

Act 250 Bill Recommendations – Committee Bill 19-0040

Vermont Planners Association

Alex Weinhagen, VPA Legislative Liaison

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Based on Committee Bill 19-0040, Draft 5.2, 1/23/2019

Thank you for inviting testimony from the Vermont Planners Association regarding the Act 250 bill (committee bill 19-0040). Please see below for VPA comments on specific provisions of the bill.

The Vermont Planners Association is a non-profit advocacy and educational organization of planners and related professionals. We are dedicated to the advancement of community planning in Vermont at the local, regional, and state levels, to foster vibrant communities and a healthy environment. More information is available on our website at www.vermontplanners.org. Our membership is diverse, including municipal planners, regional planning commission staff, private planning consultants, state planning professionals, etc. We also work to coordinate VPA's advocacy and education with other groups involved in planning policy such as VAPDA (VT Association of Planning & Development Agencies), VLCT, and the Agency of Commerce and Community Development.

1. Revisions to and greater use of the Capability and Development Plan.

- Reinvigorating the use of Capability and Development plan is positive.
- Use of maps to help inform the plan is very positive – particularly for judging conformance with Act 250 criteria #9.
- However, these maps should be developed at the local and regional level rather than the State level as proposed in the bill. Public participation is far more robust at the local and regional levels, as is expertise on the location, extent, and types of important map elements. Recent energy planning efforts across the state have followed this model successfully.
- Regional Planning Commission funding levels should be assessed to ensure there are adequate resources to facilitate these mapping efforts.

Recommended revisions:

- a. These maps should be developed from the bottom up (e.g., originating from regional plans with municipal input) rather than top down (e.g., State derived maps) as the draft bill indicates. Additional funding should be allocated to regional planning commissions to facilitate this effort. *Pages 24-25 – section 6030.*
- b. Mapping of existing settlements must start at the regional/local level, to leverage local and regional knowledge and public input. *Pages 24-25 – section 6030.*
- c. Even with a bottom up approach, caution about map accuracy should be noted in the legislation in order to avoid over reliance on broad scale maps that can suffer from accuracy, precision, and timeliness issues - i.e., not a substitute for site level assessment for the review of specific Act 250 projects. *Pages 24-25 – section 6030.*
- d. Sufficient time must be allotted for this effort. The effective date of the bill should either be extended, or some sort of phase in program should be included. *Page 81 – section 22.*

2. Amending the criteria to address climate change, including requiring projects to avoid, minimize, or mitigate greenhouse gas emissions and to be designed to withstand and adapt to climate change.

- We believe planning for these issues is important; however, the proposed criteria language on climate change and greenhouse gas emissions is problematic.
- Further research and discussion are needed before adding this language to criteria #1.
- Extending protections from floodways to river corridors will seriously hamper smartgrowth in many villages and downtowns. The bill language presents issues both in terms of jurisdiction (i.e., definition of critical resource areas) and Act 250 review criteria. Under the proposal, many small businesses in small villages around the state will face major barriers to even minor upgrades or expansions, while businesses on the outskirts of town (away from river corridors, and outside of existing settlements) will likely still benefit from the 10-acre lot jurisdictional loophole.

Recommended revisions:

- a. Delay adding climate change and greenhouse gas emissions to criteria #1 and direct further study by ANR and/or other issue-area experts. Require such a study to make recommendations and identify any unintended consequences (e.g., land use planning, housing cost/availability, economic development). *Pages 32-33 – section 6086(a)(1)(B).*
- b. Discuss whether climate change and greenhouse gas emissions should be addressed for all development, rather than having one standard for Act 250 projects and a lesser standard for non-Act 250 projects. For example, consider improved building codes, vehicle emission standards, etc. that would apply uniformly statewide outside of Act 250 review.
- c. Revise jurisdictional triggers and/or review criteria for river corridors to recognize the need for continued investment and development in existing settlements. Expand the enhanced designation concept (to make more villages and downtowns eligible), and/or include special criteria language that provides more flexibility within existing and planned settlement areas. *Page 12 – section 6001(45), critical resource areas definition. Page 35 - section 6086(a)(2)(d).*

3. Amending the criteria to address ecosystem protection through protecting forest blocks and connecting habitat. Better protect ecosystems on ridgelines by reducing the jurisdictional elevation threshold from 2,500 to 2,000 feet.

