

REPORT OF THE COMMISSION ON ACT 250:

THE NEXT 50 YEARS

PURSUANT TO 2017 ACTS AND RESOLVES NO. 47

January 11, 2019

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I. SUMMARY

A. **Structure of report**

This report is submitted by the Commission on Act 250: The Next 50 Years (the Commission), which was created by 2017 Acts and Resolves No. 47 (Act 47). The report concerns the statutes and program originally established by 1970 Acts and Resolves No. 250, now known as "Act 250" and codified at 10 V.S.A. chapter 151.

The report includes the following sections: this summary; a description of the Commission's charge; a description of the Commission's activities, including its public engagement process; and four sections on the tasks assigned to it by Act 47. These four sections consist of: (1) tasks related to the original goals of Act 250 and overarching issues, (2) issues on the Act 250 criteria, (3) issues on jurisdiction, and (4) issues on process, interface with other permitting programs and appeals.

B. **Summary of charge and process**

Act 47 created a commission of six legislators to "review the vision for Act 250 adopted in the 1970s and its implementation with the objective of ensuring that, over the next 50 years, Act 250 supports Vermont's economic, environmental, and land use planning goals." The Act also appointed advisors to provide assistance to the Commission, including representatives of State agencies, regional and municipal entities, and development and environmental interests. The list of appointed advisors is attached as Appendix 1.

As directed by Act 47, the Commission's process included three phases that are described in Sections II and III of this report: a phase of gathering information on Act 250's purpose, history, and implementation; a public engagement phase; and a phase of deliberation and report preparation.

Major themes that emerged from the public engagement process included the protection of Vermont's ecosystems, supporting its pattern of compact centers surrounded by a rural landscape, and economic development that is consistent with these goals.

C. Conclusions and recommendations

As explained below, the Commission's conclusions are as follows:

Since Act 250 was enacted in 1970:

• Vermont's per capita income, adjusted for inflation, has nearly tripled.

¹2017 Acts and Resolves No. 47 (Act 47), Sec. 2(a).

²Act 47, Sec. 1(b).

- Vermont's ranking among U.S. states for per capita annual income rose from 33 to 19.
- Vermont's population has grown by nearly half and its workforce by more than half.
- Vermont's unemployment rate has dropped from 8.7 percent in 1976 to 2.8 percent in August 2018.
- Vermont's rate of land development has substantially exceeded its rate of population growth, with land development growing at a rate of from 2.5 to six times its population growth since 1982.
- The number of impaired waters has significantly increased, from 126 in 2002 to 224 in 2018.
- Vermont also is experiencing significant creation of small parcels. From 2004 to 2016, 8,645 new parcels between zero and 10 acres in size were created in the State.
- The effects of climate change are manifesting in Vermont, with warmer winters, longer summers, and an increase in major flood events such as Tropical Storm Irene.

The Commission recommends:

- Amending Act 250 to explicitly reference the goals of the Capability and Development Plan and the goals of municipal and regional planning contained in 24 V.S.A. § 4302(c).
- Amending the Capability and Development Plan to include a climate change goal and a goal regarding the utilization of natural resources.
- Amending the statutes to require that the county-level Capability and Development Plan maps created in the 1970s be updated for reference in Act 250 review.
- Reactivating the Development Cabinet.
- Requiring that regional plans be reviewed for consistency with the statutory goals
 for municipal and regional planning and that, to be used in Act 250, the regional
 plans must be approved as consistent with those goals.
- Amending the statute to require that municipal plans be consistent with those same statutory goals and that, to be used in Act 250, the plans must obtain approval from the regional planning commission as consistent with those goals.
- Three criteria be amended to address climate change issues.

- Updating Act 250's floodways criterion so that it applies to flood hazard areas and river corridors.
- Act 250's definitions of flood hazard area and river corridor be identical to those that govern the Agency of Natural Resource's (ANR) work and that the revised criterion specifically address fluvial erosion.
- Amending the energy conservation criterion to specifically reference energy efficiency.
- The standing committees of jurisdiction review the Act 250 criteria to determine if any can be updated to address climate change.
- Amending the transportation criterion to: (a) include review of the safety and
 congestion impacts to bicycle, pedestrian, and other transit infrastructure and (b)
 better define when it is appropriate for Act 250 to require projects to incorporate
 transportation demand strategies and require connectivity to transit services other
 than single-occupancy vehicles.
- Amending the public investment criterion, 9(K), to specifically refer to investments made through the State designation program, the Vermont Housing and Conservation Board, and similar programs that have been enacted since the criterion was written.
- Improving Act 250's plan conformance criterion by requiring that local plans must be consistent with the statutory goals for municipal and regional planning.
- Criteria be added to protect forest blocks and connecting habitat from fragmentation by adopting the changes contained in H.233 of 2017.
- That the applicant have the burden of proof on criterion 8(A).
- Establishing a multitiered approach toward Act 250 jurisdiction over commercial and industrial development, subdivisions, and housing units.
- Extending Act 250 jurisdiction to cover projects in interstate interchange areas.
- Clarifying the definition of "commercial purpose."
- The establishment of baselines for preexisting gravel pits and quarries.
- That the registered slate quarries be required to give notice of their operations to neighboring property owners.
- That registered slate quarries be added to the ANR Natural Resources Atlas.

- The exemption for slate quarries be repealed.
- The provision that allows quarries to be held in reserve without being considered abandoned be repealed.
- The repeal of the exemption for farming, logging, and forestry below 2,500 feet when these occur in areas that have been designated as critical resource areas.
- Consideration of a process under which release from jurisdiction could be obtained under specific circumstances.
- Further data collection, better permit tracking, addressing delayed applications, improving annual reports, and addressing District Commission variances in order to address the difficulties of conducting an Act 250–related statistical analysis.
- Raising the per diem amount paid to District Commissioners.
- Conformance of local and regional plans with future land use and facility maps.
- Clarifying criterion 10 to indicate that the written provisions should be applied unless they are shown not to meet the same standards of specificity that applies to statutes.
- Assigning risk of nonpersuasion to the appellant in an appeal.
- The Natural Resources Board (NRB) or its successor work with the other State agencies to create a predictable timetable for the permitting process.
- Act 250 appeals be heard by an administrative board that also has the existing functions of the NRB and that the board also hear appeals of ANR permit decisions.

The Commission's recommended legislation is attached as Appendix 4. The draft legislation contains sections that require further discussion by the General Assembly.

II. DESCRIPTION OF CHARGE

As set forth in Act 47, the Commission's charge included three phases. The first was to undertake a "preliminary meeting phase" under which it became informed on the history, provisions, and implementation of Act 250.

The second phase was to conduct a public discussion phase, to be a series of informational and interactive meetings to engage Vermonters on their priorities for the future of Vermont's landscape, including how to maintain Vermont's environment and sense of place, and address relevant issues that have emerged since 1970.

The third phase was a deliberation and report preparation phase in which the Commission, with assistance from the appointed advisors, was to review and make recommendations related to a lengthy list of issues related to Act 250's goals, criteria, jurisdiction, and process.

The General Assembly added tasks to the third phase when it passed 2018 Acts and Resolves No. 194 (Act 194). Secs. 3 and 7 of that act assigned tasks to the Commission related to recreational trails and forest processing operations.

Through Sec. 22, Act 194 also required the Agency of Commerce and Community Development (ACCD) to consult with the Commission as part of ACCD's preparation of a report to other committees of the General Assembly on industrial park designation in rural areas of the State. However, Sec. 22 did not assign the Commission any specific tasks.

The full text of Act 47 is attached as Appendix 2. The text of Secs. 3, 7, and 22 of Act 194 is attached as Appendix 3.

In addition, in Sec. IV of this report, each of the tasks assigned to the Commission includes the relevant language from Act 47 and Act 194.

III. COMMISSION PROCESS

This section summarizes the process undertaken by the Commission. Minutes of the Commission's meetings are included in Appendix 7.

Phase 1: Preliminary Meetings. The Commission conducted Phase 1, the preliminary meeting phase, during adjournment between the 2017 and 2018 legislative sessions, with additional meetings during the 2018 session to prepare for the second phase of its work.

Starting in September 2017, the Commission met four times prior to the 2018 session. During these meetings, the Commission received information and recommendations from the Executive Branch working group referenced in Act 47³; data relating to the Act 250 program from the Natural Resources Board (NRB)⁴; information from the appointed advisors⁵; presentations by legislative counsel; and comments from members of the public. It also received input on conducting a public engagement process.

The Commission also met five times during the 2018 session. During this period, the Commission created subcommittees to inform the public engagement process and the Commission's deliberations. These subcommittees were: Appeals and Structures, Climate Change, Fragmentation and Settlement Patterns, Jurisdiction and Exemptions, and Water Quality. Each subcommittee included one Commission member as chair and multiple advisors. The Commission also issued a request for proposals for professional assistance in the public engagement process, met to discuss proposals received, and met with the selected contractor. The decision on the selected proposal was not unanimous. One member dissented.

Phase 2: Public Discussion. The Commission conducted Phase 2, the public discussion phase, after adjournment of the 2018 session. Public engagement meetings were conducted in Burlington, Island Pond, Manchester, Rutland, South Royalton, and Springfield. The combined attendee total for the meetings was 423.

At each public engagement meeting, a member of the Commission presented on the purpose of the forum and on the background of Act 250. Additional information was provided on Act 250 criteria, jurisdiction, and process. The selected contractor, Cope and Associates, explained the priority setting tool it uses, and facilitators led groups of forum participants in engagement on Act 250 using that tool. Forum attendees were also asked to complete individual preference surveys. If time allowed after completing the use of the tool and the survey, opportunity was provided for responses to participant questions.

³Act 47, Sec. 1(c), 2(B)(iii).

⁴<u>Id</u>., Sec. 2(B)(iv).

⁵<u>Id</u>., Sec. 2(B)(v).

The Commission also conducted a web survey consisting of 28 questions related to Act 250 generally and specifically to participation in the application and appeals processes, to issues related to future resources that should be protected and to climate change, and to jurisdiction and exemptions. The Commission received 905 responses to the web survey.

In addition, the Commission offered the opportunity for submission of written comments by e-mail and received approximately 60 written comments.

Appendices 8 and 9 to this report are, respectively, the overall Community Input Report dated October 17, 2018 and received by the Commission from Cope and Associates at the conclusion of the public engagement process and the "Public Forum Commission Debriefs" sent by Cope and Associates to the Commission after each public engagement meeting.

Many written comments were received by the Commission outside of the public engagement process. They are posted on the Commission's web page at the following link:

https://legislature.vermont.gov/committee/document/2018.1/333/Subject/4206681#documents-section

Phase 3: Deliberation and Report Preparation. After completing the public discussion phase, the Commission met nine times during the fall of 2018 to deliberate and prepare its report.

During this period, the Commission heard from Cope and Associates on its report of the public engagement process, legislative counsel on land use regulations in other jurisdictions and the relationship of Act 250 to ancillary permitting programs and presumptions created in Act 250 by other permits and approvals. It heard from witnesses on the development of the Capability and Development Plan in the 1970s and on the current development of the Vermont Conservation Design. The Commission also received a report from a State working group on recreational trails pursuant to Act 194, a copy of which is attached as Appendix 18.6

The Commission provided an opportunity for advisors to submit proposals and included the advisors in its deliberations. The Commission received proposals from the Vermont League of Cities and Towns, the Vermont Natural Resources Council, and the Vermont Planners Association. It also received various proposals from the Executive Branch, including a conceptual proposal presented by Diane Snelling, Chair of the NRB, and Peter Walke, Deputy Secretary of the Agency of Natural Resources (ANR), on behalf of multiple agencies; a proposal from ACCD regarding industrial parks in rural areas; a proposal from the Agency of Transportation (VTrans) to exempt its federally funded projects; and a proposal from the Agency of Agriculture, Food and Markets (AAFM) to exempt accessory on-farm businesses.

⁶Act 194, Sec. 3 requires appending this report.

The Commission also solicited data on permit processing from the NRB, ANR, and municipalities.

IV. TASK GROUP 1: THE FINDINGS AND THE CAPABILITY AND DEVELOPMENT PLAN; OVERARCHING ISSUES

A. <u>Charges</u>

Successful or unsuccessful in meeting goals. Act 47, Sec. 2(e)(2)(A) – "An evaluation of the degree to which Act 250 has been successful or unsuccessful in meeting the goals set forth in the Findings and the Plan."

<u>Changes since 1970</u>. Act 47, Sec. 2(e)(2)(D) – "An examination of changes that have occurred since 1970 that may affect Act 250, such as changes in demographics and patterns and structures of business ownership."

Revisions to plan. Act 47, Sec. 2(e)(2)(B) – "An evaluation of whether revisions should be made to the Plan."

B. <u>Facts/Background</u>

1. The 1970 Findings and 1973 Capability and Development Plan

In Act 47, "the Findings" means the four findings adopted in the eponymous "Act 250," that is, Sec. 1 of 1970 Acts and Resolves No. 250.7 Act 47 also defines "the Plan" to mean a series of 19 further legislative findings adopted in 1973, which the General Assembly stated constitutes the Capability and Development Plan called for by the 1970 legislation.8

In summary, the Findings from 1970 concluded that:

- unplanned and uncontrolled land use has resulted in development that may be destructive to the environment and unsuitable to the needs of Vermonters,
- comprehensive planning is necessary to guide the use of land,
- it was necessary to establish State commissions with authority to regulate the use in the State of the land and the environment, and
- the use of the land and the environment must be regulated to ensure that those uses are not unduly detrimental to the environment, promote orderly growth and development, and are suitable to the needs of Vermonters.

These findings were included verbatim in Act 47, which is attached as Appendix 2.

The 19 legislative findings from 1973 that constitute the Plan are more detailed and address the following topics:

⁷2017 Acts and Resolves No. 47, Sec. 1(a)(3).

⁸Id., Sec. 1(a)(4); 1973 Acts and Resolves No. 85, Sec. 6.

- the capability of the land to support development;
- the use of natural resources, including agricultural and forest productivity, mineral resources, conservation of the recreational opportunities, and protection of the beauty of the landscape;
- public and private capital investment, including the demands placed on public services by development;
- planning for growth, including the issues of strip development and keeping village and town centers vital;
- seasonal home development;
- general policies for economic development;
- specific areas for resource development;
- planning for housing, including housing for residents of low or moderate income;
- resource use and conservation, including those resources protected under Act 250's Criteria 1 (air and water pollution) and 9 (capability and development plan);
- preserving the value and availability of outdoor recreational opportunities;
- protecting special areas, such as sites of historic, cultural, or archaeological value;
- controlling adverse effects on scenic resources;
- encouraging energy conservation;
- taxation of land;
- planning government facilities and public utilities based on reasonable growth projections;
- public facilities or services adjoining agricultural or forestry lands;
- planning for transportation and utility corridors;
- planning for integrated transportation systems; and
- planning for waste disposal.

The General Assembly also stated that the findings that constitute the Plan "shall not be used as criteria in the consideration of applications . . . " A copy of the Plan is attached in Appendix 5.

On the settlement patterns issue discussed later in this report, the Plan found that strip development and scattered residential development have economic and environmental costs, including costs to government and loss of agricultural land. It also found that village and town centers should be renovated for commercial and industrial development, where feasible, and that residential and other development should be located off the highways, near the village center.¹⁰

Act 250's ability to achieve the goals contained in the Findings and the Plan is necessarily limited because its jurisdiction is limited. It is estimated that about 75 percent of development in Vermont is not subject to Act 250. 12

⁹¹⁹⁷³ Acts and Resolves No. 85, Secs. 7, 10.

¹⁰<u>Id</u>., Sec. 7(a)(4)(A), (B).

¹¹10 V.S.A. §§ 6001, 6081.

With respect to planning goals enunciated in the Findings and the Plan, Act 250's authority to perform land use planning was repealed in $1984.^{13}$ Its ability to facilitate achieving planning goals is primarily through a review criterion that requires conformance with local and regional plans. 14

2. <u>Changes Since 1970</u>

Vermont's population grew from approximately 447,000 in 1970 to 627,000 in 2016.15

In January 1976, Vermont had a labor force population of 213,677, with 195,099 employed and 18,658 unemployed. The unemployment rate was 8.7 percent.¹⁶

In August 2018, Vermont had a labor force population of 348,192, with 338,297 employed and 9,895 unemployed. The unemployment rate was 2.8 percent. 17

From 1970 to 2017:

- In constant dollars (2009, adjusted for inflation), Vermont's per capita annual income rose from approximately \$16,500 to approximately \$45,400.18
- In current dollars (not adjusted for inflation), Vermont's per capita annual income increased from approximately \$3,700 to approximately \$51,100.19
- As a percentage of U.S. annual per capita income, Vermont's annual per capita income increased from 88 to 101 percent.²⁰

During that same period, Vermont's ranking among U.S. states for per capita annual income rose from 33 to $19.^{21}$

¹²R.M. Sanford and H.B. Stroud, "Evaluating the Effectiveness of Act 250 in Protecting Vermont Streams," <u>Journal of Environmental Planning and Management</u>. Vol. 43, No. 5 (2000).

¹³¹⁹⁸⁴ Acts and Resolves No. 114, Sec. 5.

¹⁴10 V.S.A. § 6086(a)(10).

¹⁵Vt. Dept. of Health, Population of Vermont Towns 1930–2016 (Dec. 1, 2017); retrieved from http://www.healthvermont.gov/sites/default/files/documents/xls/STAT_Population_of_Vermont_towns_1930-2016.xls, Nov. 2, 2018.

¹⁶U.S. Bureau of Labor Statistics, Data for Vermont, retrieved from https://www.bls.gov/eag/eag.vt.htm (click on back data), Nov. 2, 2018. January 1976 is the earliest date available from this site.

¹⁸Regional Economic Analysis Project, Vermont vs. United States Comparative Trends Analysis: Per Capita Personal Income Growth and Change, 1958–2017, retrieved from https://united-states.reaproject.org/analysis/comparative-trends-analysis/per capita personal income/tools/500000/0/, Nov. 5, 2018.

¹⁹Id.

²⁰Id.

²¹Vt. Dept. of Labor, Economic and Labor Market Information, Per Capita Personal Income (Sep. 2018), retrieved from http://www.vtlmi.info/pcpivt.xlsx, Nov. 2, 2018.

Vermont's rate of land development has substantially exceeded its rate of population growth. Vermont land was developed at approximately 2.5 to three times the State's rate of population growth between 1982 and 2003.²² From 2002 to 2007, the land development rate was approximately four times the rate of population growth, and from 2007 to 2012, it was approximately six times the rate of population growth.²³

Impairment of Vermont waters remains significant:

- In 2002, the General Assembly found that in Vermont 126 surface waters were listed as impaired under the Clean Water Act.²⁴ In 2018, there are approximately 224 surface waters on ANR's lists of impaired waters prepared under that act.²⁵
- The overall miles of Vermont rivers and streams impaired for one or more uses was reported as 311 in 2004 and 365.2 in 2016.²⁶
- In January 2010, ANR reported that 17 of Vermont's waters were principally impaired for stormwater runoff.²⁷ In 2018, 17 Vermont waters are listed as principally impaired for stormwater runoff.²⁸

Vermont also is experiencing significant creation of small parcels. From 2004 to 2016, 8,645 new parcels between zero and 10 acres in size were created in the State.²⁹

Environmental regulation and permitting has changed since Act 250 was first enacted. Major federal environmental permit programs like the Clean Air Act, the Clean Water Act, and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) went into effect after Act 250. Act 250 was the primary environmental protection law during the early 1970s. Since then, both the federal and State permitting processes have expanded.

C. <u>Discussion and Recommendation</u>

Vermont has prospered since Act 250 passed in 1970. Its per capita income, adjusted for inflation, has nearly tripled. Its population has grown by nearly 50 percent

²²Vt. Forum on Sprawl, <u>Exploring Sprawl</u>, Issue 6 at 2 (Aug. 1999); V. Bolduc and H. Kessel, <u>Vermont in Transition: A Summary of Social Economic and Environmental Trends</u> at 36 (Dec. 2008).

²³B. Shupe, Powerpoint Presentation (Oct. 26, 2018).

²⁴2002 Acts and Resolves No. 109, Sec. 1(7).

²⁵State of Vermont, 303(d) Lists of Impaired Waters, Parts A, B, and D (Sep. 2018).

