

**Comments on proposed Act 250 changes**  
**Offered by Charlie Baker, Executive Director**  
**Chittenden County Regional Planning Commission**

**2/4/2020**

Note: The comments herein include references to 19-0040 Draft 10.4 dated 2/4/2020. These comments are based upon discussion of CCRPC's Act 250 Committee, but have not yet been reviewed and approved by the CCRPC Board. We hope that we will have the opportunity to provide more comments as our position and the Legislature's position evolve over the coming weeks.

General comments:

1. We support updating Act 250 and applaud the Committee for taking on this important work.
2. We recognize the challenge of addressing both substantive changes to Act 250 jurisdiction and criteria and process changes to the way Act 250 is administered. If there is not agreement on the process changes, we urge the Committee to move ahead with the substantive changes this session and continue work on the process changes in the future.
3. CCRPC believes that the state permit process should encourage development in appropriately planned places and discourage development in vulnerable and valued resource areas. Therefore, CCRPC strongly supports the concept that Act 250 should not have jurisdiction in areas planned for growth to encourage affordable housing and economic investment in our smart growth areas: walkable, transit-friendly, water and sewer-serviced areas. CCRPC appreciates the exemption for Designated Downtowns and Neighborhood Development Areas, but recommends further expansion of this exemption (see comments 8 & 13 below).
4. CCRPC supports the development of a Resource Map that makes clear to all parties what resource areas trigger jurisdiction (see comments 2, 4, 7, & 14 below) and to assist in evaluating compliance with relevant criteria.
5. CCRPC supports the concept of providing a presumption of compliance to satisfy specific criteria as appropriate based upon issuance of separate applicable state permits (see comment 18).

Specific Comments:

6. Page 6, lines 5-11 – This section proposes to expand Act 250 jurisdiction to commercial and industrial developments within 2,000 feet of interstate interchanges.  
*Comment:* CCRPC feels that this new jurisdiction is not necessary. If this provision is retained, we request that language be added to section (xi) to make explicit that the Regional Planning Commission determination that municipal bylaws meet the criteria for exemption provides for an exemption for that interchange area unless the RPC determines at a future date that the bylaws no longer meet the criteria. We would also suggest that interchanges in a Census-defined urbanized area (Interstate 89 Exits 12 to 16) be excluded from jurisdiction since these areas are already developed and will only be infilling over time.

7. Pages 7-8, lines 17-11 – This section proposes to include new road/driveway construction of 2,000 feet in length as development subject to Act 250.  
*Comment:* CCRPC is supportive of the goal of preventing forest and habitat fragmentation, but believes that this is too blunt of a tool. CCRPC recommends a connection between the 2,000’ road distance and the intended purpose of this jurisdictional trigger (habitat protection? Forest fragmentation?) and allowing an applicant to indicate if the stated purpose is being achieved with the proposed development. Alternatively, we recommend that this section be replaced with language to protect forest and habit areas; those areas to be mapped by ANR (<http://anrmaps.vermont.gov/websites/ridges/index.html>) and adopted by reference as the area regulated; and, a process for how that map will be updated.
8. Page 9, lines 15-16 – This section exempts subdivisions outside designated downtowns and neighborhood development areas from Act 250 jurisdiction.  
*Comment:* CCRPC agrees with and appreciates this approach. It is not clear if these areas are also exempt from the definition of development. We suggest that development and subdivision in both Growth Centers and New Town Center designations should also be excluded. These are also state approved growth areas and there is no need for additional Act 250 review.
9. Page 11, lines 5-14 - These sections define “connecting habitat” and “forest block.”  
*Comment:* CCRPC recommends that these definitions be expanded to specifically reference mapping developed by ANR. Some additional guidance may be helpful to provide parameters around the minimum size of forest blocks or connecting habit.
10. Page 14, lines 1-6 - This language shifts the responsibility for jurisdictional determinations from district coordinators to District Commissions.  
*Comment:* CCRPC recommends retaining the existing role of district coordinators for ease of administration and timeliness. If there are issues regarding consistency, appeals of these determinations should be reviewed by the central Vermont Environmental Review Board (VERB).
11. Pages 15-19 - This language establishes the Environmental Review Board.  
*Comment:* CCRPC does not have a position on this change yet. However, we are concerned about losing the benefit of being able to combine appeals from Act 250, DEC, and municipalities at the Environmental Court. We ask that the ability to combine appeals in one body remain.
12. Page 26-27 - Capability and Development Maps.  
*Comment:* Thank you for including consultation with RPCs in the development of these maps. It might speed the process to start with a review of the maps produced by the RPCs as part of the recent enhanced regional energy planning work. Please consider making a clearer connection to the map layers that would be appropriate for determining jurisdiction in forest blocks and connecting habit as noted in Comment #4.
13. Page 34-35, lines 11-2 - This section exempts designated downtowns and neighborhood development areas from Act 250 and allows for extinguishing of Act 250 permits in designated downtowns and neighborhood development areas.  
*Comment:* CCRPC agrees with and appreciates this approach. However, permits in both Growth

