

ACT 250 Subcommittee on Climate Change – DRAFT RECOMMENDATIONS

GOAL STATEMENT:

As the State of Vermont explores updating Act 250 – the state’s almost 50-year-old land use and development law – the Act 250 Commission’s subcommittee on climate change outlines below how existing criteria can (and have been) used to address climate change. We also recommend potential updates to improve the process and to help communities respond to and mitigate the impacts of a warming world. In the subcommittee’s exploration of issues, it was recognized that while Act 250 plays a significant role in shaping development and land use practices, it is just one tool in the toolbox and that potential changes or improvements to other programs, practices or policies might be examined to address other needs or meet other goals.

RECOMMENDATIONS:

The subcommittee recommends both climate adaptation and mitigation strategies in the update to Act 250. The subcommittee defines mitigation and adaptation the following way:

Mitigation approaches are focused on reducing greenhouse gas emissions and Vermont’s contribution to climate change. Examples of mitigation strategies include but are not limited to: Energy efficiency, renewable deployment, transportation efficiency (i.e. demand management, increasing bike and pedestrian options, expanding transit, supporting electric vehicle deployment etc).

Adaptation approaches are designed to help communities and developments withstand the impacts of climate change, helping to avoid increased costs and negative impacts to public infrastructure (bridges, roads, water supply etc), public health, electrical supply infrastructure and investments, food systems, habitat connectivity and food supply chains etc.

EXISTING and POTENTIAL NEW UPDATES to ACT 250 CRITERIA:

*Applicable existing criteria related to CLIMATE are **BOLDED***)

How can Criteria 1 currently be used to address climate:

(1) **Will not result in undue water or air (heat) 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.

EXAMPLES of climate issues this criterion currently addresses:

- *Crit. 1 is typically used to address air pollution/conformance with air permits.*

HOW could criteria 1 be updated to better support climate:

- *Better address GHG emissions as an air pollutant.*
- *Potential for 1 to serve as a more wholistic review of water quality, including cumulative impacts, impacts on hydrology, etc.*

(D) Floodways. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria:

(i) the development or subdivision of lands within a floodway will not restrict or divert the flow of flood waters, and 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.

EXAMPLES of climate issues this criterion currently addresses:

- *Mitigate flooding by protecting function flood plains.*
- *Mitigate fluvial hazards by minimizing new encroachments in river corridors.*

HOW could criteria 1D be updated to better support climate:

- *Revise criteria to better align with current law/science (see attached).*
- *Expand state flood hazard and river corridor rule/permit program to Act 250 jurisdiction development, and have that permit serve as compliance for 1D.*
- *Ensure requirements under 1D are based on climate-change informed modelling.*

(E) Streams. 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 on or adjacent to the banks of a stream will, whenever feasible, **maintain the natural condition of the stream, and will not endanger the health, safety, or welfare of the public or of adjoining landowners.**

EXAMPLES of climate issues this criterion currently addresses:

- *Typically requires some extant of vegetated riparian buffer for streams and rivers.*

HOW could criteria 1E be updated to better support climate:

- *NRB could adopt ANR riparian buffer guidance or develop their own technical guidance for what riparian areas are necessary to maintain natural condition of streams and protect public health and safety during climate-change influenced flood events.*
- *Riparian areas serve as critical wildlife corridors that are necessary for movement and adaptation resulting from climate change, more consistent and robust protection of buffers would serve an adaptation function.*

(F) Shorelines. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other criteria, the development or subdivision of shorelines must of necessity be located on a shoreline in order to fulfill the purpose of the development or subdivision, and the development or subdivision will, insofar as possible and reasonable in light of its purpose:

(i) retain the shoreline and the waters in their natural condition;

(ii) allow continued access to the waters and the recreational opportunities provided by the waters;

- (iii) retain or provide vegetation which will screen the development or subdivision from the waters; and
- (iv) **stabilize the bank from erosion, as necessary, with vegetation cover.**