²⁶Vt. Dept. of Environmental Conservation (DEC), <u>2004 Water Quality Assessment Report (305b Report)</u> at 27; <u>2016 Water Quality Integrated Assessment Report</u> at 28. The 2018 Vermont water quality assessment or 305b report is not readily comparable to the 2004 305b report because the 2018 report: (a) is based on a splitting of one former aquatic use into separate uses and a renaming of several other uses and (b) does not state overall impairment data for rivers and streams. DEC, <u>State of Vermont Water Quality Integrated</u> Assessment Report 2018 at 25, 26.

²⁷Vt. ANR, Annual Report on the Management of Stormwater Impaired Waters in Vermont at 2 (Jan. 2010). ²⁸State of Vermont, 303(d) Lists of Impaired Waters, Parts A and D (Sep. 2018).

²⁹J. Fidel, K. McCarthy, and B. Voight, <u>Tracking Parcelization Over Time</u>: <u>Updating the Vermont Database to Inform Planning and Policy (Phase III Report)</u> at 17 (Sep. 2018).

and its labor force by more than 50 percent. The State's unemployment rate has dropped from 8.7 percent in 1976 to 2.8 percent today.

At the same time, Vermont has developed land at a much faster rate than its population has grown. It has seen the creation of thousands of new, smaller parcels across the State and, as discussed in Sec. V.C., below, it is now experiencing a decline in the acreage covered by forests. The number of Vermont waters that are impaired for one or more pollutants has increased substantially and the State's efforts to achieve and maintain water quality standards have not reversed that trend. In addition, as discussed in Sec. V.A.3. below, Vermont has begun to experience significant impacts from climate change.

Act 250 has had limited success at addressing these trends or achieving the goals of the Findings and the Capability and Development Plan. It was not set up to address climate change. The removal of its planning function in the 1970s has required the Act 250 program to rely on its regulatory functions to achieve the goals of the Act, but its regulatory authority is necessarily limited by the scope of its jurisdiction.

The Commission recommends several measures to increase Act 250's ability to achieve its goals and to address emerging trends such as climate change. They include:

- Referencing goals in statute. Act 250 should explicitly reference the goals as stated in the Capability and Development Plan. In addition, Act 250 should reference the specific goals for municipal and regional planning contained in 24 V.S.A. § 4302(c). These goals should guide the interpretation and implementation of the Act.
- Climate change. The General Assembly should amend the Capability and
 Development Plan to include a goal for climate change. The goal would be to
 minimize emissions of greenhouse gases and ensure that the design and materials
 used in development enable projects to adapt to climate change. The General
 Assembly also should amend the Act 250 criteria specifically to address issues
 related to climate change. These recommendations are discussed further in Sec.
 V.A.4., below.
- Ecosystem protection. The General Assembly should amend the Capability and Development Plan's goal regarding utilization of natural resources to also include ecosystem protection. The Plan should recognize that the environment does not only provide resources to be used. It also provides an integrated system of services that clean water, purify air, maintain soil, regulate the climate, recycle nutrients, and provide food and other benefits. Healthy ecosystems support multiple forms of life and sustain human civilization and economic activity.
- Forest fragmentation. The General Assembly should add criteria to Act 250 that protect forest blocks and connecting habitat. This recommendation is discussed further in Sec. V.C., below. Protecting forest blocks not only protects the forests and their ecosystems, but also relates to climate change because it protects areas that capture and absorb carbon dioxide.
- Revising jurisdiction. The General Assembly should increase the alignment of Act 250 jurisdiction with the goals of supporting Vermont's settlement pattern of

compact centers surrounded by rural countryside and of protecting the State's ecosystems and natural resources. It should also provide for Act 250 jurisdiction in the area of interstate interchanges. These recommendations are discussed further in Sec. VI.A.3., below.

- *Role of land use planning; coordination.* To improve not only Act 250's ability to achieve statutory goals, but also consistency and predictability in the process:
 - The General Assembly should amend the statutes to require that the county-level Capability and Development Plan maps created in the 1970s be updated for reference in Act 250 review to include environmental constraints, existing settlements, critical resource areas, facilities and infrastructure, and areas targeted for conservation, public investment, and development.
 - The Executive Branch should reactivate the Development Cabinet established by statute.³⁰
 - The General Assembly should pass a statutory amendment requiring that regional plans be reviewed for consistency with the statutory goals for municipal and regional planning and that, to be used in Act 250, the regional plans must be approved as consistent with those goals.
 - The General Assembly should amend the statute to require that municipal plans be consistent with those same statutory goals and that, to be used in Act 250, the plans must obtain approval from the regional planning commission as consistent with those goals.
 - The Natural Resources Board or its successor should work with the other State agencies to create a predictable timetable for the permitting process. Applicants must receive multiple permits when seeking an Act 250 permit and having a consistent timetable for all permits needed would make the Act 250 permitting process more predictable.

³⁰³ V.S.A. § 2293.

V. TASK GROUP 2: ISSUES ON THE CRITERIA

A. Revising criteria with respect to issues emerging since 1970 such as climate change

1. <u>Charge</u>

Act 47, Sec. 2(e)(2)(C)(i) – "Whether the criteria reflect current science and adequately address climate change and other environmental issues that have emerged since 1970. On climate change, the Commission shall seek to understand, within the context of the criteria of Act 250, the impacts of climate change on infrastructure, development, and recreation within the State, and methods to incorporate strategies that reduce greenhouse gas emissions."

2. <u>Summary List of Criteria</u>

A summary list of the criteria is as follows, with their full text attached as Appendix 6:

- (1) Undue water or air pollution
 - (A) Headwaters
 - (B) Waste disposal
 - (C) Water conservation
 - (D) Floodways
 - (E) Streams
 - (F) Shorelines
 - (G) Wetlands
- (2) Sufficient water available
- (3) Unreasonable burden on an existing water supply
- (4) Unreasonable soil erosion or reduction in the capacity of the land to hold water
- (5) Traffic
 - (A) Unreasonable congestion or unsafe conditions with respect to transportation
 - (B) Incorporate transportation demand management strategies
- (6) Unreasonable burden on the ability of a municipality to provide educational services
- (7) Unreasonable burden on the ability of the local governments to provide municipal or governmental services
- (8) Undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas
 - (A) Necessary wildlife habitat and endangered species
- (9) Capability and development plan
 - (A) Impact of growth
 - (B) Primary agricultural soils

- (C) Productive forest soils
- (D) Earth resources
- (E) Extraction of earth resources
- (F) Energy conservation
- (G) Private utility services
- (H) Costs of scattered development
- (I) Public utility services
- (K) Development affecting public investments
- (L) Settlement patterns
- (10) Conformance with local or regional plan or capital program

The Vermont Supreme Court has ruled that the Act 250 program may go beyond the criteria listed above and may consider any factor related to the environmental impacts of the project before it. "[W]e note that the purposes of Act 250 are broad: "to protect and conserve the environment of the state." [Citation omitted.] To achieve this far-reaching goal, the Environmental Board is given authority to conduct an independent review of the environmental impact of proposed projects, and in doing such, the Board is not limited to the considerations listed in Title 10. See 10 V.S.A. § 6086(a)(1)."³¹

3. Facts

Climate change poses serious risks to human health, functioning ecosystems that support a diversity of species and economic growth, and Vermont's agricultural, forestry, tourist, and recreation industries. These risks include an increase in extreme weather events, the frequency and intensity of flooding, and record-breaking high temperatures, as well as in tick-borne diseases and invasive species.³²

Vermont also may become a receiving state for climate refugees as Northeast coastal populations are increasingly impacted by rising sea levels.³³

Climate change is now affecting Vermont, with significant and accelerating increases in the state's average temperature; longer, hotter summers and shorter winters; increased annual precipitation; and more frequent major storm and flooding events, such as 2011's Tropical Storm Irene.³⁴

The primary driver of climate change in Vermont and elsewhere is the increase of atmospheric carbon dioxide from the burning of fossil fuels, which has a warming effect

³¹In re Hawk Mountain Corp., 149 Vt. 179, 184 (1988).

³²30 V.S.A. § 255(a)(2); Vermont Climate Action Commission, Final Report at 1–2 (July 31, 2018); U.S. EPA, "What Climate Change Means for Vermont" (Aug. 2016); Gund Institute, Vermont Climate Assessment at 10–14 (2014).

³³Gund Institute, Vermont Climate Assessment at 122.

³⁴<u>Id</u>. at 10–11.

that is amplified because atmospheric water vapor, another greenhouse gas, increases as temperature rises. 35

Major sources of Vermont's greenhouse gas emissions are the consumption of fossil fuels for transportation, for residential and commercial uses such as heating buildings and water, and for agriculture and industrial processes. Vermont's greenhouse gas emissions increased from approximately nine million metric tons (MMTCO₂) in 1990 to 10 million MMTCO₂ in 2015, with a peak of just under 11 million MMTCO₂ in 2004. 36

For developments and subdivisions within Act 250's jurisdiction, the statute provides, through its review criteria, authority over the construction, operation, and maintenance of a project, including its buildings and uses. This authority includes air pollution, energy use, and traffic generated. Only the energy conservation criterion references greenhouse gas emissions, doing so through a statement that the principles of energy conservation include reducing greenhouse gas emissions from energy use. Otherwise, this authority does not specifically address greenhouse gas emissions from the project or its associated traffic or the ability of the project to adapt to climate change impacts.³⁷

Act 250 does have authority to review issues related to projects in floodways through its floodways subcriterion, which has not been amended since 1973.³⁸ This criterion therefore does not necessarily reflect recent work by the Agency of Natural Resources (ANR) on river corridor and floodplain protection and flood readiness.³⁹

4. <u>Discussion and Recommendation</u>

Act 250 currently *may* consider issues related to climate change through the existing criteria and its ability to go beyond the criteria in assessing environmental impacts. But the ability to review these issues is not the same as a required review. Climate change is an overarching global trend that carries significant ramifications for Vermont. Its impacts are being felt now.

The Commission therefore recommends that Act 250's criteria be amended with respect to climate change issues. The Commission recommends amending three criteria at this time, with the possibility of exploring other criteria for future amendment.

First, the Commission recommends separating Act 250's air pollution criterion from its water pollution criterion and including, within air pollution, an initial subcriterion that

³⁵30 V.S.A. § 255(a)(1); 2013 Acts and Resolves No. 89, Sec. 1; U.S. EPA, "What Climate Change Means for Vermont" (Aug. 2016); Vt. Dept. of Public Service, 2016 Comprehensive Energy Plan at 28, Sec. 3.2.

³⁶2013 Acts and Resolves No. 89, Sec. 1; Vermont Climate Action Comm., Final Report at 2–3 (July 31, 2018). ³⁷10 V.S.A. § 6086(a).

³⁸10 V.S.A. § 6086(a)(1)(D); 1973 Acts and Resolves No. 85, Sec. 10.

³⁹10 V.S.A. chapter 32; Vt. ANR, River Corridor and Flood Protection, program description, retrieved from https://dec.vermont.gov/watershed/rivers/river-corridor-and-floodplain-protection, Nov. 7, 2018; State of Vermont, Flood Ready Vermont, retrieved from https://floodready.vermont.gov/, Nov. 7, 2018.

addresses compliance with air pollution control regulations and another subcriterion that addresses climate change specifically.

The climate change subcriterion would establish a hierarchy of avoiding, minimizing, and mitigating greenhouse gas emissions from the construction, use, operation, and maintenance of the development or subdivision and the vehicular traffic that it generates. The applicant would first seek to avoid greenhouse gas emissions from the project. To the extent avoiding them is not feasible, they would be minimized. If it is not feasible to avoid or minimize the greenhouse gas emissions, mitigation would be required. This standard would allow for the use of offsets, such as carbon sequestration in Vermont, if they are verifiable and enforceable. Such a standard therefore could provide additional value to maintaining land as working forest.

The climate change subcriterion also would require the use of design and materials that are sufficient to enable the improvements to be constructed, including buildings, roads, and other infrastructure, to withstand and adapt to the effects of climate change reasonably projected at the time of application.

Second, because climate change increases the risk of major flood events in Vermont, the Commission recommends updating Act 250's floodways criterion so that it applies to flood hazard areas and river corridors. In response to the actualization of this climate change risk through recent events such as Tropical Storm Irene, ANR's work on flood readiness has focused not only on flood hazard areas, but also on river corridors, including, particularly, the issue of fluvial erosion events in those corridors. The Commission proposes that Act 250's definitions of flood hazard area and river corridor be identical to those that govern ANR's work and that the revised criterion specifically address fluvial erosion.

Third, the Commission recommends amending Act 250's energy conservation criterion to specifically reference energy efficiency.

Some stakeholders have recommended a further study committee that might result in additional suggested changes to Act 250 with respect to climate change. The Commission recommends that the standing committees of jurisdiction review other Act 250 criteria that might be updated to address climate change and consider further amendments.

B. **Settlement patterns and the criteria**

1. <u>Charge</u>

Act 47, Sec. 2 (e)(2)(C)(ii) – "Whether the criteria support development in areas designated under 24 V.S.A. chapter 76A, and preserve rural areas, farms, and forests outside those areas."

2. <u>Facts/Background</u>

a) Overview

Vermont statute and policy seek to maintain a pattern of compact village and urban centers surrounded by countryside because of that pattern's contribution to the character of the State and its economic and environmental benefits when contrasted with development that is scattered across the landscape. For example, the Department of Housing and Community Development (DHCD) has provided an estimate that the total annual cost to a Vermont town to provide services to a household is \$1,416 in a downtown as opposed to \$3,462 in rural and suburban areas.⁴⁰

DHCD also has provided estimates showing that median annual household vehicle miles decrease significantly for residents of designated downtowns and neighborhoods and those living within a half mile of downtowns.⁴¹ One can therefore infer that promoting this settlement pattern avoids fossil fuel emissions such as greenhouse gases. Total energy costs for households living within one-half mile of designated downtowns are reduced by 16 to 31 percent in comparison to other households.⁴²

Land in urban and village centers tends to support greater numbers of individuals and jobs and to be more valuable for property tax purposes than land outside those centers. It is estimated that an acre of impervious surface inside the centers supports 12 individuals and 10.67 jobs, while an acre of impervious surface outside the centers supports five individuals and 2.23 jobs.⁴³ For example, a mixed use property on 0.12 acres in a downtown district had \$154,820 per acre property tax value while the same value for box stores on 65.8 acres outside an urban center was \$4,310 per acre.⁴⁴

Vermont has long recognized the importance of settlement patterns.⁴⁵ As described above, the 1973 Capability and Development Plan included findings directly relevant to this issue. Further, in 1988's Act 200, the General Assembly adopted a goal for regional and municipal planning to support Vermont's historic settlement pattern of compact village and urban centers surrounded by countryside. This goal is one of the goals for regional and

⁴⁰C. Cochran and D. Azaria, Powerpoint: State Designation Programs (Dec. 13, 2017)

⁴¹Id.

⁴²J. Adams, Powerpoint, Settlement Patterns in Vermont (Oct. 26, 2018).

⁴³<u>Id</u>.

^{44&}lt;u>Id</u>.

⁴⁵ Vt. Council on Planning, Vermont By Design, at 7 (Jan. 2006)

municipal planning codified at 24 V.S.A. § 4302.⁴⁶ As subsequently amended, this goal includes encouraging intensive residential development in areas related to community centers, discouraging strip development along highways, and encouraging economic growth in existing village and urban centers and in designated growth centers.⁴⁷

b) State Designation Program

In 1998, the General Assembly adopted a designation program under 24 V.S.A. Chapter 76A, which states a purpose to support the State's historic downtowns and villages through the designation process and its benefits and to encourage a large percentage of future growth in designated growth centers.⁴⁸

The program provides for designations of downtowns, village centers, new town centers, growth centers, and neighborhood development areas. It seeks to provide incentives, align policies, and give Vermont communities the technical assistance needed to encourage new development and redevelopment in compact, designated areas. The program's incentives are for both the public and private sector within the designated area, including tax credits for historic building rehabilitations and code improvements, permitting benefits for new housing, funding for transportation-related public improvements and priority consideration for other state grant programs.⁴⁹

To obtain designations under the program, the municipal planning process for the relevant town must be confirmed by the regional planning commission as consistent with the planning goals of 24 V.S.A. \S 4302. 50

As of 2017, the program had designated 23 downtowns, 124 village centers, two new town centers, six growth centers, and five neighborhood development areas. 51

c) Act 250 and State Designation Program Interface

Act 250 currently interfaces with the State designation program in several ways. First, Act 250 provides for offsite mitigation of primary agricultural soils if the project is in a designated downtown district, growth center, new town center designated on or before January 1, 2014, or neighborhood development area associated with a downtown development district.⁵²

Second, in 2014, the General Assembly created a settlement patterns criterion within Act 250 that states a goal to promote Vermont's historic settlement pattern. This

⁴⁶1988 Acts and Resolves, No. 200, Sec. 7, amending 24 V.S.A. § 4302.

⁴⁷24 V.S.A. § 4302(c)(1).

⁴⁸24 V.S.A. § 2790(b)(1), (d)(1).

⁴⁹24 V.S.A. chapter 76A; Vt. DHCD, State Designation Programs, overall description, retrieved from https://accd.vermont.gov/community-development/designation-programs, Nov. 7, 2018.

⁵⁰24 V.S.A. §§ 2793(b)(3), 2793a(a), 2793b(b)(1), 2793c(c)(3), 2793e(a), 4350.

⁵¹Vt. DHCD, State Designation Programs Overview (2017).

⁵²10 V.S.A. § 6086(a)(9)(B), (C).

criterion, known as Criterion 9(L), requires Act 250 projects outside "existing settlements" to make efficient use of land, energy, and infrastructure and to show that they will not contribute to strip development. The statute defines "existing settlement" to include areas designated under the State designation program as well as other existing compact centers.⁵³ 10 V.S.A. § 6001 states in relevant part:

- (16)(A) "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.
- (B) Strip development outside an area described in subdivision (A)(i) or (ii) of this subdivision (16) shall not constitute an existing settlement.

In turn, "designated center" means "a downtown development district, village center, new town center, growth center, Vermont neighborhood, or neighborhood development area designated under 24 V.S.A. chapter 76A."54

Third, an Act 250 project that is not physically contiguous to an "existing settlement" as defined above must meet the criterion on the costs of scattered development, known as Criterion 9(H). This criterion requires the applicant to show that the direct and indirect public costs of the project do not outweigh its public benefits including tax revenue and employment opportunities.⁵⁵

Fourth, development in a designated downtown district that is subject to Act 250 may seek findings of fact and conclusions of law in lieu of issuance of a permit or permit amendment using an expedited process that does not require an application fee and that reviews the project under many but not all of the Act 250 criteria. ⁵⁶

Fifth, a municipality may seek findings of fact and conclusions of law under Act 250 from the NRB for a designated growth center within the municipality. A master plan permit also may be sought for all or part of a growth center.⁵⁷

Sixth, projects in a designated neighborhood development area that are subject to Act 250 pay 50 percent of the otherwise required application fee.⁵⁸

⁵³2014 Acts and Resolves No. 147, Secs. 1 and 2, amending 10 V.S.A. §§ 6001(16) and 6086(a)(9)(L).

⁵⁴10 V.S.A. § 6001(30).

⁵⁵¹⁰ V.S.A. § 6086(a)(9)(H).

⁵⁶¹⁰ V.S.A. § 6086b.

⁵⁷24 V.S.A. § 2793c(f), (i)(5).

⁵⁸10 V.S.A. § 6083a(d).

Finally, the Act seeks to encourage mixed income housing and mixed use development in designated areas through its provisions regarding "priority housing projects," which are mixed income housing or mixed use projects located in areas designated by the State designation program.⁵⁹ These provisions exempt priority housing projects located in designated downtowns and several of the other available designations if the municipality has population of 10,000 or more. They also reduce Act 250 jurisdiction over priority housing projects in designated areas located in smaller municipalities.⁶⁰

As of 2017, DHCD estimated that the "priority housing project" provisions supported the development of 586 housing units, saved an average of \$50,000 in permit fees per project, and reduced permit timelines an estimated average of seven months.⁶¹

d) Outside Designated Areas and Existing Centers

DHCD indicates that the areas designated by the State designation program comprise 1/400 th of the total area of Vermont.⁶²

The NRB has provided a map entitled "Vermont Act 250 Permit Distribution." When compared to a map of areas designated by the State designation program, the NRB's map indicates significant distribution of Act 250 permits outside the designated areas. The NRB's map also indicates scattered distribution of Act 250 permits across the State, with linear distributions that appear to correspond to highways or valley locations and clusters in and around various parts of the State that are more urbanized.⁶³

Two of the Act 250 criteria specifically address development outside the areas designated by the State designation program: Criterion 9(H) on the costs of scattered development and Criterion 9(L) on settlement patterns. Each of these criteria applies if a project subject to Act 250 is outside an existing settlement, and the term "existing settlement" includes the areas designated by the program as well as other existing compact centers.⁶⁴

When Act 250 has jurisdiction over a project outside the designated areas and other existing centers, various additional criteria may act to provide protection to farms and forests affected by the project as well as the rural qualities of the project area, if any. These criteria include wetlands, scenic beauty and aesthetics, rare and irreplaceable natural areas, necessary wildlife habitat, primary agricultural soils, and productive forest soils.⁶⁵

⁵⁹10 V.S.A. § 6001(35).

