

Act 250 Proposed Language for Transportation Projects



SENATE NATURAL RESOURCES COMMITTEE APRIL 19, 2021 MICHELE BOOMHOWER, VT AGENCY OF TRANSPORTATION VTrans proposes to:

- Continue its in-depth environmental review of projects
- Modify its means for calculating jurisdictional threshold under Act 250
- Minimize redundancy
- Minimize project delays



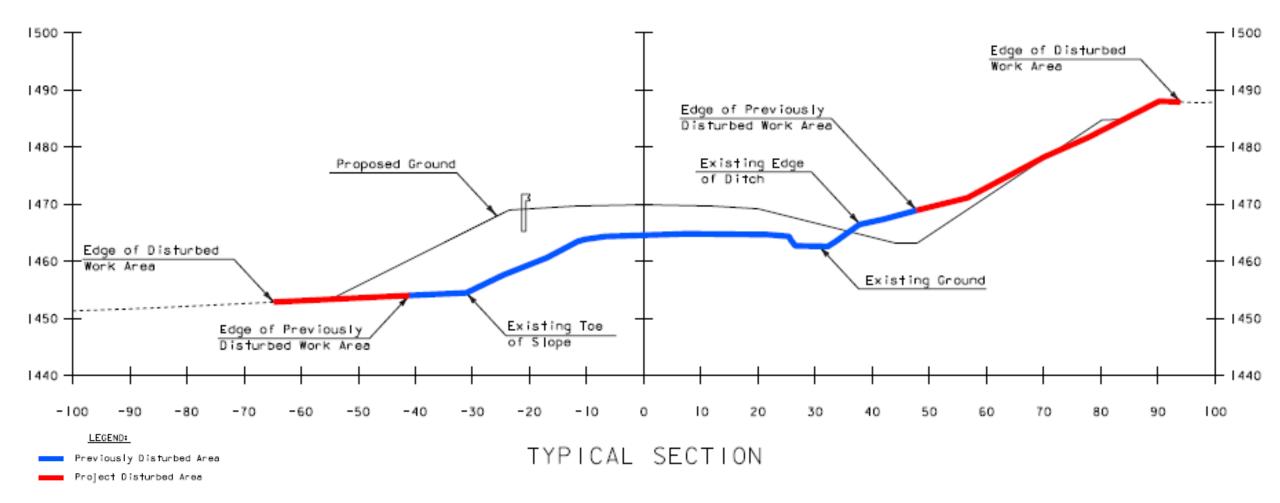


Project Environmental Milestones:

- Resource ID
- NEPA (National Environmental Policy Act)
- Permitting
- ➢ NEPA Re-Evaluation

Environmental Review of Projects





CALCULATION - EXAMPLE ROADWAY CROSS SECTION

blue = previously disturbed area to be excluded from jurisdictional calculation red = newly disturbed to be included in jurisdictional calculation



MISSISQUOI RIVER



 Disturbed area calculated to be approximately 24.0 acres via current practice (depicted within the bounds of green and red shading)

 All but approximately 10.6 acres of that (green shading) is on what would be considered previously disturbed soil (red shading).

CALCULATION - EXAMPLE ROADWAY PLAN VIEW

red = previously disturbed area to be excluded from jurisdictional calculation green = newly disturbed to be included in jurisdictional calculation



AOT projects with 10 acres or more of new disturbance will continue to fall under Act 250

- Projects which result in land use changes such as
 - corridor projects with new climbing lanes or additional turning lanes,
 - major realignments,
 - new interstate exits

Example Projects - Champlain Parkway; Pittsford/Brandon; Cabot/Danville; Exit 12B South Burlington

WHAT REMAINS UNDER ACT 250 JURISDICTION?



AOT projects with 10 acres or less of new disturbance will not be subject to Act 250 jurisdiction

