

Act 250 – Climate Change
House Natural Resources, Fish, & Wildlife
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1. Introduction.

- Sandra Levine, Senior Attorney with the Conservation Law Foundation in Montpelier Vermont
- Conservation Law Foundation is a regional environmental advocacy organization with offices in 5 New England states. We have had an office in VT since 1988.

2. Act 250 & Its Role

- Act 250 unique, visionary and continues to be valuable asset.
- Act 250 focuses on the statewide impacts of a development proposal and recognizes that what one does on the land affects the natural and community resources, and the economy we all rely on.
- At its core, Act 250 has 10 very common sense criteria, including air, water quality, farmland, habitat, community resources, and transportation.
- Sometimes another permit can satisfy the criteria, and that is used.
- For other parts there are no other permits and Act 250 is the sole venue for communities, citizens and developers to demonstrate the integrity of a proposal and ensure that a proposal will be an asset to our state
- Hallmark of Act 250 has been openness to community and citizen participation.
- Act 250 provides an opportunity for feedback and a venue that helps bring developers and communities together in a way that focuses on the bigger impacts of proposals.

3. Act 250 & Climate Change

- Helpful, but not required to have a specific greenhouse gas (GHG) emission sub-criterion.
- US Supreme Court Case from 2007, *Massachusetts v. EPA*, states greenhouse gases are air pollutants and can be regulated by the EPA. A criterion that addresses air pollution already includes GHG emissions.
- Unfortunately it has not been a focus of Criterion 1 and a more explicit requirement may be helpful.
- Not aware that ANR has provided testimony or comments in Act 250 proceedings about the GHG emission impacts of developments, though they do that in applying the Act 250 criteria in utility (Section 248) proceedings.
- In 248 there has been good review of the Act 250 & climate aspects of energy projects with helpful testimony from air and GHG emission experts.
- RECOMMENDATION – add GHG to Criterion (a)(1) as being among the things the Commission must consider. Otherwise, it could be ignored:

- Page 32 -- “In making this determination, the District Commission shall at least consider: the GHG emissions and the air contaminants and noise.....”
4. Avoid / Minimize / Mitigate GHG Impacts
 - This can be pragmatic, but it may not be protective.
 - In other contexts where similar standards are used, e.g. wetlands and agricultural soils, it can result in jumping right to the “mitigation” and not actually reduce the impact.
 - If this provision remains, suggest it be used as a means to meet a standard and that there be clear rules about how to apply it and that it be used only as a last resort.
 5. GHG Standards
 - Johanna Miller suggested requiring reductions in line with the GHG reduction goals that are already in statute in 10 VSA section 578.
 - Could be helpful. But now these are only goals and there is no requirement that they be met. Another bill (H.462) is looking to make these goals actual requirements. With that, specifically referring to it and implementing it through Act 250 could be good.
 - RECOMMENDATION: pg. 32: “A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria: (1) The construction, use, operation, and maintenance of the development or subdivision will achieve commensurate progress toward the GHG reduction requirements set forth in 10 VSA sec. 578.”
 - Resilience is good to address.
 - RECOMMENDATION: pg. 33: Should also include wind or rain on (line 15) to “extreme temperature, wind or rain events”
 6. Flood Hazard Areas & River Corridors.
 - Helpful clarifications that incorporate what is already in place in terms of identifying & managing hazards in the river area, including erosion from extreme events.