⁶⁰10 V.S.A. § 6001(3)(A)(iv), (3)(D)(viii), (27), (28), (29), (35).

⁶¹C. Cochran and D. Azaria, Powerpoint: State Designation Programs (Dec. 13, 2017)

⁶²<u>Id</u>.

⁶³Vt. Natural Resources Board, map. "VT Act 250 Permit Distribution (produced Aug. 30, 2017); Vermont Planning Atlas Map, Designation Layer (generated Oct. 24, 2018).

⁶⁴10 V.S.A. §§ 6001(16), 6086(a)(9)(H), (9)(L).

⁶⁵10 V.S.A. § 6086(a)(1)(G), (8), (8)(A), (9)(B), (9)(C).

When Act 250 does not have jurisdiction over a project outside the designated areas and existing centers, the Act 250 criteria do not apply, although a municipality may choose to adopt them for conditional use review. 66

Available data show that, statewide from 2008 to 2018, 83 percent of new residential structures and 60.63 percent of commercial structures were located outside existing centers.⁶⁷ The spread of residential development outside the centers is underscored by map comparisons of Vermont's population distribution, which show that Vermont's daytime population is much more concentrated in the centers than its 24-hour population distribution.⁶⁸

Available data also show that, statewide from 2004 to 2016, Vermont lost 147,684 acres or approximately 15 percent of its undeveloped woodland parcels, and 53,406 acres, or 9.3 percent, of its farmland parcels to public ownership or another land classification.⁶⁹ During the same period, the acreage classified as residential use increased by 162,670 acres, or seven percent.⁷⁰

3. <u>Discussion and Recommendation</u>

Many of Vermont's downtowns and village centers remain vibrant and have been assisted in doing so by the State designation program. But the data above suggest that Vermont is not meeting its settlement pattern goals, with the majority of development occurring outside existing centers and with the loss of significant percentages of woodland and farmland in recent years.

The Act 250 criteria themselves support achievement of those goals in many ways that are detailed above. There are also a number of changes that could be made to the criteria to improve this support.

First, the Commission recommends that criteria be added to protect forest blocks and connecting habitat from fragmentation. These criteria would increase the protection of the working forests that form an important part of the settlement patterns goal. This recommendation is detailed in Section V.C.3., below.

Second, other criteria can be enhanced in ways that are relevant to supporting Vermont's desired settlement patterns. The Commission recommends amending the transportation criterion to: (a) include review of the safety and congestion impacts to bicycle, pedestrian, and other transit infrastructure and (b) better define when it is appropriate for Act 250 to require projects to incorporate transportation demand strategies and require connectivity to transit services other than single-occupancy vehicles.

⁶⁶10 V.S.A. §§ 6001, 6081, 6086; 24 V.S.A. § 4414(3)(C).

⁶⁷J. Adams, Powerpoint, Settlement Patterns in Vermont (Oct. 26, 2018).

⁶⁸Id.

⁶⁹Fidel , McCarthy and Voight, Phase III Report at 24. A portion of the undeveloped woodland parcels was transferred to public land.

⁷⁰<u>Id</u>.

The Commission also recommends amending the public investment criterion to specifically refer to investments made through the State designation program, the Vermont Housing and Conservation Board, and similar programs that have been enacted since the criterion was written.

Third, the Commission recommends improving Act 250's plan conformance criterion by requiring that, to be used in Act 250, local plans must be consistent with the statutory goals for municipal and regional planning, which include supporting compact centers surrounded by rural countryside. Such a change would strengthen the nexus between local plans used in Act 250 and that goal.

Although these changes to the criteria can improve Act 250's support for Vermont's settlement patterns goal, Act 250 only applies its criteria to projects over which it has jurisdiction. In Sec. VI.A.3., below, the Commission recommends a multitiered approach to changes to Act 250 jurisdiction that encourages the settlement goals.

C. Forest fragmentation

1. <u>Charge</u>

Act 47, Sec. 2(e)(2)(C)(iii) – "Whether the criteria support natural resources, working lands, farms, agricultural soils, and forests in a healthy ecosystem protected from fragmentation and loss of wildlife corridors."

2. Facts

The area in Vermont covered by forests is declining. The U.S. Forest Service reports that Vermont lost five percent of its forest parcels over 100 acres between 2001 and 2006⁷¹ and an estimated 2.2 percent, or 102,000 acres, of forestland between 2012 and 2017.⁷² In Vermont, between 2004 and 2016, the amount of undeveloped woodland in parcels 50 acres or larger decreased by 124,845 acres.⁷³ As stated above, between 2004 and 2016, Vermont lost 147,684 acres of its undeveloped woodland parcels to public ownership or other land classifications.⁷⁴

In addition, land subdivision is on the increase. From 2002 to 2009, 2,749 lots were created from 925 subdivisions affecting a total of 70,827 acres of land in 22 case study towns. Based on spatial analysis in four case study towns, between 50 percent and 68.8 percent of those subdivisions were located within wildlife habitat blocks mapped by the Agency of Natural Resources.⁷⁵ Between 2004 and 2016, the number of parcels of land between zero and 10 acres increased by 8,695 parcels.⁷⁶ During the same period, the peracre value of land in Vermont nearly doubled.⁷⁷ As land values increased, the number of parcels less than 50 acres increased as well, further dividing the land.⁷⁸

"Forest fragmentation is the breaking of large, contiguous, forested areas into smaller pieces of forest. Typically, these pieces are separated by roads, agriculture, utility corridors, subdivisions, or other human infrastructure development." Fragmentation isolates forest patches and prevents the movement of plants and animals. This interrupts natural processes, like breeding and gene flow, leading to population decline.⁸⁰

⁷¹Vermont Forest Partnership Memorandum at 2 (Sep. 14, 2018).

⁷²Morin et al (2017). Forests of Vermont, 2016. Resource Update FS-119, available at https://www.fs.fed.us/nrs/pubs/ru/ru_fs119.pdf.

⁷³Fidel, McCarthy, and Voight, Phase III Report at 27.

⁷⁴<u>Id</u>. A portion was transferred to public land.

⁷⁵VNRC, Informing Land Use Planning and Forestland Conservation Through Subdivision and Parcelization Trend Information at 15 (May 2014).

⁷⁶Fidel, McCarthy and Voight, Phase III Report at 17.

⁷⁷Id. at 44.

⁷⁸Id. at 45.

⁷⁹Vt. Dept. of Forests, Parks and Recreation, 2015 Forest Fragmentation Report at 23.

⁸⁰ Id. at 33.

Fragmented forest patches run a higher risk of shifting toward edge-adapted and invasive species. This puts the health of trees and other plants at significant risk.⁸¹

Poor forest health hurts Vermont's economic interests, including particularly its forest products and tourism industries. "Fragmentation of Vermont forests presents a significant threat to the operability and economic viability of the forest products economy. As forest fragments become ever smaller, practicing forestry within them becomes operationally impractical, economically non-viable, and culturally unacceptable." Tourism in Vermont often centers on the natural beauty of the state. "Changes in scenic quality and recreational opportunities—owing to loss of open space, decreased parcel size, and fragmentation—degrades the recreational experience and lead to increased likelihood of land-use conflicts." 83

3. Discussion and Recommendation

In 2017, the House passed H.233, entitled an act relating to protecting working forests and habitats. The bill proposed to amend the Act 250 criteria in order to protect forest resources and support the forest economy, water quality, and habitat connectivity. It proposed adding criteria 8(B) and (C), which would require projects subject to the Act to avoid, minimize, or mitigate fragmentation of, respectively, forest blocks and habitat connectors. The Commission recommends that the changes to Act 250 contained in H.233 be adopted in order to protect against further fragmentation of Vermont's shrinking forests and habitat.⁸⁴

H.233 included a proposal that the applicant should have the burden of proof on the new criteria 8(B) and (C). However, some witnesses have pointed out that today the party opposing the application has burden of proof under criterion 8(A), necessary wildlife habitat, and argue that this burden of proof should be on the applicant as well. Currently, under 8(A), a party opposing the application must prove that a development or subdivision will destroy or significantly imperil necessary wildlife habitat or an endangered species. Placing the burden on a concerned party is unfair because the applicant has control over the property and understands the nature of the proposed project. Mapping and data related to significant wildlife habitat has improved and is readily available to applicants through the ANR Natural Resources Atlas. The Commission recommends that the applicant have the burden of proof on criterion 8(A) because it has control over the property and an understanding of the proposed project.

⁸¹<u>Id</u>. at 34.

⁸²Id.

⁸³Id. at 43.

⁸⁴The Commission has received comments to the effect that the term "connecting habitat" should be used instead of "habitat connector," which is a reasonable suggestion.

D. <u>Forest products processing, permit conditions</u>

1. <u>Charge</u>

Act 194, Sec. 7 – "The Commission on Act 250: the Next 50 Years (Commission) established under 2017 Acts and Resolves No. 47 (Act 47) shall review whether permit conditions in permits issued under 10 V.S.A. chapter 151 (Act 250) to forest processing operations negatively impact the ability of a forest processing operation to operate in an economically sustainable manner, including whether Act 250 permit conditions limit the ability of a forest processing operation to alter production or processing in order to respond to market conditions. If the Commission determines that Act 250 permit conditions have a significant negative economic impact on forestry processing operations, the Commission shall recommend alternatives for mitigating those negative economic impacts. The Commission shall include its findings and recommendation on this issue, if any, in the report due to the General Assembly on December 15, 2018 under Act 47."

2. Facts

Vermont's forest economy is currently experiencing significant economic issues due to external factors such as the collapse of the paper industry in Maine and the growth of sawlog exports to China. Vermont's forest commodities are largely transported out of the State for processing rather than to enterprises in the State.⁸⁶

There are 19 sawmills in Vermont producing one million board feet or more per year. There is only one pellet mill. In the last five years, there have been seven Act 250 applications for wood processing facilities. All seven were granted permits. The average length of time to receive the permit was 110 days. Only one of the new permits contained conditions related to traffic. Two of the permits contained conditions related to hours of operation.⁸⁷

The wood harvest season is approximately 180 days long, most of which is during the winter. "Working lands operations are weather dependent. The harvesting and delivery of forest products must take place when the ground conditions are suitable for heavy equipment, typically meaning dry or frozen conditions. As our climate changes, these conditions are less prevalent or predictable, which creates short windows in which site conditions and available markets must be paired."⁸⁸

"Hours of operation and truck traffic are primary concerns as these businesses receive raw materials that must be removed from the forest and hauled on gravel roads when appropriate frozen or dry conditions prevail or deliver wood energy products to

⁸⁶M. Snyder, Commissioner, to Rep. A. Sheldon, Chair, Memorandum re Act 250 and forest products value adding, Appendix (Nov. 7, 2018).

⁸⁷G. Boulboul, Vt. Natural Resources Board, testimony (Oct. 11, 2018).

⁸⁸M. Snyder and S. Lincoln, Vt. Dept. of Forests, Parks and Recreation, Forest Products Processing and Act 250 Memorandum, at 2 (Dec. 8, 2017).

customers, and this is often at night or can be on weekends or holidays for which these applicants have found themselves limited in permit conditions and concerned that they must make choices between operating their business or violating those permit conditions."⁸⁹

The Commission has not received statistics that demonstrate and quantify negative impacts to forest processing operations specifically caused by Act 250 permit conditions. The Commission has received anecdotal testimony regarding those impacts.

3. Discussion and Recommendation

The issues facing Vermont's forest industries are broad market issues that are interstate and international in scope. They are not the result of Act 250 regulation.

In this regard, the Commission's charge under Sec. 7 of Act 194 is to review whether Act 250 permit conditions negatively impact the ability of forest processing operations to "operate in an economically sustainable manner" and to recommend alternatives for mitigating those negative economic impacts "if it determines that Act 250 permit conditions have a significant negative impact on forest processing operations."

As stated above, the Commission does not have data before it that specifically demonstrates and quantifies the negative impacts to forest processing operations from Act 250 permit conditions, let alone show that those conditions render the operations economically unsustainable. The Commission therefore does not determine that Act 250 permit conditions have a significant negative impact on forest processing operations.

Instead, the information before the Commission is that forest processing operations are nearly always granted permits when they apply and that they only sometimes receive permit conditions that limit traffic or hours of operation.

It has been argued that forest processing operations need flexibility in their hours of operation and permitted amount of traffic in order to respond to market conditions, and that therefore, Act 250 should be amended to provide such flexibility by allowing "for at least 60 days per year where off-hour (between 6 p.m. and 7 a.m., or on weekends and holidays) delivery of raw materials can occur" and also allowing "for trucks leaving with wood energy products and returning to these enterprises during off-hours." ⁹⁰

This proposal is unnecessary because the Act already provides the ability to craft permit conditions that allow for flexibility. The relevant criteria of the statute give the District Commissions the ability to decide, based on the facts and circumstances, whether the impacts are "undue" or "unreasonable." In deciding whether an application presents such an impact, the District Commission is given latitude on how to craft permit conditions

⁸⁹Id. at 3.

⁹⁰M. Snyder, Commissioner, Memorandum re Act 250 and forest products value adding at 2.

⁹¹See, e.g., 10 V.S.A. § 6086(a)(5), (8).

to ensure that the impact is not undue or unreasonable. The conditions must be "reasonable" and "appropriate" with respect to the criteria.

The statute thus does not state that the District Commission must impose limits on the hours of operation or on traffic generation and does not forbid the Commission from issuing a permit that includes periods of the year when such limits, if imposed, are lifted or reduced. Instead, a forest processing applicant may request conditions that are tailored to the facts and circumstances of its operation.

The forest products processing industry is important to Vermont, but it has particular aspects that have the potential to cause undue impacts under the criteria, including noise and traffic from the operations.

The Commission therefore does not support interfering with the District Commissions' ability to issue case-specific permit conditions for these operations. Permit conditions "ensure that the values sought to be protected under Act 250 will not be adversely affected." A permit condition is included to resolve an issue critical to the issuance of the permit if the Project would not comply with one or more Act 250 criteria without the permit condition." The addition of conditions often prevents a permit from being denied.

The Commission also is concerned that removing or altering the conditioning authority in regard to a single industry will cause unfairness to all other industries that regularly seek Act 250 permits. The Commission does not recommend a specific statutory mandate or limit on how Act 250 permit conditions are crafted for forest processing operations.

Member of the Commission, Representative Paul Lefebvre, disagrees with the above discussion and objects to the Commission's recommendations under this section.

^{92 10} V.S.A. § 6087(b).

⁹³ Act 250 Rule 32 (A).

⁹⁴ Act 250 Rule 60 (B).

⁹⁵ Act 250 Rule 34 (E)(1).

VI. TASK GROUP 3: ISSUES ON JURISDICTION

A. Revising jurisdiction to achieve goals

1. <u>Charges</u>

Achieving Goals. Act 47, Sec. 2(e)(2)(G)(ii) – "Potential revisions to Act 250's definitions of development and subdivision for ways to better achieve the goals of Act 250, including the ability to protect forest blocks and habitat connectivity."

<u>Promoting desired settlement patterns</u>. Act 47, Sec. (2)(e)(2)(C)(iv) – "Whether Act 250 promotes compact centers of mixed use and residential development surrounded by rural lands."

<u>Protecting important natural resources</u>. Act 47, Sec. (2)(e)(2)(C)(v) – "Whether Act 250 applies to the type and scale of development that provides adequate protection for important natural resources as defined in 24 V.S.A. § 2791."

The phrase "important natural resources" means "headwaters, streams, shorelines, floodways, rare and irreplaceable natural areas, necessary wildlife habitat, wetlands, endangered species, productive forestlands, and primary agricultural soils, all of which are as defined in 10 V.S.A. chapter 151."96

2. <u>Background</u>

Act 250 only applies to projects that meet one of its jurisdictional thresholds. The statute prohibits, without a permit, the sale or offer for sale of any interest in a subdivision in the State, commencing construction on a subdivision or development, or commencing development.⁹⁷

In general, Act 250 will apply to a project if it constitutes: (a) a "development" as defined in the Act, (b) a "subdivision" as defined in the Act; (c) a "substantial change" to a preexisting development or subdivision, or (d) a "material change" to a permitted project.⁹⁸ Exemptions to Act 250 jurisdiction are discussed in the next section.

a) "Development"

The term "development" applies to multiple categories of projects that are variously defined in terms of type, purpose, size, elevation, the existence or nonexistence of

⁹⁶24 V.S.A. § 2791(14).

⁹⁷10 V.S.A. § 6081(a).

⁹⁸¹⁰ V.S.A. §§ 6001, 6081(a), (b); Act 250 Rule 34(A), (B).

permanent and zoning and subdivision bylaws in the town, or a combination of factors. "Development" includes:

- The construction of improvements for a commercial, industrial, or residential use above the elevation of 2,500 feet.
- The construction of improvements for any commercial or industrial purpose on more than 10 acres of land, or on more than one acre of land if the municipality does not have both permanent zoning and subdivision bylaws.
- The construction of 10 or more housing units, or the construction or maintenance of mobile homes or trailer parks with 10 or more units, within a radius of five miles.
- The construction of improvements for a governmental purpose if the project involves more than 10 acres or is part of a larger project that will involve more than 10 acres of land.
- The construction of a support structure that is primarily for communication or broadcast purposes and that extends 50 feet, or more, in height above ground level or 20 feet, or more, above the highest point of an attached existing structure.
- The exploration for fissionable source materials beyond the reconnaissance phase or the extraction or processing of fissionable source material.
- The drilling of an oil or gas well.
- Any withdrawal of more than 340,000 gallons of groundwater per day from any well or spring on a single tract of land or at a place of business, independent of the acreage of the tract of land.⁹⁹

Priority housing projects. The 10-unit threshold for a housing project does not apply to a "priority housing project," which, as stated above, is defined to include mixed income housing or mixed use located in areas designated by the State designation program. Priority housing projects are entirely exempt if located in municipalities of 10,000 or more. For smaller municipalities, the jurisdictional thresholds are: (a) 75, if the population is 6,000 to 10,000; (b) 50, if the population is 3,000 to 6,000, and (c) 25, if the population is less than 3,000. However, a priority housing project consisting of 10 or more units will require an Act 250 permit if it involves the demolition of a listed historic building, unless the State Division for Historic Preservation makes certain determinations listed in statute. 103

Commercial purpose. The "commercial purpose" definition of development includes more than establishments engaged in sales for profit. Under the Act 250 rules:

"Commercial purpose" means the provision of facilities, goods, or services by a person other than for a municipal or state purpose to others in exchange

⁹⁹10 V.S.A. § 6001(3)(A).

¹⁰⁰¹⁰ V.S.A. § 6001(35).

¹⁰¹10 V.S.A. § 6001(3)(D)(viii).

¹⁰²10 V.S.A. § 6001(3)(A)(iv).

¹⁰³10 V.S.A. § 6001(3)(A)(iv), (D)(viii).

for payment of a purchase price, fee, contribution, donation, or other object or service having value. 104

In 1984, the Vermont Supreme Court ruled that this definition is not limited to situations in which a person is required to make a payment to receive a facility, good, or service because that would render the terms "contribution" and "donation" superfluous. By definition, those terms connote "giving" or the voluntary transfer of value without consideration. 105

In the case, the Court determined that the construction of a church was for a commercial purpose because "there is a de facto exchange of the Church's facilities and services for donations and contributions." In so doing, the Court cited statements from the trial court, below, that the majority of the church's income was derived from the contributions and donations of its members and the church could not provide services without those contributions and donations. It did not state that its ruling was limited to situations in which contributions and donations were essential to providing the services.

