

Option 1- Preferred Municipal Delegation Route

Notes about this option:

- Maintains 24 VSA §4420, which is the existing, but very limited, authority for local review of municipal impacts for Act 250 permits (includes Act 250 criterion 6, 7 and 10 only).
- Builds on §4420 by creating another tier, which includes full delegation of review of all Act 250 criteria across an entire municipality, based on an agreement with the NRB Director that finds a municipality's local zoning and ordinances are functionally equivalent to Act 250's review criteria. This is modeled closely on existing Shoreland Delegation statutes (10 VSA §1448). (See Burlington, Winooski & South Burlington technical memo regarding this distinction.)
- Does not use Enhanced Designation idea as currently proposed in S.100.
- This option relies on the current proposal in S.100 that raises the threshold for Act 250's applicability for a development from 10 to 25 units. The City of Burlington opposes reverting back to a 10 unit threshold. The creation of a new municipal delegation authority that is based on a 10 unit threshold would undermine years of local zoning reforms, and diminish the effectiveness of a new delegation process for Burlington.

Proposed Text for Option 1:

Modify text of S.100 as currently drafted:

1. Further amend proposed language for 10 V.S.A. §6081 on page 23, lines 20-21, and continuing on to page 24, lines 1-2, to read:

(z) ~~In addition to all exemptions herein, No permit or permit amendment is required for any subdivision or development located in a municipality that has a municipal delegation agreement in place pursuant to 24 V.S.A. 4420a. an enhanced designation area. If the enhanced designation is terminated, a development or subdivision within the designated center must receive a permit, if applicable.~~
2. Strike proposed language for Sec. 19 (regarding 24 V.S.A §2793f), Sec. 20 (regarding 10 VSA §6001(45)), and Sec. 21 (regarding Enhanced Designation Bylaw Adoption) on pages 23-29.

And add language establishing a new municipal delegation authority within 24 V.S.A. § 4420 to text of S.100:

1. Replace the proposed Enhanced Designation language with the following. This creates new authority for full delegation for permitting at the local level in lieu of Act 250 for municipalities with local regulations that are functionally equivalent to Act 250 criteria:

§4420a. Municipal Delegation

(a) Notwithstanding the local review of municipal impacts authorized in Section §4420 above, the Executive Director of the Natural Resources Board (Director) shall delegate authority to permit a subdivision or development to a municipality who has:

- (1) The criteria specified in this section have been adopted in the appropriate bylaws authorized under this chapter.
- (2) The municipality's plan has been duly adopted under the provisions of this chapter.

- (3) The municipality has adopted zoning bylaws and subdivision bylaws, either separately or incorporated into one unified development bylaw.
- (4) adopted bylaws and/or other ordinances regulating subdivisions, development and the impacts of development that is/are, as determined by the Director, functionally equivalent to the requirements of 10 V.S.A. §6086 (a); and
- (5) the Director shall determine that the municipality provides adequate resources for administration and enforcement of the bylaw or ordinance.

(b) Delegation Agreement

(1) Delegation under subsection (a) of this section shall be by agreement between the Director and the delegated municipality. The delegation agreement shall set the terms for revocation of delegation.

(2) Under the delegation agreement, the Director and the municipality may agree on geographic areas of the municipality or conditions under which municipal delegation will not be applicable, and requirements of 10 V.S.A. §6086 continue to apply.

(3) Under the delegation agreement, the Director and the municipality may agree, in instances where a delegated municipality does not or cannot address noncompliance, that the Director, after consultation with the municipality, may institute enforcement proceedings under 10 V.S.A. Chapter 201.

(4) The delegation agreement shall require the municipality to:

(A) have or establish a process for accepting, reviewing, and processing applications and issuing permits for subdivisions and development;

(B) take timely and appropriate enforcement actions;

(C) commit to reporting annually to the Director on a form and date determined by the Director;

(D) cure any defects in such bylaw or ordinance or in the administration or enforcement of such bylaw or ordinance upon notice of a defect from the Director.

(4) A municipality that seeks delegation under subsection (a) of this section shall be presumed to satisfy the requirements of this subsection for a permit process and enforcement if the municipality has designated a municipal zoning administrator or other municipal employee or official as responsible for the permitting and enforcement of the construction, creation, or expansion of subdivisions or developments within the municipality.