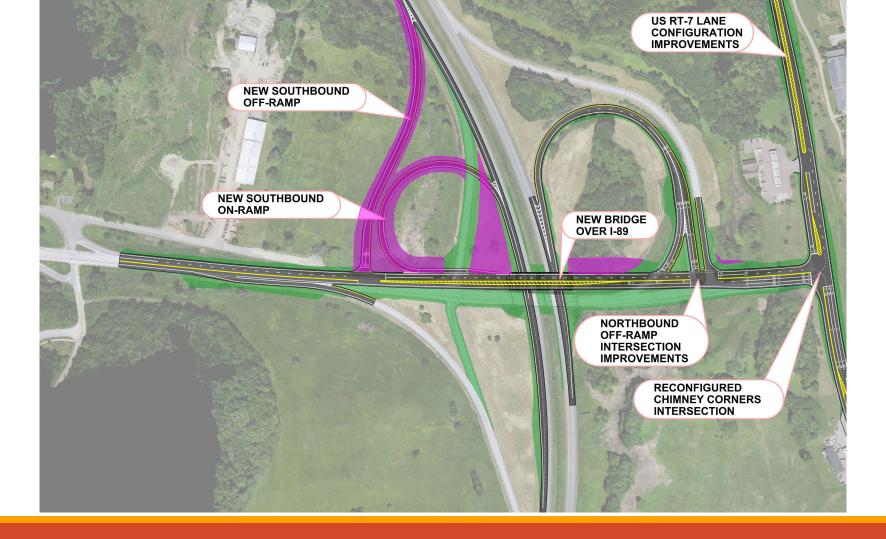
- Reconstruction and upgrades of existing infrastructure such as
 - reconstruction of roads on existing alignment,
 - intersection updates,
 - upgrades to sidewalks, pathway, etc. Example Project – Colchester Exit 17

WHAT CHANGES?



Project	Current Jurisdiction		Proposed Jurisdiction		Project Length (miles)	Comments
	Calc (acres)	Permit Req	Calc (acres)	Permit Req		
Charlotte Route 7	42.2	Yes	5.9	Ν	2.9	The existing roadway was wide and new disturbance was related mostly to temporary impacts associated with lane shifts to allow for two-way traffic during construction.
Colchester Exit 16 DDI	17.7	Yes	2	N	1.1	Project has been delayed due to hearings related to appeals by interested party. The proceedings have added substantial time and money to the project.
Colchester Exit 17	21.6	Yes	3.5	N	Non-Linear2.5 miles including US Route 2, I-89, I- 89 ramps, and US Route 7	It is the opinion of VTrans that this project does not represent a substantial change to a pre-existing development; however, the Commission did not agree.
Cabot Danville	20.3	Yes	5	Y	1.4	This is part of a corridor project constructed in Contracts. The analysis was for one of four contracts so the total for all 4 would surely be > 10 acres; thus, fall under jurisdiction of the newly proposed language.
Pittsford Brandon	21.8	Y	4.75	Y	1.4	Similar to Cabot Danville; this project was evaluated as only one of several segments of a corridor. The total project would surely include > 10 acres of new disturbance; thus, fall under jurisdiction of the proposed language.
Brattleboro Interstate Bridges	>10	No	N/A for this exercise	Unknown	Non-Linear	Jurisdictional Opinion written to determine the project did not constitute a substantial change and thus Act 250 did not apply.
Swanton	24	Yes	10.6	?	5.7	It is the opinion of VTrans that this project does not represent a substantial change and will seek a JO from the commission.

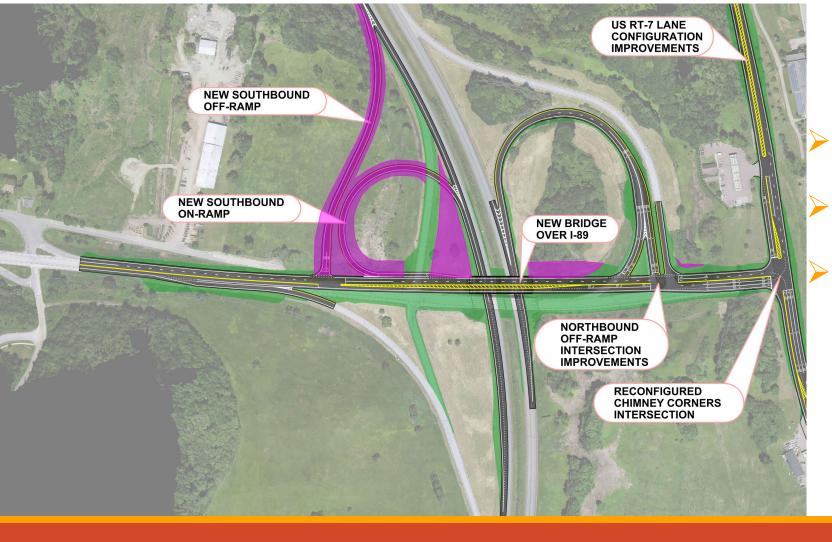
JURISDICITIONAL DIFFERENCES



EXAMPLE PROJECT

green shading = previously disturbed area to be excluded from jurisdictional calculation red shading = newly disturbed to be included in jurisdictional calculation





- Project schedule and cost impact
- Redundant permit conditions
- No change to the project