However, in a recent 3–2 decision, the Court held that a shooting range was not for a commercial purpose because it does not charge for its services and, though it has solicited and received donations for several years, it "would continue to make the range available for use even without donations." In other words, the donations were not "essential to sustain the enterprise indefinitely." The shooting range in question is open seven days a week, 10 to 11 hours per day, and receives nearly \$20,000 annually in donations.

The Court's recent qualification to "commercial purpose" was not derived from any change in statute or rule. To determine Act 250 jurisdiction, the new holding requires inquiry into the internal finances of a company or operation, raising issues of administrative complexity, privacy, and a lack of relationship to the purposes of the statute. It could allow significant land uses for education, religious, or other nonprofit purposes to avoid review for compliance with Act 250's environmental and land use criteria based on an argument that donations or other consideration received are not essential to the provision of facilities and services.

b) "Subdivision"

The term "subdivision" applies to three categories related to the creation of lots:

¹⁰⁴ Act 250 Rule 2(C)(4).

¹⁰⁵In re Baptist Fellowship of Randolph, Inc., 144 Vt. 636, 639 (1984).

¹⁰⁶ Id

¹⁰⁷In re Laberge Shooting Range, 2018 VT 84, ¶ 34.

¹⁰⁸<u>Id.</u>, ¶ 37 (Robinson, J. and Reiber, C.J., dissenting).

¹⁰⁹<u>Id</u>.

- Creation of 10 or more lots of any size, by a person on tracts that the person owns or controls, within a five-mile radius or within the jurisdictional limits of a District Commission within a continuous period of five years.
- Within a town that does not have both permanent zoning and subdivision regulations, the creation of six or more lots of any size, by a person on tracts that the person owns or controls, within a continuous period of five years.
- The sale, by public auction, of any interest in a tract or tracts of land, owned or controlled by a person, that have been partitioned or divided for the purpose of resale into five or more lots within a radius of five miles and within any period of 10 years.¹¹⁰

The term "person" is broadly defined and includes individuals or entities affiliated with each other for profit, consideration, or any other beneficial interest derived from the partition or division of land.¹¹¹

c) "Substantial change"/Preexisting Development or Subdivision

Act 250 exempts so-called preexisting developments and subdivisions, which can be thought of as projects that predate the Act but would meet the Act's definition of development or subdivision if they were undertaken today. The next section contains more specifics on these exemptions.

The Act requires a permit for a "substantial change" in a preexisting development or subdivision.¹¹³ "Substantial change" is defined by rule to mean "any cognizable change to a preexisting development or subdivision which may result in significant adverse impact with respect to any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10)."¹¹⁴

In turn, "cognizable change" means "any physical change or change in use, including, where applicable, any change that may result in a significant impact on any finding, conclusion, term or condition of the project's permit." ¹¹⁵

d) "Material change"/Permitted Project

When a project has received an Act 250 permit, the Act 250 rules require a permit amendment for a "material change"¹¹⁶ because, generally, jurisdiction is permanent once it attaches. See further discussion in Sec. VI.C.3. The term "material change" is defined as:

[A]ny cognizable change to a development or subdivision subject to a permit under Act 250 or findings and conclusions under 10 V.S.A. § 6086b, which

¹¹¹10 V.S.A. § 6001(14).

¹¹⁰10 V.S.A. § 6001(19).

¹¹²10 V.S.A. § 6081(b); Act 250 Rule 2(C)(8), (9).

¹¹³10 V.S.A. § 6081(b).

¹¹⁴Act 250 Rule 2(C)(7).

¹¹⁵Act 250 Rule 2(C)(26).

¹¹⁶Act 250 Rule 34(A).

has a significant impact on any finding, conclusion, term or condition of the project's permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10). ¹¹⁷

3. Discussion and Recommendation

As discussed in Section V.B., above, the goal of maintaining a settlement pattern of compact centers surrounded by rural countryside has been a long-standing policy of the State of Vermont, and the data indicate that, while the State has had some success, it is not achieving this goal. Similarly, as discussed in Section V.C., above, the fragmentation of forests and habitat threatens Vermont's ecosystems and natural resources.

The Commission finds that Act 250's jurisdictional thresholds are not necessarily related to the goal of compact settlement surrounded by rural landscape or to protecting important natural resources. There are a few instances in which there is a relationship. For example, Act 250's jurisdiction over commercial, industrial, and residential uses above 2,500 feet protects natural resources in locations that are outside compact centers. In addition, the definitions of "substantial change" and "material change" require, among other things, consideration of the potential for impact on the natural resources protected by the Act. But Act 250 jurisdiction is largely triggered by such factors as the size of the tract and the purpose of the project, the number of lots to be created, or the number of housing units to be built.

As part of an overall balancing of interests to support economic development in compact centers while promoting a rural countryside and protecting important natural resources, the Commission recommends establishing a multitiered approach toward Act 250 jurisdiction over commercial and industrial development, subdivisions, and housing units. This approach would include the following tiers, with jurisdictional thresholds running from lowest to highest:

- A tier of "critical resource areas" containing ecosystems, natural resources, and habitat that are priorities for protection. These areas could include river corridors, elevations above 2,000 feet, significant wetlands, and areas characterized by steep slopes and shallow soils. Act 250's jurisdiction would be increased by lowering the existing jurisdictional thresholds for critical resource areas. Regional and municipal planning processes could assist in identifying critical resource areas. This tier would include protection of these areas even if they are located within existing settlements.
- A "rural and working lands" tier, consisting of lands that are neither critical resource areas nor existing settlements as currently defined in Act 250. Jurisdictional thresholds would be higher in this tier than the critical resource areas tier but, in order to protect forests, connecting habitat, and agricultural soils, potentially lower than they are today.

¹¹⁷Act 250 Rule 2(C)(6).

• A tier for "existing settlements" as defined under current law, which includes not only existing compact centers, but also areas designated under the State designation program. This tier would include multiple sub-tiers and jurisdictional thresholds that might be increased from where they are today for some of these sub-tiers. One sub-tier might be for areas receiving an enhanced designation created within the State designation program. Under the enhanced designation process, the municipality would require compliance with the Act 250 criteria instead of application review by the District Commission. Because of the implications for Act 250 jurisdiction, designation decisions would become appealable.

Taken together, these proposals should support the desired settlement patterns by encouraging development in desired areas and encouraging thoughtful, careful planning in natural resource areas that require more protection.

The Commission also finds that achieving the desired settlement patterns could be supported by increasing Act 250 jurisdiction at interstate interchanges. This would protect against sprawl and ensure protection of roadway functions, aesthetics, and state investments in these important areas. The Commission recommends that language be adopted that would provide for Act 250 jurisdiction in interstate interchange areas. Such language can be found in S.214 and H.784 of the 2017–18 biennium.

Further, protection of important natural resources would be supported by clarifying that the phrase "commercial purpose" does not require inquiry into whether a donation or other consideration received is essential to a project or its operation. The essentiality of a donation or other consideration is not necessarily related to a project's environmental and land use impacts.

B. **Exemptions**

- 1. Relationship to Findings and the Plan
 - a) Charge

Act 47, Sec. 2(e)(2)(C)(iii) – "Whether the exemptions from Act 250 jurisdiction further or detract from achieving the goals set forth in the Findings and the Plan, including the exemptions for farming and for energy projects."

b) Facts/Background

Many types of projects are explicitly exempt from Act 250 jurisdiction. In other words, the projects do not need an Act 250 permit even if they would otherwise meet one of the jurisdictional thresholds discussed in the preceding section. Appendix 10 to this report is a memorandum that lists these exemptions and includes their statutory text. The exemptions can be grouped into the following categories:

• **Energy:** electric generation and transmission, natural gas facilities

No permit is required for the construction of improvements for an electric generation or transmission facility that requires a certificate of public good or a natural gas facility as defined in the statute. 118

• **Fairs:** agricultural fairs, equine fairs

Provided certain statutory factors are met, development does not include the construction of improvements for: (a) an agricultural fair that is registered with the Agency of Agriculture, Food and Markets¹¹⁹ or (b) equine events.¹²⁰

• **Government services and infrastructure:** solid waste facilities, wastewater treatment facilities, water supply improvements, public schools, government buildings, water or sewer lines

No permit or permit amendment is required for a solid waste management facility subject to a provisional certification under 10 V.S.A. § 6605d.¹²¹ No permit is required for preexisting municipal, county, or State wastewater treatment facility enhancements that do not expand capacity by more than 10 percent; preexisting municipal, county, or State water supply enhancements that do not expand capacity by more than 10 percent; public school expansion that does not expand capacity by more than 10 percent; and municipal, county, or State building renovation or reconstruction that does not expand capacity by more than

¹¹⁸10 V.S.A. § 6001(3)(D)(ii).

¹¹⁹10 V.S.A. §§ 6001(3)(D)(iv), 6081(u).

¹²⁰10 V.S.A. § 6001(3)(D)(v).

¹²¹10 V.S.A. § 6081(c).

10 percent.¹²² No permit is required for municipal water or sewer line replacement that does not expand capacity by more than 10 percent when part of the municipality's regular maintenance or replacement of facilities.¹²³

• **Landfills:** earth removal sites associated with landfill closing, closure of a landfill that began prior to July 1, 1992

No permit is required for earth removal sites associated with a landfill closing, if a municipal zoning permit is obtained.¹²⁴ No permit or permit amendment is required for closure operations at an unlined landfill which began disposal operations prior to July 1, 1992, as defined in statute.¹²⁵

• Lots conveyed to the State or conservation organizations: Long Trail lots, conservation rights and interest lots

No permit is required for lots created to convey land to the State or an organization, in order to preserve the Long Trail. No permit is required for lots created to convey to the State or a qualified organization for "conservation rights and interest." 127

• **Preexisting development or subdivision:** preexisting developments, preexisting subdivisions, State highways

No permit is required for subdivisions that were exempt under Department of Health regulations that were in effect on January 21, 1970 or that received a permit from the Board of Health prior to June 1, 1970; for construction of a development that began before June 1, 1970 and was finished by March 1, 1971; or for State highways that had a hearing held prior to June 1, $1970.^{128}$

• **Projects in designated centers:** certain priority housing projects, mixed use and mixed income housing within designated center

As defined in Act 250, "priority housing projects" include "mixed income" projects in which at least 20 percent of the units are affordable to people earning 80 percent of area median income and "mixed use" projects that devote at least 40 percent of the floor area to housing that meets the mixed income housing definition. 129

No permit is required for construction of a priority housing project in a designated center within a municipality of at least 10,000 people. For smaller municipalities,

¹²²10 V.S.A. § 6081(d)(1)–(4).

¹²³10 V.S.A. § 6081(e).

¹²⁴10 V.S.A. § 6081(g).

¹²⁵10 V.S.A. § 6081(h).

¹²⁶10 V.S.A. § 6001(19)(B)(i).

¹²⁷10 V.S.A. § 6001(19)(B)(ii).

¹²⁸¹⁰ V.S.A. § 6081(b).

¹²⁹10 V.S.A. § 6001(27)–(29), (35)

¹³⁰10 V.S.A. § 6001(3)(D)(viii).

permits are only required for these projects if they exceed a size threshold that increases as the size of the municipality increases.¹³¹

In designated downtowns, no permit amendment is needed for a project that would create a priority housing project on property that is already subject to Act $250.^{132}$ In the other designated centers, no permit amendment is needed provided certain statutory requirements are met. 133

Other projects in a designated downtown are exempt from Act 250 if they have received positive findings under 10 V.S.A. \S 6086b. 134

• **Remedial action:** remedial action authorized by ANR, including if the site already has a permit

No permit or permit amendment is needed for the construction of improvements for remedial action authorized by ANR, as well as any abatement, removal, or corrective action taken for water pollution control, waste management, or development soils.¹³⁵

• **Special exemptions:** slate quarry, railroad repairs, shooting range, de minimis improvements

A slate quarry in operation prior to June 1, 1970, if lying unused, is deemed held in reserve and not abandoned, provided it met statutory requirements for registering the quarry by January 1, 1997. No permit or permit amendment is required for a change to a shooting range that has been in operation since January 1, 2006, provided certain statutory requirements are met. No permit is required for railroad repairs with no expansion, if they are part of the railroad's maintenance. No permit amendment required for de minimis improvements, as defined by rule. 138

 Telecommunications facilities: improvements not ancillary to broadcast/communications structure; replacement, repair, and routine maintenance of telecommunications facilities built prior to July 1, 1997 and of permitted facilities; telecommunication facilities obtaining a certificate of public good

No permit is required for future improvements that are not ancillary to the support structure to a broadcast/communication structure. No permit is required for the

¹³¹10 V.S.A. § 6001(3)(A)(iv).

¹³²10 V.S.A. § 6081(p)(1).

¹³³10 V.S.A. § 6081(p)(2).

¹³⁴10 V.S.A. § 6081(v).

¹³⁵10 V.S.A. §§ 6001(3)(D)(vi)(I)(aa)-(ff), 6081 (w) (aa)-(ff).

¹³⁶10 V.S.A. § 6081(j).

¹³⁷¹⁰ V.S.A. § 6081(w).

¹³⁸Act 250 Rule 2(C)(3)(c).

¹³⁹10 V.S.A. § 6001(3)(A)(ix)(I)(bb).

replacement, repair, or routine maintenance of a telecommunications facility in existence prior to July 1, 1997, except in the case of a replacement that constitutes a material or substantial change. No permit amendment is required for the replacement, repair, or routine maintenance of a permitted telecommunications facility, except in the case of a replacement that constitutes a material or substantial change. Permitted telecommunications facility for which the Public Utility Commission (PUC) issues a certificate of public good.

• **Working lands:** farming, logging, forestry, farming on primary agricultural soils, composting

No permit required for the construction of improvements for farming, logging, and forestry purposes below the elevation of 2,500 feet.¹⁴³ No permit amendment is required for farming that will occur on primary agricultural soils.¹⁴⁴ No permit is required for construction of improvements for storage, preparation, and sale of compost, provided certain statutory requirements are met.¹⁴⁵

c) Discussion and Recommendation

Exemptions not presenting significant issues. The Commission believes that, as specifically worded in the statutes, the following exemptions or categories of exemptions described above do not detract from achieving the goals of the Findings and the Plan: agricultural and equine fairs; solid waste facilities under a provision certification and the various government service and facility enhancements within the 10 percent limit; earth removal sites associated with landfill closing, and closure of a landfill that began prior to July 1, 1992; lots conveyed to the State or conservation organizations; remedial action authorized by ANR; railroad repair; and de minimis improvements.

Electric generation and transmission and natural gas facilities. In 1988, the General Assembly opted for the PUC (then the Public Service Board) to retain siting jurisdiction over electric generation and transmission and natural gas facilities, with the addition of requiring due consideration of the Act 250 criteria set forth at 10 V.S.A. § 6086(a)(1)–(8) and (9)(K). The PUC siting statute does not require due consideration of Act 250 criteria 9(A) through (J), 9(L), or 10.146

The PUC regulates and supervises Vermont's electric and natural gas utilities and, in 1988, it was typically utilities that built and operated the relevant electric and natural gas

¹⁴⁰10 V.S.A. § 6081(m).

¹⁴¹10 V.S.A. § 6081(n).

¹⁴²10 V.S.A. § 6001(3)(D)(ii).

¹⁴³10 V.S.A. § 6001 (3)(D)(i).

¹⁴⁴¹⁰ V.S.A. §6081 (s)(1).

¹⁴⁵10 V.S.A. § 6001(3)(D)(vii).

¹⁴⁶30 V.S.A. § 248(b)(5); 1988 Acts and Resolves No. 273, Sec. 1; <u>In re Glebe Mountain Wind Energy, LLC</u> (Appeal of JO #2-227), No. 234-11-05VTEC, 2006 WL 4087912 (Vt. Envtl. Ct. May 18, 2006).

facilities.¹⁴⁷ Since then, there has been a significant increase in electric generation built by non-utility actors, such as merchant generators, due to the creation of a wholesale market for electric generation and to renewable energy policies such as Vermont's net metering and standard offer programs and renewable portfolio standards in the New England states.¹⁴⁸

Increased siting of electric generation in Vermont has led to some statutory changes. For example, on primary agricultural soils, the General Assembly amended the PUC siting statute in 2016 to require due consideration of impacts to primary agricultural soils, although due consideration of Act 250's Criterion 9(B) is still not required. 149

A similar change was made on the role of local and regional planning. Instead of requiring conformance with local and regional plans, the PUC siting statute requires due consideration of the land conservation measures in the local plan and of the recommendations of the municipal legislative body and the municipal and regional planning commissions. The 2016 legislation amended the statutes to allow local and regional plans to obtain affirmative determinations of energy compliance and to provide increased weight in the PUC siting process to plans that obtain those determinations by requiring substantial deference to land conservation measures and specific policies contained in them.¹⁵⁰

The Environmental Division has concluded that siting electric generation on land already subject to Act 250 does not require a permit amendment if the generation is subject to PUC siting jurisdiction, but questions remain about the relationship between the PUC certificate of public good and any conditions on the land previously imposed by Act 250.¹⁵¹

The Commission spent considerable time on this issue and discussed many possible recommendation options, but there was no consensus. Although reviewed under Section 248, energy generation facilities are "development" as understood under Act 250 and in the last 50 years there have been changes in the ways energy is generated. Therefore, the Commission believes that the permitting process needs to be further discussed and evaluated.

Preexisting developments and subdivisions; gravel pits and quarries. While the Commission does not conclude that the exemptions for preexisting developments and subdivisions significantly detract from achieving the goals of the Findings and the Plan,

¹⁴⁷30 V.S.A. § 203(1) and (2).

¹⁴⁸In re Promoting Wholesale Competition by Pub. Utilities, 168 P.U.R. 4th 590 (F.E.R.C. Apr. 24, 1996) (known as FERC Order 888); 30 V.S.A. §§ 8004, 8005; 8005a, 8010; National Conference of State Legislatures, State Renewable Portfolio Standards and Goals (July 20, 2018); retrieved from http://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx, Nov. 18, 2018.

¹⁴⁹30 V.S.A. § 248(b)(5); 2016 Acts and Resolves No. 174, Sec. 11.

¹⁵⁰²⁴ V.S.A. § 4352; 30 V.S.A. § 248(b)(1)(C); 2016 Acts and Resolves No. 184, Secs. 6, 11.

¹⁵¹<u>In re Glebe Mountain Wind Energy, LLC</u> (Appeal of JO #2-227), No. 234-11-05VTEC; G. Boulbol, testimony (Nov. 15, 2018).

there is a substantial issue with respect to preexisting gravel pits and quarries. As time moves on from June 1, 1970, it becomes increasingly difficult with these operations to establish a baseline for determining whether a substantial change has occurred in the extraction rate or the scope of operation, such as whether a crusher was used prior to 1970. The State has never enacted or implemented a process to establish a baseline for preexisting gravel pits and quarries against which to measure changes in operation. Therefore, the Commission recommends that such baselines are established.

Projects in designated centers. The existing exemptions related to projects in designated centers appear to support the goals of the Findings and the Plan without also detracting from them. However, the question has been raised of whether more should be done within Act 250 to promote projects in designated centers, a settlement pattern of compact centers surrounded by a working landscape, and protection of important natural resources outside those centers.

Slate quarries. The Commission considered the specific requirements of the exemption for slate quarries. In order to qualify for this exemption, slate had to have been removed from the quarry prior to June 1, 1970¹⁵³ and then those quarries were required to register with the District Commissions by January 1, 1997.¹⁵⁴ Unlike other earth extraction sites, the exemption for a registered slate quarry includes "ancillary activities" other than crushing even if the activities were not part of the quarry operation prior to June 1, 1970. Examples of ancillary activities include blasting, drilling, sawing and cutting stone, and use of buildings and equipment exclusively for ancillary activities. The buildings can have been built after 1970.¹⁵⁵

Slate mining only takes place in the southwestern Vermont region, along the Vermont/New York state line. The slate industry is a significant part of the economy of that region. Further, there are a finite number of exempt slate quarries. The NRB reported that District 1 has 110 tracts of land registered under the slate quarry exemption. The land registered under the slate quarry exemption.

There are a number of environmental and aesthetic concerns associated with slate quarries. The Commission received anecdotal testimony about conflicts that arise with those who live adjacent to slate quarries, including those who move near a registered quarry hole during decades in which the quarry is not in active use. Lack of Act 250 jurisdiction reduces the recourse available to nearby landowners with concerns about slate quarries, whether they are related to water quality, effect on water supply, blasting, or traffic.

