

# Municipal Delegation Framework Report

As requested by the Vermont Legislature in Act 47 of 2023

11/14/2023 **DRAFT**

Reported to the Legislature by the Vermont Association of Planning and Development Agencies (VAPDA)

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## Municipal Delegation in the Act 250 Process

**The State of Vermont has recognized that it is in a housing crisis, one that is deeply intertwined with its workforce, demographic, equity and environmental goals and priorities.** With the passage of Act 47 (S.100) of 2023, the Legislature took major steps to address regulatory barriers to new housing in municipal zoning. Key provisions of Act 47 include requiring multi-unit dwellings and minimum residential density standards in municipalities that are served by public water and wastewater and temporarily increasing a key jurisdictional threshold that triggers Act 250 review of housing projects in designated places (specifically, the threshold commonly known as the “10/5/5” rule—or the creation of 10 units within five miles within five years by the same developer). The aim of these provisions was to increase the number of homes in places that are planned and suitable for growth.

Consistent with the Legislature’s intent to increase housing opportunities statewide, Act 47 also directed three studies in addition to this one to review and recommend modernizations to statewide regional land use planning, the Act 250 process, and state designation programs. These discreet studies are closely interrelated, particularly in terms of their relationship to where and to what degree Act 250 review is applicable. Despite these relationships, **the concept for Municipal Delegation outlined herein is feasible independent of the other tangentially related efforts.**

**In the more than 50 years since the inception of Act 250, statewide development considerations have evolved, and many municipalities have modernized their planning and permitting efforts.** Act 250 was enacted in 1970, providing a new forum to review developments that would have significant regional or environmental impacts. Today, many municipalities have adopted plans in compliance with statutes guiding municipal and regional planning; robust regulatory measures adopted accordingly (24 V.S.A. Chapter 117); professional staff; and boards and commissions that provide consistent review and interpretation of local land use regulations. In communities with such resources, Act 250 can often present a duplicative review process, and in some locations require the review of criteria that are not applicable.

**Duplicative state permitting processes can add significant expenses to new housing developments in the form of time, money, and expertise required to prepare an Act 250 application and shepherd it through the review process.** In fact, a 2017 report by the Agency of Commerce and Community Development found that current exemptions from Act 250 for Priority Housing Projects<sup>1</sup> “facilitated the development of more than 200 housing units by saving an estimated 6 months in state permitting timelines and more than \$250,000 in permitting fees”.<sup>2</sup>

During the 2023 session, as the legislature discussed strategies to meet the state’s housing needs and the role of Act 250, a group of municipalities proposed the concept of **Municipal Delegation as a time-sensitive complement to other broad reforms under consideration—one that would help reduce this permitting redundancy and support housing production.** As a result, the legislature included the Municipal Delegation framework study among other studies directed by Act 47.

**This report outlines a proposed process for Municipal Delegation whereby municipalities with high quality bylaws and other statutorily authorized ordinances that are functionally equivalent to the criteria of Act 250 can pursue an agreement with the Natural Resources Board (NRB) to delegate review of development to the municipality and exempting development within the municipality from Act 250 review.** This concept is not unique—other forms of municipal delegation exist in statute, including Lake Shoreland Protection Standards (10 V.S.A. § 1448), Potable Water Supply and Wastewater Systems (10 V.S.A. § 1976), and Building Codes/Fire Safety Standards (20 V.S.A. § 2736), all with slightly different processes. In fact, municipalities such as Burlington & South Burlington have Municipal Inspection Agreements with the Division of Fire Safety to issue one or more local permits in compliance with fire, electrical, accessibility, plumbing, and/or structural building codes. In Burlington, a Shoreland Delegation Agreement with the Agency of Natural Resources allows the city to issue permits for construction or vegetation removal in a protected shoreland area.

**This report’s recommendations for Municipal Delegation do not entail a municipality administering Act 250 permits and review processes on behalf of the local District Commission.** Rather, upon demonstrating to the NRB that local regulations provide a similar or more stringent level of review for any relevant Act 250 criteria within the municipality, a municipal permit can be issued in lieu of Act 250

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<sup>1</sup> <https://nrb.vermont.gov/sites/nrb/files/documents/PHP%20Flowchart%202023.pdf>

Act 157 Report to the Vermont General Assembly on ways to improve the quality and quantity of housing and tools to finance infrastructure prepared by the Agency of Commerce and Community Development; January 15, 2017 - <https://accd.vermont.gov/community-development/resources-rules/publications/Act157-Housing-Report>

review. Such delegation would eliminate the need for an Act 250 permit in addition to a municipal land use permit for the same project.

#### Legislative Report Requested

The legislature asked the Vermont Association of Planning and Development Agencies (VAPDA) to develop a proposed framework for delegating administration of Act 250 permits to municipalities. The specific language from Act 47 requesting this report states:

##### *Sec. 18a. REPORT; ACT 250 MUNICIPAL DELEGATION*

*(a) The Vermont Association of Planning and Development Agencies, in consultation with the Natural Resources Board, shall develop a **proposed framework for delegating administration of Act 250 permits to municipalities** (emphasis added). They shall consult with other relevant stakeholders, including those with experience issuing Act 250 permits under 10 V.S.A. chapter 151, environmental organizations, State agencies, and municipal planning and zoning officials. Each regional planning commission shall hold one public meeting on the framework.*

*(b) On or before December 31, 2023, the Vermont Association of Planning and Development Agencies shall report to the House Committee on Environment and Energy and the Senate Committee on Natural Resources and Energy on the proposed framework to delegate Act 250 permit administration to municipalities.*

#### Alternative Municipal Delegation Framework Recommended – Functional Equivalency

After discussions with various municipalities (primarily Burlington, South Burlington, St. Albans City, and Winooski) and other stakeholders engaged in the Act 250 process, it became clear that there is **no interest or support for municipalities taking on responsibility of issuing and administering Act 250 permits as it is currently done by the District Environmental Commissions**. Chief among the concerns about this potential process for delegation is that it would not address the central concern behind this proposal: to eliminate the duplication of local and state permitting. Such a framework would in fact maintain parallel reviews—instead of duplicate reviews between municipalities and District Commissions, there would be parallel reviews at the local level itself. Additionally, there are concerns that this could create new or additional inconsistencies in Act 250 decisions, even within District Commission boundaries, with some localities reviewing state requirements.

**Instead, these municipalities with local capacity are interested in a process for delegation that involves an agreement with the NRB based upon a determination by the municipality, the Regional Planning Commissions (RPCs) and the NRB, that the municipality's regulations are functionally equivalent to the ten criteria of Act 250.** More specifically, this process is envisioned to function like other existing forms of municipal delegation in which the state defers to a municipal permit issued in lieu of a state permit. These existing forms of delegation are based on state agencies' review of applicable municipal regulations to determine they will have either a substantially similar or better effect than the state's regulations, or evidence that a municipality has locally adopted and administers the same codes as the state.

*[Placeholder – RPCs to discuss this concept with their largest municipalities to see what interest might exist. RPCs to distribute draft report on or about 11/13/2023 seeking input from NRB, District*

*Coordinators, statewide environmental organizations, and Vermont planners. RPCs will also discuss this at a public meeting in each region to solicit input. Add summary of comments and responses.]*

Based on municipal input, **VAPDA recommends a framework that includes a review and recommendation by the municipality's RPC and approval of the NRB that a municipality has legally adopted local regulations, enforcement, and administrative capability for issuance of development permits that are functionally equivalent to relevant Act 250 criteria.** Upon a recommendation by the RPC and approval of the NRB, the NRB will execute an agreement with the municipality that exempts development within that municipality from requiring an Act 250 permit and certifies that a municipal permit can be issued in lieu of an Act 250 permit.

