

NRB Study - LEGISLATIVE CHARGE

In Act 182 of 2022 and Act 47 of 2023, the Vermont Legislature charged the NRB with drafting a report to address the following issues:

• How to transition to a system in which Act 250 jurisdiction is based on location, which shall encourage development in designated areas, the maintenance of intact rural working lands, and the protection of natural resources of statewide significance, including biodiversity. Location-based jurisdiction would adjust the threshold for Act 250 jurisdiction based on the characteristics of the location. The report shall also consider whether to develop tiers of jurisdiction—defined as areas with different levels of development potential—as recommended in the Commission on Act 250: the Next 50 Years report.

- An assessment of the current level of staffing of the Board and District Commissions, including whether there should be a district coordinator located in every district.
- Whether the Act 250 permit fees are sufficient to cover the costs of the program and, if not, a recommendation for a source of revenue to supplement the fees.
- Whether permit fees are effective in providing appropriate incentives.
- Whether the Board should be able to assess its cost on applicants.
- How to use the Capability and Development Plan of 1973 to meet the statewide planning goals.
- Whether increasing jurisdictional thresholds for housing development to 25 units under 10 V.S.A. § 6001(3)(A)(iv) would affect housing affordability, especially for primary homeownership, and what the potential impact of increasing those thresholds to 25 units would have on natural and community resources addressed under existing Act 250 criteria.

NRB Study Steering Committee Membership:

Andy Rowe	Engineer and Consultant, Snyder Homes
Jon Groveman	Vermont Natural Resources Council
Peter Gregory	Two Rivers-Ottawaquechee Regional Commission
Tom Litle	District 4 Environmental Commission Chair
Geoff Hand	Attorney
Judge Thomas Zonay	Vermont Judiciary
Brent Rakowski, P.E.	Engineer, Oter Creek Engineering
Chip Sawyer	Director of Planning and Development, City of St. Albans
Megan Sullivan	Vice President, Vermont Chamber of Commerce
Kathy Beyer	Senior Vice President, Evernorth
Charlie Hancock	Forest Consultant, North Woods Resource Group
Xusana Davis/Jay Greene	Vermont State Office of Racial Equity
Kirsten Sultan	District 7 Environmental Coordinator
Billy Coster	Agency of Natural Resources
Sabina Haskell	Natural Resources Board
Peter Gill	Natural Resources Board

NRB invited **over 60 Vermonters** with relevant experience and expertise to join seven advisory groups focused on the topics of:

- Legal Issues
- Permitting and Development Logistics, Barriers and Opportunities
- Environmental Issues
- Housing/Economic Development/Environmental Justice
- Local and Regional Planning
- Working Lands
- Act 250 Coordinator Roundtable

NRB Study – Tiered Approach to Jurisdiction:

- NRB Study recommends:
 - Tiers 1A/1B – exemptions in planned growth areas
 - Tier 2 – status quo with addition of an updated Road Rule
 - Tier 3 – areas of automatic jurisdiction

- NRB Steering Committee Tier 3 discussion considered:
 - VCD [highest priority interior forest blocks](#)
 - VCD [highest priority connectivity blocks](#) @ 2.8M acres
 - Necessary Wildlife Habitat, e.g. [DWA necessary wildlife habitat](#) @ ~597,000 acres.
 - River Corridors and Floodplains
 - DEC Mapped River Corridors cover approx. 209,000 acres, 12,000 buildings, 5600 miles.
 - Class A1 water - [Water Reclassification Candidates](#)
 - Elevational Triggers (1500', 2000', etc.)
 - And others...

For comparison's sake, the Steering Committee also considered the current extant of state designated areas as proxy for what may eventually comprise Tier 1A/1B.

As of March 2023, the 274 state designated centers included just under 22,000 acres, or 1/350th the state's total land area - [Designation Program Overview](#).

Ultimately the Steering Committee concluded that **no existing mapped layer or combination of layers clearly emerged as an automatic Act 250 trigger**, and that **more work is necessary** to analyze existing maps, consider development trends/data and engage with communities to establish an appropriately sized and effective Tier 3.

The NRB Study's Tier 3 discussion recommendation are as follows:

NRB Study – Tier 3: Overview and Definition

Tier 3 is intended to protect a subset of the state’s ecologically important natural resource areas. Tier 3 is a counterbalance to Tier 1 exemptions and is a critical part of the tiered jurisdictional approach to ensure that critical natural resources are protected.

Currently, development at higher than 2,500 feet in elevation automatically triggers jurisdiction because of the sensitive ecosystem above that elevation. There are other critical natural resource areas that could be protected by Act 250. The Steering Committee recommends creating a Tier 3 to protect critical natural resources in addition to the protections provided in Act 250 to address development above 2,500 feet. **Any designation of specific Tier 3 areas will require further analysis based on good science, careful mapping, and public engagement.** This report outlines a process and makes general recommendations for consideration before any phase of a Tier 3 can be codified.