¹⁵²S. Murray, testimony (Nov. 15, 2018); G. Boulbol, testimony (Nov. 15, 2018).

¹⁵³10 V.S.A. § 6081(j).

¹⁵⁴10 V.S.A. § 6081(l).

¹⁵⁵10 V.S.A. § 6081(k).

¹⁵⁶VT DEC website, Slate, citing Industrial Minerals: 200 Years and Going Strong: D. Conrad and D. Vanacek, 1990; updated 2005 (S. King) and 2016, retrieved from https://dec.vermont.gov/geological-survey/resources-energy/minres/slate (Nov. 26, 2018).

¹⁵⁷G. Boulbol, testimony (Nov. 15, 2018).

¹⁵⁸G. Tarrant, testimony (Nov. 15, 2018).

Requiring slate quarries to obtain Act 250 permits would not bar them from operating under a permit. Currently, both Criteria $9(D)^{159}$ and $9(E)^{160}$ address earth resources. Criteria 9(D) seeks to ensure that projects will not interfere with the future ability to extract earth resources, demonstrating the importance of earth resources industry to Vermont. Criteria 9(E) seeks to prevent specific environmental damage that may be caused by the extraction of earth resources, implying that Act 250 permits extraction operations that are thoughtfully planned and do not harm the environment. In addition, the broad exemption for ancillary activities places slate quarries on a different footing from other earth resource extraction operations.

The Commission has several recommendations in regard to slate quarries. The Commission recommends that the registered slate quarries be required to give notice of their operations to neighboring property owners. The Commission also recommends that the registered slate quarries be added to the ANR Natural Resources Atlas so that the location of quarries can be easily discovered online. The Commission recommends that the exemption for slate quarries be repealed. The exemption should be phased out over a number of years so that the quarries have time to obtain Act 250 permits. Further, the Commission recommends that the provision that allows quarries to be held in reserve without being considered abandoned be repealed.

Telecommunications facilities. There are effectively four exemptions related to telecommunications facilities. The first three of these exemptions do not appear to detract from goals of the Findings and the Plan. The first exemption ensures that Act 250 jurisdiction does not extend to otherwise nonjurisdictional activities on the same tract when jurisdiction is triggered by construction of a broadcast or support structure.

The second and third exemptions allow for repair and routine maintenance of these structures and ancillary equipment, as well as for replacement that does not constitute a material or substantial change. As discussed above, the analysis of material and substantial change requires consideration of the potential impact on the Act 250 criteria.

The fourth exemption relates to telecommunications facilities that obtain a certificate of public good (CPG) from the PUC in lieu of an Act 250 permit or local land use approval, or both. The relevant statute initially applied to networks of three or more telecommunications facilities. It was enacted to further telecommunications deployment through the Vermont Telecommunications Authority, with the PUC's authority to accept new applications expiring on July 1, 2010. The statute was subsequently amended to apply to a single telecommunications facility and the period for accepting new applications has been extended multiple times. The PUC's authority to accept applications for telecommunications facility CPGs currently expires on July 1, 2020. The statute requires that the PUC give due consideration to Act 250's Criteria 1 through 8 and 9(K) and substantial deference, "unless there is good cause to find otherwise," to the plans of the

¹⁵⁹ 10 V.S.A. § 6086(a)(9)(D).

¹⁶⁰ 10 V.S.A. § 6086(a)(9)(E).

affected municipalities and to the recommendations of the municipal and regional planning commissions and the municipal legislative body. 161

Working lands. The exemptions within the category of working lands include the exemptions for farming, logging, and forestry below 2,500 feet, as well as the exemption for farming on primary agricultural soil and specific composting projects.

The Commission finds that the exemption for farming both detracts and supports the goals of Act 250. The ongoing concerns over the water quality issues in Vermont raise questions about agricultural runoff. Without Act 250 oversight, the Commission is concerned about water quality and climate change impacts caused by farming. From this perspective, the Commission believes that the exemption detracts from the environmental protection aspect of Act 250. However, farming is a traditional and essential part of Vermont. In this way, the farming exemption furthers the goals of Act 250, which include "Preservation of the agricultural and forest productivity of the land, and the economic viability of agricultural units." It also furthers one of the statute's overarching goals of compact development separated by rural countryside. 163

However, exempting farming from Act 250 jurisdiction does not mean that farms are unregulated. Recent changes to water quality regulations applicable to farms may mitigate the lack of Act 250 jurisdiction. The Required Agricultural Practices (RAPs) are a relatively new set of regulations aimed at protecting water quality from agricultural runoff. Legislation in 2015 changed the former Accepted Agricultural Practices to the RAPs and the new RAPs went into effect in 2016.¹⁶⁴ They establish nutrient, manure, and waste storage standards and regulate farms based on their size. Therefore, while aspects of the farming exemption detract from the goals of Act 250, the farming industry in Vermont is still adjusting to the new regulations, which may sufficiently address water quality concerns.

The Commission recommends repealing the exemption for farming, logging, and forestry below 2,500 feet when these occur in areas that have been designated as critical resource areas. To implement this recommendation, the definition of "construction of improvements" should be amended so that it only includes the construction of permanent structures, in regard to these working lands activities. This recommendation is intended to protect critical resource areas and improve water quality, while still supporting working lands.

AAFM asked the Commission to further extend the exemption for farming to include accessory on-farm businesses. AAFM would define such businesses in the same way as 2018 Acts and Resolves No. 143 (Act 143), which amended the statutes pertaining to municipal land use regulation. Act 143 defines an accessory on-farm business as activities that are accessory to a farm subject to the RAPs. The activities may include storage,

¹⁶¹²⁰⁰⁷ Acts and Resolves No. 79, Secs. 1, 17; 2009 Acts and Resolves No. 54, Sec 44; 30 V.S.A. § 248a.

¹⁶²1973 Acts and Resolves No. 85, Sec. 7(a)(2).

¹⁶³10 V.S.A. § 6086(a)(9)(L).

¹⁶⁴2015 Acts and Resolves No. 64, Sec. 4.

processing, preparation, and sale of qualifying products, as well as educational, recreational, or social events. The activities must have a nexus to agriculture and must be in addition to a farming operation. Vermont farms are seeking to diversify their revenue stream by participating in agritourism and adding other activities to their farm.

However, Act 143 does not exempt accessory on-farm businesses from regulation. Instead, the Act authorizes and limits municipal land use regulation of such accessory businesses. It allows municipalities to conduct site plan review of these businesses and to apply the same performance standards to them that it applies to similar commercial uses. 166

Exemption from Act 250 would be different from limited regulation and could result in differential treatment of similar businesses based on whether they are or are not accessory to a farm. The Commission is concerned that extending the farming exemption in this way would not be fair because it would exempt what currently could be commercial developments. Therefore, the Commission does not recommend adopting the proposal from AAFM.

Rural industrial parks proposal. ACCD presented the Commission with a proposal regarding industrial parks in rural areas. The proposal was to incentivize the use of master plan permits in rural industrial parks and to reduce the Act 250 permit fee. Under this proposal, "rural" refers to any county outside of Chittenden.

The specifics of the proposal included allowing subsequent development within industrial parks to be administrative amendments and allowing a master plan permit even if the site already contains development. Treating subsequent development as an administrative amendment would mean that the development is not reviewed for compliance with the Act 250 criteria.

The Commission finds that while rural economic development is important, reducing Act 250 review in areas outside of existing settlements is contrary to the settlement pattern goals discussed throughout this report. The Commission does not recommend adopting the proposal from ACCD regarding rural industrial parks.

VTrans project proposal. The Vermont Agency of Transportation (VTrans) presented a proposal to the Commission that the Agency be exempt from Act 250 jurisdiction for all of its projects that use federal aid. VTrans is one of the largest landowners in the State. The Agency testified that its projects are large, complex, and undertaken in the public interest. If further testified that its projects that use federal aid are subject to extensive oversight, from both the State and the federal government. The Agency believes that Act 250 oversight generally results in little or no change in a proposed

¹⁶⁵2018 Acts and Resolves No. 143, Sec. 2, enacting 24 V.S.A. § 4412(11).

¹⁶⁶Id.

¹⁶⁷T. Brady, ACCD, written testimony (Nov. 8, 2018).

¹⁶⁸D. Dutcher, VTrans, Key Points written testimony, at 1 (Dec. 6, 2017).

project.¹⁶⁹ For these reasons, VTrans proposed that its projects with federal aid be exempt from Act 250 jurisdiction.

The Commission received testimony from VTrans that nearly all State and municipal transportation projects receive federal aid. The Agency also testified that multiple aspects of the Act 250 process are time consuming, particularly when there is citizen input. The Commission received multiple public comments about the importance of citizen participation in transportation projects through Act 250. In addition, the Commission is concerned about relying on the federal government under the current circumstances, particularly in the area of environmental protection.

In addition, VTrans in part relies on the National Environmental Policy Act (NEPA) for its argument on federal scrutiny. But NEPA is an environmental analysis requirement and not a process that results in a permit or approval with enforceable obligations. Under NEPA, as long as the requisite analysis is done, the project may move forward, even if there are environmental concerns.

Accordingly, the Commission does not recommend adopting the proposal from VTrans.

¹⁶⁹<u>Id</u>. at 2.

2. <u>Ridgelines</u>

a) Charge

Act 47, Sec. 2(e)(2)(G)(iii) – "The scope of Act 250's jurisdiction over projects on ridgelines, including its ability to protect ridgelines that are lower than 2,500 feet, and projects on ridgelines that are expressly exempted from Act 250."

b) Facts

Based on a review of dictionary definitions, a ridgeline can be described as a long, narrow section of the earth's surface, such as a chain of mountains or hills that form a continuous elevated crest or the divide between adjacent valleys, or as an area of higher ground separating two adjacent streams or watersheds.¹⁷⁰

Currently, Act 250 governs the construction of improvements for commercial, industrial, or residential use above 2,500 feet.¹⁷¹ There are exempt categories of projects that may affect areas above 2,500 feet, such as electric generation and telecommunications facilities permitted by the PUC.¹⁷² Elevations below 2,500 feet are susceptible to logging, farm, and forestry projects, as well as other projects that are exempt from jurisdiction.

Act 250's headwaters criterion applies to lands above 1,500 feet in elevation, among other lands. 173

Vermont's mean elevation is 1,000 feet above sea level. 174 Vermont has 223 mountains that rise above 2,000 feet. 175 It has 35 mountains that top 3,500 feet. 176

Wind energy projects at high elevations have been an issue in Vermont. In general, the strength and persistence of the wind typically increases with elevation, such that the strongest winds are often found at the highest mountain summits.¹⁷⁷ Research into the best locations for wind power found that the areas that were the windiest and on public

¹⁷⁰American Heritage Dict., ridge, retrieved from https://ahdictionary.com/word/search.html?q=ridge; Cambridge Dict., ridge, retrieved from https://dictionary.cambridge.org/us/dictionary/english/ridge; Dictionary.com, ridgeline, retrieved from https://www.dictionary.com/browse/ridgeline; all Nov. 2, 2018. https://www.dictionary.com/browse/

¹⁷²10 V.S.A. § 6001 (3)(D)(ii).

¹⁷³10 V.S.A. § 6086(a)(1)(A).

¹⁷⁴Ereference desk, Almanac Quick Facts, Vermont State Facts and Figures, retrieved from http://www.ereferencedesk.com/resources/almanac/vermont.html, Nov. 2, 2018.

¹⁷⁵World Atlas: Vermont, retrieved from

https://www.worldatlas.com/webimage/countrys/namerica/usstates/vtland.htm, Nov. 2, 2018.

¹⁷⁶Encylopedia Britannica, Vermont, retrieved from https://www.britannica.com/place/Vermont, Nov. 2, 2018.

¹⁷⁷Vt. Dept. of Public Service, Wind Energy Planning Resources for Utility-Scale Systems in Vermont (October 2002) at 7.

land were above 2,500 feet and that this constituted less than one percent of the total land area in Vermont.¹⁷⁸

The relative rarity of these high elevation sites makes them a concern for those seeking to protect unique habitat and the scenic beauty of Vermont. "For instance, with wind energy projects sited along high ridgelines, it's not uncommon to encounter multiple rare, unique and high quality natural communities supporting rare plant and animals."¹⁷⁹

Ridgeline locations are highly susceptible to damage due to their generally remote locations. They typically support interior forests, which are the most at risk from fragmentation. Further, the physical characteristics of ridgelines often make them important corridors for the movement of a wide range of species.¹⁸⁰

c) Discussion and Recommendation

Ridgelines are an important geographical feature that contribute to the distinctive character and scenic beauty of Vermont and that contain important habitat and natural communities. The State has long had a policy of protecting its ridgelines.

The building of wind energy facilities in these sensitive areas has presented a policy conflict for Vermont because the facilities can advance the goals of reducing greenhouse gas emissions while at the same time potentially affecting the environment and scenic beauty of the ridgelines, including the clearing of forested areas and the placement of impervious surfaces and resulting stormwater discharges.

The importance of ridgelines for interior forests suggests that reducing Act 250's 2,500-foot elevation threshold to 2,000 feet could improve its ability to protect forests from fragmentation. As discussed above, Vermont has 223 mountains that rise above 2,000 feet. However, as discussed above in Sec. VI.B., the Commission could not reach a consensus on this issue, particularly in regard to siting energy generation projects.

¹⁷⁸Vermont Environmental Research Associates, Inc., Estimating the Hypothetical Wind Power Potential on Public Lands in Vermont (December 2003) at 14.

¹⁷⁹Vt. ANR, Report on the Environmental and Land Use Impacts of Renewable Electric Generation in Vermont in Response to Act 56 of 2015 at 14.

¹⁸⁰<u>Id</u>. at 21.

C. Release from jurisdiction

1. <u>Charge</u>

Act 47, Sec. 2(e)(2)(G)(i) – "Circumstances under which land might be released from Act 250 jurisdiction."

2. Facts

Under Act 250, with three exceptions, all permits are issued for an indefinite time period. In addition to being permanent, all permits run with the land and are enforceable against the permit holder and all successors in interest.

The three exceptions are for projects involving mineral resource extraction, solid waste disposal facilities, and logging above 2,500 feet.¹⁸³ The permits granted for these types of projects must contain a specific date for completion of the project, a plan for the reclamation of the land used, and the expiration date of the permit.¹⁸⁴ When a permit expires, the land is no longer subject to Act 250 jurisdiction if the permitted improvements are removed, the operation has ceased, the land is reclaimed according to the plan, and there is no other activity to trigger the statute's application.¹⁸⁵

In the case of the exceptions, the permit's duration is set based on the time during which the land is suitable for the stated use. 186 The duration must extend through this period at a minimum. 187

Permits can be abandoned prior to construction, which also releases the land from Act 250 jurisdiction. If a permit is issued and construction of the project does not begin within three years, the permit is considered abandoned. This is known as involuntary abandonment. However, a permit is not considered abandoned if the project is subject to litigation that prevents construction. A permit can also be voluntarily abandoned by the holder of the permit any time before construction of the project begins.

3. <u>Discussion and Recommendation</u>

¹⁸¹10 V.S.A. § 6090(b)(2).

¹⁸²Act 250 Rule 33(C)(3).

¹⁸³10 V.S.A. § 6090(b)(1).

¹⁸⁴Act 250 Rule 33(b).

¹⁸⁵In re Huntley, 2004 VT 115, ¶¶ 9–11, 15.

¹⁸⁶10 V.S.A. § 6090(b)(1).

¹⁸⁷Rule 32(b)(2).

¹⁸⁸Rule 38(A).

¹⁸⁹10 V.S.A. § 6091(b).

¹⁹⁰Rule 38(B).

There is currently no process to release land from jurisdiction when a permit was not abandoned but the land use subsequently changes to a use that would not have triggered Act 250 jurisdiction in the first place. The Commission recommends consideration of a process under which release from jurisdiction could be obtained if the following apply:

- The use of the land as of the date of the application for release from jurisdiction is not the same as the use of the land that caused the obligation to obtain an Act 250 permit.
- This use does not constitute development or subdivision as defined in the Act and would not require a permit or permit amendment but for the fact that the land is already subject to an Act 250 permit.
- The permittee or permittees are in compliance with the permit and their obligations under Act 250.
- If there is a subsequent proposal on the same land of a project that requires an Act 250 permit, it would be subject to Act 250 as if the land had never previously received an Act 250 permit.

D. **Projects in multiple towns**

1. <u>Charge</u>

Act 47, Sec. 2(e)(2)(G)(iii) – "Potential jurisdictional solutions for projects that overlap between towns with and without both permanent zoning and subdivision bylaws."

2. <u>Facts/Background</u>

As discussed above, when a project involves the construction of improvements for a commercial or industrial purpose, an Act 250 permit is required if the project involves more than 10 acres of land or, if the municipality does not have both permanent zoning and subdivision bylaws, more than one acre of land.

The radius for determining involved land is five miles from any point on any involved land. 191

The same project may involve lands in two towns if the lands are within a radius of five miles. It is therefore possible that one of the towns has both permanent zoning and subdivision bylaws (a "10-acre town") and the other town does not (a "one-acre town").

In such a situation, the project's total amount of involved land could exceed one acre and be less than 10 acres. The project would then trigger Act 250 because of the one-acre town and jurisdiction would apply to the entire project.

The Commission has not received data on how often this situation occurs.

3. <u>Discussion and Recommendation</u>

The Commission has not received information that indicates this issue represents a significant problem or why. The Commission therefore recommends that no jurisdictional solutions be pursued.

¹⁹¹10 V.S.A. § 6001(3)(A)(i); Act 250 Rule 2(C)(5).

E. <u>Jurisdiction over trails</u>

1. <u>Charge</u>

Act 194, Sec. 3 (a) "In addition to the currently assigned tasks under 2017 Acts and Resolves No. 47 (Act 47), the Commission on Act 250: the Next 50 Years (the Commission) established under that act shall evaluate the strengths and challenges associated with regulation of recreational trails under 10 V.S.A. chapter 151 (Act 250) and alternative structures for the planning, review, and construction of future trail networks and the extension of existing trail networks. The Commission shall include recommendations on this issue in its report to the General Assembly due on or before December 15, 2018 under Act 47."

2. Facts

Act 250 jurisdiction is governed primarily by its definitions of "development" and "subdivision." These definitions do not contain language that is specific to when a recreational trail becomes subject to Act $250.^{192}$

Instead, a recreational trail project may require an Act 250 permit in one of three situations. First, if the trail project is for a commercial purpose, it will trigger Act 250 if it is on a tract of tracts of land totaling 10 or more acres in a town with zoning or subdivision bylaws or more than one acre in a town that does not have both of these bylaws. For a commercial project, the entirety of the tract or tracts would be counted for the purpose of determining jurisdiction, though if a permit is required Act 250 would only regulate the trail corridor and the area directly or indirectly affected by the trail.

Second, if the trail project is for a municipal, county, or State purpose, including a trail that is part of the Vermont Trails System, it will trigger Act 250 if the land physically altered as part of the project and any land incidental to the use totals more than 10 acres. 195

Third, if the trail project is on land already subject to an Act 250 permit for other reasons, it will trigger Act 250 if it constitutes a material change to the permitted project.¹⁹⁶

¹⁹²10 V.S.A. §§ 6001, 6081.

¹⁹³10 V.S.A. § 6001 (3)(A).

¹⁹⁴Act 250 Rules 2(C)(5), 71(A).

¹⁹⁵10V.S.A. § 6001(3)(A); Act 250 Rules 2(C)(5), 71(B).

¹⁹⁶Act 250 Rules 2(C)(6), 34(A).

Trail projects vary in type, use, and potential impact.¹⁹⁷ In the last five years, there have been 31 permit applications for recreational trails. All of them were granted. Eighty percent of the applications were processed within 60 days.¹⁹⁸

Also, in the last five years, the Act 250 program issued 38 jurisdictional opinions concerning recreational trails. Of these opinions, 32 found that jurisdiction did not attach.¹⁹⁹ Some of the reasons for the conclusions of nonjurisdiction were: there was no material change to the permitted project, the trail project was determined to be routine maintenance, or the trail project did not reach the required acreage threshold.²⁰⁰

3. <u>Discussion and Recommendation</u>

Act 194 established the Recreational Trails Working Group. This Working Group was required to submit a report to the Commission on Act 250 with information and recommendations regarding recreational trails by October 1, 2018. The Working Group submitted the results of a survey on or about October 1, 2018 that indicated it was not the Group's final report and that the Group would continue to work together during the fall of 2018.

