

Markups to Draft No 1.1- S.100, dated 3/13/23

1. 2025 Effective Date for Enhanced Designation

This version of the bill moves the effective date for the proposed enhanced designation process from January 2024 to January 2025. While it is understood that there are studies underway regarding Act 250, and that the development of model bylaws for municipalities that pursue enhanced designation will take time, urgent action is needed to address the statewide housing crisis.

The City has previously offered a concept for municipal delegation of Act 250 that would eliminate the need for the NRB to prepare model bylaws by putting more of the onus on municipalities to demonstrate that local regulations are already functionally equivalent to Act 250's review criteria in 10 V.S.A. §6086 (a), and could likely be implemented more quickly than it would take for the NRB to write and vet new model bylaws.

If the Committee is not able to create this new delegation authority, then we propose that the timeline for implementation of Secs 18-20 of this bill be reverted to January 1, 2024 (p 35, line 7).

2. Ensure Enhanced Designation considers not only municipal bylaws, but also other codes & ordinances

Enabling municipalities to demonstrate that local laws are “identical to or consistent with” model bylaws is a strong start. Within statute, “bylaw” typically refers to zoning and subdivision ordinances. However, some municipalities have adopted other legal and enforceable codes and ordinances – such as stormwater regulations, sign ordinances, and noise ordinances—outside of municipal zoning ordinances that will achieve some of the purposes of these model bylaws. A technical change is offered to ensure that these codes and ordinances, in conjunction with zoning and subdivision bylaws, may also suffice for the purposes of granting an Enhanced Designation.

Amend page 26, lines 10-18, to read:

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

(1) an approved designated area(s);

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

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

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

3. Remove the appeals process for the Enhanced Designation

This establishes a process through which a municipality's legislative body is required to approve a municipality's application, and the NRB, after public hearing and extensive

technical review of a municipality's laws, can issue a determination that a municipality's bylaws, codes and ordinances are consistent with bylaws that the NRB itself will develop. Based on this review and approval process, it is unclear why a new appeals authority is necessary for this designation, and there is concern that it could limit municipalities' ability to utilize this new option.

Strike lines 3-15 on page 30:

~~(e) Appeal.~~

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

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

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

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

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

4. Clarify that a hotel is a commercial use that can be part of a "mixed-use" priority housing project in designated areas

10 V.S.A 6001 (3) (D) currently identifies projects that are not considered to be "development" for purposes of Act 250 jurisdiction—including priority housing projects. Priority housing projects are defined as being mixed income housing or mixed use, or any combination thereof, located within certain designated areas. The definition of "mixed use" in the same section enables broad categories of commercial uses to be combined with housing; the only use type that is clearly excluded is industrial. However, the definition is currently silent on whether hotels are considered to be eligible commercial uses that can be part of a mixed use project. This has led to the determination that hotel uses are not eligible to be part of a mixed-use project, and therefore do not meet the definition of a priority housing project that would be exempt from Act 250 review. It is necessary for statute to be clear on how this use should be treated for the purposes of determining Act 250 jurisdiction over a project, and we recommend that it should be an eligible commercial use.

Insert the following language from 10 V.S.A §6001, as amended, into other changes in Sec. 16 of the bill, such as after line 4 on page 23:

(28) "Mixed use" means construction of both mixed income housing and construction of space for any combination of retail, office, hotel, services, artisan, and recreational and community facilities, provided at least 40 percent of the gross floor area of the buildings involved is mixed income housing. "Mixed use" does not include industrial use.

5. 25-unit threshold for Act 250 jurisdiction in designated places

This version of the bill reverts to the current 10-unit threshold for Act 250 jurisdiction for developments, except when located in a designated place where the proposed threshold is 25 units.

A 25-unit threshold is a positive change in terms of better facilitating and incentivizing development in the areas of the state that are planned for growth, and in Burlington’s designated downtown and neighborhood development areas. At the same time, this new threshold could exacerbate the current complexity and inconsistencies with regard to the overlapping layers of state and local review in Burlington’s downtown—particularly in light of the delayed effect for the enhanced designation process. This is rooted in the fact that Burlington utilizes a local Major Impact Review process, that is functionally equivalent to Act 250, with tiered applicability based on our municipal plan. The proposed 25-unit thresholds does not recognized the likely (or unlikely) land use or infrastructure impacts resulting from a project of a certain size.

The following chart illustrates this challenge:

Project Type in Burlington Designated Downtown	City Major Impact Review	Act 250 Review
1. 24 units, not priority housing	No	No
2. 25-49 units, not priority housing	No	Yes
3. 50 units, priority housing	Yes	No
4. 50 units, not priority housing	Yes	Yes

While the conflicting permitting authorities in examples 2 and 3 already exist today, at the current 10-unit Act 250 threshold, the proposal to increase the threshold for Act 250 jurisdiction to 25 units in designated places may not be effective at supporting the mid-sized projects appropriate for and most likely to be developed in certain designated places.

If the committee is not interested in creating a new municipal Act 250 delegation authority, then we propose to utilize the existing priority housing project thresholds in 10 V.S.A. §6001 (3) (A) (iv) (I) as the new Act 250 thresholds in designated places, effective July 1, 2023.

Amend page 21, lines 20-21, and page 22, lines 1-5, to read:

(xi) The construction of housing projects such as cooperatives, condominiums, dwellings, or of mobile homes, ~~with 25 or more units,~~ constructed or maintained on a tract or tracts of land, located entirely within a designated downtown development district, a designated neighborhood development area, or a designated growth center, owned or controlled by a person, within a radius of five miles of any point of any involved land and within any continuous period of five years shall ~~constitute a development only if the number of housing units within the project is:~~

- (I) 50 or more, in a municipality with a population of less than 6,000
- (II) 75 or more, in a municipality with a population of 6,000 or more but less than 10,000