**The municipalities contributing to this report estimate that approximately 90% to 95% of the issues covered by Act 250 criteria are addressed by their local regulations, and this framework would not have an adverse impact on other applicable state permitting requirements.** In support of this recommended framework for Municipal Delegation, four municipalities reviewed the existing criteria in Act 250 (including sub-criteria) and identified the extent to which local regulations provide similar or enhanced review and regulation for each issue. Further, this report identifies other applicable state permits that may be triggered for development projects regardless of Act 250's jurisdiction over a project (see Appendix B). As such, this proposed framework only relates to the need for an Act 250 permit itself; other applicable state permits including wetlands, stormwater, and wastewater would still be required. These permits are currently issued by the authorized state agencies independent of the Act 250 process and continue to be applicable even when a Priority Housing Project may otherwise be exempt from Act 250.

**While this concept deviates from the legislative language included in Act 47, the resulting process would address the legislative intent.** Specifically, the intended outcome of this alternative option would be to create a system where municipalities, through their local regulatory processes, can demonstrate that local bylaws, ordinances, and regulations provide standards of review to regulate and enforce the criteria and sub-criteria included in Act 250 where applicable based on the specifics of project and its location. This would also have the benefit of consistency in interpretations of regulations, reduced time to receive permits to begin projects, and reduced permitting costs that can be reinvested in the projects themselves.

### **Benefits of Municipal Delegation**

Municipalities with functionally equivalent regulations that successfully receive delegation from the NRB will be on the forefront of helping to alleviate the housing crisis and begin to realize positive impacts on state and local economies. Specific benefits of this process may include:

- Municipalities will be incentivized to adopt stronger regulations and establish best practices related to land use regulations and planning.
- Enforcement of permit conditions and regulatory requirements will be addressed at the local level.
- District Environmental Commissions can focus more resources on communities with less robust regulations and local capacity; or projects that have significant regional impacts as defined by regional plans.

- The NRB will maintain formal oversight of the program, including benchmarks to ensure continued compliance with delegation standards.
- Reduced permitting requirements in communities that have infrastructure and regulations to support additional growth will help reduce development pressure in open natural areas and working agricultural landscapes.
- Provide cost and time savings for new developments in areas planned for growth and supporting the creation of much-needed housing and mixed-use projects in those communities.

#### Existing Statutory Provisions for Delegation of State Permitting or Review

Delegation of statutory requirements to municipalities is not new. As stated previously, statutes provide municipalities with an opportunity to regulate specific statutory requirements (Lake Shoreland Protection; Potable Water Supply and Wastewater Systems; and Building Codes/Fire Safety Standards) through agreements between the state agencies and the municipality when municipal regulations have been found to be functionally equivalent.

In addition, statute already provides a form of delegation through an exemption to Act 250 permitting for Priority Housing Projects. Projects that are proposed in Downtown and Neighborhood Development Areas (NDA) and meet the housing affordability standards for Priority Housing are exempt from Act 250 review and only require local land use permits and other applicable state permits<sup>3</sup>.

In order to receive the NDA designation, a municipality must receive approval from the Vermont Downtown Board by demonstrating that:

- The municipality has a confirmed planning process as outlined in 24 V.S.A. § 4350.
- The proposed NDA area conforms to complete street standards as outlined in 19 V.S.A.309d.
- The proposed NDA area is compatible with Historic Register Historic Districts including state or national historic sites and significant cultural resources.
- Mapping includes Important Natural Areas consistent with 24 V.S.A. § 2791(14).
- Municipal bylaws meet minimum standards for density, accessory dwelling units, and design guidelines.

Exempting Priority Housing Projects from Act 250 review is an important tool to support the construction of affordable housing in areas planned for growth. However, it is important to note that such projects can have the same land use and infrastructure impacts as non-priority housing projects of the same scale within those locations. The current exemption recognizes the importance of reducing duplicative permitting that can add cost and time to affordable housing development and defers to the adequacy of municipal land use regulations and other applicable state regulations. The proposed Municipal Delegation framework builds on this limited exemption from Act 250 and provides a more thorough foundation for examining the effect of local regulations in order to exempt other projects as well.

#### Proposed Process for Issuing a Municipal Delegation Agreement

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<sup>3</sup> Other state permits such as wetland, stormwater, and wastewater permits are still required even with Priority Housing Projects.

In order to advance this Municipal Delegation Framework, this report suggests a new, key definition in statute:

*Municipal Delegation of Act 250 through functional equivalency is an agreement between the NRB and a municipality upon the NRB finding the municipality's regulations, standards of review, and enforcement mechanisms are functionally equivalent or better at reviewing development issues currently covered by each applicable Act 250 criterion. This will be commonly referred to as Municipal Delegation of Act 250. Areas of a municipality included in the Municipal Delegation agreement will be exempt from Act 250 review.*

The process for achieving such Municipal Delegation is described in the two sections below.

#### Minimum Requirements for Municipal Eligibility

To be considered for municipal delegation, the municipality must demonstrate that robust planning, permitting, administration, and enforcement are in place. To accomplish this, a municipality would need to provide supporting information to show at a minimum:

- An adopted municipal plan, approved by the RPC as compatible with the Regional Plan and statewide planning goals and objectives.
- An approved municipal plan that has received an affirmative Enhanced Energy Plan designation for applicability for Section 248 review.
- Adopted zoning and subdivision bylaws, in compliance with Title 24, Chapter 117 of Vermont Statute, and other duly adopted municipal ordinances or codes enabled by statute, which regulate issues relevant to any applicable Act 250 criteria within the municipality.
- One or more current (or future equivalent) state designated areas including Downtown, Neighborhood Development Area, or Growth Center designations within municipal limits.
- Professional staff to administer and enforce municipal codes and ordinances and commitment from the legislative body to invest in, and support, enforcement.
- Utility infrastructure to support growth and development including the ability to expand capacity when necessary.
- The municipality will demonstrate that their local regulations and processes are functionally equivalent to the applicable criteria currently evaluated through Act 250
- Received approval from the municipal legislative body at a public meeting to pursue municipal delegation through an agreement with the NRB.

#### Process to Recommend and Approve a Municipal Delegation Agreement

The process to receive municipal delegation is proposed to be a collaborative effort between the municipality, the respective RPC, and the NRB. This process would require the municipality to demonstrate that their local regulations and processes are functionally equivalent to the applicable criteria currently evaluated through Act 250 permitting. It may be possible that only a specific area of a municipality has the necessary regulatory and physical infrastructure to support municipal delegation, or that certain Act 250 criterion are not applicable within the municipality (i.e. lands above 2,500 ft. elevation). As such, each municipality will have an individualized agreement with the NRB outlining

terms of the delegation agreement, if granted. An example of this process would include the following three steps:

1. RPC Review & Recommendation of an Application

- Applications for delegation would be prepared by the municipality, based on responses to an available checklist, and submitted to their RPC for a recommendation.
- The RPC would review the application to confirm the municipality has a regionally approved municipal plan and planning process, document findings regarding the extent that the municipal regulations look at similar areas of impact as Act 250, and provide additional technical input and advice as needed to improve the application. Upon affirmative findings of functional equivalency, the RPC provides a letter of recommendation to accompany the municipal application.
- The municipality would submit the application with the letter of recommendation from the RPC to the NRB for approval. If the RPC raises objections to the municipality's application, the municipality could choose to rework the application and resubmit it to the RPC or submit the application for review by the NRB without RPC approval. In the latter instance, the municipality would have to prove to the NRB that the application is consistent with the regional plan and explain why it chose not to rework its application.
- In order to address projects that may have significant regional impacts, consider a statutory change to provide RPCs with interested party status in those municipal permitting processes for projects that are defined as having significant regional impacts by the RPC.

