

Testimony Notes: House Committee on Natural Resources, Fish, and Wildlife
Overview of Planning and Comment on Provisions in Draft Committee Bill (19-0040, draft 5.2)

Introduction

- Kate McCarthy, Sustainable Communities Program Director at the Vermont Natural Resources Council (VNRC).
- I'm trained as a land use planner, and have a masters of regional planning.
- I worked at the Windham Regional Commission before coming to VNRC.
- What I'd like to talk about today:
 - I will provide a quick refresher on planning and why it is important to Act 250.
 - Then, I'll walk through planning-related provisions in the committee bill and provide VNRC's position on each.

Planning and Act 250

- You have heard from a number of witnesses this session about planning.
 - The Department of Housing and Community Development provided an overview of Vermont's planning statute, which says how planning happens and what plans must include. Local planning is optional but must include certain elements.
 - Professor Kinvin Wroth told you about the history of the state land use plan, and the Capability and Development Plan, and why thinking about resources at a state level is important.
 - I believe you also heard from Ed Stanak about planning, and about resources of compelling state interest.
- In general in your discussions about Act 250 this session, you've talked about what community and environmental resources are important, and what – if anything – Act 250 should do to protect them.
 - From all of these discussions I think one thing that is probably clear is that different resources are important at different scales. For example:
 - At the *local* level, you might want to know how growth would affect demand on the school system.
 - At the *regional* level, you might want to know how growth would affect traffic on a state route that serves people moving throughout the region.
 - At the *state* level, you might want to know whether building in a river corridor would lead to displaced water during flooding in a way that hurts the next town over, or damages a state road.

- It is clear that there are different impacts depending on the scale you are observing – that is, whether you’re zoomed in or out.
- Our state planning goals, which you’ve heard a lot about, acknowledge this. I will highlight two in particular (from 24 V.S.A. §4302):

(b) It is also the intent of the Legislature that municipalities, regional planning commissions, and State agencies shall engage in a continuing planning process that will further the following goals:

...

(2) To encourage citizen participation at all levels of the planning process, and to assure that decisions shall be made at the most local level possible commensurate with their impact.

(3) To consider the use of resources and the consequences of growth and development for the region and the State, as well as the community in which it takes place.

- As you know, we have local and regional planning to contemplate these impacts. *But we don’t have the planning that allows us to review projects to understand whether they impact resources that are important at the state level. That’s why we are talking about planning in Act 250.*
 - Without appropriate planning – that is, knowing what resources are present, knowing what infrastructure is available, knowing what we want to happen in a certain part of town or part of the state – we cannot evaluate whether an individual project is helping us get where we want to go, or not.
 - This can mean that we incrementally lose things that are important.

This is why you have before you a number of policy updates related to planning: Because planning helps us figure out *what* is important to us in the future, and then identifies *where* and *how* we should grow, develop, and change – or not – in order to achieve that future goal.

Having an underlying foundation of planning – in the form of a Capability and Development plan as well as strong local and regional planning – will help make Act 250 more effective in achieving our state land use goals, lead to greater clarity about how a project fits into a the surrounding context, and will improve the Act 250 process.

Planning-related proposals in the draft bill

With that as a background, next I'd like to talk about the different planning-related proposals in the draft committee bill: 19-0040, draft 5.2.

Capability and Development Plan

Task Group 1 in the Commission's report

- *How it relates to planning:* The Capability and Development Plan is a set of guiding policies (findings), saying what Act 250 should accomplish. It's also a set of maps that help show the surrounding context when you are reviewing a project.
- *What the proposed changes will do:* Currently the Capability and Development Plan's findings and map aren't used in Act 250. The draft bill brings the Capability and Development Plan into play in several ways:
 - It updates the policies/findings in the Capability and Development Plan to address two important new factors that we understand better than we used to: climate change and ecosystem protection.
 - On p. 5 of the draft bill, starting on line 7, it adds an overview paragraph at the very beginning of Act 250 that says the purpose of Act 250 is to achieve the goals of the Capability and Development Plan. This is important because it guides interpretation of Act 250 – that's not there now.
 - Then on p. 24, the bill requires that the Capability and Development maps be updated. These are not a state land use plan. They are maps that highlight "environmental constraints, existing settlements, rural and working lands areas, critical resource areas, facilities and infrastructure, and areas targeted for conservation, public investment, and development" (p. 24, lines 19-21 in draft bill). In other words, this map lays out guidelines for how the puzzle pieces of development should fit together, and provide a way to interpret the criteria.
 - We have some of this today through local and regional plans, but the Capability and Development would be an important addition because it would convey what's important to the state on a bigger scale, and where those resources are located.
- *VNRC position*
 - We support these changes.

