

Act 250 and Transportation

Proposal for Statutory Changes for Act 250 Review of Federally Funded Transportation Projects

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What Act 250 Jurisdiction over Federally Funded Transportation Projects

Why?



Sec. xx: Involved Land

**Sec. yy:
Transportation Facility**

For projects involving pre-existing developments (*i.e.*, in existence on June 1, 1970 or, in the case of highways, segments that were the subject of a 19 V.S.A. § 222 “corridor” hearing held before June 1, 1970), Act 250 also can be triggered by “substantial change.” For Act 250 purposes, “substantial change” is a hyper-technical term of art. Although strictly in-kind replacement of existing features generally is not considered a “substantial change,” functional replacement of existing facilities—for example, installation of a larger diameter culvert or substitution of a more modern bridge design with longer spans and fewer piers in the stream—often is considered a “substantial change,” thus triggering Act 250 jurisdiction.

Sec. xx would amend Act 250’s definition of “involved land” in 10 V.S.A. § 6001(3)(A) to exclude from the computation land that was previously disturbed as the result of construction of a transportation facility funded in whole or in part by federal aid, with the exception of creation of new or additional points of access to the Interstate System. This would exclude Act 250 jurisdiction transportation projects that involve less than 10 acres of additional disturbance beyond previously disturbed areas.

Sec. yy adds a new Act 250 definition of “transportation facility” in 10 V.S.A. § 6001(38) to accompany the new definition of “involved land.”

Why?



Sec. zz: Maintenance

Sec. zz adds a new 10 V.S.A. § 6081(ee) Act 250 exemption for maintenance projects on the Interstate Highway System. In this regard:

- Vermont's Interstate routes were purpose built in segments between 1958 and 1982. To meet the exacting engineering standards for safe movement of high-speed traffic, these routes feature extensive earthwork for cuts and fills, with broad rights-of-way providing a buffer from abutting land uses. All the Interstate routes are limited access (*i.e.*, no driveways or "curb cuts" providing access to adjacent properties).
- Act 250 took effect June 1, 1970, while Vermont's Interstate construction program was still underway.
- Because Act 250 included an exemption for state highway projects on which a 19 V.S.A. § 222 "corridor" hearing was held prior to June 1, 1970, even Interstate segments on which construction had not yet occurred did not need Act 250 permits.
- Beginning in the mid-1980s, as the Interstate System neared completion and the oldest Interstate segments began to reach the 30-year mark, Congress began to provide 90% federal funding for maintenance projects.
- In Vermont, our oldest Interstate Highway segments are now approaching the 60-year mark. To meet contemporary engineering and environmental standards, it is often not practical or cost-effective to undertake maintenance using materials and techniques identical to the original construction. For example, functional replacement of an eight-foot diameter corrugated steel culvert might result in substituting a larger, cast concrete box culvert, which not only increases the resilience of the highway infrastructure by providing better capacity for floodwaters, but also improves passage for aquatic and terrestrial animals, thereby mitigating habitat fragmentation from original Interstate construction.
- Vermont's Interstate Highway System is the backbone of Vermont's transportation system, essential to the State's economy, resilience to natural disasters, and national defense.
- Interstate maintenance projects already are subject to numerous federal and state permits and reviews, as well as stringent environmental standards built into VTrans' *Standard Specifications for Construction*.
- Moreover, because they are funded with federal-aid funds, Interstate maintenance projects are subject to additional, holistic review under the National Environmental Policy Act (NEPA).

KNOWN UPCOMING PROJECTS

PROJECT

Lyndon IM 091-3(53)

Springfield IM 091-1(83)

Richmond IM 089-2(60)

Richmond IM 089-2(57)

POTENTIAL IMPLICATION

\$ 2 Million due to loss of staging area

Unknown

Unknown

Unknown

How?



Modify the jurisdictional threshold calculation to net out previously disturbed area to align with jurisdiction over land use changes.



Add new definition of “transportation facility” as it relates to involved land.