Forest fragmentation also emerged as an issue of concern. Act 171 directs towns to assess forest blocks and habitat connectors and incorporate this information into a future land use map as part of the town plan. Building on Act 171, municipal identification of forest blocks and habitat connectors could be aided by mapping assistance from the respective Regional Planning Commission and approval of Tier 3 designated areas by a state agency. **The expectation is that Tier 3 would apply to a small area of the state.**

Recommendation Jurisdiction Tier 3: The purpose of Tier 3 is to address ecologically important natural resource areas where Act 250 jurisdiction can provide more protection. Within identified and mapped Tier 3 areas, Act 250 jurisdiction would be automatic.

Recommendation—Tier 3 Designation process: Each respective Regional Planning Commission would recommend a mapping process for identifying Tier 3 areas. **This should involve a process for reviewing existing maps (such as Vermont Conservation Design drafted by the Agency of Natural Resources and other available science-based resources), a process for public comment, and authorization of a statewide board to review and approve Tier 3 designations.**

Each Regional Planning Commission would be primarily responsible for conducting the mapping, in consultation with municipalities, based on consistent and robust standards, and with additional resources and technical support from the state. The Regional Planning Commissions would submit their maps to a statewide entity for approval through a public process, with opportunities for public comment and appeal. This could be the same entity responsible for reviewing and approving Tier 1A and Tier 1B designated areas. Municipalities would have an opportunity to oppose and/or appeal the Regional Planning Commission’s proposed maps if they disagree with the Regional Planning Commission’s determinations.

H.687 Critical Resource Area

(50) "Critical resource area" means a river corridor, a significant wetland as defined under section 902 of this title, ~~land at or above 2,000 feet~~, land characterized by slopes greater than 15 percent and shallow depth to bedrock, an area with any amount of prime agricultural soil, and a parcel containing all or part of a connecting habitat.

Like the areas considered by the NRB study, H.687's current definition **includes potentially expansive areas of the state**, which, as you have heard from other witnesses, **may not be the best indicators of critical resource areas that warrant automatic Act 250 jurisdiction.**

ANR supports the NRB Study recommendation that **more analysis is needed to define Tier 3** and agrees with others that have testified in this committee that the current Critical Resource Area definition may not target Act 250's limited regulatory capacity where it is most necessary or effective.

So where do we go from here?

The Planned Growth Area Analogy

H.687 currently requires proposed Tier 1A Areas meet 11 separate requirements, that taken cumulatively, qualify the area for Act 250 exemptions:

(b) Planned growth area designation requirements.

*(1) To obtain a Tier 1A planned growth area designation under this section, a municipality must demonstrate to the Board that it has **each** of the following:*

[A through K]

Unlike the current H.687 Critical Resource Area proposal that lists individual elements – any of which can qualify the area as a CRA– the Planned Growth Areas must meet all the criteria to qualify.

This approach of stacking of attributes to identify areas with the highest value or risk is common in natural resource planning, and one that could be effective in identifying Critical Resource Areas that are targeted, reasonable in size and that effectively deploy limited Act 250 capacity to there areas of most need.

However, this is a detail and data rich analysis, that requires expertise, iteration and that takes time.

Options to Further Refine Critical Resource Areas

1. A la Carte Menu for Regional Planning Commissions to map Tier 3 areas.
2. Expert Working Group to establish criteria for Tier 3, in advance of RPC process.

ANR strongly recommends Option 2.

Either approach should consider not only resource maps, but also development and subdivision trends to consider resource value in the context of risk, such as VRNC's subdivision data, and data shared by VCGI on new E911 addresses.

Either approach **must** involve robust public outreach and engagement, especially with Vermonters who own land in areas completed for Tier 3 designation. Vermont has prioritized environmental justice in policy making, and the changes contemplated in H.687 more than most necessitate good public engagement. Act 154 of 2022 created an Environmental Justice policy for the state:

*It is the policy of the State of Vermont that no segment of the population of the State should, because of its racial, cultural, or economic makeup, bear a disproportionate share of environmental burdens or be denied an equitable share of environmental benefits. **It is further the policy of the State of Vermont to provide the opportunity for the meaningful participation of all individuals, with particular attention to environmental justice focus populations, in the development, implementation, or enforcement of any law, regulation, or policy.** (3 V.S.A. §6003)*

The Committee may find useful a letter ANR recently submitted to the Senate Committee on Natural Resources and Environment on this topic, as it relates to another pending piece of legislation: [ANR EJ Letter - S.213](#)

Through our Environmental Justice and Climate Action Offices, ANR is developing new ways to engage the public in policy decisions, that are more inclusive and meet Vermonters where they are. Examples include the process the Public Service Department undertook regarding updates to Vermont Renewable Energy Standard, [Overview of Energy Issues January 15, 2021 \(vermont.gov\)](#), and the [Vermont Climate Engagement Plan](#) developed by ANR as part of our work supporting implementation of the Global Warming solutions Act.

Before any of the Tiers are finalized, the NRB should be professionalized and given time to establish themselves, before approving the RPC Tier areas and implementing the Tiered jurisdictional structure.