- Forest blocks and connecting habitat would be better addressed in criteria #9 rather than added under criteria #8. Criteria #9 addresses conformance with the capability and development plan, which per the bill language, will involve mapping of these and other resources – an important facet to protecting forest blocks and connecting habitat.
- Definitions for forest blocks and connecting habitat need to be clarified and vetted with VT ANR before these are added as Act 250 criteria considerations.
- More study is needed before changing the jurisdictional elevation trigger from 2,500 feet to 2,000 feet. This study should include an assessment of the sensitivity of lands in the elevation range between 2,000 and 2,500 feet. ANR staffing levels should also be assessed given that this and other proposed Act 250 jurisdictional changes will increase Agency work load.

Recommended revisions:

- a. Clarify and vet definitions related to forest blocks and connecting habitat with VT ANR before adding these criteria to Act 250 review. Perhaps this could be accomplished quickly – i.e., during

the legislative review process as opposed to a summer study and report requirement. *Page 10 – section 6001(38 & 39), connecting habitat and forest block definitions.*

- b. Once definitions are vetted, add appropriate forest block and connecting habitat language under criteria #9 instead of criteria #8. *Pages 38-39 – section 6086(a)(8)(B).*
- c. Delay changing the jurisdictional elevation trigger from 2,500 feet to 2,000 feet. Require a study to assess the sensitivity of that elevation range across the state. Consider whether clarifying sensitive resources in the Capability and Development Plan effectively addresses this issue without the need for an elevation-based jurisdictional change. *Page 6 – section 6001(3)(A)(vi).*
- d. Get recommendations from ANR on staffing levels necessary to address increased work load related to the various Act 250 jurisdictional changes contemplated in the bill.

4. Requiring that, to be used in Act 250, local and regional plans must be approved as consistent with the statutory planning goals.

- This is a positive change. Most local plans do get approved by the regional planning commission to this same standard in order to ensure municipal eligibility for certain State grants. However, this change will provide further incentive for municipalities to seek plan review and approval.
- Since regional plans have no existing approval process, the bill needs to establish the right review/approval entity. The bill proposes that the new Environmental Board serve this function, but we recommend an alternative model. Just as importantly, the bill needs to address how regional plans will be factored into Act 250 review in the interim – i.e., prior to approval of all the regional plans.
- The bill also needs to flesh out an appeal process for these approvals. Existing statute (Title 24, Chapter 117, Section 4476) provides an appeal process for decisions by regional planning commissions (i.e., approval of local plans). Unfortunately, this section of statute needs to be updated because it references an appellate body (the “regional review panel”) that is defined in another section of statute (section 4305) that was repealed.

Recommended revisions:

- a. Modify the bill language so that regional plans are approved by a Development Cabinet that is expanded for this function to include representatives with planning expertise – e.g., directors of two adjacent regional planning commissions, a representative from the VT Planners Association, and a representative from the VT Association of Planning and Development Agencies. *Pages 77-78 – section 2293(b).*
- b. Clarify and add to existing statute (Title 24, Chapter 117, Section 4476) to make either the existing Natural Resources Board or the new Environmental Board the body to hear appeals for regional plan approvals and for regional approval and/or confirmation of local plans and the local planning process. Board decisions on plan appeals could be further appealed to the VT Supreme Court as already outlined in Section 4476.

5. Eliminating Act 250 jurisdiction in enhanced designation areas. Enhanced designations being compact centers delineated by municipalities and approved by the Downtown Board, where robust local-level development review regulations and review ensures that effectively ensure compliance with Act 250 criteria.

- Reducing or eliminating Act 250 jurisdiction in existing and planned settlement areas delineated and approved by municipalities and regional planning commissions makes sense when the local level regulations and development review process are robust.

- State designations are too constrained to properly identify all areas that may be suitable for reduced Act 250 jurisdiction. These designations are not designed to identify the full complement of existing and planned settlements that exist in Vermont’s villages and downtowns, and their surrounding commercial, industrial, and residential areas. As such, simply enhancing the review of these designation areas is the wrong approach because the starting point is flawed. Defining areas with limited Act 250 jurisdiction should start with those existing settlements and areas identified as suitable for future growth in municipal and regional plans. A review to ensure municipal regulations address Act 250 criteria remains important, but should be based on existing and planned settlements identified in the plans.
- Clarification is needed regarding jurisdiction of critical resource areas within enhanced designation areas. The bill appears to limit Act 250 jurisdiction within enhanced designation areas but then also require jurisdiction within critical resource areas. Many Vermont villages and downtowns are located along river corridors (e.g., Montpelier, Johnson, etc.). Investments have been and are being made to ensure the safety of these existing settlements, historic buildings, and infrastructure. Planning for these areas includes recognition of river corridors and the ecological functions they serve. As such, limiting Act 250 jurisdiction within river corridor portions of an enhanced designation area is appropriate and important.

