

250 COMMISSION REPORT OUTLINE

I. SUMMARY

- A. Describe structure of report
- B. Summarize charge
- C. Summarize Commission process
- D. Summary and bullet point list of conclusions and recommendations

II. DESCRIPTION OF CHARGE

- A. 2017 Acts and Resolves No. 47 (Act 47)/three phases/cross-reference text in appendix
- B. 2018 Acts and Resolves No. 194 (Act 194) – additional tasks re trails, forest products processing operations

III. COMMISSION PROCESS

- A. Introduction; cross-reference minutes in appendix
- B. Phase 1; description; cross-reference NRB submission in appendix
- C. Phase 2; description; cross-reference public engagement report in appendix
- D. Phase 3; description

IV. TASK GROUP 1: THE FINDINGS AND THE CAPABILITY AND DEVELOPMENT PLAN;
OVERARCHING ISSUES

- A. Successful or unsuccessful in meeting goals: Act 47, Sec. 2(e)(2)(A) – “An evaluation of the degree to which Act 250 has been successful or unsuccessful in meeting the goals set forth in the Findings and the Plan.”

B. Changes since 1970: Act 47, Sec. 2(e)(2)(D) – “An examination of changes that have occurred since 1970 that may affect Act 250, such as changes in demographics and patterns and structures of business ownership.”

C. Revisions to plan: Act 47, Sec. 2(e)(2)(B) – “An evaluation of whether revisions should be made to the Plan.”

1. Climate change?
2. Ecosystem protection?
3. Other changes?

V. TASK GROUP 2: ISSUES ON THE CRITERIA

A. Revising criteria with respect to issues emerging since 1970: Act 47, Sec. 2(e)(2)(C)(i) – “Whether the criteria reflect current science and adequately address climate change and other environmental issues that have emerged since 1970. On climate change, the Commission shall seek to understand, within the context of the criteria of Act 250, the impacts of climate change on infrastructure, development, and recreation within the State, and methods to incorporate strategies that reduce greenhouse gas emissions.”

B. Settlement patterns and the criteria: 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.”

C. Forest fragmentation: Act 47, Sec. 2(e)(2)(C) (iii) – “Whether the criteria support natural resources, working lands, farms, agricultural soils, and forests in a healthy ecosystem protected from fragmentation and loss of wildlife corridors.”

D. Forest products processing, permit conditions: Act 194, Sec. 7: “The Commission on Act 250: the Next 50 Years (Commission) established under 2017 Acts and Resolves No. 47 (Act 47) shall review whether permit conditions in permits issued under 10 V.S.A. chapter 151 (Act 250) to forest processing operations negatively impact the ability of a forest processing operation to operate in an economically sustainable manner, including whether Act 250 permit conditions limit the ability of a forest processing operation to alter production or processing in order to respond to market conditions. If the Commission determines that Act 250 permit conditions have a significant negative economic impact on forestry processing operations, the Commission shall recommend alternatives for mitigating those negative economic impacts. The Commission shall include its findings and recommendation on this issue, if any, in the report due to the General Assembly on December 15, 2018 under Act 47.”

VI. TASK GROUP 3: ISSUES ON JURISDICTION

A. Revising jurisdiction to achieve goals: Act 47, Sec. 2(e)(2)(G)(ii) – “Potential revisions to Act 250’s definitions of development and subdivision for ways to better achieve the goals of Act 250, including the ability to protect forest blocks and habitat connectivity.”

1. Promoting desired settlement patterns: Act 47, Sec. (2) (e)(2)(C)(iv) – “Whether Act 250 promotes compact centers of mixed use and residential development surrounded by rural lands.”

2. Protecting important natural resources: Act 47, Sec. (2) (e)(2)(C)(v) –
“Whether Act 250 applies to the type and scale of development that provides adequate protection for important natural resources as defined in 24 V.S.A. § 2791.”