2. NRB Review of an Application

- The NRB would hold a public meeting to review a municipal application, which includes an opportunity for public comment, and then issue a determination on the application.
- During the NRB review, an RPC's recommendation and affirmative finding of functional equivalency should create a presumption that the application is consistent with the regional plan, and therefore state planning goals, and shall be given deference with regard to the adequacy of municipal bylaws.

3. NRB Decisions on an Application

- Upon concurrence with the findings of an RPC, the NRB may execute an agreement with responsible municipal officials outlining the terms of the Municipal Delegation. The agreement may include identifying areas of the community or certain project types that remain within Act 250 jurisdiction due to their regional significance (such as airports, landfills, or ski resorts) as determined by the NRB. The agreement shall exempt developments from review under all of Act 250's current criteria and identify criteria which are not applicable within the municipal boundaries and therefore not required to be regulated at the local level.
- If the NRB rejects a municipal application which has received a recommendation from its RPC, the NRB must clearly articulate deficiencies in municipal planning or bylaws relative to any applicable Act 250 criteria within the municipality. Municipalities shall be allowed to address those deficiencies, modify their applications, and reapply.
- If approved, Municipal Delegation Agreements must be reviewed and recertified every 8 years.
- Delegation agreements may be amended if the underlying Act 250 thresholds or criteria are adjusted by the State, if a municipality substantially amends local regulations that are applicable

to such agreement, or if a municipality fails to administer or enforce local regulations according to the terms of the agreement.

- During the term of the Municipal Delegation Agreement, the municipality shall report to the NRB on a schedule, and with the content, as included in the Municipal Delegation Agreement.

*Existing Act 250 Permits in Municipalities with Delegation*

If prior to the effective date of the Municipal Delegation agreement an Act 250 permit exists for a property, the permit (including any conditions and enforcement) would remain under the authority and enforcement of the District Environmental Commission that has jurisdiction. However, when a property with an existing Act 250 permit proposes redevelopment or substantial modification in a community with Municipal Delegation, the property may proceed under the requirements of the Municipality's bylaw/ordinance and any other applicable state and local laws and regulations and is not required to be reviewed by Act 250. The applicant shall provide the municipal permit to the District Environmental Commission for the District Environmental Commission to terminate the Act 250 permit.

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**Appendix A – Draft Act 250 Criteria and Municipal Regulation Crosswalk**

The following information lists the 10 criteria and sub-criteria in Act 250 and the specific impacts they set out to evaluate. Included below each criterion is an **initial draft** set of questions or requests for information to provide an example of the information that may be used by a municipality to demonstrate functional equivalency. This is not intended to be the final format or final list. Specific standards should be agreed upon by the municipality, the RPC, and the NRB in order to receive Municipal Delegation.

<b>GENERAL INFORMATION</b>
NAME OF MUNICIPALITY
SIZE OF MUNICIPALITY (Acres or Square Miles)
POPULATION
FORM OF GOVERNMENT
POINT OF CONTACT FOR DELEGATION
MASTER PLAN ADOPTION DATE
EFFECTIVE DATE OF LAND USE REGULATIONS
DEPARTMENT RESPONSIBLE FOR ADMINISTERING LAND USE REGULATIONS
NUMBER OF STAFF IN DEPARTMENT
DEPARTMENT BUDGET (if applicable)
<b>CRITERION 1 - AIR POLLUTION</b>
Every project should be designed to minimize air pollutants to levels that will not threaten public health or create an unreasonable nuisance for nearby residents. Some areas of concern include:
industrial/manufacturing emissions, such as paint fumes, sawdust, chemical vapors, and fly ash;
vehicle exhaust at congested intersections;
excessive dust, smoke, or noise during construction;
processing or storage of radioactive materials;
noise during operations, to the extent that it may have an adverse effect on health
<b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b>
List the section of from the municipal land use regulations that include standards consistent with 24 V.S.A. § 4414(5)
Last enforcement action related to these standards
Federal or state agencies included
Outcome of enforcement action
<b>CRITERION 1(A) - HEADWATERS</b>

Every project must comply with the applicable water quality regulations. This is particularly true in headwater areas. Criterion 1(A) applies to lands that are not already devoted to intensive development and that meet at least one of the following subcategories:
headwaters of watersheds characterized by steep slopes and shallow soils;
drainage areas of < 20 square miles;
lands > 1,500 feet in elevation;
lands within watersheds of public water supplies designated by the ANR Drinking Water & Groundwater Protection Division; or
areas supplying significant amounts of recharge waters to aquifers.
<b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b>
List any headwaters that include steep slopes and shallow soils
List any drainage areas within the municipality, including the size (in square miles)
List any public drinking water supplies within the municipality that are designated by the ANR Drinking & Groundwater Protection Division
List any areas supplying recharge waters to aquifers within the municipality
Provide maps that identify any of the above information
Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250
<b>CRITERION 1(B) - WASTE DISPOSAL</b>
In addition to meeting any other applicable regulations regarding waste disposal, every project should be designed to provide treatment or proper disposal of wastes or toxic materials that are generated at the project site. Wastes or materials of typical concern include the following:
domestic septic wastewater;
industrial or manufacturing wastewater (including anything discharged into floor drains);
stormwater from parking lots and other contaminated surfaces;
fuels, chemicals, pesticides, and the like;
batteries and other hazardous products; and
construction debris
<b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b>
Provide citations for any land use regulations or municipal code sections that regulate water, wastewater, waste disposal, toxic chemicals, construction debris, or other hazardous products
Provide maps that identify any areas served by municipal water, wastewater, and stormwater
Include information on any MS4 permitting that may be applicable in the municipality
Provide maps that identify industrial properties including brownfields, superfund sites, or similar locations
Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250
<b>CRITERION 1(C) - WATER CONSERVATION</b>

<p>Every project that consumes water should be designed to conserve water. This reduces burdens on municipal sewage and water systems, saves energy used to heat water, and protects groundwater reserves during droughts. For domestic plumbing, water-conserving plumbing fixtures are available. For larger commercial water users, applicants should detail how the project will use the "best available technology" for conserving water.</p>
<p><b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b></p>
<p>Identify any building codes that are enforced within the municipality</p>
<p>Provide information on public water supply sources, including capacity</p>
<p>Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250</p>
<p><b>CRITERION 1(D) - FLOOD HAZARD AREAS; RIVER CORRIDORS</b></p>
<p>If a project will impinge on the flood hazard areas of a river or stream, it should be designed to withstand flooding and to avoid causing any significant increase in the flood level. This usually means no construction should occur in Flood Hazard Areas. Any proposed construction in River Corridors should be reviewed by an engineer or other qualified expert to document that it will not cause peak flood levels or fluvial erosion hazards to increase.</p>
<p><b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b></p>
<p>Provide information on land use regulations, including section citations, where flood hazards, river corridors, or floodways are regulated</p>
<p>Provide information on municipal standards, including citations, for erosion and sedimentation control</p>
<p>Provide mapping of flood hazard areas and river corridors, including any structures located in these areas</p>
<p>Provide details on any vulnerable structures located in flood hazard areas or river corridors</p>
<p>Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250</p>
<p><b>CRITERION 1(E) - STREAMS</b></p>
<p>Any project that encroaches on a stream should be designed to minimize the impact and maintain the natural condition of the stream. A stream may include any intermittent flow of water where there is a defined channel. Applicants are encouraged to avoid disturbing any streams (by minimizing road crossings, locating buildings away from riparian zones, etc.) and to provide a natural riparian zone (buffer) along all perennial and intermittent streams to provide shade and filter out sediment and other pollutants. For guidance on appropriate riparian zone widths, refer to ANR's Riparian Buffer Guidance.</p>
<p><b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b></p>
<p>Provide maps that identify all streams within the municipality</p>
<p>Provide information, including citations, for land use regulations that will limit impacts to identified streams</p>
<p>Provide information, including citations, for any riparian buffer standards that are consistent with ANR's Riparian Buffer Guidance</p>

Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250
<b>CRITERION 1(F) - SHORELINES</b>
Projects must be designed to avoid or minimize the impact to, and maintain the natural condition of, the shoreline of any river, pond, or lake. Refer to the discussion of streams under Criterion 1(E) for general guidelines. Direct any questions about retaining the natural condition of the shoreline to the ANR Regional Fisheries Biologist.
<b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b>
Provide maps that identify all water bodies within the municipality
provide information, including citations, for any land use regulations that will limit impacts to water bodies
Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250
<b>CRITERION 1(G) - WETLANDS</b>
Any project that encroaches on a wetland considered significant under the Vermont Wetland Rules should be designed to avoid and minimize project impacts on the wetland. Significant wetlands are those determined to be significant by ANR, including, but not limited to, those on the Vermont Significant Wetland Inventory (VSWI) maps, available online on the ANR Natural Resources Atlas (aka, the ANR Atlas). VSWI maps are intended to denote approximate locations and boundaries of some wetlands, but these maps are incomplete and therefore, should not be relied upon to provide precise information regarding the location or configuration of wetlands (see Vermont Wetland Rules, Section 3.2). Additionally, not all wetlands are mapped, and many wetlands not mapped on the VSWI are still considered significant. Only a qualified wetland scientist can determine the absence or presence of a wetland and its boundaries.
<b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b>
Provide maps that identify any Class I and Class II wetlands within the municipality
Provide information, including citations, for any land use regulations that will limit impacts to wetlands
Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250
<b>CRITERIA 2 AND 3 - WATER SUPPLIES</b>
Every project that consumes water should be designed to have an adequate supply of water without creating an unreasonable burden on an existing water supply. Typically, applicants demonstrate they will have an adequate water supply by providing information on nearby wells or by providing a commitment letter from a municipal water department.
<b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b>
Provide detailed information on the source of municipal water supply (this does not require the exact location of the water supply to be identified)
Provide detailed information on current use and overall capacity of the municipal water supply

Provide detailed information on any planned expansions, upgrades, or improvements to the water supply
Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250
<b>CRITERION 4 - SOIL EROSION AND DRAINAGE</b>
Every project should be planned in a manner to prevent undue soil erosion during and after construction. This usually requires that measures be implemented to retain soil on the construction site and prevent sediment from entering any streams or other water bodies or allowing sediment-contaminated runoff to flow onto adjoining property.
<b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b>
Provide detailed information, including citations, on municipal regulations that address erosion and sedimentation
Provide information to ensure the municipal regulations meet or exceed the Vermont DEC Green Stormwater Infrastructure and Low Impact Development Standards
Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250
<b>CRITERION 5 - TRANSPORTATION</b>
Criterion 5 consists of the following two sub-criteria and requires the Commission to find that projects:
(5)(A) will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed; and,
(5)(B) as appropriate, will incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services. In determining appropriateness under this subdivision (B), the Commission shall consider whether such a strategy, access, or connection constitutes a measure that a reasonable person would take given the type, scale, and transportation impacts of the proposed development or subdivision.
CRITERION 5(A) Every project should be designed to have safe access onto local or state roadways. In addition, projects should not create or contribute to unreasonable congestion on area roadways. To ensure safe access will be provided, applicants should focus on the design of the intersection of any driveways or access roads with the main road. Typical concerns include:
sight distance along the main road from the driveway or access road;
approach grades on the driveway or access road (ability to stop in slippery weather);
traffic controls (stop signs, automated signals, etc.);
speed limits on the main road;
turning or stacking lanes on the main road or driveway;
radii of corners (ability to make turns at reasonable speeds);
width of driveways or access roads; and
number of driveways onto main road

<p>CRITERION 5(B) Applicants must also demonstrate the project will, as appropriate, incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services. The application should explain how these requirements will be met considering the type, scale, and transportation impacts of the proposed development or subdivision. For multi-unit structures containing &gt;10 housing units, long-term, sheltered, secure bicycle storage should be provided.</p>
<p><b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b></p>
<p>Provide detailed information on standards and specifications for intersection, curb cut, driveway, and other access design elements</p>
<p>Provide detailed information on standards and specifications related to sight distances from intersections, driveways, or access points</p>
<p>Provide detailed information on standards that limit or otherwise consolidate curb cuts that access public roadways</p>
<p>If the municipality requires a Transportation Impact Study in conjunction with development applications, provide details on the information required to be included</p>
<p>Provide detailed information on requirements for vehicle parking, bicycle parking, and pedestrian facilities</p>
<p>Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250</p>
<p><b>CRITERION 6 - EDUCATIONAL SERVICES</b></p>
<p>If a project will have an impact on area schools, the applicant must demonstrate that the project will not create an unreasonable burden on the municipality's ability to provide educational services. Title 16 of Vermont Statutes provides each town with a block grant from the State Education Fund for the operating expense of educating each student in the school system. Therefore, the operating expenses of educating the additional students resulting from the project are generally not considered to be a burden on the municipality's ability to provide educational services. However, if the new students cause the need for an addition to the school or other capital improvements, applicants will need to address the potential financial burden to the municipality that this might cause.</p>
<p><b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b></p>
<p>Provide detailed information on how your municipality measures impacts to educational facilities from new development</p>
<p>Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250</p>
<p><b>CRITERION 7 - MUNICIPAL SERVICES</b></p>
<p>Most projects require services from the municipality, and applicants need to demonstrate that the project will not place an unreasonable burden on those services. Areas of concern usually include the following:</p>
<p>fire and police protection;</p>
<p>solid waste disposal (landfill, transfer station, etc.);</p>
<p>sewage treatment;</p>

water supply;
rescue service (volunteer or paid professional); and
road maintenance
<b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b>
Provide detailed information on the land development review process that includes reviews for impacts to municipal services, including municipal code citations where applicable
Provide information on municipal staff including police, fire, public works, and similar departments that provide municipal services
Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250
<b>CRITERION 8 - SCENIC BEAUTY, AESTHETICS, HISTORIC SITES, AND NATURAL AREAS</b>
Scenic Beauty and Aesthetics Every project should be designed to be consistent with the visual character of the area, and not have an undue adverse impact on the aesthetics of the area. If a project is out of context with the scenic qualities of the area, it may be considered to have an adverse impact. The type of visual aesthetic concerns to watch for include:
compatibility with nearby land uses (commercial, retail, agricultural, etc.);
proximity to prominent visual features (ridgelines, wetlands, open meadows, scenic overlooks, historic buildings, shorelines, etc.);
frequency and duration of public view;
compatibility with nearby architectural styles and colors;
consistency with area building density; and
visibility from nearby residences
<b>Historic Sites</b>
In addition to scenic qualities, projects must respect existing historic sites. Historic sites may include buildings, structures, districts, or archeological sites listed on, or eligible for, the State or National Registers of Historic Places. The Vermont Division for Historic Preservation (DHP) at the Agency of Commerce and Community Development (ACCD) evaluates all applications involving impacts to historic sites according to the Vermont Historic Preservation Act Rules. For more information about DHP's review process and a link to the Rules, see the Division's dedicated web page for Act 250 - Criterion 8 or contact the Division directly. Applicants are strongly encouraged to contact DHP for assistance in advance of applying to avoid project delays. In general, a building or structure may be listed on, or eligible for, the Historic Registers if it is at least 50 years old. A Historic District may include a group of buildings that is at least 50 years old. For example, part or all of an older village center may be considered a Historic District. Archeological sites might include prehistoric Native American sites or the remains of 18th- and 19thCentury occupation. Unlike other types of historic sites that are readily visible on the landscape, a prehistoric Native American site or area of high prehistoric archeological sensitivity might not be immediately apparent to the layperson. Using information about the project area and the applicant's project description, DHP can provide applicants or the Commissions with a determination of archeological sensitivity and the potential for project impacts to archeological sites.
<b>Natural Areas</b>