EXAMPLE PROJECT Efficiency and Redundancy





INTER-OFFICE MEMORANDUM

AOT - PDB - ENVIRONMENTAL SECTION

PERMITTING & CLEARANCES REQUIRED

TO:
COPY:
FROM:
PROJECT:

, Project Manager

DATE:

Environmental Section Project File; Central Files; (and Consultant)

, Environmental Specialist

At this time and based on the review of the Preliminary Plan set, Project Impact Data Form, and supporting documentation dated (date), the following permits will be required for this project to advance. Changes in scope of work may require additional permitting. The Environmental Section (or Consultant on retainer) will commence permitting (define roles and responsibilities on permitting and NEPA)

STATE	APPROVALS (REQUIRED):	FEDER	AL APPROVALS (REQUIRED):
	VTrans Historic Preservation & Archaeological Officers (22 V.S.A. Ch 14)		Section 106 Evaluation (16 U.S.C. National Historic Preservation Act)
	1272 Order (10 V.S.A. Ch 47, Section 1272) Stream Alteration Permit (10 V.S.A. Ch. 41) and Consultation (19		Section 4(f) Evaluation (23 U.S.C. 138 Preservation of Parklands & 49 U.S.C. 303)
	V.S.A. Ch. 1, Section 10[12]) Stream Obstruction Permit (10 V.S.A. Ch 111, Section 4607) NPDES Construction General Permit (40 C.F.R. Part 122.26 –		Section 6(f) Evaluation (16 U.S.C. Ch 1, Section 4601-4 Land & Water Conservation Fund) USDA Green Mountain National Forest Authorization under
	Title 10, V.S.A. Ch 47) – NOI Authorization to Discharge required prior to construction for >/= 1 acre disturbance: o Construction Stormwater Individual Permit o CGP #3-9020(2006) Low or Moderate Risk		FHWA MOU 401 Water Quality Certificate (33 U.S.C. Ch 26, Clean Water Act, Section 401)
	VTrans EPSC Plan Pursuant to PDD Directive to comply with "VANR Low Risk Handbook for projects under 1 acre:		404 Corps of Engineers Permit (33 U.S.C. 1344 Clean Water Act, Section 404) (Can waive 401 Water Quality Certification)
	Storm Water Discharge Permit:		NEPA Documentation via FHWA (23 C.F.R. Part 771.117)
	 Individual Permit 		NEPA Documentation via FAA NEPA Documentation via FRA
	 GP #3-9015 ACT 140 – Stormwater Discharge GP #3-9010(2003) 		NEPA Documentation via FKA NEPA Documentation via FEMA
_	• "WIP" Watershed Improvement Permit		RCRA (Resource Conservation & Recovery 42 U.S.C. Ch
	Underground Injection Permit Compliance with MS4 GP-3-9014.		82)/CERCLA (Comprehensive Environmental Response, Compensation, & Liability Act 42 U.S.C Ch 103)
	Compliance with TS4 GP		US Coast Guard (33 U.S.C. 403 Rivers & Harbors - Sec. 10 Navigable Waters)
	State Wetland Permit (10 V.S.A. Ch. 37, Section 905 [7-9] [1986])		USCG Section 144(h) (23 CFR 650.805 and 33 CFR 115.50(c) & 115.70(a))
	Lakes and Ponds Permit (29 V.S.A. Ch 11) Threat. and End. Species Permit (10 V.S.A. Ch 123)		Floodplain Management - FEMA (Floodway and Floodplain) & Executive Order 11988
	Act 250 Land Use Permit (10 V.S.A. Ch 151)		Wetland Protection (Executive Order 11990)
	Agency of Agriculture		Wild and Scenic Rivers Act 1982
	Hazardous Waste (10 V.S.A. Ch 159)		Environmental Justice (Executive Order 12898)
	Insignificant Waste Management Event (10 V.S.A. Ch 159)		Farmland Protection (7 U.S.C. Part 658)
	Dam Construction Permit (10 V.S.A. Ch 43)		Fish & Wildlife Coordination Act (16 U.S.C. Part 661 – 666)
	Scenic Roads (10 V.S.A. Section 425 & 19 V.S.A. Ch 25) Flood Hazard Area and River Corridor Permit (10 V.S.A. Ch. 29)		Clean Air Act (42 U.S.C. Ch 85 and 23 U.S.C. Ch 1, Section 109[J])
	Shoreland Protection Permit (10 V.S.A. Ch. 49A) Other State Clearances and Approvals (see below):		Endangered Species Act (16 U.S.C. Section 1531 – 1534) – USF&W Service Section 7 consultation
	o		Other Federal Clearances and Approvals (see below) o

I will contact you to discuss permitting and clearances requirements. Feel free to contact me at your convenience if you have any questions.