B. Exemptions:

1. Relationship to Findings and the Plan: Act 47, Sec. (2) (e)(2)(C)(iii) –
“Whether the exemptions from Act 250 jurisdiction further or detract from achieving the goals set forth in the Findings and the Plan, including the exemptions for farming and for energy projects.”
2. Ridgelines: Act 47, Sec. 2(e)(2)(G)(iii) – “The scope of Act 250’s jurisdiction over projects on ridgelines, including its ability to protect ridgelines that are lower than 2,500 feet, and projects on ridgelines that are expressly exempted from Act 250.”

- C. Release from jurisdiction: Act 47, Sec. 2(e)(2)(G)(i) – “Circumstances under which land might be released from Act 250 jurisdiction.”

- D. Projects in multiple towns: Act 47, Sec. 2(e)(2)(G)(iii) – “Potential jurisdictional solutions for projects that overlap between towns with and without both permanent zoning and subdivision bylaws.”

- E. Jurisdiction over trails: Act 194, Sec. 3 (a) “In addition to the currently assigned tasks under 2017 Acts and Resolves No. 47 (Act 47), the Commission on Act 250: the Next 50 Years (the Commission) established under that act shall evaluate the strengths and challenges associated with regulation of recreational trails under 10 V.S.A. chapter 151 (Act 250) and

alternative structures for the planning, review, and construction of future trail networks and the extension of existing trail networks. The Commission shall include recommendations on this issue in its report to the General Assembly due on or before December 15, 2018 under Act 47.”

VII. TASK GROUP 4: ACT 250-PROCESS; INTERFACE WITH OTHER PERMITTING; APPEALS

A. Application and review process before the District Commissions; role of Natural Resources Board:

1. Statistical analysis: Act 47, Sec. 2(e)(1): “A statistical analysis based on available data on Vermont environmental and land use permitting in general and on Act 250 permit processing specifically, produced in collaboration with municipal, regional, and State planners and regulatory agencies.”
2. Evaluation: Act 47, Sec. 2(e)(2)(F) – “An evaluation of how well the Act 250 application, review, and appeals processes are serving Vermonters and the State’s environment and how they can be improved, including consideration of:

(i) Public participation before the District Environmental Commissions and in the appeals process, including party status.

(ii) The structure of the Natural Resources Board. . . .”

B. Interface with other permit processes: Act 47, Sec. 2(e)(2)(E) – “An examination of the interface between Act 250 and other current permit

processes at the local and State levels and opportunities to consolidate and reduce duplication. This examination shall include consideration of the relationship of the scope, criteria, and procedures of Act 250 with the scope, criteria, and procedures of Agency of Natural Resources permitting, municipal and regional land use planning and regulation, and designation under 24 V.S.A. chapter 76A.”

- C. Appeals: Act 47, Sec. 2(e)(2)(F) – “An evaluation of how well the Act 250 application, review, and appeals processes are serving Vermonters and the State’s environment and how they can be improved, including consideration of:

* * *

(iii) De novo or on the record appeals.

(iv) Comparison of the history and structure of the former Environmental Board appeals process with the current process before the Environmental Division of the Superior Court.

(v) Other appellate structures. “

- D. Misuse of opportunity to participate or appeal: Act 47, Sec. 2(e)(2)(G)(v) – “The potential of a person that obtains party status to offer to withdraw the person’s opposition or appeal in return for payment or other consideration that is unrelated to addressing the impacts of the relevant project under the Act 250 criteria.”

VIII. APPENDICES (possibly multiple volumes]

- A. Act 47

- B. Recommended legislation
- C. Minutes of commission meetings
- D. Public engagement report
- E. Legislative Council documents
 - 1. Vermont permit process glossary
 - 2. 10/25/17 presentation
 - 3. Research on other states
 - 4. Exemption list memorandum
 - 5. Memorandum on presumptions/supervisory authority [to be completed]
- F. Executive branch submissions
 - 1. NRB fall 2017 submission per Act 47
 - 2. AAFM 3/18 submission re agricultural exemption
 - 3. Trails submissions 10/18
- G. Other advisors' submissions
 - 1. Land Use Planning in Vermont (Sharon Murray)
 - 2. Advisors' testimony fall 2017
- H. [Other public comments; research; submissions, TBD]