Recommended revisions:

- a. Revise the bill so that limitations on Act 250 review are tied to existing and planned settlements identified in approved municipal and regional plans. Retain an enhanced review component to ensure that local development review in such areas is robust, including regulations that address the substance of the Act 250 criteria. *Pages 54-55 – section 2739f.*
- b. Clarify that Act 250 review is limited in the entirety of the areas mentioned above – even if these areas contain critical resource areas. Proper planning for river corridors is already a requirement of municipal and regional plans. If further consideration of critical resource areas is deemed necessary, that can be addressed as part of the enhanced review of local level regulations and development review process. *Pages 5-7 – section 6001, development definitions.*

6. Requiring the Development Cabinet to meet regularly.

- This is a positive provision of the bill. Reinvigorating the Development Cabinet could have positive effects on statewide planning.
- As noted above, consider making the Development Cabinet “Plus” responsible for the review/approval of regional plans. The “Plus” being several extra members with planning expertise that would join the Development cabinet only when a regional plan review is needed.
- Giving the Development Cabinet a clear charge (i.e., regional plan approval) will help broaden its expertise and engage the involved Agency Secretaries in statewide planning goals.

7. Repealing the exemption for farming, logging, and forestry when those activities take place in critical resource areas.

- There are better vehicles than Act 250 to ensure that farming and forestry practices address environmental impacts. The recently strengthened Required Agricultural Practices for farming practices is one example. Similar best management practices for forestry operations also exist. These provisions could be strengthened if additional environmental protections are desired. The administration of these provisions could also be relocated to the Agency of Natural

Resources, Department of Environmental Conservation to better ensure that water quality and other concerns are properly vetted and enforced.

- As evidenced by its ten criteria, Act 250 review is designed for traditional development – e.g., houses, commercial buildings, parking lots, etc. These criteria are not well suited for the review of farming and forestry.
- As critical resource areas is currently defined in the bill, it will cast a very wide net over many agricultural operations within river corridor areas and forestry operations on slopes of 15% or greater. The Act 250 District Commissions are not equipped to handle such an influx of applications, and as noted above, there are better permitting pathways that could be bolstered that are specific to these land uses.

Recommended revisions:

- a. Revise the bill to retain the exemption for farming, logging, and forestry – even in critical resource areas. *Page 7 – section 6001(3)(D)(i).*
- b. Consult and work with ANR to legislate greater environmental protections for these land uses through existing review pathways (e.g., RAPs). Consider consolidating review and enforcement of water quality provisions in the ANR Department of Environmental Conservation.

8. Replacing the Natural Resources Board (NRB) with a Vermont Environmental Review Board (the Board), which would hear appeals from the District Commissions and the Agency of Natural Resources in addition to the NRB’s current duties. The Environmental Division of the Superior Court would continue to hear enforcement and local zoning appeals.

- The existing appeals system through the VT Superior Court, Environmental Division is problematic. It is cumbersome, expensive, and takes far too long to adjudicate appeals. Some also argue that it is too litigious with a focus on legal motions and arguments rather than on the goals of Act 250 and the planning precepts behind the ten criteria. With that said, there are pros and cons to the new appeals structure envisioned in the bill.
- One advantage of a Board-level process is that appeals would be decided by multiple people rather than a single judge. More perspectives is valuable in and of itself, but it also allows for different areas of expertise if each Board member is selected with that in mind.
- One real disadvantage is having two separate appeal pathways for Act 250 and municipal development review decisions. Consolidated appeals are a significant advantage of the current Environmental Division appeal process. Most Act 250 projects also require municipal permits, and to have appeals on both decided by different entities in the first round of appeal would make the current process more cumbersome, less timely, and more expensive. It would also make for an awkward final appeal to the VT Supreme Court (coming from two different appellate bodies), especially if conditions on one appeal conflict with conditions of the other appeal.
- It’s not clear which appeal process is better. What is clear is that additional resources will be needed, regardless of whether the current appeal system remains, or a Board-level appeal process is created. In other words, adequate professional staffing, administrative clerks, additional judges (if the bill is revised to retain the current system), etc. There were good reasons why the appeal system was modified to utilize the court (Environmental Division). It’s not clear that the advantages of reverting to the previous Board-based appellate system outweigh the benefits of the current system, even if the current system has issues and is in need of additional resources.