

Act 250 Reform – Big Picture Recommendations

Vermont Planners Association

Testimony to the House Committee on Natural Resources, Fish and Wildlife
Peg Elmer Hough, VPA Legislative Committee, 4/7/2021



Key Reforms Needed

1. Act 250 State Planning and Policy Framework: Implement the Capability and Development Plan.

Recommendation: Update and implement the Capability and Development Plan (10 VSA § 6042) including state land use policies and maps, to provide the context needed to coordinate, inform, and guide Act 250 review, and in particular the review of development under Criterion 9 – project conformance with the state development plan. [see ‘study’ in H120]

- Clearly define and map critical statewide interests, as referenced in Act 250 for use in state agency, regional, and municipal planning and development review, for use by applicants in project development, and for consideration by District Commissions in the review of projects, and for consideration in municipal, regional, and state agency planning.
- Update Capability and Development Plan policies for consistency with more recently enacted state planning, development and smart growth policies under 24 V.S.A. § 4302 (as referenced) which are intended to guide and coordinate municipal, regional and state agency planning.
- Use the Capability and Development Plan to improve the consistency of Act 250 decisions through the use of clear and consistent mapping and statewide policies.
- Use the Capability and Development Plan to determine project conformance with the plan as required under Criterion 9, including associated sub-criteria.

Recommendation: Establish the basis for project “conformance” with municipal and regional plans (Criterion 10).

- Require that for consideration in Act 250 proceedings municipal plans be reviewed and approved by Regional Planning Commissions to ensure that they are complete (required elements and maps) and consistent with state land use policy. [see H120]
- Require approval of regional plans. Establish an approval mechanism – e.g., by the Natural Resources Board, or by a regional review panel as outlined in 24 VSA § 4476, etc.
- Insert in statute the Vermont Supreme Court test for “conformance with plan.” [see H120]

2. Update Act 250 criteria in light of new science and emerging issues.

Recommendation: Update Act 250 criteria for conformance with current state land use policies including an updated Capability and Development Plan, current state energy and hazard mitigation plans, current state rules, and updated science; and to address emerging issues.

- Ensure Act 250 criteria respond to climate mitigation and adaptation, farm and forest fragmentation.
- Ensure Act 250 criteria measure the secondary and cumulative impacts of development.
- Ensure Act 250 criteria support planned settlement patterns existing infrastructure, context sensitive siting and design.
- Use Act 250 criteria to ensure consistency with state clean transportation goals. [see climate adaptation H120; planned settlement, infrastructure, alternative transportation H400/S112]

3. Update Jurisdiction and Exemptions reflecting state planning policy and mapping.

Recommendation: Limit Act 250 jurisdiction in areas intended for growth that also have rigorous planning and municipal development review protocols. Specifically, limit Act 250 jurisdiction in State designated downtowns, growth centers, new town centers, and neighborhood development areas. Also, commit to studying similar options for well-planned rural growth areas – e.g., in/around village center designation areas. [see H.400/S.112]

- Establish an appeals process for Downtown Board decisions where Act 250 jurisdiction is extinguished.
- Release an existing Act 250 permit for projects never undertaken. [see H.120]
- Provide jurisdictional release from an existing Act 250 permit for projects within new exemption areas, while recognizing that a mechanism for preserving appropriate permit conditions is needed. [see H400/S112]
- Direct ANR to further study procedures, criteria and staffing needs to support a permit program based on principles of “avoid, minimize and mitigate” impacts to forest blocks and wildlife areas.
- Address river corridors under relevant criteria rather than expanding jurisdiction to any project in a river corridor area, with appropriate consideration for development within existing settlements. River corridor areas currently lack an effective map amendment process, are non-responsive to parcel scale geological conditions and existing settlement patterns (including local infrastructure commitments).

Recommendation: Study overall jurisdiction and exemptions in relation to State planning goals (24 V.S.A. § 4302), and as informed by an updated Capability and Development Plan.

4. Improve the Natural Resources Board and District Commissions without dismantling the system.

Recommendation: Preserve District Commissions as originally conceived of in Act 250 as a “citizen-friendly” review process.

- Require relevant qualifications and/or experience for board and commission appointments.
- Improve the consistency of decisions across District Commissions and District Coordinators. Multiple ways to accomplish this – e.g., greater policy guidance from the Natural Resources Board, improved training, etc.

Vermont Planners Association

VPA is a non-profit advocacy and educational organization of over 150 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. We are a section of the Northern New England Chapter of the American Planning Association. More information is available online at <https://nne.planning.org/sections/vermont>. Our membership is diverse, including municipal planners, regional planning commission staff, private consultants, state planning professionals, etc.

VPA has been very involved in the Act 250 reform effort. We served as an advisor to the Act 250 Commission, organized a well-attended Act 250 reform conference at VT Law School in May 2018, provided a comprehensive set of reform recommendations to the Act 250 Commission in November 2018, and provided testimony on multiple occasions to the House Natural Resources, Fish and Wildlife Committee during the 2019 session and the 2020 session.