

## VNRC Summary of Act 250 Jurisdictional Tiers and Designation Process

The Vermont Natural Resources Board (NRB)'s report recommends that Act 250 jurisdiction be reformed to reflect three tiers. Act 250 jurisdictional triggers will vary depending upon which tier a project is in. Below is an outline of the substantive requirements for establishing each tier, the jurisdictional triggers within each tier and the process for establishing each tier.

### Tier 1A

In Tier 1A, all residential, commercial and industrial development will be exempt from Act 250. Tier 1A areas shall include the core town center and an area that can meet the housing goals identified in the town plan. To qualify for a Tier 1A designation a municipality must have water and sewer, a duly adopted town plan, zoning and subdivision regulations that meet certain standards to address the resource issues covered in Act 250, the capacity to administer its land use regulations and the following characteristics:

- The area is generally within walking distance ( $\frac{1}{4}$ - $\frac{1}{2}$  mile) from the municipality's, or an adjacent municipality's, downtown, village center, new town center or growth center.
- The area excludes identified flood hazard and fluvial erosion areas, except those areas containing preexisting development in areas suitable for infill development as defined in § 29-201 of the Vermont Flood Hazard Area and River Corridor Rule.
- The municipal plan indicates that this area is intended for higher density residential and mixed use development.
- The area provides for housing that meets the needs of a diversity of social and income groups in the community as described in the municipality's plan to achieve their housing targets developed under 24 V.S.A. § 4348a for the full range of housing.
- The area is served by planned or existing transportation infrastructure that conforms with "complete streets" principles as described under 19 V.S.A. § 309d and establishes pedestrian access directly to the downtown, village center, or new town center.
- Reflects a planned settlement pattern that, at full build-out, is not characterized by:
  - scattered development located outside compact urban and village centers that is excessively land consumptive;
  - development that limits transportation options, especially for pedestrians;
  - the fragmentation of farmland and forestland or the destruction of critical wildlife habitat;
  - development that is not serviced by municipal infrastructure or that requires the extension of municipal infrastructure across undeveloped lands in a manner that would extend service to lands located outside compact village and urban centers;
  - linear development along well-traveled roads and highways that lacks depth, as measured from the highway.

Tier 1A areas would be developed by the RPC's in consultation with municipalities. If an RPC believes that a municipality qualifies for a Tier 1A area it will be recommended in the Regional Plan along with a proposed map of the area. Once the Regional Plan is approved by the Regional Planning Commission and the reformed professional NRB, a Tier 1A application could be approved by the NRB that would confer Act 250 exemptions in the approved Tier 1A area. The Tier 1A application would be reviewed by the NRB in accordance with rules adopted by the

NRB. The rules will include an opportunity for participation in the Tier 1A designation process and the designation will be appealable to the Vermont Supreme Court if the NRB is alleged to not properly apply the Tier 1A designation criteria.

## **Tier 1B**

In Tier 1B, up to 50 residential units per project on a lot 10 acres or less shall be exempt from Act 250. The Tier 1B area shall include a core village center and a ¼ mile radius around the village center. Lots or units in Tier 1A or 1B do not count toward the jurisdictional trigger outside of Tier 1. To qualify for a Tier 1B designation a municipality must have permanent zoning and subdivision regulations, water, sewer or an alternative to sewer service to accommodate growth in the Tier 1B area and the following characteristics:

- The municipality has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title and has adopted bylaws and regulations in accordance with sections 4414, 4418, and 4442 of this title.
- The area excludes identified flood hazard and fluvial erosion areas, except those areas containing preexisting development in areas suitable for infill development as defined in § 29-201 of the Vermont Flood Hazard Area and River Corridor Rule.

Tier 1B areas would be developed by the RPC's in consultation with municipalities. If an RPC believes that a municipality qualifies for a Tier 1B area it will be recommended in the Regional Plan along with a proposed map of the area. Once the Regional Plan is approved by the Regional Planning Commission and the reformed professional development NRB the Tier 1B area would be adopted and the Act 250 exemptions would be in place.

## **Tier 2**

Tier 2 is an area that is not designated Tier 1A, 1B or Tier 3. Current Act 250 jurisdictional triggers would apply in Tier 2 with the addition of a jurisdictional trigger when either a single road or driveway of 800 feet is built to serve a development or there are cumulatively 2,000 feet of roads and driveways built to serve a development. In addition, a new criterion (Criterion 8C) would be added to discourage undue adverse impacts on forest blocks and connecting habitat in Tier 2 and Tier 3. If a project would result in an undue adverse impact, a permit would only be granted if effects are avoided, minimized, or mitigated in accordance with rules adopted by the Board. More details about how to structure the road rule and forest fragmentation criterion and rulemaking can be found in S.234 as introduced in the Senate in 2022.

## **Tier 3**

Tier 3 are areas where critical natural resources exist that merit protection. Any development in Tier 3 will require an Act 250 permit. Tier 3 areas will be mapped by the RPC's with input from the town and ANR in the planning process. Tier 3 areas **may** include land characterized by steep slopes, Class A high quality waters designated by ANR, areas with mapped threatened or endangered species, rare and irreplaceable natural areas and critical wildlife habitat, and

critically important wildlife travel corridors or connectivity areas. Tier 3 may also include high priority intact forest blocks that have been identified as providing exceptional functions and values that require enhanced protection. The selection of Tier 3 areas, and the extent to which they are proposed for designation, would fall within the discretion of the RPC working in consultation with local towns and the ANR, but the designation process is not intended to be a sweeping designation. Tier 2 would cover the majority of land outside of Tier 1

Tier 3 areas would be developed by the RPC's in consultation with municipalities. If an RPC believes that a critical natural resource in a municipality qualifies as a Tier 3 area it will be recommended in the Regional Plan along with a proposed map of the area. Once the Regional Plan is approved by the Regional Planning Commission and the reformed professional NRB, a Tier 3 application could be approved by the NRB that would confer Act 250 jurisdiction in the approved Tier 3 area. The Tier 3 application would be reviewed by the NRB in accordance with rules adopted by the NRB. The rules will include an opportunity for participation in the Tier 3 designation process and the designation will be appealable to the Vermont Supreme Court if the NRB is alleged to not properly apply the Tier 3 designation criteria.