

VLCT TESTIMONY

89 Main Street, Montpelier, Vermont 05602

To: Members of the House Natural Resources and Energy Committee
From: Karen Horn, Director, Public Policy and Advocacy, khorn@vlct.org www.vlct.org
Date: February 13, 2019
Re: Act 250 Draft 10-0040

Thank you for the opportunity to testify regarding draft legislation to revamp Act 250. I was part of the Act 250 Commission group of advisors, attended several of the Commission’s work sessions and the facilitated public involvement exercise in Burlington. I also gave comments to the Commission on several occasions and provided technical information and data from towns as requested. We expressed our concerns with many of the recommendations in the Act 250 Commission Report, and welcome the opportunity to testify on the legislation.

Context of Act 250 Discussion. We are very concerned that Vermont’s growth is stagnant, our demographic is aging, and that even with exciting things happening in cities and towns around the state, word is not necessarily getting out to those we might want to attract to Vermont. Outside of a few areas of the state, this reality is readily apparent. We are working hard at the local level and with the Agency of Commerce and Community Development to foster right-sized investment in our towns and villages. On March 27, VLCT is hosting an Economic Development Forum at Burke Mountain Resort to help local officials build thriving local economies that generate revenue, attract new residents, create jobs, and preserve the unique attributes of each town.

We believe that the discussion about revising Act 250 must take place in the context of the current economic reality and that many components of the draft are unhelpful in that regard.

I need to dispel what seems to be a current myth that Vermont’s history is *only* compact settlement areas surrounded by countryside. There are school houses, cemeteries and cellar holes all over rural Vermont in the hills—places that were homes, that when you come upon them, make you stop and think what was the story here?

We do not endorse profligate building all over the forests and fields of the state. We agree that Act 250 is a valuable tool for producing thoughtful development in appropriate places. However, there is history here and the effort to move people into centralized areas and off the hills is not new. This is worth remembering as we address the future of rural Vermont – which is very different from the future of more urbanized Vermont. We believe both experiences may be accommodated in the context of today’s environment and climate change. It seems that the draft legislation in your committee may be swinging too far in the direction of restrictions. We also believe municipal plans are the best expression of those visions of our future.

In 1935, Representative George D. Aiken of Putney spoke to the federal Resettlement Administration about an essential piece of Vermont:

“Why do folks live in the hills?...The reason is that some folks just naturally love the mountains, and like to live up among them where freedom of thought and action is logical and inherent. I look off to the east and see Mount Monadnock rearing its peak through the clouds. Tonight the lights of the neighbors’ houses twinkle in friendliness and neighborliness from a dozen locations. Some of these neighboring houses are better than mine, some of them not quite so good. None of us would willingly move away.”

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Draft Legislation H. 197. We urge you to take up H. 197, which addresses the significant issues the draft 10-0040 has raised, and simplifies the process and the inter-relation between Act 250, other state permits, and plans at all levels.

Draft Legislation 10-0040.

Planning. The primary purpose of Act 250 today is to “encourage the appropriate development of all lands in this state by the action of its constituent municipalities and regions...” Duplicative permitting systems and planning imposed from the top down, do not accomplish that purpose. We hope that legislation will reduce redundancies that have evolved between Act 250 and state, federal and local jurisdiction over land use. The state’s laws and regulatory review responsibilities have expanded significantly in breadth and capacity since Act 250 was enacted in 1970. It is important to ensure that jurisdiction assumed by Act 250 neither duplicates nor contradicts other regulations or plans administered by state agencies or boards or by local governments, which have enacted comprehensive plans and bylaws.

We are concerned that the layering of a resuscitated Act 250 Capability and Development Plan over state agency plans, regional plans and local plans will be confusing and reduce the relevance of locally based planning efforts and visions.

More than 200 of Vermont’s 246 cities and towns currently have adopted plans and bylaws in accordance with the multitudinous provisions of Title 24, Chapter 117, the Municipal and Regional Planning and Development Act. They have been developed, adopted, and implemented by more than 2,300 planning and zoning commission and development review board members, who are dedicated to realizing community visions for growth, development, conservation, health and safety, and so much more. The chapter’s purpose section gives a taste of what is required.