The Commission received testimony on December 7, 2018 that the Recreational Trails Working Group had not yet unanimously decided on what to recommend. The Working Group met regularly since the passage of Act 194, but had not finished their work. The Working Group reported that they are developing a proposal on the creation of an alternative review process for trail permits. The Working Group plans to present their findings and recommendations to the General Assembly, after they have concluded their work, by March 1, 2019.²⁰¹

Lack of a final report from the Recreational Trails Working Group hinders the Commission's ability to make recommendations on Act 250's jurisdiction over recreational trails, and therefore, the Commission does not make such recommendations at this time.

The Commission does note three concepts that have emerged from the testimony on this issue:

• Clarifying Act 250 terms such as "public purpose," "involved land," the definition of "trail," and "area of impact" in regard to trails.

¹⁹⁷Act 194 Recreational Trails Working Group, Report to the Act 47 Commission regarding Act 250 and Recreational Trail Regulation in Vermont at 3 (Oct. 1, 2018).

¹⁹⁸G. Boulboul, Vt. Natural Resources Board, testimony (Oct. 11, 2018).

¹⁹⁹<u>Id.</u>

²⁰⁰Id.

²⁰¹D. Snelling, Recreational Trails Working Group, testimony (Dec. 7, 2018).

- Removing recreational trails from Act 250 jurisdiction in favor of an alternative regulatory structure.
- Creating a specific definition of "development" in Act 250 for recreational trails in order to provide clarity and uniformity as to when Act 250 does and does not apply to recreational trails.

VII. TASK GROUP 4: ACT 250 PROCESS; INTERFACE WITH OTHER PERMITTING; APPEALS

A. Application and review process before the District Commissions; role of Natural Resources Board

1. <u>Statistical analysis</u>

a) Charge

Act 47, Sec. 2(e)(1) – "A statistical analysis based on available data on Vermont environmental and land use permitting in general and on Act 250 permit processing specifically, produced in collaboration with municipal, regional, and State planners and regulatory agencies."

b) Facts/Analysis

The Joint Fiscal Office (JFO) utilized permitting data from the Natural Resources Board in completing the statistical analysis of permitting activities. Most of the data came from annual reports, but in some cases, the NRB provided updated numbers due to noted inconsistencies in the data between report years. The analysis reflects a ten-year reporting period, from calendar year 2008 through calendar year 2017. After reviewing the data submitted by NRB, ANR, and some municipalities, JFO decided to focus the statistical analysis on Act 250 permitting activity only because of the unique nature of the program and the lack of comparability across data sources (i.e., staffing differences, varying administrative complexity, and application volume).

Figure 1,²⁰² below, shows the total number of Act 250 applications (bars) processed by the NRB over a ten-year period as well as major and minor applications and administrative amendments (lines).²⁰³ The total annual applications dropped steadily through most of this period with a slight uptick in the past two years, driven by an increase in administrative amendments. Major applications have dropped, while minor applications have remained relatively stable.

As major and minor applications typically require greater effort than administrative amendments, Figure 2 highlights total major and minor applications with an overlay of the median processing times²⁰⁴ for each application type over a ten-year period. An important

²⁰²All figures were derived using data provided by the Natural Resources Board.

²⁰³The numbers for each year, save for 2008, were taken directly from the Natural Resources Board annual report for that particular year. Major and minor applications for 2008 were taken from the 2009 report, while the administrative amendments were taken from the report titled "The Next 50 Years," which was produced by the NRB.

²⁰⁴Median processing times were provided by the Natural Resources Board (NRB) and may differ from median times shown in annual reports.

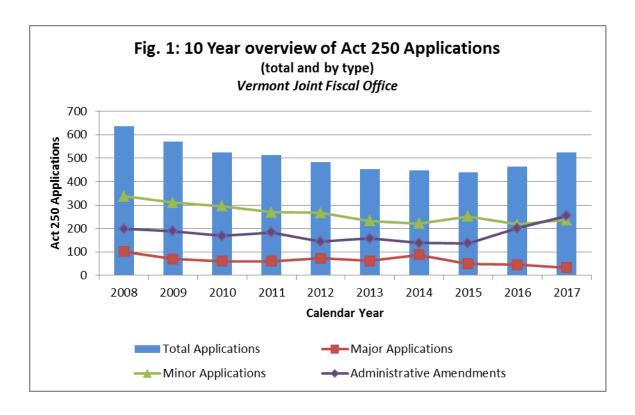
note is that the processing times are not exclusive of periods when an application resides outside of NRB control (i.e., ANR, applicant, etc.). The NRB does not currently have the capability to break out the time an application spends within its possession from total processing time. Overall, as major and minor applications have dropped over the ten-year period, median processing times have crept up. 2016 stands out significantly in this figure and in Figure 3, but the NRB has stated that the permitting numbers are accurate. Median times were used rather than average times due to the presence of a small number of applications in a typical year that take a very long time to process, and which skews the average significantly. Figure 3 reflects the disparity between average and median processing times.

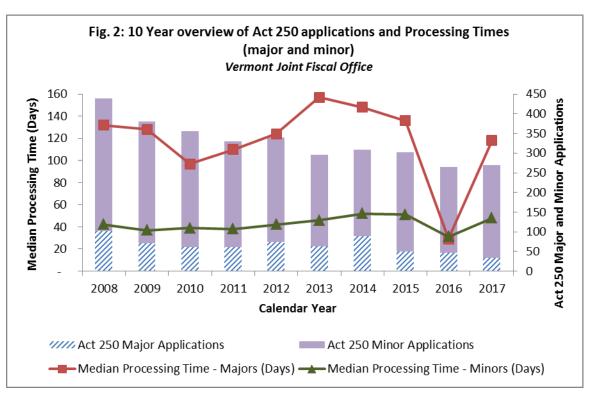
The two primary metrics presented by the NRB in its annual reports to indicate the timeliness of application processing are 1) processing times arranged within date ranges and 2) Performance Standards. Figure 4 shows a ten-year look at processing times based on the percent of applications processed within five date ranges. Over ten years, the percent of applications exceeding 119 days for processing has increased while the percentages in other ranges have decreased slightly. The performance standards maintained by the NRB are as follows:

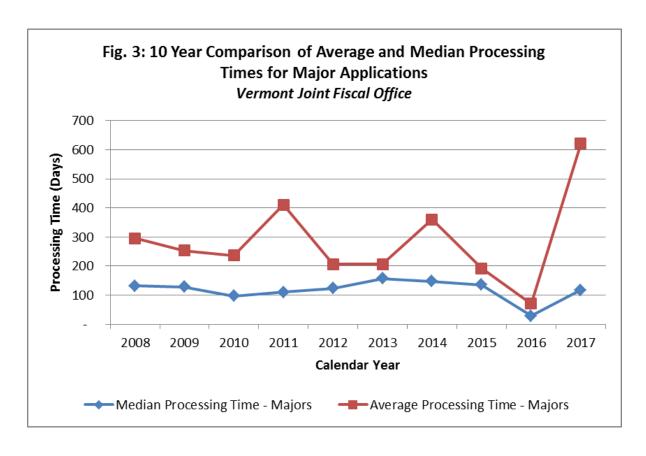
- 1. Application Completeness Review (internal standard): 7 days
- 2. Minors—days to issue after end of comment period (internal standard): **10 days**
- 3. Majors—days to issue after adjournment (Act 250 rule): 20 days
- 4. Majors—days to schedule a hearing (statutory rule): **40 days**

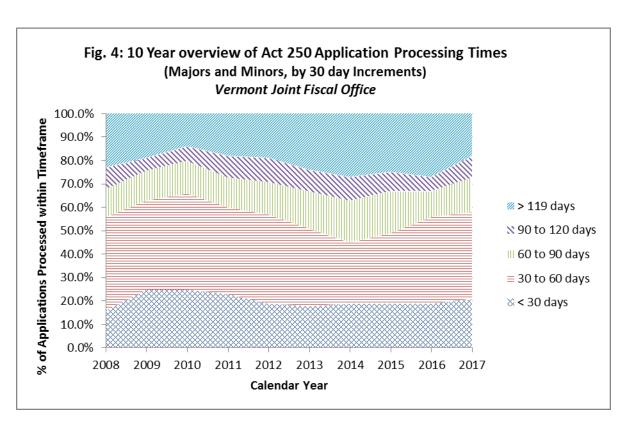
Figure 5 shows how actual application processing results compare to the standards. The standards are represented by dashed lines while actual results are represented by solid lines. This figure represents nine years of performance data rather than ten years because two of the four metrics were not given in the 2017 annual report.

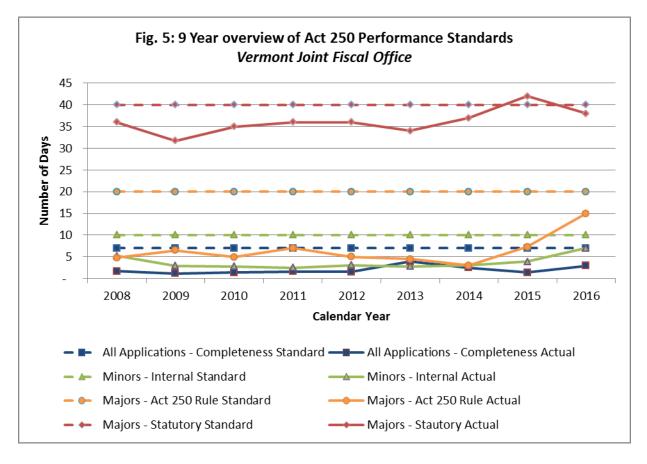
The process of performing the statistical analysis was complicated by several factors that should be addressed by the NRB going forward. The annual reports often were inconsistent from year to year. For example, prior to 2016, processing times were calculated based on major and minor applications only, but in 2016 and 2017, processing times included administrative amendments. Processing times dropped dramatically from prior years, but no explanation was given for the change. Additionally, annual numbers given in the report "The Next 50 Years," which was drafted by the NRB, do not match the numbers in past annual reports. The NRB has also indicated that for any given Act 250 application there is no way of singling out the time an application is in NRB possession from the time it might be awaiting action from another party. The NRB has indicated that it is taking actions to address many of these challenges.











c) Recommendation

The Commission recommends the following:

- Further Data Collection. The current data submitted to the Commission does not reflect the back-and-forth nature of the application process, where applicants communicate with the agencies to compile the information needed for a complete permit application. Further, the existing data does not reflect the variation in municipal capacity to process land use permit applications. The Commission recommends that further data collection is needed in order to better understand the permitting process.
- Better Permit Tracking. The Commission recommends that the NRB database be updated to allow point-to-point monitoring of applications as they move through the review process. If an application goes back to the applicant for revision or to ANR for additional permitting, then the database should reflect who possesses an application at a given time.
- Address Delayed Applications. Some Act 250 applications have taken years for a final
 decision, in one case over 16,000 days (almost 44 years). These outliers
 significantly complicate any effort to accurately analyze average permitting results.
 In some cases, these are abandoned applications, and in others, there may be

ongoing litigation. A better permit tracking system would allow NRB to isolate these outliers more easily and explain the circumstances surrounding any delay in its reports to the public. The Commission recommends that the NRB also consider adopting a rule to periodically "check in" on delayed applications to determine whether action might be taken to move it along or close it out.

- Improve Annual Reports. Past reports often contain inconsistencies with how permitting data is presented year to year. This reality created significant complications for JFO in performing a statistical analysis. The Commission recommends that the NRB be more transparent in highlighting major changes to the presentation of its permitting statistics and provide data in a more consistent format in general going forward.
- Address District Commission variances. The NRB's testimony suggested that some
 District Commissions may track permit applications differently in regard to the
 performance standards. This would skew the actual processing performance in
 relation to the standards. The Commission recommends that these variations
 between District Commissions be resolved.

2. Evaluation

a) Charge

Act 47, Sec. 2(e)(2)(F) – "An evaluation of how well the Act 250 application, review, and appeals processes are serving Vermonters and the State's environment and how they can be improved, including consideration of:

- (i) Public participation before the District Environmental Commissions and in the appeals process, including party status.
 - (ii) The structure of the Natural Resources Board. . . . "

b) District Commissions

Nine District Environmental Commissions serve Vermont. Each consists of a chair, two members, and up to four alternate members. The members are removable for cause only, except the Chair who serves at the pleasure of the Governor. District Commissioners are not salaried. They receive a \$50 per diem and expenses. Each District Commission is served by one or more District Coordinators and other staff, all employed by the NRB.

The public may participate in District Commission proceedings related to permit applications and in the issuance of jurisdictional opinions by District Coordinators.²⁰⁸

For permit applications, the statute specifies the following parties: the applicant; the landowner if other than the applicant; the municipality; the municipal and regional planning commissions; any State agency affected by the proposed project; and any adjoining property owner or other person "who has a particularized interest protected by this chapter that may be affected by an act or decision by a District Commission."²⁰⁹

If a person seeks party status under this last category, "particularized interest," the statute requires either an oral or written petition to the District Commission and specifies information to be included in the petition.²¹⁰ A decision on party status is appealable.²¹¹

The statute requires that District Commissions reexamine party status before the close of hearings and consider the extent to which a person continues to qualify for party

²⁰⁵10 V.S.A. § 6026.

²⁰⁶10 V.S.A. § 6028, 32 V.S.A. § 1010.

²⁰⁷Natural Resources Board, District Staff and Environmental Commissions, retrieved from https://nrb.vermont.gov/act250-program/district-staff-and-commissions, Nov. 5, 2018.

²⁰⁸10 V.S.A. §§ 6007(c), (d), 6085(c).

²⁰⁹10 V.S.A. § 6085(c).

²¹⁰ Id.

²¹¹10 V.S.A. § 8504(d)(2)(B).

status. 212 Loss of party status because of such reexamination would affect a person's ability to appeal on the merits. 213

The statute allows a person to participate as a friend of the commission rather than as a party. Friend of the commission status does not carry the ability to appeal.²¹⁴

If the District Commission processes an application as a minor, parties have the right to comment and request a hearing. A hearing request must include a petition for party status if made by a person who is required to demonstrate qualification for "particularized interest" status. 216

Hearings are held for major applications and for minor applications when the District Commission grants a hearing request or determines to hold a hearing on its own motion.²¹⁷ When hearings are held, parties have the right to present and respond to evidence and conduct cross-examination.²¹⁸

Before a hearing is held, a District Commission may conduct a prehearing conference to: determine preliminary party status, make preliminary rules on procedural matters, clarify the issues in controversy, and set a schedule for future proceedings; identify evidence, documents, and witnesses to be presented at a hearing by any party; or promote nonadversarial resolution of issues.²¹⁹

Jurisdictional opinions are issued by District Coordinators rather than District Commissions. They pertain to whether Act 250 applies to a project or to whether a permit application is complete. Any person may request a jurisdictional opinion. After issuance, reconsideration of the opinion may be requested.²²⁰

c) Natural Resources Board

The NRB consists of five members and five alternate members appointed by the Governor. The members are removable for cause only, except that the Chair serves at the pleasure of the Governor. The Chair is a full-time, salaried position.²²¹ Other NRB members are not salaried. They receive a \$50 per diem and expenses.²²²

The NRB has the following functions:

²¹²10 V.S.A. § 6085(c)(6). ²¹³10 V.S.A. § 8502(7), 8504(a), (d). ²¹⁴10 V.S.A. §§ 6085(c)(5), 8502(7), 8504(a). ²¹⁵10 V.S.A. § 6084(b), (c). ²¹⁶Act 250 Rule 51(B)(3)(e). ²¹⁷10 V.S.A. § 6084. ²¹⁸10 V.S.A. § 6002; 3 V.S.A. §§ 809–810. ²¹⁹Act 250 Rule 16. ²²⁰10 V.S.A. § 6007(c); Act 250 Rules 3, 10(D). ²²¹10 V.S.A. § 6021; 32 V.S.A. § 1003(b)(1)(CC). ²²²10 V.S.A. § 6028, 32 V.S.A. § 1010.

- adopting rules of procedure for the District Commissions and itself;
- adopting substantive rules for the Act 250 program;
- overseeing the administration and enforcement of Act 250;
- initiating permit revocation proceedings before the Environmental Division;
- participating in proceedings before the Environmental Division in all matters relating to Act 250;
- hearing appeals from decisions on whether municipal and regional plans should be given an affirmative determination of energy compliance.²²³

d) Discussion and Recommendation

Per diems. The District Commissions have a complex and difficult job yet only receive a \$50 per diem, which has not been changed in many years. The Commission recommends that the General Assembly increase the per diem paid to the District Commissioners.

Preapplication engagement. Several witnesses have recommended that there be a required preapplication engagement process for at least some Act 250 projects. Such a process would involve the applicant, affected adjoining property owners and neighbors, the town, the regional planning commission, ANR, and other affected State agencies. It might be convened by the District Coordinator and might involve the District Commission itself in some way.

The Commission supports, in principle, the suggestion for a preapplication engagement process. Since not every project will be controversial or have significant impacts, appropriate thresholds for triggering this process will need to be determined. Such thresholds could be based on construction costs or the number of lots or housing units to be built. In addition, the involvement of the District Commissioners and District Coordinators will need to be carefully considered in light of the applicable requirements of the Administrative Procedure Act, such as the stricture against ex parte contacts and the requirement that findings be based exclusively on the record. Further, there are aspects of a project that parties do not have the right to bargain away during informal meetings, such as environmental values. The Commission believes that more details are required before it can fully recommend this process.

NRB structure. The Commission has discussed the structure of the NRB, including the possibility of turning it into or replacing it with a professional board. This consideration is interwoven with the possibility of changing the current appeals structure for decisions of the District Commissions and District Coordinators from a judicial to an administrative structure, which the Commission recommends below.

²²³10 V.S.A. §§ 6025, 6027, 8004, 8504(n); 24 V.S.A. § 4352(f).

²²⁴3 V.S.A. §§ 809-814.

B. <u>Interface with other permit processes</u>

1. <u>Charge</u>

Act 47, Sec. 2(e)(2)(E) – "An examination of the interface between Act 250 and other current permit processes at the local and State levels and opportunities to consolidate and reduce duplication. This examination shall include consideration of the relationship of the scope, criteria, and procedures of Act 250 with the scope, criteria, and procedures of Agency of Natural Resources permitting, municipal and regional land use planning and regulation, and designation under 24 V.S.A. chapter 76A."

2. Facts/Background

a) Supervisory Authority

When the Act 250 program has jurisdiction over a project, it has primary or supervisory authority over any other applicable environmental or land use review process. "Act 250 itself explicitly proclaims its primacy over, without preemption of, ancillary permit and approval processes." The program "sits as the final decision maker in environmental matters in Vermont."

b) Other Permits; Presumptions

The NRB is enabled by rule to allow other State and municipal permits and approvals to create presumptions of compliance with various Act 250 criteria if they satisfy the requirements of those criteria. Presumptions take the place of evidence and typically may be rebutted by evidence contrary to the presumed fact. 229

Current Act 250 rules place a high bar on a party seeking to rebut another permit, effectively requiring a party to produce affirmative testimony that the criterion is not met. 230 The statute also requires that the District Commissions give substantial deference to the technical determinations of ANR. 231

The Act 250 program is required to give presumptive weight to determinations of municipal development review boards (DRB) resulting from local Act 250 review of a project's municipal impacts under 24 V.S.A. § 4420.²³²

²²⁵In re Hawk Mountain Corp., 149 Vt. 179, 184-85 (1988).

²²⁶In re Agency of Transp., 157 Vt. 203, 208 (1991).

²²⁷Southview Assocs., Ltd. v. Individual Members of Vermont Envtl. Bd., 782 F. Supp. 279, 283 (D. Vt. 1991), aff'd sub nom. Southview Assocs., Ltd. v. Bongartz, 980 F.2d 84 (2d Cir. 1992). ²²⁸10 V.S.A. § 6086(b).

²²⁹VRE 301(a), applicable in Act 250 proceedings through 10 V.S.A. § 6002 and 3 V.S.A. § 810; <u>Tyrrell v. Prudential Ins. Co. of Am.</u>, 109 Vt. 6, 23–24 (1937); Black's Law Dict. (10th ed. 2014).

²³⁰Act 250 Rule 19(F)(2).

²³¹10 V.S.A. § 6086(d).

