

Report from the Water Quality subcommittee

Members: Peter Gregory, Jon Groveman, Seth Jensen, Diane Snelling, Neil Kamman, Laura DiPietro, Billy Coster; David Deen

The subcommittee met twice. The meetings developed issues in response to the five underlying questions asked of each group.

There were some recommendations with unanimous support from the subcommittee and we would put those ideas forward as follows:

- The 250 Manual, a document available to applicants to explain 250 criteria and process, contains Chapters that deal with water that were last updated since 2006/7. There has been a great deal of water law put in place since then. 250 should update these chapters and any others in the Manual that are out of date.***
- There are many provisions of law and definitions that ANR deals with that are like 250 criteria, but they are not synched up with each other and should be. Several recent Acts of the General Assembly (Acts 110 of 2012, 138 of 2013, 172 of 2014, 64 of 2015) post-date Act 250 definitions. These Acts establish definitions for floodplains, river corridors, buffers, shorelands, and other important features to which Act 250 criteria could be better aligned. A proposal to modernize Criterion 1D to make it consistent with current science and law is attached.

The committee used the frame for evaluating each parameter provide in the charge to the committee to structure our discussion. The committee responses are:

Why are we looking at this issue?

- Water quality is important to all of us and to our future. It is a worthy topic for 250 to address whenever development affects water quality
- Water quality is threatened overall in VT by unregulated development, as we continue to see downgrades of water quality in some various waters around VT. There are also successes where requirements compelled by Act 250 had restored previously impaired waters
- VT law requires us to protect and enhance the quality, character and usefulness of our surface waters and to assure the public health; and maintain the purity of drinking water. Act 250 is a useful way to meet those requirements.

How often does the issue of water quality come up?

- Clean water is a constant part of planning and regulatory discussions and most developments have some impact on surface or ground waters whether it is stormwater, wetlands, water supply, river corridor management, buffer clearances especially in village/downtown/agriculture areas, compensatory flood storage, CSOs, cumulative impacts to surface and ground water.

How well is Act 250 meeting the relevant goals/potential for protection of water quality from adverse impacts?

Act 250 could do better and to that end the Commission should:

- Develop better guidelines for targeted mitigation when there is a ground or surface water impact
- Consider how to generate more ANR scientific guidance on all public trust resource issues as 250 works better because of the science fed into the process through ANR participation but not all issues have the benefit of ANR input. For example:
 - 250 does not have a reliable method to assess full and/or cumulative impact of development on aquifers and watersheds partially due to the lack of data relative to sub jurisdictional development
 - 250 is one of two regulatory processes that address a clear gap in rules relative to buffer protections along rivers (the other is the Agricultural RAPs)
 - There is limited groundwater data available to 250 since there is no groundwater quality monitoring done by ANR
- Clarify what adequate water supply means relative to available on site water supply versus piped in water.

Do we need to revise jurisdiction for Act 250?

Act 250 could be more effective with jurisdictional changes and so the Commission should:

- Review cumulative development impacts on the use of groundwater, loss of aquifer recharge, or river corridor alterations should be considered for additional authority
- Clarify the difference between Act 250 jurisdictional authority for WWTF/POW based on capacity versus line extensions. The location of service lines drives development and should be considered as a factor
- Consider more compelling incentives to build with density and stronger disincentives to build in greenfields.

Questions to ask the public:

- How can we better avoid continued threats to water quality?
- What do we want for protection of Vermont surface and groundwater in the future?
- How would you reduce the footprint/impact of development on water through Act 250 review?
- Are there water quality/quantity problems that you are aware of that 250 should address – please be specific.

***Diane Snelling, Chair of the NRB being a member of the subcommittee did assure the group that this update to the Manual is in progress. She also advised the subcommittee that substantial work has been done to improve communications between ANR and the NRB/Act250, and the project continues to make progress.

ANR Proposal to Modernize Act 250 Criteria 1D:

§ 6086. Issuance of permit; conditions and criteria

(a) Before granting a permit, the district commission shall find that the subdivision or development:

(1) Will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of land above sea level; and in relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable health and environmental conservation department regulations.

(D) ~~Floodways~~ Floodplains. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision of lands within a ~~floodway~~ flood hazard area or river corridor will not restrict or divert the flow of flood waters; cause or contribute to fluvial erosion; and will not endanger the health, safety, and welfare of the public or of riparian owners during flooding; ~~and~~

~~(ii) the development or subdivision of lands within a floodway fringe will not significantly increase the peak discharge of the river or stream within or downstream from the area of development, and endanger the health, safety, or welfare of the public or riparian owners during flooding.~~

10 V.S.A. § 6001. Definitions

When used in this chapter: ***

~~(6) "Floodway" means the channel of a watercourse which is expected to flood on an average of at least once every 100 years and the adjacent land areas which are required to carry and discharge the flood of the watercourse, as determined by the secretary of natural resources with full consideration given to upstream impoundments and flood control projects. "Flood Hazard Area" means the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year as determined by the Secretary of Natural Resources. The term has the same meaning as "area of special flood hazard" under 44 C.F.R. § 59.1.~~

~~(7) "Floodway fringe" means an area which is outside a floodway and is flooded with an average frequency of once or more in each 100 years as determined by the secretary of natural resources with full consideration given to upstream impoundments and flood control projects. "River corridor" means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary for the natural maintenance or natural restoration of a dynamic equilibrium condition and for~~

minimization of fluvial erosion hazards, as delineated by the Agency in accordance with river corridor protection procedures. (10 V.S.A. § 1422(12)).