Centers and New Town Center designations should also be exempt and allowed to be extinguished. These are also state approved growth areas and there is no need for additional Act 250 review.

14. Pages 41-42, lines 1-5 – This section proposes a 30-day pre-application notice requirement to the public and affected agencies for larger Act 250 cases. It allows for municipal or regional planning commissions to hold hearings and provide recommendations to the applicant or District Commission.  
*Comment:* CCRPC agrees with this approach; however, CCRPC recommends that projects should be vested at time of submittal of the pre-application materials.
15. Page 52, line 13 – This section provides stronger language for applicants to provide bike, pedestrian and transit infrastructure.  
*Comment:* CCRPC supports this stronger language.
16. Page 53, lines 2-5 – This section adds language noting that if a municipality does not respond with 90 days to whether a development will impose an unreasonable burden on the municipality to provide educational services, it will be presumed to have no impact.  
*Comment:* CCRPC recommends that this request for a response be the responsibility of the applicable school district(s), not the municipality.
17. Page 57, lines 1-3 – This section proposes certification and inspection of energy conservation and efficiency and the stretch energy code.  
*Comment:* CCRPC feels that there should be one consistent energy code applied throughout the state, not a higher standard in Act 250.
18. Pages 58-59, lines 12-2 – This section proposes that a municipal plan must be approved by the Regional Planning Commission in order for it to be used in the Act 250 review process.  
*Comment:* CCRPC agrees with this approach.
19. Pages 70-71 – This section requires ANR to produce resource maps, including for forest blocks.  
*Comment:* Thank you for this section. It mostly addresses concerns identified above and should be referenced more specifically with regards to forest blocks and connecting habitat. It may be useful to clarify the relationship between this resource map and the Capability and Development Maps proposed on pages 26-27 and which layers should be used for jurisdictional determinations.
20. Page 73, lines 3-9 - This section has the VERB approve regional plans and amendments if consistent with the goals of section 4302 of Title 24.  
*Comment:* CCRPC supports State review of regional plans. We request consideration of adding relevant State agencies into this review process (maybe by consultation), such as ACCD, ANR, and VTrans so that all of our collective planning is as coordinated and consistent as possible. We also request additional language be added so that the review is more similar to how RPCs review municipal plans. Besides reviewing the plan for consistency with the goals we also confirm that the plan contains all the elements required by state law in 24 VSA §4382(a) and is compatible with the approved plans of adjacent municipalities (or in this case RPCs).

21. Pages 75-76 – This section provides for the appropriate municipal development review panel to review Act 250 permits and take on or remove previously required conditions under certain criteria.

*Comment:* CCRPC supports and appreciates the intent of this provision to remove unnecessary conditions from properties and level the playing field for all property owners in areas exempted from Act 250 going forward.

22. Page 97, lines 3-9 – This section requires ANR to adopt rules to designate highest priority river corridors.

*Comment:* CCRPC thinks this is a step in the right direction, but would like to see explicit language added giving direction to ANR to allow for appropriate infill in our already developed downtowns and villages.

23. Presumptions for ANR permits in Act 250 Proceedings

*Comment:* We may have missed this provision. Nonetheless, CCRPC would like to see the bill include the presumption provided in the Joint Proposal of the Administration and VNRC. (See page 40 of the “discussion draft” dated 1/14/2020.)

24. Exemption for Certain Transportation Projects

*Comment:* CCRPC would like to see the exemption for transportation projects that disturb less than an additional 10 acres included in the bill as proposed in Joint Proposal of the Administration and VNRC. (See page 21 of the “discussion draft” dated 1/14/2020.)