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Attachments (Plan Cover Sheet) (Project Impacts & Clearance Data Memo)



Cr	iterion(1)	Description	Potential Impact(2)	Notes/Comments	Associated Collateral Permit/Reviews	
1		Air & water pollution	Minor, Temporary, Long-term Beneficial	Temporary air pollution impacts during construction; post construction improvement due to reduce idling. Water pollution detailed below.	DEC Const. Phase SW Permit / NEPA	
1	А	Headwaters	None	Project not located in headwaters area.	NA DEC Drinking Water and Groundwater Protection / 401 Water Quality Certification	
1	В	Waste disposal	Minor, Temporary, Long-term Beneficial	Construction waste management, design to incorporate operational phase stormwater management which would bring about improved water quality compared to existing conditions. Short-term impact during construction phase.	DEC Const. Phase SW Permit/DEC Op. Phase SW Permit / NEPA	
1	С	Water conservation	None	Project would not impact water conservation as it has no associated long-term water use. Not applicable.	NA [DEC Wastewater System and Potable Water Supply Permit]	
1	D	Floodways	None	No FEMA mapped floodplains in the Project Area.	NA [DEC Flood Hazard Area River Corridor Permit] / NEPA]	
1	E	Streams	None	The Project avoids all work within the area of the perennial stream.	NA [19 VSA Ch1 Section 10(12) "Title 19" DEC River Mgt Consultation / NEPA]	
1	F	Shorelines	None	None present in the Project Area.	NA [DEC Lake Encroachment Permit / DEC Shoreland Permit]	
1	G	Wetlands	Moderate	Impacts to Class II wetlands and buffers associated with the Project. Would likely meet threshold for individual VWP and Section 404 permit. Depending on the degree of impact a mitigation and/or in lieu fee may be required.	Vermont Wetlands Permit / USACE Section 404 Permit / Section 401 WQC (potential) / NEPA	
2, 3		Water supply	Minor, Temporary	Project would use limited amounts of water during construction and would not use water for operation. Not located with surface or groundwater source protection area. There are several private wells in the vicinity, but little or no blasting is anticipated during construction.	NA [DEC Wastewater and Potable Water Supply Permit / NEPA]	
4		Soil Erosion	Minor, Temporary	EPSC plan and DEC construction stormwater permit would be required for construction phase stormwater management.	DEC Const. Phase SW Permit / DEC Op. Phase SW Permit	
5	А	Traffic	Minor Temporary, Long-term Beneficial	Reconstruction of the transportation infrastructure through this Project is intended to mitigate existing traffic safety issues. Temporary traffic impacts during construction would be mitigated through the implementation of a comprehensive Transportation Management Plan and Smart Work Zone deployment. Project is intended to mitigate existing traffic safety issues. Traffic study shows the long-term alternatives considerably improve traffic flow.	NEPA	
5	В	Transportation	Minor Temporary, Long-term Beneficial	The proposed interchange improvements incorporate enhanced bicycle facilities. The Chimney Corners Park and Ride is the only public transportation in the area. No impacts are proposed to the facility and it would continue to be utilized and maintained.	NA [NEPA]	
6		Educational services	None	No effect.	NA [NEPA]	
7		Municipal services	Minor Temporary, Local, Long-term Beneficial	Long term improvement due to anticipated reduction in traffic congestion. Short-term impact during construction.	NA [NEPA]	
8		Aesthetics, scenic and natural beauty	Minor Project area highway current/future includes infrastructure would not appreciably change the landscape.		NEPA	
8		Historic sites & archeology	None	Hartgen conducted a Phase IB archeological survey in November 2018. No precontact cultural materials or potentially significant historic deposits were recovered during the Phase IB testing, and no further archeological work is recommended for the project as presently designed.	Section 106 and 404 Review Section 4(f) NEPA	
8		Rare and irreplaceable natural areas	Minor	No DEC-mapped significant natural communities are mapped within the Project Area. Very minimal impacts to a potential significant natural community are possible due to the reconfiguration of the signalization at the Chimney Corners intersection.	NEPA [F&W Coord]	
8	А	Necessary wildlife habitat and endangered species	None to Minor and Local	No known necessary wildlife habitat areas, rare and endangered species, or deer wintering areas are located within the Project Area. VTFWD would be consulted for tree cutting.	he NEPA [F&W T&E Permit / Fed ESA Permit]	
9	A	Impact of growth	None	The Project involves improvements to an existing highway interchange facility to accommodate growth in the surrounding towns and counties and is not a trip generator.		
9	В	Primary agricultural soils	Minor	The relocated southbound off ramp would unavoidably impact 0.88 acres of primary agricultural soils. AAFM has issued a letter to VTrans and VHB indicating concurrence with the de minimis conclusion and indicating that no mitigation would be required.		
9	С	Productive forest soils	None	Not located in an area of productive forest soils. Authorizatio		
9	D&E	Earth Resources and Extraction of Earth Resources	None	This Project is not located in an area with potential for extraction of earth resources. These criteria are not applicable to the Project.		
9	F	Energy conservation	None	Not applicable.		
9	G	Private utility services	None	There are no private utilities associated with the Project.		
٩	ц	Scattered development	None	Would not place an excessive or uneconomic demand on any governmental or public facilities or services. Improved travel	NA	