“24 VSA § 4302 It is the intent and purpose of this chapter to encourage the appropriate development of all lands in this State by the action of its constituent municipalities and regions, with the aid and assistance of the State, in a manner which will promote the public health, safety against fire, floods, explosions, and other dangers; to promote prosperity, comfort, access to adequate light and air, convenience, efficiency, economy, and general welfare; to enable the mitigation of the burden of property taxes on agricultural, forest, and other open lands; to encourage appropriate architectural design; to encourage the development of renewable resources; to protect residential, agricultural, and other areas from undue concentrations of population and overcrowding of land and buildings, from traffic congestion, from inadequate parking and the invasion of through traffic, and from the loss of peace, quiet, and privacy; to facilitate the growth of villages, towns, and cities and of their communities and neighborhoods so as to create an optimum environment, with good civic design; to encourage development of a rich cultural environment and to foster the arts; and to provide means and methods for the municipalities and regions of this State to plan for the prevention, minimization, and future elimination of such land development problems as may presently exist or which may be foreseen and to implement those plans when and where appropriate.”

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In municipalities that have adopted zoning and subdivision bylaws, we believe it is appropriate for those regulations to guide commercial or industrial development on parcels of land involving more than ten acres of land. We urge you to consider delegating the responsibility for Act 250 to municipalities with duly adopted local zoning and subdivision regulations for those projects with local impact.

Definitions. The term “rural and working lands”, upon which much of Act 250 jurisdiction rests, is expansive. It is defined as an “area that is not in an existing settlement or critical resource area”. Likewise, the definitions of “forest block”, “greenhouse gas” and “fragmentation” are expansive. Their use in 10 VSA section 6086, reads as though permits would be unattainable on the basis of those definitions.

Compact Settlements and Designation Programs. We support the direction of the recommendation to recognize the heightened level of planning, design, and local regulation in designated downtowns, growth centers, new town centers and neighborhood development areas, as well as tax increment financing districts, and to remove remaining Act 250 jurisdiction from development in those areas. These are the places where proposed projects receive intense municipal scrutiny from both professional staff and local board members as they will come to define a community for decades to come. Project review at the local level is far more detailed than was even contemplated at the time Act 250 was enacted. We urge you to recognize the evolved regulatory environment, commitment to good design, and competence at the local level in those areas. However, we believe that towns will not seek enhanced designation the way it is proposed in the draft legislation as the threshold for approval is even higher than that established in current law.

Natural Resources Board Approval of Regional Plans. We oppose efforts to subject regional plans to approval by the Natural Resources Board or any other state entity. To do so makes a sham of the municipal involvement in adoption of regional plans or efforts to “solicit the participation of local citizens and organizations”.

VTrans. We continue to endorse the testimony from the Agency of Transportation that calls for eliminating redundancies between Act 250 criteria and other state permitting programs. Such redundancies complicate the review and implementation of transportation projects, including those that advance Complete Streets objectives, which integrate people of all ages and abilities in planning, design, construction, operation and maintenance of transportation networks.

State Permits. We urge you to strengthen the presumptions accorded to other state permits in recognition of their expanded breadth, the professional capacity of staff who implement them, and the new environmental notice bulletin, which makes it easier for all to navigate and comment on permits.

Aesthetics. Criterion 8 of Act 250 requires the district commission to find that a project “will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.” The “Quechee Analysis” is seen by many as a subjective assessment of aesthetics and was called out as such by participants in the Act 250 Commission’s Public Engagement Process. Visual impact assessments (VIAs) assess the visual character and quality before and after a project’s construction to evaluate the impact of proposed projects. The National Environmental Policy Act established that the federal government must use all practicable means to ensure that all Americans have access to safe, healthful, productive, and *aesthetically and culturally pleasing* surroundings. For decades, the Bureau of Land Management of the U.S. Department of the Interior, the Federal Highway Authority of the Department of Transportation, and the Department of Energy, among other federal

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agencies, have used the VIA tools to acquire consistent results in characterizing the visual impacts of proposed federally funded projects. We urge the commission to consider using VIAs to help assess Criterion 8, aesthetics.

There is much to digest in the draft legislation in this committee as well as in H. 197. Any revisions to Act 250 will significantly affect the Vermont landscape and the involvement of people in the planning and permitting process. This includes local officials who sometimes wonder why they invest time and energy in local planning when it is given short shrift at the state and in Act 250.

Thank you for the opportunity to testify.