EXAMPLES of climate issues this criterion currently addresses:

- *Typically requires some extent of vegetated riparian buffer for lakes and ponds.*

HOW could criteria 1F be updated to better support climate:

- *Revise criteria to better align with state shoreland permit program, expand shoreland program to apply to Act 250 jurisdictional development, and have that permit serve as compliance for the 1F.*

G) Wetlands. A permit will be granted whenever it is demonstrated by the applicant, in addition to other criteria, that the development or subdivision will not violate the rules of the Secretary of Natural Resources, as adopted under chapter 37 of this title, relating to significant wetlands.

(2) Does have sufficient water available for the reasonably foreseeable needs of the subdivision or development.

(3) Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

EXAMPLES of climate issues this criterion currently addresses:

- *Typically protects wetlands and associated buffer, defers to state wetland permit for protection of Class I and II wetlands, which requires applicants to avoid and minimize impacts before permitting them.*

HOW could criteria 1G be updated to better support climate:

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CRITERIA 4:

How can Criteria 4 currently be used to address climate:

(4) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

EXAMPLES of climate issues this criterion currently addresses:

- *Crit. is typically used to address stormwater impacts.*

HOW could criteria 4 be updated to better support climate:

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How can Criteria 5 currently be used to address climate:

(5)(A) Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.

(B) As appropriate, will incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services. In determining appropriateness under this subdivision (B), the District Commission shall consider whether such a strategy, access, or connection constitutes a measure that a reasonable person would take given the type, scale, and transportation impacts of the proposed development or subdivision.

EXAMPLES of climate issues this criterion currently addresses:

- *Crit. is typically used to address necessary transportation upgrades and connectivity issues.*

HOW could criteria 5 be updated to better support climate:

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CRITERIA 8/8A:

(8) Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.

8(A) Necessary wildlife habitat and endangered species. A permit will not be granted if it is demonstrated by any party opposing the applicant that a development or subdivision will destroy or significantly imperil necessary wildlife habitat or any endangered species; and

- (i) the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision will not outweigh the economic, environmental, or recreational loss to the public from the destruction or imperilment of the habitat or species; or**
- (ii) all feasible and reasonable means of preventing or lessening the destruction, diminution, or imperilment of the habitat or species have not been or will not continue to be applied; or**
- (iii) a reasonably acceptable alternative site is owned or controlled by the applicant which would allow the development or subdivision to fulfill its intended purpose.**

EXAMPLES of climate issues this criterion currently addresses:

- *Crit. is typically used to address aesthetic, historic and wildlife/wildlife habitat related impacts.*

HOW could criteria 8 be updated to better support climate:

- *Criteria could be expanded to better address landscape-scale values that are necessary for climate adaptation such as maintenance of unfragmented forest blocks and connecting habitat.*

CRITERIA 9:

(9) (F) Energy conservation. A permit will be granted when it has been demonstrated by the applicant that, in addition to all other applicable criteria, the planning and design of the subdivision or development reflect the principles of energy conservation, including reduction of greenhouse gas emissions from the use of energy, and incorporate the best available technology for efficient use or recovery of energy.

(L) Settlement patterns. To promote Vermont's historic settlement pattern of compact village and urban centers separated by rural countryside, a permit will be granted for a development or subdivision outside an existing settlement when it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision: (i) will make efficient use of land, energy, roads, utilities, and other supporting infrastructure; and

EXAMPLES of climate issues this criterion currently addresses:

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HOW could criteria 9 be updated to better support climate:

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CRITERIA 10:

10) Is in conformance with any local or regional plan or capital facilities program.

EXAMPLES of climate issues this criterion currently addresses:

- *Crit. is typically used to address consistency with local planning.*

HOW could criteria 10 be updated to better support climate:

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BIKE RACK/PARKING LOT IDEAS:

Articulate other potential tools, programs or policies that might be examined or updated to complement Act 250 update?