



February 27, 2019

From: David Snedeker, Executive Director
Northeastern Vermont Development Association

To: VT House Committee on Natural Resources, Fish & Wildlife

RE: Changes to Act 250, Local, Regional, and State Planning

Hon. Chair Sheldon, and Members of the Committee:

Thank you for the invitation to speak with your committee today on proposed changes for Act 250 and local, regional, and state planning. It is important that Act 250 and local permitting processes support community, economic, environmental, and land use planning goals at all levels. It is also important to have permitting processes at all levels that are predictable in both time and expense; that minimize duplication at all levels of review; and, having the permitting responsibility resting at the appropriate level of government so that community and/or state goals that protect the environment while allowing for community and economic growth to be achieved.

The Northeast Kingdom region (Caledonia, Essex, and Orleans Counties and 50+ municipalities - approximately 1/5 of VT's land area) of which NVDA serves is and has long been the most rural and economically-challenged region of Vermont given its low incomes, high unemployment, and limited development opportunities. At the same time our communities have preserved a high quality of environment that exceeds many other areas of Vermont.

What we have observed over the last decade is that the number of municipalities adopting municipal plans has increased significantly. Communities better understand that having an adopted plan in place gives them greater voice and some semblance of local control in state permitting processes like Act 250 and the PUC Section 248 processes. The result has been that in the NVDA region, we have seen communities that were once very resistant to adopting municipal plans (e.g. Albany, Irasburg, Holland, Coventry, and Brunswick are a few examples) for fear that a town plan would lead to local zoning are now adopting municipal plans that they now understand will give them a voice in state permitting processes because that is where they want to have a local voice.

As to the types of developments that we see in the rural Northeast Kingdom region today: We see the establishment of on-farm enterprises, home-based businesses, in-fill re-developments in designated and non-designated areas utilizing existing buildings, and place-based outdoor recreation developments that fit within the rural landscape and are supported by local communities. We are concerned that proposed changes to Act 250 will inhibit some of this development and negatively impact our rural economy.

Regarding some of the proposed changes:

Revisions to and greater use of the Capability and Development Plan (CDP):

Renewing the use of the CDP is positive and has the potential to improve Act 250 review by creating additional predictability. As proposed, the process for developing the CDP is “top down”. *Agree with VPA testimony that these maps should be developed at the local and regional levels. Public engagement and local knowledge is more robust at these levels.* All VT regional planning commissions have mapping programs and undertook a similar process with their recent energy plan updates. Believe that the best planning begins at the local level.

Requirement that to be used in Act 250, local and regional plans must be approved as consistent with statutory planning goals:

There already exists a process under Title 24 for reviewing and approving the consistency of local plans (24 V.S.A. § 4350). Regional commissions shall approve a plan if it finds that the municipal plan:

- (A) is consistent with the goals established in section 4302 of this title;
- (B) is compatible with its regional plan;
- (C) is compatible with approved plans of other municipalities in the region; and
- (D) contains all the elements included in subdivisions 4382(a)(1)-(12) of this title.

Creating another review process for local plans would be duplicative and problematic. RPCs have recently been given the authority to certify local plans seeking energy compliance if they adhere to all of the requirements for that certification.

Regional planning commissions were created by their member municipalities and it is the representatives appointed by the municipality that adopt the regional plan. 24 V.S.A. § 4348a outlines the required elements for all regional plans, and all regional plans must be consistent with the goals established in § 4302 of this title. Prior to hearings for adoption, regional plans must be submitted for review and comment to the following:

- (1) the chair of the legislative body of each municipality within the region;
- (2) the executive director of each abutting regional planning commission;
- (3) the Department of Housing and Community Development within the Agency of Commerce and Community Development;
- (4) business, conservation, low-income advocacy, and other community or interest groups or organizations that have requested notice in writing prior to the date the hearing is warned; and
- (5) the Agency of Natural Resources and the Agency of Agriculture, Food and Markets.

Any of the foregoing bodies, or their representatives, may submit comments on the proposed regional plan or amendment to the regional planning commission, and may appear and be heard in any proceeding with respect to the adoption of the proposed plan (or amendment).

Very recently, the Dept. of Public Service has been given a review and approval role for regional plans as RPCs pursued determinations for energy compliance. Now we have a proposal for the Natural Resources Board (or a new Environmental Board) to determine the consistency of regional plans with statute – problematic given the NRB role in the regulatory process. State agencies and entities have different responsibilities and goals of their own and may be conflicting. *Giving more state entities a review and certification role takes responsibility away from the municipally appointed RPC representatives that have the authority to adopt the plan.*

Act 250 jurisdiction in enhanced designation areas and expanded jurisdiction in other areas:

The state permit process should encourage development in appropriately planned places and carefully consider or discourage development outside of those areas. Reducing or eliminating Act 250 jurisdiction in existing and planned settlement areas delineated and approved by municipalities and regional planning commissions when local regulations and development review process is robust.

Existing state designation programs are both complex and constraining and creating a new designation will add to this complexity. The designation programs aren't designed to accommodate the full range of settlements that exist in Vermont's villages, downtowns, and surrounding commercial, industrial, and residential areas. *Agree with VPA testimony that defining areas for limited Act 250 jurisdiction should begin with areas identified as suitable for future growth in municipal and regional plans. Agree with CCRPC comments that improving and expanding existing designations would be better than creating a new designation.*

The proposed changes for Act 250 will greatly expand jurisdiction, even into areas where development may be appropriate, including working lands and critical resource areas. Many Vermont villages and downtowns are located along river corridors (e.g. Hardwick, Lyndonville, Barton and Orleans Villages) and they have and continue to make investments in buildings and infrastructure. Limiting Act 250 jurisdiction in communities like these with robust regulations and existing designations is appropriate. *The regional planning commissions (VAPDA) will be putting forth recommendations on river corridors and their use in state permitting processes in developed areas.*

Also agree with the following comments:

Delay changing the jurisdictional elevation trigger from 2,500 to 2,000 feet. Recommend a study to identify the amount of land that would be brought under jurisdiction and the sensitivity of that land. (VPA testimony)

Revise the proposed language to retain the exemption for farming, logging, and forestry – even in critical resource areas. There are other ways to ensure that farming and forestry address environmental impacts. (VPA testimony)

Support an appeals process that allows coordination or consolidation of appeals of municipal and state permits to one entity to ensure consistency in decision-making and provide unaligned requirements between the Environmental Court (enforcement and local zoning) and Environmental Review Board (appeals from District Commission and ANR permitting). (CCRPC recommendation)

In summary, the proposed changes for Act 250 are substantive. Given the expansion of land uses and land area that may fall under Act 250 jurisdiction if these proposed changes are passed, ***it would be prudent to take any final version of proposed Act 250 changes back to the public through a well-noticed series of public hearings for comment before being passed by the legislature and signed into law.*** It is extremely important to hear from local communities, landowners, and residents before enacting such significant changes.

Thank you for your consideration.

Sincerely,

David Snedeker
Executive Director, NVDA