²³²Id.

Under the relevant statutes, the local Act 250 review of municipal impacts corresponds directly with the District Commissions in terms of criteria and procedures. The criteria for which this review is available are worded nearly identically to the Act 250 criteria for educational services, local governmental services, and conformance with the local plan.²³³

Similarly, both the DRBs engaging in local Act 250 review and the District Commissions are required to follow quasi-judicial procedures that: (a) direct that all parties be given notice and an opportunity to respond and present evidence on all issues involved, (b) require testimony under oath or affirmation and the use of the Vermont Rules of Evidence, (c) prohibit ex parte communications, and (d) require that decisions be in writing with findings of fact based exclusively on the record and conclusions of law based on those findings.²³⁴

State permits and approvals given presumptive weight do not employ quasi-judicial procedures and instead use a less formal notice and comment process. For example, applications for ANR permits typically involve notice of the application, notice of a draft decision, and an opportunity to submit comment and request a public meeting. The rules of evidence do not apply to what is contained in the record and what may be relied on, testimony is not taken under oath, and ex parte communications are not prohibited. Decisions must contain a concise statement of their legal and factual basis rather than findings of fact and conclusions of law.²³⁵

The scope of other State permits and approvals is typically more limited than Act 250, which involves a comprehensive review of a development or subdivision under a suite of criteria related to the environment, land use, and economic impacts to governments. In contrast, ANR's permits usually relate to specific activities, resources, and environmental media, such as discharges to waters, wetlands, and air emissions.

The criteria or standards used for application review by Act 250 and other State permits differ in their complexity and focus. On a statutory level, Act 250 requires a set of findings under 10 criteria of moderate specificity that take up approximately six pages of statute, with criteria 1 and 9 encompassing detailed lists of seven and 11 subcriteria, respectively.²³⁸

In contrast, statutes requiring permits from ANR typically require a permit from the Secretary of Natural Resources, who is given general policy direction and the authority to adopt rules. For example, the General Assembly has provided approximately half a page of factors to consider in determining which wetlands are significant enough to be protected,

²³³Compare 10 V.S.A. § 6086(a)(6), (7), (10) with 24 V.S.A. § 4420(c)(1)–(3).

²³⁴3 V.S.A. chapter 25, subchapter 2; 10 V.S.A. § 6002; 24 V.S.A. § 4420(b)(1), chapter 36.

²³⁵See 10 V.S.A. chapter 170 generally, and specifically 10 V.S.A. §§ 7711, 7713.

²³⁶10 V.S.A. §§ 6001, 6081, 6086(a).

²³⁷10 V.S.A. §§ 556, 556a, 913, 1259.

²³⁸10 V.S.A. § 6086(a)(1)-(10).

given the Secretary authority to adopt wetland rules, and, except for certain uses, prohibited activity in a significant wetland or its buffer zone without approval by the Secretary.²³⁹

ANR's rules implementing these statutes often consist of detailed technical and engineering-based provisions that address the specific environmental impact or resource regulated by ANR. For example, the Stormwater Management Rule consists of 26 pages that address such matters as applicability, exemptions, and permitting standards that vary according to the type of permit sought and whether the discharge is to an impaired or unimpaired water. This rule in turn incorporates the Vermont Stormwater Management Manual, which consists of 113 pages that address in detail such matters as the design of stormwater treatment measures and the treatment standards to be met.²⁴⁰

Act 250 criteria that incorporate ANR regulations often require additional inquiry by the District Commission. For example, the Act 250 criterion on air and water pollution begins with language that requires the District Commission to consider several factors such as the land's elevation, slope, and ability to support waste disposal as well as applicable ANR regulations.²⁴¹

Similarly, the subcriterion on waste disposal requires the applicant to show that the project will comply with applicable ANR regulations and "will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells." ²⁴²

c) Local and Regional Planning

As discussed above, Act 250 is a regulatory program that no longer has responsibility to perform land use planning. It has limited jurisdiction. When a project is subject to Act 250, it is reviewed through a quasi-judicial process for compliance with a comprehensive set of criteria on the environment, land use, and economic impacts to governments.

Under 24 V.S.A. chapter 117, regional and municipal planning commissions engage in land use planning that is comprehensive for the area to which the planning applies and which may, in the case of a municipality, lead to adoption of regulatory bylaws that affect nearly all land use in the municipality.²⁴³ The plans are adopted through notice and comment procedures.²⁴⁴

Act 250 intersects with local and regional planning primarily through a criterion requiring that a project conform with the local and regional plans. It does not contain a

²³⁹10 V.S.A. §§ 905b(18), 913.

²⁴⁰Vt. ANR, Environmental Protection Rule Chapters 18 (Stormwater Management Rule) and 36 (Vermont Stormwater Management Manual) (July 1, 2017).

²⁴¹10 V.S.A. § 6086(a)(1).

²⁴²10 V.S.A. § 6086(a)(1)(B).

²⁴³24 V.S.A. §§ 4348a, 4382, 4410–4414.

²⁴⁴24 V.S.A. §§ 4348, 4384, 4385.

definition or other language indicating how that conformance is to be determined, except to state that the town's bylaws are consulted only if the District Commission finds town plan provisions to be ambiguous and only to the extent that the bylaws implement and are consistent with the plan provisions.²⁴⁵

In a series of cases starting with <u>In re Molgano</u>, the Vermont Supreme Court ruled that plan provisions cannot be applied in Act 250 unless they enunciate a specific policy rather than a "nonregulatory abstraction."²⁴⁶ In <u>Molgano</u>, the Court enunciated no constitutional or statutory basis for creating these rules.²⁴⁷

However, <u>In re B & M Realty</u>, a recent Supreme Court decision on this issue, refers to constitutional case law under the due process clause. This case law requires that statutes and regulations be sufficient to place citizens on notice of what activities are allowed or prohibited.²⁴⁸ As the Court stated: "[A] statute must be sufficiently clear to give a person of ordinary intelligence a reasonable opportunity to know what is proscribed."²⁴⁹

While Act 250 requires conformance with local and regional plans, it does not incorporate the statutory goals for regional and municipal planning set forth in 24 V.S.A. § 4302. In this regard, local plans may but do not have to be consistent with those goals.²⁵⁰ Regional plans must be consistent with these goals.²⁵¹

In an Act 250 proceeding, if there is a conflict between the local and regional plans, the local plan takes precedence unless the project has a substantial regional effect.²⁵²

d) State Designation Program

The State designation program is described in detail above, including its interface with Act 250. The program is not a regulatory process. It is a program under which land area designations conferring various benefits are granted to municipalities by a State board called the Vermont Downtown Development Board. The governing statutes require application by the municipality and typically specify the application requirements in detail. The Board grants the determination if it determines that the statutory requirements are met. There is no appeal from this decision, but reconsideration may be requested.²⁵³

²⁴⁵10 V.S.A. § 6086(a)(10).

²⁴⁶<u>In re Molgano,</u> 163 Vt. 25, 29, 31 (1994); <u>In re Kisiel</u>, 172 Vt. 124, 130 (2000); <u>In re John A. Russell Corp.</u>, 2003 VT 93, ¶ 19.

²⁴⁷See, e.g., Molgano, 163 Vt. at 29.

²⁴⁸<u>In re B & M Realty, LLC</u>, 2016 VT 114, ¶ 33; <u>In re Appeal of JAM Golf, LLC</u>, 2008 VT 110, ¶ 17; <u>In re Handy</u>, 171 Vt. 336, 347 (2000); <u>Brody v. Barasch</u>, 155 Vt. 103, 110 (1990).

²⁴⁹Brody, 155 Vt. at 110.

²⁵⁰10 V.S.A. § 6086(a)(10); 24 V.S.A. § 4382.

²⁵¹24 V.S.A. § 4348a(a).

²⁵²24 V.S.A. § 4348(h).

²⁵³24 V.S.A. chapter 76A.

3. Discussion and Recommendation

Interface with local and regional plans. The Commission has received proposals with respect to improving Act 250's criterion on conformance with local and regional plans. As discussed above, the Commission recommends requiring that the plans applied in Act 250 first be approved as consistent with the statutory planning goals. The Commission also recommends that Act 250 require conformance not only with the written provisions of those plans but also with their future land use and facility maps, since those maps represent the land use choices of, respectively, the town and the region. In addition, the criterion should be clarified to indicate that the written provisions should be applied unless they are shown not to meet the same standard of specificity that applies to statutes.

Interface with other permits and approvals. The Commission has received proposals to: (1) deny the ability to rebut presumptions created in Act 250 by other permits and approvals unless "new" evidence is presented or (2) make the existing presumptions conclusive or dispositive. The Commission disagrees with these proposals.

A key feature of the Act 250 program is that it consists of decision-making bodies composed of informed citizens drawn from the region that have supervisory authority and the final say on projects within their jurisdiction.

They make their determination based on a comprehensive review of the environmental and land use impacts of a proposed project through an open, public hearing process in which citizens may be full parties with the right to present evidence and question the witnesses who support the application or the State's position on the application or an ancillary permit or approval.

The jurisdiction of the District Commissions is therefore purposefully concurrent with other centralized State agencies staffed by engineers and scientists.

- In contrast to centralized agencies, the District Commissions are independent, regionally based citizen commissions more in touch with local conditions and circumstances.
- The District Commissions make their decisions based on a comprehensive project review rather than a compartmentalized evaluation of a particular impact or activity such as a stormwater discharge.
- They provide a clear avenue for citizens to participate in project review in a manner that provides a greater and more meaningful role than simply submitting or voicing concerns after an agency has decided to issue a draft permit based on back and forth between its staff and the applicant's experts.
- They act as a safeguard against agency decisions in case they are flawed.

The Act 250 program is enabled, but not required to accept other permits and approvals as demonstrating compliance with the relevant Act 250 criteria, except in the case of local Act 250 review through a quasi-judicial process. Under this authority, the

program has chosen to adopt rules that allow for presumptions and that set a high bar to rebut the presumption. The rules effectively require a party to demonstrate that the criterion is not met and do not allow rebuttal simply by pointing out irregularities in or underlying the other permit.

Making presumptions conclusive or dispositive would negate the citizen-based supervisory authority of the District Commissions by, in effect, removing their authority over the issue addressed in the permit or approval creating the presumption. In this regard, conclusive presumptions are not true presumptions but rather are rules of law that direct a particular outcome whether or not there is conflicting evidence.²⁵⁴

Proposals to deny the ability to rebut presumptions created by permits unless there is new evidence would have nearly the same effect on the supervisory authority of the District Commissions, which could not review the issue addressed in the permit or approval unless a party discovers and offers new evidence. Their jurisdiction therefore would be restricted to a narrow circumstance rather than being truly concurrent.

Negating or reducing Act 250's supervisory authority is particularly troubling in light of the significant water quality issues that continue to vex the State. As discussed above, the number of Vermont waters that are impaired for one or more pollutants has increased and, despite conscientious and hard work by ANR staff, the State's efforts to achieve and maintain water quality standards have not reversed that trend. ANR permits and approvals related to water quality constitute a significant number of the permits and approvals used as rebuttable presumptions in Act 250.255 The ability of the District Commissions to question these permits should not be reduced at a time when it appears important for the District Commissions to more vigorously exercise their supervisory authority over the water quality impacts of projects within their jurisdiction.

The District Commissions' ability to exercise their supervisory authority could be strengthened by reaffirming that authority in statute, requiring that permits and approvals may be given presumptions only if the relevant program reliably achieves its goals, and not giving presumptive weight to permits that allow discharges into impaired waters of a pollutant that causes or contributes to the impairment.

The Commission also recommends, as stated in Sec. IV.C., that the NRB or its successor work with the other State agencies to create a predictable timetable for the permitting process.

²⁵⁴2 McCormick on Evid. § 342 (7th ed.).

²⁵⁵Act 250 Rule 19(E).

C. Appeals

1. <u>Charge</u>

Act 47, Sec. 2(e)(2)(F) – "An evaluation of how well the Act 250 application, review, and appeals processes are serving Vermonters and the State's environment and how they can be improved, including consideration of:

* * *

- (iii) De novo or on the record appeals.
- (iv) Comparison of the history and structure of the former Environmental Board appeals process with the current process before the Environmental Division of the Superior Court.
 - (v) Other appellate structures."

2. <u>Facts/Background</u>

a) De Novo and On the Record

The term "de novo" means "anew."256

When there is an appeal from a decision of a District Commission or of a jurisdictional opinion by a District Coordinator, the statute calls for a "de novo hearing": "The Environmental Division, applying the substantive standards that were applicable before the tribunal appealed from, shall hold a de novo hearing on those issues which have been appealed . . ."²⁵⁷

In a de novo hearing, the Environmental Division is required to hear the issues on appeal as if there had been no prior proceedings in the District Commission.²⁵⁸ A de novo hearing therefore involves a trial to establish a factual record on the appealed issues through the presentation of testimony and cross-examination of witnesses. The Court decides what the facts are and reaches its own conclusions of law.

In contrast, when appeal is "on the record," the appellate body reviews the record established by the tribunal below rather than creating a factual record through a trial process.²⁵⁹ Typically, the parties are given an opportunity to file legal briefs and to present legal argument orally.

In an appeal on the record, the appellate body typically will uphold the lower tribunal's findings of fact unless they are "clearly erroneous," meaning "they are supported by no credible evidence that a reasonable person would rely upon to support the

²⁵⁶Black's Law Dict. (10th ed. 2014).

²⁵⁷10 V.S.A. § 8504(h) (emphasis added).

²⁵⁸In re Killington, Ltd., 159 Vt. 206 (1992).

²⁵⁹State Dep't of Taxes v. Tri-State Indus. Laundries, Inc., 138 Vt. 292, 295 (1980).

conclusions."²⁶⁰ In other words, the appellate body does not substitute its judgment of what the facts are and instead makes sure the findings are reasonably supported by evidence.

However, in on-the-record review, an appellate court typically does apply its own judgment on questions of law or statutory interpretation, reviewing them "de novo." As stated above, this term means "anew." If no error of law or statutory interpretation is found, the lower court's conclusions of law will be affirmed if "reasonably supported by the findings." 262

But when an on-the-record appeal is from an administrative body to an appellate court, the court typically will defer to that body's interpretation of its enabling statutes and the rules it has adopted, unless there is a compelling indication of error. For example, "when reviewing the PSB's [Public Service Board] interpretation of a statute within its particular expertise, we look for a compelling indication of error, and in its absence, we will uphold the PSB's decision." ²⁶³

b) Comparison: Prior and Current Appeal Processes

Before January 31, 2005, appeals of District Commission decisions went to the former Environmental Board.²⁶⁴ Similarly, appeals of District Coordinator jurisdictional opinions went to that board by means of petition for declaratory ruling.²⁶⁵ Today, appeals from District Commission decisions and District Coordinator jurisdictional opinions go to the Environmental Division of the Superior Court.²⁶⁶

The Environmental Board was an administrative body in charge of the Act 250 program that consisted of nine members and up to five alternate members appointed by the Governor with the advice and consent of the Senate. It was a citizen board. Only the Chair was full time. There were no statutorily specified qualifications for appointment. In addition to its authority to hear appeals, the Environmental Board heard petitions for revocation and had rulemaking and overall management authority for the implementation and enforcement of the Act 250.²⁶⁷

The Environmental Board made decisions as a body, by majority vote, including appeals and declaratory rulings.²⁶⁸ The appeal and declaratory ruling procedures were governed by the Administrative Procedure Act (APA), which requires notice to parties of

²⁶⁰In re Zaremba Grp. Act 250 Permit, 2015 VT 88, ¶ 6.

²⁶¹In re Vill. Assocs. Act 250 Land Use Permit, 2010 VT 42A, ¶ 7.

²⁶²Zaremba, 2015 VT 88, ¶ 6.

²⁶³<u>In re Proposed Sale of Vermont Yankee Nuclear Power Station</u>, 2003 VT 53, ¶ 5. The Public Service Board is now the Public Utility Commission. 30 V.S.A. § 3.

²⁶⁴2004 Acts and Resolves No. 115, Sec. 58.

²⁶⁵<u>Id</u>., Sec. 47.

²⁶⁶10 V.S.A. § 6089.

²⁶⁷2004 Acts and Resolves No. 115, Secs. 48–52, 67–69.

²⁶⁸1 V.S.A. § 172.

the issues and the hearing and gives parties the right to present and respond to evidence and conduct cross-examination.²⁶⁹ The rules of evidence were applicable, but in a relaxed manner to ensure that all material or relevant evidence could be received.²⁷⁰

A party appealing to the Environmental Board was required to file the appeal within 30 days and to include a statement of the issues to be addressed, a summary of the evidence to be presented, and a preliminary list of witnesses. Cross-appeals were permitted within 14 days.²⁷¹

The Environmental Board would then hold a de novo hearing on the issues identified by appeal and cross-appeal.²⁷² Therefore, the Environmental Board heard only the criteria raised by the appeal documents.

The Environmental Board typically proceeded by convening a prehearing conference to identify the parties, clarify the issues, and set a schedule for the case. It could hear the case itself or assign the hearing to a member or subcommittee of the Board, who would then issue a proposed decision subject to presentation by the parties of oral argument and written objections to the full Board.²⁷³

There was no discovery in Environmental Board proceedings other than through issuance of subpoena to compel a person to appear and testify or produce books and records.²⁷⁴ However, to provide information to the parties about each other's case and to expedite the hearing process, the Board typically required the parties to file their testimony in written form prior to the hearing, called "prefiled testimony."

Appeal from the Environmental Board was to the Vermont Supreme Court, which reviewed the appeal on the record and sustained the Board's findings if they were supported by substantial evidence on the record as whole.²⁷⁵ Unless there was a "compelling indication of error," the Court deferred to the Board's interpretation of Act 250 and its own rules.²⁷⁶

During the period 1999 through 2004, the former Environmental Board addressed 154 appeals from the District Commissions, with an average processing time of approximately 269 days.²⁷⁷ During the same period, the Environmental Board addressed

²⁶⁹10 V.S.A. § 6002; 3 V.S.A. §§ 809-10.

²⁷⁰3 V.S.A. § 810(1); <u>In re Desautels Real Estate</u>, <u>Inc.</u>, 142 Vt. 326, 335 (1982).

²⁷¹2014 Acts and Resolves No. 115, Sec. 58; C. Argentine, Vermont Act 250 Handbook at 57–58 (1st ed. 1993).

²⁷²2014 Acts and Resolves No. 115, Sec. 58.

²⁷³Id., Sec. 50; 3 V.S.A. § 811.

²⁷⁴3 V.S.A. 809(h).

²⁷⁵2014 Acts and Resolves No. 115, Sec. 58.

²⁷⁶In re BHL Corp., 161 Vt. 487 (1994).

²⁷⁷NRB, Summary of the quantity and duration of appeals for the last 6 years (1999–2004) of the Environmental Board (undated).

65 appeals from District Coordinator jurisdictional opinions, with an average processing time of approximately 298 days. 278

The Environmental Division of the Superior Court is a division within the Vermont Judiciary. It consists of two full-time judges, "each sitting alone."²⁷⁹ In other words, the judges each hear and decide cases by themselves and the Division does not decide a case as one body.

The Environmental Judges must be attorneys admitted to the Vermont bar and are appointed through the judicial nominating process.²⁸⁰

Unlike the former Environmental Board, the Environmental Division does not have rulemaking authority for the Act 250 program or a responsibility to manage the program. It is a trial court that, overall, hears two kinds of cases: environmental enforcement and environmental appeals.

With respect to enforcement, if an administrative order is issued to enforce Act 250 or statutes administered by the Secretary of Natural Resources, the respondent may request a hearing before the Environmental Division.²⁸¹ The Division's approval also must be obtained for the settlement of an alleged violation, known as an assurance of discontinuance.²⁸²

With respect to appeals, in addition to Act 250, the Environmental Division hears appeals from acts and decisions of the Secretary of Natural Resources, and from decisions in municipal land use proceedings under 24 V.S.A. chapter 117.²⁸³

Like the former Environmental Board, the Environmental Division is required to hold a de novo hearing on Act 250 appeals. The same is true on most of the other appeals the Division hears.²⁸⁴

When a project subject to Act 250 also requires permits from ANR or local land use authorities, or both, the Environmental Division has authority to, and often does, consolidate hearing the different appeals.²⁸⁵ The former Environmental Board did not hear appeals other than Act 250 and did not have this authority.

