

4. Citizen Enforcement: The law should enable citizens to enforce violations of Act 250 including failure to apply for a required permit, or to enforce permit conditions once the permit is issued. Citizen plaintiffs should be able to recover attorneys' fees and litigation costs when successful.

5. Reduced Oversight in Downtowns and Village Centers: The State has already made headway in trying to reduce the level of regulatory process under Act 250 for downtowns and village centers but more could be done (Act 250 should not be relaxed for "growth areas" since that designation has been over-extended). The recent fiasco in Woodstock in which a modest affordable housing project was nearly defeated by years of litigation under Act 250 is an example of how the law can be used to impede development where we most want and need it. This reduced oversight should only occur as part of a broader package of reforms that include meaningful protections for critical areas.

6. Administrative Appeals Process: The current Environmental Division of the Superior Court has not proven to be an adequate substitute for or improvement from the former Environmental Appeals Board. Instead of an administrative hearings process which is accessible to citizens, reasonably efficient, and representing a mix of perspectives and backgrounds, we now have a full-fledged judicial process with extensive discovery and procedural motions seemingly without limit. Further, the promise of getting better informed decisions by virtue of having specialized judges has not been delivered and instead important land use and environmental policy is being determined by just two jurists. For these reasons, any significant reform of Act 250 should include revisions to the appeals process for Act 250 decisions. I recommend looking to the Shoreline Hearings Board of the Environmental Hearings Office in Washington State as a model for consideration (see <http://www.eluho.wa.gov/Board/SHB>).

7. Climate Disruption: The State should consider adding provisions to Act 250 in light of the growing scientific knowledge regarding the short-term and long-term impacts of climate disruption on Vermont's landscape. Additional consideration should be given, perhaps in the

form of a new criterion, to whether a project will cause or contribute to an increase in greenhouse gas emissions. Projects with a significant impact should either be denied approval or required to mitigate the impact. Conversely, applications for projects that will mitigate greenhouse gas emissions, or which will increase community resilience to the impacts of climate disruption should be given a priority in terms of process.