<p>Finally, in addition to scenic qualities and historic sites, applicants must avoid and protect rare and irreplaceable natural areas. The F&amp;W Wildlife Diversity Program maintains an inventory of mapped significant natural communities that can be viewed on the ANR Atlas. Additional rare and irreplaceable natural areas exist statewide that have not yet been mapped. Applicants are encouraged to contact F&amp;W staff early during project design to incorporate protections of sensitive natural communities.</p>
<p><b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b></p>
<p>Provide detailed information on historic districts and regulations for historic properties</p>
<p>Provide maps detailing natural, historic, architectural, cultural, or archeological resources that have been identified in your municipality</p>
<p>Provide specific citations in your municipal regulations that provide regulations or protections for natural, historic, architectural, cultural, or archeological resources</p>
<p>Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250</p>
<p><b>CRITERION 8(A) - ENDANGERED SPECIES AND NECESSARY WILDLIFE HABITAT</b></p>
<p>All projects should be designed to avoid necessary wildlife and endangered species habitats. Necessary wildlife habitat means concentrated habitat that is identifiable and is demonstrated as being decisive to the survival of a species of wildlife at any period in its life, including breeding and migratory periods. Necessary wildlife habitat need only be decisive to the survival of the wildlife using that habitat, not to the survival of the entire species. F&amp;W's Wildlife Division and/or Fisheries Division can identify critical wildlife habitat and endangered species habitat on a site-specific basis. Typical habitats identified by F&amp;W or other state agencies often include the following:</p>
<p>deer wintering areas, which include, among other characteristics, evergreen tree cover, browse areas, and steep southern-facing woodlands;</p>
<p>bear feeding areas, which include, among other characteristics, stands of beech or oak trees and certain wetlands;</p>
<p>salmonid spawning areas, found in streams and rivers with gravel bottoms; and</p>
<p>bat, reptile, amphibian, and bird feeding and breeding areas</p>
<p><b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b></p>
<p>Provide detailed maps that identify any endangered species or necessary wildlife habitat</p>
<p>Provide detailed information, including citations, for municipal regulations that provide protections or limit impacts to endangered species or necessary wildlife habitat</p>
<p>Identify local staff that will be responsible for reviewing this information, including their credentials; or provide information on contractual agreements or similar arrangements for review of areas that include endangered species or necessary wildlife habitat</p>
<p>Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250</p>
<p><b>CRITERION 9(A) - IMPACTS OF GROWTH</b></p>



Applicants must demonstrate that the project will not significantly impact the municipality’s ability to provide services to its residents. For instance, if a project adds significantly to the population of a town, the town’s budget may become so strained that it will have difficulty providing services to its residents. Similarly, if a large retail project causes other retail establishments to fail, the subsequent loss of property tax revenues may also affect the town’s ability to provide services. In this latter example, the emphasis is not on the loss of existing retail stores themselves; rather, it is on the impact that this loss might cause to the Town’s financial health and its ability to serve its residents. For residential projects, applicants should indicate how many additional people could live in the project, what portion of that population might be seasonal, and what percentage of the total population of the municipality these additional people represent. For commercial or recreational projects, applicants should provide information regarding anticipated employment growth, growth in personal income, retail sales growth, or growth in tourism. For all projects, applicants should provide an estimate of the tax revenues the project will generate. This includes property tax revenues paid to the municipality as well as income tax, sales, and rooms and meals taxes paid to the State, if appropriate.

**POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY**

Provide detailed information on the municipal budget, including funding levels for core government services

Provide detailed information on any municipal departments or supported organizations that specifically target business development and retention

Provide detailed information on municipal capacity to expand and accommodate new residential and non-residential growth

Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250

**CRITERION 9(B) - PRIMARY AGRICULTURAL SOILS**

Definition of Primary Agricultural Soils (10 VSA § 6001(15)): “Primary agricultural soils” means each of the following: (A) [It is an] important farmland soils map unit that the Natural Resources Conservation Service (NRCS) of the US Department of Agriculture has identified and determined to have a rating of prime, statewide, or local importance, unless the Commission determines the soils within the unit have lost their agricultural potential. In determining that soils within an important farmland soils map unit have lost their agricultural potential, the Commission shall consider: (i) impacts to the soils relevant to the agricultural potential of the soil from previously constructed improvements; (ii) the presence on the soils of a Class I or Class II wetland under Chapter 37 of this title; (iii) the existence of topographic or physical barriers that reduce the accessibility of the rated soils so as to cause their isolation and that cannot reasonably be overcome; and (iv) other factors relevant to the agricultural potential of the soils, on a site-specific basis, as found by the Commission after considering the recommendation, if any, of the Secretary of the Vermont Agency of Agriculture, Food & Markets. (B) Soils on the project tract that the District Commission finds to be of agricultural importance, due to their present or recent use for agricultural activities and that have not been identified by the NRCS as important farmland soil map units [10 VSA § 6001(15)].

**POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY**

Provide detailed maps that identify any prime agricultural soils as defined in statute
Provide detailed information, including citations, for any municipal regulations that protect or preserve prime agricultural soils
Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250
<b>CRITERION 9(B)'S FOUR SUB-CRITERIA</b>
When a project results in the reduction of the agricultural potential of any primary agricultural soils on the project tract, applicants must generally demonstrate compliance with sub-criteria (i)–(iv) of Criterion 9(B). Compliance with specific sub-criteria depends on whether the project tract is located within or outside of certain State-designated areas where the State seeks to encourage development, subject to the mitigation flexibility of 10 VSA § 6093. These specific areas are designed to encourage development near Vermont’s historic downtowns and designated growth centers pursuant to 24 VSA § 2793c. For assistance determining whether your project tract is located within or outside of a designated area, please contact your town office or consult the Vermont Department of Housing and Community Development (DHCD)’s Planning Atlas online. Projects located within a designated area must comply with only sub-criteria (i) and (iv). Projects located outside a designated area must comply with all four sub-criteria subject to any exercise of mitigation flexibility by the Commission in accordance with 10 VSA § 6093(a)(3).
for all projects, applicants must demonstrate that the project will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential; and
for projects located outside of a designated area, the applicant must demonstrate that there are no lands other than primary agricultural soils owned or controlled by the applicant that are reasonably suited to the purpose of the project; and
for projects located outside of a designated area, the applicant must demonstrate the project has been planned to minimize the reduction of agricultural potential of the primary agricultural soils through innovative land use design resulting in compact development patterns, so that the remaining primary agricultural soils on the project tract are capable of supporting or contributing to an economic or commercial agricultural operation; and
for all projects, the applicant must provide “suitable mitigation” for any reduction in the agricultural potential of the primary agricultural soils caused by the project.
<b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b>
<i>See standards under Criterion 9(B)</i>
<b>CRITERION 9(C) - PRODUCTIVE FOREST SOILS</b>