- ***Suggested addition/change:*** The part of Act 250 that describes the Capability and Development plan is Section 6042. Currently, it says that the Capability and Development plan's findings "may" accomplish the purposes of the state's planning goals – which are separate. We think you should change "may" to "shall" in the last line of 10 VSA §6042.

Criterion changes

Task group 2 in the Commission's report

- *How it relates to planning:* The draft bill includes one main change to Act 250's criteria that better connects planning to Act 250: updates to Criterion 10, "Local and Regional Plans." These changes are on p. 43 of the proposed legislation. In my view, the purpose of these changes is to make it so that the policies and maps of local and regional plans play a stronger role in shaping projects under review in Act 250.
- *What the proposed changes will do*
 - First, (in lines 6 and 7, p. 43) it says that to be used in Act 250, local plans must be approved by their Regional Planning Commission, and regional plans must be approved by the Vermont Environmental Resources Board.
 - Line 9, highlights town and regional plan maps, and requires that projects must "conform" with the future land use maps in the local and regional plans.
 - For example: If an area in a municipal or region is planned for working lands and low-intensity residential development, and a small box store is proposed, looking at the map would show that the proposed project may not be a suitable use given the community's vision of its future.
 - Line 12 is about a municipal or regional plan's written policies. It provides a standard saying how clear a plan's policy needs to be for a district commission to interpret it.
 - Plan policies really vary right now – you might have one that says, "Where feasible, strip development is discouraged," which could be open-ended and difficult to interpret. By contrast, "Strip development and dispersed residential development along the scenic corridors as identified in the plan is prohibited" is clear.
 - In general, making Criterion 10 clearer is one way to give plans more weight, to have more recognition of local process and goals within Act 250.

- *VNRC position*
 - We agree that municipal plans should be approved before being used in Act 250. The approval process means that they are compatible with an overall regional pattern and vision, and meet the state’s land use goals.
 - We agree that it is important to be explicit about using maps, since it is important to understand how projects fit on the ground. We also agree regarding having a clear standard for policies.
 - We feel less strongly that regional plans must be approved before being used in Act 250. There is already a requirement that RPCs participate in Act 250. This requirement can be found in 24 V.S.A. §4345a(13), which says that “A regional planning commission created under this chapter shall... Appear before District Environmental Commissions to aid them in making a determination as to the conformance of developments and subdivisions with the criteria of 10 V.S.A. §6086” (Act 250’s 10 criteria).

Changes to the planning statute

Task Group 1 of the Commission’s report

- *How it relates to planning:* The changes you are proposing to make to Act 250 are in Title 10, Ch. 151 – this is where “Act 250” resides. However, the draft bill also recommends complementary changes within the planning section of statute – Title 24, Chapter 117. In our view, these changes make planning more accountable so that the plans are better aligned with state goals, and clearer, which will lead to better outcomes in Act 250.
- *What the proposed changes will do*
 - The first change for planning is on p. 57-58. It requires that after being adopted by the RPC, a regional plan be reviewed by the Vermont Environmental Review Board. This makes sure they advance the goals of Review of regional plans.
 - P. 58 requires regional plans to identify critical resource areas.
 - P. 58 also has a change for municipal plans. Currently, they are not required to be consistent with the state’s planning goals. This change of “may” to “shall” requires them to be consistent with the state’s planning goals.
- *VNRC position*
 - VNRC believes that it is positive to have regional plans reviewed. As to which body conducts that review, we are open to further discussion. It makes sense to

us to have some peer review rather than just the revised NRB, and to ensure a mix of expertise among reviewers.

- It makes sense to have RPCs aid in the identification of critical resource areas as part of the planning process.
- We agree with requiring that town plans advance the state's planning goals. This is part of the overall alignment we're talking about.
- ***Suggested addition/change:*** It is important to us that approval of regional plans be appealable, especially if they have a role in designating critical resource areas or areas planned for growth. The appeal body could be the revised Natural Resources Board. (During preparation for this testimony I did not see this in the bill, but acknowledge that I may have missed it.)

Additional Remarks

Enhanced Designations

I have already testified on enhanced designations (February 6, 2019), but I would just note that these are an example of how a well-planned area might be considered differently in Act 250. I still think that the enhanced designation process should only be used for existing areas, not areas planned for growth. However, there might be other ways you could treat areas planned for growth in Act 250 – again, *if* the planning is good – but it's VNRC's position that exemption from Act 250 should not be one of those treatments.

Municipal Planning Grants

In the interest of supporting high-quality and robust planning, I'd ask this committee to support full funding of the Municipal Planning Grant Program. The Municipal Planning Grants are the primary source of money for towns to do town plans and zoning updates. Most towns don't have planning staff, so this allows them to hire consultants or RPCs to help. It's essential, and it has been underfunded for years.

Thank you for the opportunity to testify, and for all of your work.