Recognize that in order to meet contemporary engineering and environmental standards, it is often not practical or cost-effective to undertake maintenance using materials and techniques identical to the original construction. Expanded footprint of culverts and bridges may be needed.



Recognize that Interstate maintenance projects built with federal funds are subject to numerous federal (National Environmental Policy Act (NEPA) review) and state permitting through ANR, as well as stringent environmental standards built into VTrans’ *Standard Specifications for Construction*.

Project Environmental Milestones:

- Corridor Planning: to ID resources to avoid and opportunities to support
- Resource ID: pre-project scoping to avoid and minimize resource impacts
- NEPA (National Environmental Policy Act): to ensure project is evaluated against a variety of environmental criteria
- State & Federal Resource Permitting: to minimize and mitigate impacts
- NEPA Re-Evaluation: to ensure changes to the project do not cause change in impact

Environmental Review of Projects

New AOT projects with 10 acres or more of new disturbance will continue to fall under Act 250

- Projects which result in land use changes such as
 - Corridor projects with new climbing lanes or additional turning lanes
 - Major realignments
 - New interstate ramps (exit/entrance)
- Example Projects - Champlain Parkway; Rt. 7 Pittsford/Brandon;
Rt. 2 Cabot/Danville;

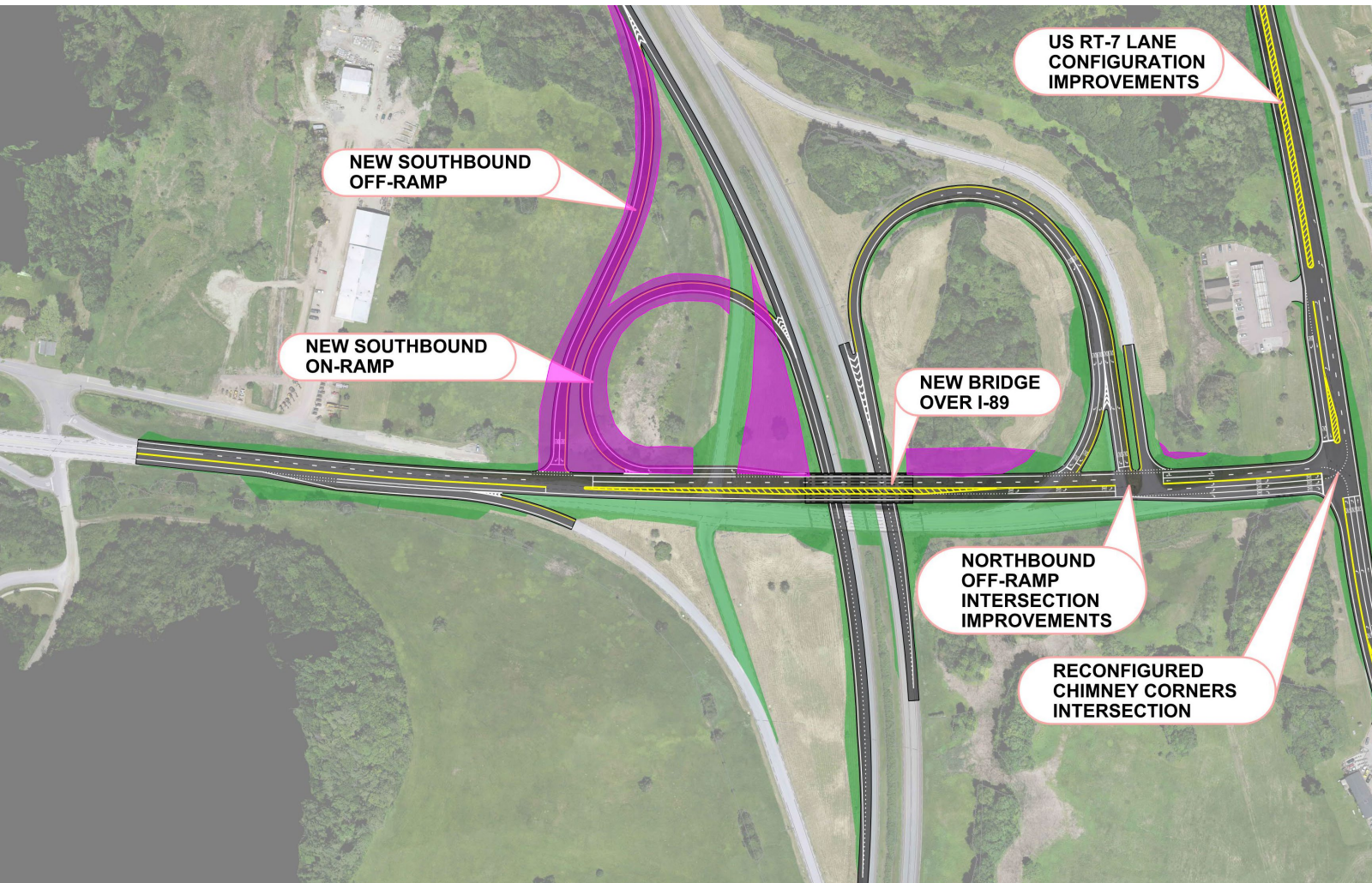
What AOT Projects Remain Under Act 250 Jurisdiction?