Option 2- Tweak the Enhanced Designation Concept to include full Delegation

Notes about this option:

- Maintains 24 VSA §4420, which is the existing, but very limited, authority for local review of municipal impacts for Act 250 permits (includes Act 250 criterion 6, 7 and 10 only).
- Builds on the proposed Enhanced Designation idea as proposed in S.100 to include a full delegation for local review of all Act 250 criteria for projects across an entire municipality. Unlike Option 1, this is based on the NRB findings process determining that local zoning is functionally equivalent. This is a hybrid between the “functional equivalency” standard in the Shoreland Delegation statutes in (10 V.S.A. §1448) and the NRB Enhanced Designation process proposed in the current S.100 draft.
- One consideration of this approach is that it would actually create three tiers of delegation—which is positive in the sense that it can create multiple pathways for a municipality based on the completeness of local regulations and administrative capacity, but is a negative in the sense that it creates regulatory complexity in terms of the delegation landscape that could result across the state.
- It is important to create distinctions between zoning bylaws and/or codes and ordinances, because some key elements of Act 250 criteria may be regulated by various municipal codes and ordinances, not just in zoning bylaws. This language will help ensure swifter impact of enhanced designation changes for the purpose of creating new housing.
- This is not the preferred option, because while these changes would create new opportunities for municipal delegation, those processes would be more vulnerable to appeal. A proposed change to strike the option to appeal.

Proposed Text for Option 2:

Modify text of S.100 as currently drafted:

1. Further amend proposed language for 10 V.S.A. §6081 on page 23, lines 20-21, and continuing on to page 24, lines 1-2, to read:

(z) In addition to all exemptions herein, ~~No~~ permit or permit amendment is required for any subdivision or development located in an enhanced designation area or in a municipality that has a municipal delegation. If the enhanced designation or municipal delegation is terminated, a development or subdivision within the designated center or municipality must receive a permit, if applicable.
2. Expand authority for Enhanced Designation to include full municipal delegation for an entire municipality, by amending proposed text in Secs. 19, 20 and 21 on pages 24-29 to include the following:

Sec. 19. 24 V.S.A § 2793f is added to read:

§ 2793f. ENHANCED DESIGNATION OR MUNICIPAL DELEGATION

(a) Application and approval. A municipality, by resolution of its legislative body, may apply to the Natural Resources Board for an enhanced designation for any designated area or for full municipal delegation for the municipality. The Natural Resources Board shall issue an

affirmative determination on finding that the municipality meets the requirements of subsection (c) of this section.

(b) Enhanced designation ~~or municipal delegation~~ requirements. To obtain an enhanced designation ~~or municipal delegation~~ under this section, a municipality must demonstrate that it has each of the following:

(1) an approved designated area ~~or areas~~;

(2) municipal bylaws ~~and/or ordinances~~ that are identical ~~to~~ or are determined to be ~~consistent with functionally equivalent to~~ the model bylaws written by the Natural Resources Board pursuant to subsection (f) of this section;

(3) municipal bylaws ~~and/or ordinances~~ that do not include broad exemptions excluding significant private or public land development from requiring a municipal land use permit; and

(4) adequate municipal staff to support coordinated comprehensive and capital planning, development review, and ~~zoning~~-administration ~~of zoning bylaws and other ordinances~~.

(c) Process for issuing enhanced designation.

(1) A preapplication meeting shall be held with Department staff to review the program requirements. The meeting shall be held in the municipality unless another location is agreed to by the municipality.

(2) An application by the municipality shall include the information and analysis required by the Department's guidelines established pursuant to section 2792 of this title on how to meet the requirements of subsection (b) of this section.

(3) The Department shall establish a procedure for submission of a draft application that involves review and comment by all the parties to be noticed in subdivision (4)(A) of this subsection and shall issue a preapplication memo incorporating the comments to the applicant after receipt of a draft preliminary application.

(4) After receipt of a complete final application, the Natural Resources Board shall convene a public hearing in the municipality to consider whether to issue a determination of enhanced designation ~~or municipal delegation~~ under this section.