<p>“Productive forest soils” [see 10 VSA § 6001(8)] means: “...those soils that are not primary agricultural soils but that have a reasonable potential for commercial forestry and that have not been developed. In order to qualify as productive forest soils, the land containing such soils shall be of a size and location, relative to adjoining land uses, natural condition, and ownership patterns, so that those soils will be capable of supporting or contributing to a commercial forestry operation. Land use on those soils may include commercial timber harvesting and specialized forest uses, such as maple sugar or Christmas tree production.”</p>
<p><b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b></p>
<p>Provide detailed maps that identify any productive forest soils as defined in statute</p>
<p>Provide detailed information, including citations, for any municipal regulations that protect or preserve productive forest soils</p>
<p>Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250</p>
<p><b>CRITERION 9(C)'S THREE SUB-CRITERIA</b></p>
<p>When a project results in the loss of any productive forest soils on the project tract, applicants must demonstrate compliance with sub-criteria (i)–(iii) of Criterion 9(C). Compliance with these sub-criteria depends on whether the project tract is located within or outside of a designated “growth center” as defined by 24 VSA § 2793c. For assistance determining whether your project tract is located within or outside a designated growth center, consult DHCD’s Planning Atlas online. Projects located within a designated growth center must comply with only sub-criterion (i). Projects located outside a designated growth center must comply with sub-criteria (i)–(iii). The three sub-criteria are:</p>
<p>the development or subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agriculture or forestry potential; and</p>
<p>except in the case of an application for a project located in a designated growth center, there are no lands other than productive forest soils owned or controlled by the applicant which are reasonably suited to the purpose of the development or subdivision; and</p>
<p>except in the case of an application for a project located in a designated growth center, the subdivision or development has been planned to minimize the reduction of the potential of those productive forest soils through innovative land use design resulting in compact development patterns, so that the remaining forest soils on the project tract may contribute to a commercial forestry operation. [10 VSA § 6086(a)9(C)]</p>
<p><b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b></p>
<p><i>See standards under Criterion 9(C)</i></p>
<p><b>CRITERION 9(D) - EXTRACTION OF EARTH RESOURCES</b></p>

If the project involves the extraction of earth materials, such as topsoil, sand, gravel, crushed rock, marble, slate, granite, or other stone, the extraction process should be designed to minimize impacts on neighboring land uses and the environment, and a suitable reclamation plan must be prepared. Impacts on neighboring land uses most often include noise, dust, water supplies, and traffic. Applicants should contact area residents during the planning of their project and prior to submitting a land use permit application, to explore mitigation measures that might be acceptable. Many applicants limit the hours of operation and use earthen berms or wooded buffers to reduce noise. Dust can be controlled by various means, including water spray, truck covers, and the like. Water supplies can be protected by limitations on blasting depth and preservation of drainage patterns.

**POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY**

Provide detailed maps identifying any locations that include extraction areas for earth resources

Provide detailed information, including citations, for municipal regulations that include information on the operations locations, or proximity of earth resource extraction areas to other land uses

Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250

**CRITERION 9(F) - ENERGY CONSERVATION**

All projects must incorporate the best available technology for energy efficiency and reflect principles of energy conservation, including reduction of greenhouse gas emissions from the use of energy. All projects must also provide evidence that the project complies with the applicable building energy standards under 30 VSA § 51 or 53 [Residential Building Energy Standards (RBES), and the RBES Stretch Code and Commercial Building Energy Standards (CBES), respectively].

**Residential Buildings**

Applicants for residential projects (single-family dwellings, two-family dwellings, and multi-family housing three stories or less in height) must certify that the project, when constructed, will meet the RBES–Stretch Code. (Multi-family housing projects that are four stories or greater in height must meet the CBES. See below). Post-construction, you will need to submit certification from the Department of Public Service (PSD) the project meets the Stretch Code. Contact PSD for the RBES Certificate forms. Under the Criterion 9(F) Procedure and statute, these actions create a presumption of compliance with Criterion 9(F). If the presumption cannot be met, additional documentation will be required.

**Commercial Buildings**

Applicants for commercial projects (including multi-family housing projects that are four stories or greater in height) must certify that the project, when constructed, will meet the CBES. A Department of Public Service certification that the project meets the CBES must be filed post-construction. Contact the PSD for the CBES Certificate form. However, compliance with the CBES does not serve as a presumption of compliance with Criterion 9(F). To demonstrate compliance with Criterion 9(F), applicants must prove that they have incorporated the best available technology for efficient use or recovery of energy. Applicants are encouraged to list details related to the energy features of the project, such as interior and exterior lighting, energy controls, space heating and cooling, water heating, ventilation systems, insulation levels, fenestration, and other proposed energy conservation measures. Applicants are encouraged to submit “renewable ready” building designs, including providing the electrical infrastructure to support the future installation of electric vehicle charging stations, photovoltaics, solar hot-water systems, or other infrastructure to reduce greenhouse gas emissions from the use of energy from the project.

**POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY**

Provide detailed information, including regulatory citations, that require recording certification of RBES or CBES with the municipal clerk

Provide detailed information, including regulatory citations, that include information on requirements for energy conservation measures in land development projects

Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250

**CRITERION 9(G) - PRIVATE UTILITIES**

If a project involves a utility, such as a road, water line, sewer line, well, or the like, which will be shared by more than one user, the applicant must provide a mechanism to protect the municipality from having to assume responsibility for the utility in the future or that ensures that the utility will not be a burden on the municipality.

**POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY**

Provide detailed information, including regulatory citations, that include information on design standards for private utilities such as roads, water lines, sewer lines, or similar utilities

Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250

**CRITERION 9(H) - SCATTERED DEVELOPMENT**

This criterion is intended to ensure that a proposed subdivision or development outside of an existing settlement doesn't impose additional costs of public services and facilities that outweigh the tax revenue and other public benefits that the development or subdivision will provide. The first step under this criterion is to determine whether the project tract is physically contiguous to an existing settlement. "Existing settlement" means an area that constitutes one of the following: (i) a designated center; or (ii) an existing center that is compact in form and size; that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other; that has significantly higher densities than densities that occur outside the center; and that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens. Strip development outside of an area described in subdivision (i) or (ii) above shall not constitute an existing settlement. [10 VSA § 6001(16)(A)-(B)] If the project is contiguous to an existing settlement, Criterion 9(H) does not apply.

**POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY**

Provide detailed information, including maps, on municipal service areas such as water, wastewater, stormwater, and emergency services

Provide detailed information on any regulatory measures that would limit subdivision of land in locations outside of municipal service areas

Provide detailed information on land uses that are permitted in locations outside of municipal service areas

Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250

**CRITERION 9(J) - PUBLIC UTILITIES**

All projects must be designed to not cause excessive or uneconomic demands on public utilities, which include natural gas companies, electric companies, telephone companies, cable television companies, water companies (public or private), sewer utilities (public or private), and highway departments.

**POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY**

Provide certification from any public utility providers that indicate their ability to serve the municipality; or any issues or constraints to future service of a municipality

Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250

**CRITERION 9(K) - PUBLIC INVESTMENTS**

Projects should be designed to avoid unreasonable impacts on any public investments adjacent to the project site. Typical investments of concern include highways (existing or proposed), sewer and water lines, schools, parks and wildlife refuges, recreation trails, municipal or state buildings, publicly financed projects, and public waterways. Direct any related questions to your Coordinator.

**POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY**

Provide detailed information on any review processes that coordinate discussions between municipal departments, state agencies, or other community partners that relate to protection or preservation of public investments
Provide information on any future capital projects, including maps that show locations in relation to existing public investments
Provide detailed information and citations on any measures that are included in municipal regulations to protect public investments
Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250
<b>CRITERION 9(L) - SETTLEMENT PATTERNS</b>
Criterion 9(L) is intended to prevent and minimize linear commercial development along public highways that erodes the functions and benefits of Vermont's traditional land use pattern of compact centers separated by rural lands.
<b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b>
Provide detailed information, including citations from municipal regulations that will prohibit or limit linear development along public highways
Provide maps that identify where growth is planned in the municipality, including land use categories
Provide detailed information on why some or all of this criterion is not applicable or otherwise regulated outside of Act 250
<b>CRITERION 10 - LOCAL AND REGIONAL PLANS</b>
All projects must be in conformance with the municipal plan, the regional plan, and any capital improvement plan that may exist.
<b>POTENTIAL APPLICATION INFORMATION TO DEMONSTRATE EQUIVALENCY</b>
Provide information on the municipal plan, including adoption date, and acknowledgement by the regional planning commission of conformity with state statute and regional plans

## Appendix B – Possible Permits Related to Act 250 Permitting

The following is a list of common permits that the state requires. In many cases, these permits are needed regardless of the project needing an Act 250 permit. This list is intended to provide information on the level of oversight that may still be required if a municipality receives delegation through functional equivalency; including any municipal role in issuing a similar permit. This does not represent and is not intended to be an exhaustive list of all possible state permits that may apply to a project.

POSSIBLE PERMITS & REQUIREMENTS RELATED TO ACT 250 PERMITTING		
PERMIT/REQUIREMENT	STATE AGENCY	LOCAL ROLE
Water and/or Wastewater Permitting	ANR – Department of Environmental Conservation	State permit typically issued based on municipality’s ability to serve.
Construction/Modification of Source	ANR – Air Pollution Control Division	Generally covered under nuisance regulations
Demolition Waste	ANR – Waste Management & Prevention Division	
Hazardous Waste Handler Site ID	ANR – Waste Management & Prevention Division	
Used Septic System Components/Stone	ANR – Waste Management & Prevention Division	Only applies if septic systems are used
Universal Recycling and Food Waste	ANR – Department of Environmental Conservation	
Construction Permit – Public Drinking Water Systems	ANR – Drinking Water & Groundwater Protection Division	Covered under building codes and building permitting
Nongame & Natural Heritage Program (Threatened and Endangered Species)	ANR – Department of Fish & Wildlife	
Wetlands	ANR – Department of Environmental Conservation	
Floodplains	ANR – Watershed Management Division	
Stormwater: Developments	ANR – Watershed Management Division	
Construction Permit – Public Drinking Water System	ANR – Drinking Water & Groundwater Protection Division	
Multi-Sector General Permit for Stormwater Associated with Industrial Activities	ANR – Watershed Management Division	
Construction Permit Fire Prevention, Electrical, Plumbing, ADA	Department of Public Safety	If building codes are delegated to municipalities, this would be covered locally



<b>POSSIBLE PERMITS &amp; REQUIREMENTS RELATED TO ACT 250 PERMITTING</b>		
<b>PERMIT/REQUIREMENT</b>	<b>STATE AGENCY</b>	<b>LOCAL ROLE</b>
Plumbing in residences served by public water/sewer with 10 or more customers	Department of Public Safety	If building codes are delegated to municipalities, this would be covered locally
Historic Buildings & Architectural Sites	Division for Historic Preservation	Local historic regulations would address these issues
Program for Asbestos Control & Lead Certification	Department of Health	
Food, Lodging, Bakeries, Food Processors, Children's Camps	Department of Health	
Liquor Licenses	Department of Liquor Control	Also requires local liquor control approval
Access to State Highway	Agency of Transportation	Only applicable if on state highway, otherwise local access permit is required
Signs	Agency of Transportation	Local sign regulations address this
Construction within State Highway Right-of Way	Agency of Transportation	Only applicable if on state highway, otherwise local right-of-way permit required
Airports and Landing Strips	Agency of Transportation	Super specific permitting
Vermont Building Energy Standards	Vermont Energy Code Assistance Center	Certification required for local CO issuance
Business Registration	Secretary of State	
Income and Business Taxes (sales, meals/rooms, etc.)	Department of Taxes	

## Appendix C – Technical Memo on Proposed Delegation of Act 250

*Editors Note: The following memo was provided to Senator Wendy Harrison in February of 2022. The purpose of this memo was to outline a process whereby municipalities would receive delegation through functional equivalency for Act 250 permitting. This was the foundational document that outlined how this process may work and is provided for informational purposes only. Many of the concepts included in this memo have been outlined in this report.*

To: Honorable Senator Wendy Harrison, Windham District

From: Paul Conner, AICP, Director of Planning and Zoning, City of South Burlington  
Meagan Tuttle, AICP, Director of Planning, City of Burlington  
Eric Vorwald, AICP, Planning & Zoning Manager, City of Winooski

RE: **Technical Memo on Proposed Delegation of Act 250**

Date: February 22, 2023

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### **Overview**

The purpose of this memo is to provide information as requested on a possible process for delegation of Act 250 review to municipalities where state and local development review are substantially similar. This process would require municipalities to demonstrate that-- through adopted regulations, policies, and plans-- local regulations are functionally equivalent to the ten criteria (including sub-criteria) outlined in Act 250 (10 V.S.A. Chapter 151), and that capacity exists to perform development review and permitting at the local level.

Other forms of municipal delegation exist in statute, including Lake Shoreland Protection Standards ([10 V.S.A. § 1448](#)), Potable Water Supply and Wastewater Systems ([10 V.S.A. § 1976](#)), Building Codes/Fire Safety Standards ([20 V.S.A. § 2736](#)), local Act 250 review of municipal impacts ([24 V.S.A. § 4420](#)), and acceptance of permits or approvals by state agencies or municipalities for identified criteria ([10 V.S.A. § 6086\(d\)](#)) in Act 250 permitting. This memo outlines a mechanism to expand upon current Act 250 delegation by authorizing a process for municipal review and permitting for all criteria, town-wide, which is most closely related to the current shoreland delegation process.

### **Municipal Delegation as a Response to Jurisdictional Challenges**

#### ***Planning as a foundation for development review***

As originally envisioned, the Land Use and Development Law, or Act 250, would have relied on a Statewide Capability and Development Plan to guide decision-making through the permitting process at the District Commissions ([10 V.S.A. § 6042](#)). However, this plan did not come to fruition and for the last 40 years there has been no statewide land use plan providing the foundation for Act 250's review.

As such, **current jurisdictional thresholds<sup>11</sup> provide a proxy for developments of regional significance or impacts on resources of statewide interest.** These thresholds apply to both the most urban and rural places within the state. However, a new ten-unit development in downtown Winooski has very different land consumption and infrastructure impacts than a ten-lot subdivision

in a rural municipality or a ten-acre commercial development. Similarly, the current Act 250 thresholds present substantial discrepancies even within urban areas: a ten unit residential development in an urban area will have a much lesser impact than a 9-acre commercial project, which would currently be exempt. As a result, for decades both proponents and opponents of the law have documented ways in which Act 250's jurisdiction has not been effective at preventing certain development impacts-- such as sprawl and natural resource fragmentation-- nor at effectively directing growth into areas planned for it.

**A municipality must have a municipal development plan that is in conformance with the 14 state planning goals ([24 V.S.A § 4302](#)) in order to adopt or amend municipal zoning regulations**, establish local impact fees, and for the plan to have standing in Act 250 or Section 248 (Public Utility Commission) proceedings. These plans include current and future land use maps; information on future population projections; and policies regarding development impacts that should be planned for and mitigated. These municipal development plans are reviewed and approved by the Regional Planning Commissions to ensure consistency, and effectively act as a local capability and development plan.

In the 50 years since Act 250's adoption, **many municipalities have successfully utilized this planning framework to adopt increasingly specific bylaws and other ordinances to implement municipal plans**. The state's economic development and planning programs recognize and reward this planning. For example, growth center designations require municipalities to commit to meeting minimum standards through zoning and other land development controls that advance the statewide goal of dense mixed-use centers.