Maintenance projects and AOT projects with 10 acres or less of new disturbance will not be subject to Act 250 jurisdiction

- Reconstruction and upgrades of existing infrastructure such as
 - Reconstruction of roads on existing alignment;
 - Intersection updates;
 - Replacement of pre-existing culverts and bridges;
 - Upgrades to sidewalks, trails, pathways, etc.

Example Projects – Colchester Exit 17 Interstate Bridge,
Maintenance of State-Owned Rail Trails,

What Changes?



- Project schedule and cost impact
- Redundant permit conditions
- No change to the project

EXAMPLE PROJECT

Green shading = previously disturbed area to be excluded from jurisdictional calculation
Red shading = newly disturbed to be included in jurisdictional calculation

Proposed Jurisdictional Language (1 of 2)

* * * Act 250; Transportation Projects * * *

Sec. xx. 10 V.S.A. § 6001(3)(A) is amended to read:

(3)(A) “Development” means each of the following:

* * *

(v) The construction of improvements on a tract of land involving more than 10 acres that is to be used for municipal, county, or State purposes. In computing the amount of land involved,

(I) ~~land~~ Land shall be included that is incident to the use, such as lawns, parking areas, roadways, leaching fields, and accessory buildings.

(II) Land that was previously disturbed as the result of construction of a transportation facility shall be excluded from computing the amount of land involved, provided that the project subject to this exclusion is a transportation project that is funded in whole or in part by federal aid. This exclusion shall not apply to the creation of new or additional points of access to, or exit from, the Dwight D. Eisenhower National System of Interstate and Defense Highways. As used in this subdivision (II), “previously disturbed” means land that has been changed by previous installation of transportation facilities, including roads, railroads, runways, taxiways, airport aprons, trails, sidewalks, ditching, drainage features, ledge removal, utility work, clear zones, or other similar features associated with such facilities.

Proposed Jurisdictional Language (2 of 2)

* * * Act 250; Transportation Projects * * *

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Sec. yy. 10 V.S.A. § 6001 is amended to read:

§ 6001. DEFINITIONS

* * *

(38) “Transportation facility” means highways, sidewalks, and bicycle paths, as defined under 19 V.S.A. § 2301; State-railroad or railbanked lines; and runways, taxiways, and airport aprons at State- and municipally owned airports.

Sec. zz. 10 V.S.A. § 6081(ee) is added to read:

(ee) No permit or permit amendment is needed for maintenance projects on the Dwight D. Eisenhower National System of Interstate and Defense Highways. For purposes of this exemption, “maintenance” means resurfacing, restoring, rehabilitating, and reconstructing existing Interstate System routes, including functional replacement of existing bridges and culverts to meet modern engineering and environmental standards.