9	Н	Scattered development	None	Would not place an excessive or uneconomic demand on any governmental or public facilities or services. Improved travel times would be a primary economic benefit.	NA [NEPA]
9	J	Public utility services	Minor and Local	Existing public utilities would remain available following the construction of the Project. Some utilities would require relocation or alteration to accommodate Project design.	NA [NEPA]
9	к	Public investments	None	Park and Ride facility to be maintained.	Section 4(f) / NEPA
9	L	Settlement patterns	None	Would make efficient use of existing highway infrastructure.	NA [NEPA]
10		Local and regional plans	None	Work planned for Exit 17 in conformance with Colchester Town Plan, 2018 Chittenden County Plan, and CCMPO Metropolitan Transportation Plan.	NEPA

NOTES:

1. List of criteria based on NRB website (http://nrb.vermont.gov/act250-permit/criteria; accessed April 2018) and 10 V.S.A. § 6086

2. Explanation of Impact Terms:

None: Project is not expected to result in any impacts. Minor: Project impacts would be expected to be measurable, but not significant

Moderate: Project impacts greater than minor are possible. Further assessment is needed to determine level of significance and adversity

Local: Impact would only occur in the nearby Project vicinity

Temporary: Impacts would be limited to Project construction phase Long Term: expected to exceed Project construction phase Beneficial: Project impact expected to result in a favorable outcome

Also, note that all impacts are presumed to be permanent, unless noted above as Temporary

Bolded indicated reviews relevant to Exit 17 Project; unbolded indicate permit related to criterion but not needed for this project.

State and Federal Project Permitting Requirements

Michele Boomhower February 7, 2020

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InterfaceInterfaceInterfaceInterfaceNUMPERNU	or toxic substances into ground waters.		Permit; 7) NPDES Construction General Permit (40 C.F.R.	
			Discharge required prior to construction for >/= 1 acre	
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1	[AGENCY OF TRANSPORTATION PROPOSAL ON ACT 250 -
2	EXCERPT FROM <u>H.433 PROPOSALS, v. 4.1]</u>
3	* * * Act 250 Transportation Projects * * *
4	Sec. 28a. 10 V.S.A. § 6001(3)(A) is amended to read:
5	(3)(A) "Development" means each of the following:
6	<mark>* * *</mark>
7	(v) The construction of improvements on a tract of land involving
8	more than 10 acres that is to be used for municipal, county, or State purposes.
9	In computing the amount of land involved,:
10	(I) land Land shall be included that is incident to the use, such
11	as lawns, parking areas, roadways, leaching fields, and accessory buildings.
12	(II) Land that was previously disturbed as the result of
13	construction of a transportation facility shall be excluded from computing the
14	amount of land involved, provided that the project subject to this exclusion is a
15	transportation project that is funded in whole or in part by federal aid. This
16	exclusion shall not apply to the creation of new or additional points of access
17	to, or exit from, the Dwight D. Eisenhower National System of Interstate and
18	Defense Highways. As used in this subdivision (II), "previously disturbed"
19	means land that has been changed by previous installation of transportation
20	facilities, including roads, railroads, runways, trails, sidewalks, ditching,
21	drainage features, ledge removal, utility work, clear zones, or other similar
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- features associated with such facilities.

 Sec. 28b. 10 V.S.A. § 6001 is amended to read:
 § 6001. DEFINITIONS

 (38) "Transportation facility" means highways, sidewalks, and bicycle
 paths, as defined under 19 V.S.A. § 2301; State-owned railroad or railbanked
- 8 lines; and runways at State- and municipally owned airports.