(A) Notice.

(i) At least 35 days in advance of the Natural Resources Board's meeting, the Department shall provide notice to the municipality and post it on the Agency's website.

(ii) The municipality shall publish notice of the meeting at least 30 days in advance of the Natural Resources Board's meeting in a newspaper of general circulation in the municipality, and deliver physically or electronically, with proof of receipt or by certified mail, return receipt requested to the Agency of Natural Resources; the State Downtown Board; the Division for Historic Preservation; the Agency of Agriculture, Food and Markets; the Agency of Transportation; the regional planning commission; the regional development corporations; and the entities providing educational, police, and fire services to the municipality.

(iii) The notice shall also be posted by the municipality in or near the municipal clerk's office and in at least two other designated public places in the municipality

and on the websites of the municipality and the Agency of Commerce and Community Development.

(iv) The municipality shall also certify in writing that the notice required by subdivision (4)(A) of this subsection (c) has been published, delivered, and posted within the specified time.

(B) No defect in the form or substance of any requirements of this subsection (c) shall invalidate the action of the Natural Resources Board where reasonable efforts are made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the Superior Court or by the Natural Resources Board itself, the Department shall provide and the municipality shall issue new posting and notice, and the Board shall hold a new hearing and take a new action.

(5) The Natural Resources Board may recess the proceedings on any application pending submission of additional information. The Board shall close the proceedings promptly after all parties have submitted the requested information.

(6) The Board shall issue its determination in writing. The determination shall include explicit findings on each of the requirements in subsection (b) of this section.

(d) Review of enhanced designation ~~or municipal delegation~~ status.

(1) Initial determination of an enhanced designation ~~or municipal delegation~~ may be made at any time. Thereafter, review of the enhanced designation shall be concurrent with the next periodic review of the underlying designated area(s).

(2) The Natural Resources Board, on its motion, may review compliance with the enhanced designation ~~or municipal delegation~~ requirements at more frequent intervals.

(3) If at any time the Board determines that the enhanced designation area ~~or municipal delegation~~ no longer meets the standards for the designation, it shall take one of the following actions:

(A) require corrective action within a reasonable time frame; or

(B) terminate the enhanced designation ~~or municipal delegation~~.

(4) If ~~the-an~~ underlying designation is terminated, the enhanced designation also shall terminate, ~~except when a municipality has been granted municipal delegation. For municipalities with municipal delegation, the Natural Resources Board shall ensure the requirements in subsection (b) of this section continue to be met within municipal bylaws and/or ordinances in order to retain municipal delegation.~~

~~(e) Appeal:~~

~~(1) An interested person may appeal any act or decision of the Board under this section to the Environmental Division of the Superior Court within 30 days following the act or decision.~~

~~(2) As used in this section, an "interested person" means any one of the following:~~

~~(A) a person owning a title to or occupying property within or abutting the designated area;~~

~~(AB) the municipality making the application or a municipality that adjoins the municipality making the application; and~~

~~(BC) the regional planning commission for the region that includes the designated area or a regional planning commission whose region adjoins the municipality in which the designated center is located.~~

(f) Model bylaws.

The Natural Resources Board shall publish model bylaws that may be adopted by a municipality seeking an enhanced designation **or municipal delegation**. These bylaws shall address all Act 250 criteria provided for in 10 V.S.A. § 6086(a)(1)–(10).

Sec. 20. 10 V.S.A. § 6001(45) is added to read:

(45) “Enhanced designation” means the process by which a designated area **or areas** demonstrate(s) that it has satisfied the requirements of 24 V.S.A. § 2793f. The term shall also refer to the resulting status.

(46) “Municipal delegation” means the process by which a municipality demonstrates that it has satisfied the requirements of 24 V.S.A. § 2793f for the entire municipality. The term shall also refer to the resulting status.

Sec. 21. ENHANCED DESIGNATION BYLAW ADOPTION

On or before January 1, 2024, the Natural Resources Board shall publish model bylaws that a municipality may adopt in order to achieve an enhanced designation **or municipal delegation**. These bylaws shall encompass all of the Act 250 criteria found in 10 V.S.A. § 6086(a)(1)–(10).