Over the years, **some local regulations have evolved to be more finely tuned to development thresholds that will impact municipal or regional systems' capacity to support growth**. For example, in Burlington, the City's major impact criteria evaluate many of the same development impacts in Act 250's criteria-- these standards apply to developments of as few as five units in areas planned for the lowest-density development, but are only applicable to developments of fifty units or more in downtown. In other municipalities, thresholds may be based on specific impacts, such as traffic.

Due to statewide applicability, **not all of Act 250's criteria include clear tests for when a particular criteria will be relevant or how developments demonstrate that a potential impact has been minimized**, which can vary significantly based on context and in some cases rely on decisions of the courts. Some local zoning bylaws provide more specific standards-- such as Winooski's Form Based Code. This code includes specific guidelines and parameters for the siting, design, and overall context for how a building interacts with both the individual building site and the adjacent streetspace. A number of other communities throughout the state have also adopted form-based codes to provide detailed and prescriptive standards to guide new developments with sensitivity to an area's existing character. Another example includes Burlington's natural resource overlay zones, which apply specific development regulations to the natural areas and resources that were inventoried and mapped in the city's open space plan.

### ***Leveraging municipal resources to reduce permitting redundancy***

Despite this evolution at the municipal level, **Act 250 jurisdiction and its limited exemptions have not evolved to recognize the capacity of local review processes, which has created significant redundancy in some communities**. Today, full exemption from Act 250 jurisdiction is possible only

for priority housing projects of varying sizes within state-designated downtowns, neighborhood development areas, and growth centers. This creates a process where two identical developments-- but for the fact that one incorporates 20% of its housing units at an affordable rate-- can have substantially different review processes. While this is an important incentive for the creation of more affordable homes in the state's designated areas, the local impacts, including review and permitting, from these developments are the same and have the opportunity to be treated as such.

**A more robust local delegation process can eliminate duplicative development review, which can speed housing development without compromising Act 250's jurisdiction and criteria.** For decades, there have been tensions between Act 250's regulatory structure and certain statewide goals-- including the increasingly urgent need to speed housing production statewide. Significant reforms to this law take time, and there are many important perspectives on how to do so. New delegation authority does not replace the need or ability to consider these reforms, but provides a time-sensitive solution in areas equipped to manage development review at the local level.

Burlington, South Burlington, and Winooski have professional staff and development review boards which develop local bylaws; apply these bylaws and other codes; review development plans; and coordinate with local, regional, and state agencies to identify appropriate mitigations where needed. Within these three cities, Zoning Administrative Officers are unaware of a situation in the past 5 to 10 years in which a development that was approved at the local level was subsequently denied by Act 250, or for which Act 250 conditions resulted in the need for substantial modifications to the local permit.

As noted above, the state has recognized local capacity and expertise by creating processes through which **other state permits can be administered or replaced by municipalities with functionally equivalent local regulations and the professional capacity to administer.** A similar process for Act 250 delegation could recognize where local regulations have the necessary foundation to review and permit projects within the context of local and statewide goals together. These procedures can identify areas where municipal regulations may not adequately address certain critical statewide resources, and provide a route for local regulations to be amended or for the expertise of certain state agencies to continue to apply to certain aspects of a local development review. It is possible to engage the important and valuable expertise of these agencies for targeted issues without a duplicative development review framework for all other aspects of a project.

A more robust delegation of Act 250 review would provide a direct impact on new development, particularly for housing. These impacts include reduced review times; reduced permitting and professional service fees; and more predictability in development review and permitting processes. This could also enable the Natural Resources Board (NRB) to leverage the capacity and resources of municipalities in support of meeting statewide housing needs. For example, local delegation offers the opportunity for direct enforcement of regulations including potential violations after a project has been completed and can also reduce the number of projects that require review by the District Commissions in areas with functionally equivalent regulations, increasing access to resources for project review in municipalities that have fewer local technical resources.

### **An Expanded Process for Local Act 250 Delegation**

#### ***Delegation based on functional equivalency***

Statute currently provides for partial local delegation of Act 250, limited to a review on municipal impacts ([24 V.S.A. § 4420](#)). This enables municipal review of Act 250's criteria 6, 7, and 10 only. Once

established, this requires municipal review of these criteria for all projects that meet Act 250's current jurisdictional thresholds. All other criteria continue to be reviewed by the District Commissions, or by state agencies where enabled by [10 V.S.A. § 6086\(d\)](#)--therefore, both state and local review remains. Just 12 municipalities have local delegation, including communities such as Brattleboro, Vergennes, Middlebury, Morristown and Hardwick.

**Amendments to 24 V.S.A. § 4420 may be a logical place to authorize another tier of local delegation that exempts Act 250 jurisdiction where municipal regulations and review processes are functionally equivalent to Act 250's development thresholds and criteria.** In the case of municipal delegation for Lake Shoreland Protection Standards, the City of Burlington entered into a delegation agreement with the Secretary of the Agency of Natural Resources (ANR) to issue and enforce local permits in lieu of state permits after demonstrating adopted ordinances were functionally equivalent to shoreland protection standards in statute, and that the City had adequate resources to administer and enforce its ordinances. This review and agreement identified two key areas of the City's ordinances that were required to be amended in order to obtain full municipal delegation of this process. This agreement requires the City to take on the cost of administering this review, but enables municipal assessment and retention of permit fees to do so, and requires routine reporting to ANR regarding local permits issued.

**The intent is not for municipalities to issue Act 250 permits, but rather ensure the outcomes of the local review and permitting process are functionally equivalent or better.** Act 250 delegation similar to the shoreland delegation would enable a municipality to demonstrate, through a series of benchmarks, that local zoning bylaws, other enforceable local ordinances, permitting requirements, and locally adopted plans provide a substantially similar or greater level of consideration to development projects. This process would expand upon the three criteria currently enabled by 24 V.S.A. § 4420 to enable municipal review of most, if not all, of Act 250's criteria. For example, an analysis of Winooski's local development regulations relative to Act 250 criteria has been provided to the Senate Committee on Economic Development, Housing, and General Affairs; similar analyses have been prepared for Burlington and South Burlington and can be provided if helpful.

### ***Statutory framework vs. rulemaking***

Changes to statute would only need to accommodate a process for expanded authority for local delegation of Act 250 review, the minimum benchmarks that must be demonstrated for such delegation, and an exemption from Act 250 jurisdiction in such circumstances. Similar to the legislation that created Act 250, the statutory language provides the basis for the 10 criteria ([10 V.S.A. § 6086](#)), but what is expected to be demonstrated by an applicant is set out through NRB and other agencies' rulemaking processes. A more robust local delegation could be formalized through a similar rulemaking process which includes local planning professionals, regional planning commissions, the NRB, and district commissions.

Local delegation would not eliminate the need for certain state permits such as wetland permits, erosion & sedimentation control permits, or similar statewide requirements where applicable. Rather than relying on the Act 250 review process as the clearinghouse for ensuring applicable state permits are issued, the rulemaking process could establish processes for ensuring these reviews take place-- this is particularly relevant since Act 250 is not currently applicable to all projects that may require such permits. Additionally, the statutory framework can make it clear that a community with delegated authority may consult state agencies' expertise on specific topics (such as reviewing particular wildlife habitats, prime agricultural soils, or intermunicipal impacts on state highways if applicable).

Finally, like other delegation processes, routine reporting is an appropriate mechanism to ensure delegated municipalities' bylaws and administrative capacity maintain agreed upon standards. Consistent reviews at set intervals would also ensure a municipality is reviewing and updating local regulations and processes consistent with any applicable changes to Act 250 statutes.

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[1] Throughout this memo, "jurisdiction" or "jurisdictional thresholds" refer to the [location or circumstances](#) that require a development project to be reviewed through Act 250, and "the criteria" refers to the [ten standards](#) outlined in statute that are used in an Act250 project review.

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