The consolidation authority has the advantage of one trial on the various permits that may apply to a project, with all the parties and witnesses appearing in that one trial. It

²⁷⁸Id.

²⁷⁹4 V.S.A. § 1001(a).

²⁸⁰4 V.S.A. § 1001(c).

²⁸¹10 V.S.A. §§ 8008, 8012.

²⁸²10 V.S.A. § 8007.

²⁸³10 V.S.A. § 8504(a), (b).

²⁸⁴10 V.S.A. § 8504(h).

²⁸⁵10 V.S.A. § 8504(g).

carries the disadvantage of delaying resolution of appeals already filed while the Division awaits potential appeals of other permits.

A party appealing to the Environmental Division must file a notice of appeal within 30 days of the decision. Within 21 days of that filing, the appellant must file a statement of questions to be determined. Cross-appeals also may be filed. The three-week period to file a statement of issues is different from the former Environmental Board process, under which the statement was to be filed at the time of appeal.

Unlike the former Environmental Board process, discovery is available in appeals before the Environmental Division, with the Division directed to issue scheduling orders "to limit discovery to that which is necessary for a full and fair determination of the proceeding . . ." 287

Prefiled testimony is rarely used in the Environmental Division, although that procedure is available. $^{\rm 288}$

In an appeal, the Division conducts a pretrial conference and issues an order. Issues discussed at the pretrial conference include party status, consolidation with other appeals involving the same project, the potential for resolution of the appeal without trial, and potentially other issues such as sequence of discovery and scheduling.²⁸⁹ The Division may schedule additional conferences and issue additional orders to manage the appeal.²⁹⁰

Appeals before the Division may be decided on legal and procedural grounds rather than reaching the merits of a project's compliance with the criteria. Motions available before the Division include motions to dismiss some or all of the questions on appeal, to dismiss for lack of jurisdiction or failure to state a claim on which relief can be granted, and for summary judgment.²⁹¹

As with the former Environmental Board, appeals from the Environmental Division are to the Supreme Court, which reviews the case on the record. As discussed above, the Supreme Court applies the "clearly erroneous" standard to the Division's factual findings and considers questions of law de novo. Since the Division is not an administrative agency, there is no standard of deferring to the Division's interpretation of enabling statutes or adopted rules absent a compelling indication of error.

Based on data from 2013 to December 2018 supplied by the Superior Court through the Vermont Bar Association, the Environmental Division received 63 appeals from District Commissions and resolved 59 of them. Excluding resolved District Commission appeals

²⁸⁶VRECP 2(b), (f).

²⁸⁷4 V.S.A. § 1001(g)(3).

²⁸⁸VRECP 2(e)(2).

²⁸⁹VRECP 2(d), 5(g).

²⁹⁰4 V.S.A. § 1001(g), VRECP 2(g).

²⁹¹VRECP 5(2), (f); VRCP 12, 56.

that were consolidated with non-Act 250 appeals on the same project, the average number of active days for the resolved appeals was approximately 293.²⁹²

Based on the same data for the same period, the Environmental Division received 21 appeals from District Coordinator jurisdictional opinions and resolved 20 of them. Excluding the one resolved jurisdictional opinion appeal that was consolidated with non-Act 250 appeals on the same project, the average number of active days for the resolved jurisdictional opinion appeals was approximately 309.²⁹³

These average time frames are not significantly different from the averages set forth above for the former Environmental Board.

c) Other Appellate Structures

Potential other appellate structures include an administrative body similar to the PUC, an administrative body similar to the Environmental Appeals Board (EAB) of the U.S. Environmental Protection Agency (EPA), appeal to a generalist rather than a specialized lower court, and direct appeal from the District Commissions to the Vermont Supreme Court.

The PUC is a three-member administrative body that has broad supervisory authority over Vermont's utilities. It is the decision-maker on utility matters, including rate cases and siting cases for electric generation and transmission and natural gas facilities. It also currently hears appeals from ANR relating to renewable energy and telecommunications facilities, with a requirement to hold a de novo hearing. The PUC Chair is full time and the two other members are two-thirds time. In most cases before it, the PUC proceeds under the APA in a manner similar to the former Environmental Board. Unlike that board, however, the PUC has a staff of lawyers and experts who can serve as hearing officers. It also has the ability to retain its own outside experts and allocate the cost to the petitioning utility or other applicant. Appeal is on the record from the PUC to the Vermont Supreme Court, and the principles the Court applies in those appeals are similar to those it applied to appeals from the former Environmental Board.²⁹⁴

The EAB "is a permanent, impartial, four-member body that is independent of all [EPA] components outside the immediate Office of the Administrator. It is the final [EPA] decisionmaker on administrative appeals under all major environmental statutes that EPA administers."²⁹⁵ It consists of four Environmental Appeals Judges and a staff of lawyers and other assistants.²⁹⁶ Each case is typically decided by majority vote of a three-

²⁹²Data source: G. Tarrant, E-mail and Attachments sent to F. Brown re Update of Environmental Court data number of JO and Act 250 Dist. Commission Appeals (Dec. 6, 2018).

²⁹³Id.

²⁹⁴30 V.S.A. §§ 3, 8–12, 20, 21, 203, 209, 218, 225, 248; 8010; 10 V.S.A. § 8506; 32 V.S.A. 1012; Vt. PUC, Employee List, retrieved from https://puc.vermont.gov/about-us/employee-list, Nov. 14, 2018; In re Petition of E. Georgia Cogeneration Ltd. P'ship, 158 Vt. 525, 531 1992).

²⁹⁵EPA Environmental Appeals Board Practice Manual at 1 (Aug. 2013).

²⁹⁶A Citizen's Guide to EPA's Environmental Appeals Board at 11 (July 2018).

member panel of the Environmental Appeals Judges based on a hearing conducted by a presiding officer, who is typically an EPA administrative law judge.²⁹⁷ The EAB conducts de novo review of both the factual and legal conclusions of the presiding officer.²⁹⁸ Appeal from the EAB is generally to federal court under the federal Administrative Procedure Act, which would apply a standard of whether the EAB decision is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . ."²⁹⁹

Many states route appeals of environmental or land use decisions by an administrative agency to its generalist lower court rather than a specialized court such as the Environmental Division. For example, decisions of the State of Maine Land Use Planning Commission are appealable to the Maine Superior Court. The Court does not substitute its judgment for the Commission on questions of fact and instead reviews the Commission's record for legal error such as exceeding statutory authority, making findings that are unsupported by substantial evidence on the record as a whole, or acting in a manner that is arbitrary or capricious or an abuse of discretion.³⁰⁰

A further option is direct appeal from the District Commissions to the Vermont Supreme Court, without intermediate appeal, under the same type of standards courts usually apply to appeals from administrative agencies. Direct appeal exists today to the Vermont Supreme Court from several administrative bodies, including the PUC, the Green Mountain Care Board, and the Labor Relations Board.³⁰¹

3. Discussion and Recommendation

The two options for appeal structure that appear viable to the Commission are: (1) retaining and potentially modifying the current judicial appeal structure and (2) routing Act 250 appeals to an administrative board that also has the current functions of the NRB. This board might also hear appeals from ANR. The board could be fully professional or could be semiprofessional, meaning a mix of full-time professional members and citizen members.

The Commission has not received testimony supporting other options, such as appeal to a generalist rather than the current specialized court or direct appeal from the District Commissions to the Vermont Supreme Court. The Commission does not support these two options. In particular, direct appeal from the District Commission to the Supreme Court likely would cause increased formalization of the District Commission with a resulting of loss of accessibility to citizens.

Of the options that appear viable, the Commission has received conflicting testimony, with strong opinions voiced for retaining the current systems of judicial appeals,

²⁹⁷EPA Environmental Appeals Board Practice Manual at 5, 21.

²⁹⁸<u>Id</u>. at 29.

²⁹⁹5 U.S.C. §§ 704, 706.

 $^{^{300}}$ 5 M.R.S.A. § 11001, 11007; 12 M.R.S.A. § 689. The Maine Land Use Planning Commission adopts and administers land use regulations for Maine's unorganized areas. 12 M.R.S.A. chapter 206-A. 301 18 V.S.A. § 9381; 21 V.S.A. §§ 1623, 1729; 30 V.S.A. § 12.

potentially with modifications, and strong opinions for moving appeals to an administrative board. An advantage of the judicial structure is that, by lodging appeals in a branch of government separate from the Executive, the decision-makers are part of an independent judiciary.

On the other hand, the former Environmental Board was a core component of Act 250 when it was enacted. The Board issued decisions that set forth analytical frameworks for addressing the complex issues that shaped growth in Vermont and provided certainty to applicants. These issues included water quality, wildlife habitat, aesthetics, and the growth criteria of the Act. Because it also administered the program, it was able through its appellate decisions, rules, and guidance to provide consistent and unified direction to the District Commissions, a consistency that has been lost by splitting those functions between the Environmental Division and the Natural Resources Board.

Routing appeals to an administrative board that is also charged with supervising the Act 250 program would mean that policy decisions inherent in any appeals are being made by the administrative body charged with those decisions. It would mean that the interpretation of the Act and the rules issued under it are informed by those policy decisions and a practical understanding of the day-to-day administration of the program. It would endow that body with the greater ability to provide direction to the District Commissions that was possessed by the former Environmental Board. The strictures of the Vermont Administrative Procedure Act, such as the prohibition on ex parte communications, would support the independence of such a board, and appointment and removal structures could be devised to protect that independence.

After consideration of the testimony, the Commission recommends that Act 250 appeals be heard by an administrative board that also has the existing functions of the NRB.

The Commission also recommends that this board hear appeals of ANR permit decisions because both sets of programs are State programs with concurrent jurisdiction in several areas and because appeals from both sets of programs in many cases involve policy decisions that are more appropriately delegated to an administrative board rather than the Judicial Branch.

Further work is needed on the specific composition of this administrative board, such as whether it is a full-time professional board or a semiprofessional board that includes some part-time, citizen appointees.

Under this proposal, the Environmental Division would continue to hear environmental enforcement cases and appeals of local land use decisions.

The Commission does not support changing from de novo hearing to on-the-record appeals. While such a change might speed the appeals process, like direct appeals to the Supreme Court, the change likely would result in a loss of accessibility to citizens through increased formalization of the District Commissions.

Instead, the Commission believes there is merit in exploring changing the burden of proof on appeal so that the appellant, whether the applicant or another party, bears that burden on the issues the appellant raises in its appeal. In this regard, the term "burden of proof" primarily refers to which party bears the risk of nonpersuasion, and means that in the absence of evidence on an issue, or where the evidence is indecisive, the issue must be decided in favor of the party that does not bear the burden. ³⁰² In Act 250, even when an opponent is assigned the burden of proof, the applicant still bears a burden of production to establish at least a "prima facie case" of compliance. ³⁰³

In a de novo appeal, the decision-maker will still need to understand the essential details of a proposed project and its context and impacts, and the applicant is the party best placed to produce this information, whether or not the applicant is an appellant. The Commission therefore specifically recommends consideration of assigning the risk of nonpersuasion to the appellant and requiring that the applicant continue to bear on appeal a burden to produce basic evidence on the nature, elements, context, and impacts of its proposed project.

³⁰²In re Denio, 158 Vt. 230, 237 (1992); In re Quechee Lakes Corp., 154 Vt. 543, 553(1990).

³⁰³In re N. E. Materials Grp., LLC, 2017 VT 43, ¶ 36; In re Champlain Parkway, 2015 VT 105, ¶ 15.

D. <u>Misuse of opportunity to participate and appeal</u>

1. <u>Charge</u>

Act 47, Sec. 2(e)(2)(G)(v) – "The potential of a person that obtains party status to offer to withdraw the person's opposition or appeal in return for payment or other consideration that is unrelated to addressing the impacts of the relevant project under the Act 250 criteria."

2. <u>Facts/Background</u>

Under current law, an adjoining property owner or other person who is not a statutory party may be admitted as a party if the person demonstrates a particularized interested protected by Act 250.³⁰⁴ If the person is unable to demonstrate such an interest, party status may be denied. In addition, at the close of the proceeding, the person's party status is reexamined and the person may be disqualified from party status.³⁰⁵

In order to appeal an Act 250 decision, a person must have party status and be aggrieved by the decision and may only appeal issues under those criteria on which the person was granted party status. 306 The grant or denial or party status also may be appealed. 307

Appeals before the Environmental Division are subject to the Vermont Rules of Civil Procedure and the Vermont Rules for Environmental Court Proceedings. Under these rules, sanctions are available if an appeal or document filed in an appeal is submitted for an improper purpose.³⁰⁸

The Commission has not received data demonstrating the occurrence or extent of misuse of the opportunities to participate or appeal.

3. Discussion and Recommendation

The Commission was not presented with data quantifying instances of misuse of party status. The Commission also does not believe that such data currently exists. While data exists relating to party status and appeals, it would be difficult to assess whether a party's participation the permit process was in bad faith. The anecdotal testimony presented to the Commission on this issue included conversations related to proving a party's motive.

³⁰⁴10 V.S.A. § 6085(c)(1)(E).

³⁰⁵10 V.S.A. § 6086(c)(6).

 $^{^{306}}$ 10 V.S.A. § 8504(a), (d). An environmental judge nonetheless may allow an appeal to proceed in limited circumstances involving procedural defects in the proceeding or a demonstration of manifest injustice. 10 V.S.A. § 8504(d).

³⁰⁷Id.

³⁰⁸VRCP 11; VRECP 5(a)(2). VRCP 11 also states other potential grounds for sanctions.

The Commission has received a significant number of public comments praising Act 250's current system of public participation. Any attempt to reduce party status thresholds would reduce the amount of participation available to the public.

As discussed above, current law contains safeguards that place limits on who can obtain party status and how this status can be used. The Commission does not recommend any action on this issue at this time.

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STATE OF VERMONT

General Assembly Commission on Act 250: the Next 50 Years

LIST OF ADVISORS

The Chair of the Natural Resources Board (NRB) or designee: Diane Snelling

A representative of a Vermont-based, statewide environmental organization: Brian Shupe, Vermont **Natural Resources Council**

A person with expertise in environmental science: William Keeton, University of Vermont

A representative of the Vermont Association of Planning and Development Agencies: **Peter Gregory**, Two Rivers-Ottaquechee Regional Planning Commission

A representative of the Vermont Planners Association: Sharon Murray, Front Porch Community **Planning**

A representative of a Vermont-based business organization: Ernest A. Pomerleau, Pomerleau Real **Estate**

A person currently serving or who formerly served in the position of an elected officer of a Vermont city or town: Karen Horn, former member, Moretown School Board

The Chair of the Environmental Law Section of the Vermont Bar Association: Gerald R. Tarrant, Esq.

The Secretary of Agriculture, Food and Markets or designee: **Diane Bothfeld (designee)**

The Secretary of Commerce and Community Development or designee: Michael Schirling

The Secretary of Natural Resources or designee: Julie Moore

The Secretary of Transportation or designee: **Joe Flynn**

A current or former district coordinator or district commissioner: Tom Little, Chair, District No. 4 **Environmental Commission**

Additional advisor appointed by the Commission on Act 250: To be determined

Additional advisor appointed by the Chair of the NRB: Elizabeth Courtney

2017

No. 47. An act relating to the Commission on Act 250: the Next 50 Years. (H.424)

It is hereby enacted by the General Assembly of the State of Vermont: Sec. 1. FINDINGS; PURPOSE

- (a) Findings. The General Assembly finds as follows:
- (1) In 1969, Governor Deane Davis by executive order created the Governor's Commission on Environmental Control, which consisted of 17 members and became known as the Gibb Commission because it was chaired by Representative Arthur Gibb.
- (2) The Gibb Commission's recommendations, submitted in 1970, included a new State system for reviewing and controlling plans for large-scale and environmentally sensitive development. The system was not to be centered in Montpelier. Instead, the power to review projects and grant permits would be vested more locally, in commissions for districts within the State.
- (3) In 1970, the General Assembly enacted 1970 Acts and Resolves No. 250, an act to create an environmental board and district environmental commissions. This act is now codified at 10 V.S.A. chapter 151 and is commonly known as Act 250. In Sec. 1 of Act 250 (the Findings), the General Assembly found that:
- (A) "the unplanned, uncoordinated and uncontrolled use of the lands and the environment of the state of Vermont has resulted in usages of the lands

and the environment which may be destructive to the environment and which are not suitable to the demands and needs of the people of the state of Vermont";

- (B) "a comprehensive state capability and development plan and land use plan are necessary to provide guidelines for utilization of the lands and environment of the state of Vermont and to define the goals to be achieved through land environmental use, planning and control";
- (C) "it is necessary to establish an environmental board and district environmental commissions and vest them with the authority to regulate the use of the lands and the environment of the state according to the guidelines and goals set forth in the state comprehensive capability and development plan and to give these commissions the authority to enforce the regulations and controls"; and
- (D) "it is necessary to regulate and control the utilization and usages of lands and the environment to insure that, hereafter, the only usages which will be permitted are not unduly detrimental to the environment, will promote the general welfare through orderly growth and development and are suitable to the demands and needs of the people of this state."
- (4) In 1973 Acts and Resolves No. 85, Secs. 6 and 7, the General Assembly adopted the Capability and Development Plan (the Plan) called for by Act 250. Among the Plan's objectives are:

(A) "Preservation of the agricultural and forest productivity of the land, and the economic viability of agricultural units, conservation of the recreational opportunity afforded by the state's hills, forests, streams and lakes, wise use of the state's non-renewable earth and mineral reserves, and protection of the beauty of the landscape are matters of public good. Uses which threaten or significantly inhibit these resources should be permitted only when the public interest is clearly benefited thereby."

- (B) "Increased demands for and costs of public services, such as schools, road maintenance, and fire and police protection must be considered in relation to available tax revenues and reasonable public and private capital investment. . . . Accordingly, conditions may be imposed upon the rate and location of development in order to control its impact upon the community."
- (C) "Strip development along highways and scattered residential development not related to community centers cause increased cost of government, congestion of highways, the loss of prime agricultural lands, overtaxing of town roads and services and economic or social decline in the traditional community center."
- (D) "Provision should be made for the renovation of village and town centers for commercial and industrial development, where feasible, and location of residential and other development off the main highways near the village center on land which is other than primary agricultural soil."

(E) "In order to achieve a strong economy that provides satisfying and rewarding job and investment opportunities and sufficient income to meet the needs and aspirations of the citizens of Vermont, economic development should be pursued selectively so as to provide maximum economic benefit with minimal environmental impact."

- (b) Purpose. The General Assembly establishes a Commission on Act 250: the Next 50 Years (the Commission) and intends that the Commission review the vision for Act 250 adopted in the 1970s and its implementation with the objective of ensuring that, over the next 50 years, Act 250 supports Vermont's economic, environmental, and land use planning goals.
- (c) Executive Branch working group. Contemporaneously with the consideration of this act by the General Assembly, the Chair of the Natural Resources Board (NRB) has convened a working group on Act 250 to include the NRB and the Agencies of Commerce and Community Development and of Natural Resources, with assistance from the Agencies of Agriculture, Food and Markets and of Transportation. The working group intends to make recommendations during October 2017. The General Assembly intends that the Commission established by this act receive and consider information and recommendations offered by the working group convened by the Chair of the NRB.

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Sec. 2. COMMISSION ON ACT 250: THE NEXT 50 YEARS; REPORT

- (a) Establishment. There is established the Commission on Act 250: the Next 50 Years (the Commission) to:
- (1) Review the goals of Act 250, including the findings set forth in 1970

 Acts and Resolves No. 250, Sec. 1 (the Findings) and the Capability and

 Development Plan adopted in 1973 Acts and Resolves No. 85, Secs. 6 and 7

 (the Plan), and assess, to the extent feasible, the positive and negative

 outcomes of Act 250's implementation from 1970 to 2017. This review shall include consideration of the information, statistics, and recommendations

 described in subdivision (d)(1)(B) of this section.
- (2) Engage Vermonters on their priorities for the future of the Vermont landscape, including how to maintain Vermont's environment and sense of place, and address relevant issues that have emerged since 1970.
- (3) Perform the tasks and the review set forth in subsection (e) of this section and submit a report with recommended changes to Act 250 to achieve the goals stated in the Findings and the Plan, including any suggested revisions to the Plan.
 - (b) Membership; officers.
 - (1) The Commission shall be composed of the following six members:
- (A) three members of the House of Representatives, not all from the same party, appointed by the Speaker of the House; and

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(B) three members of the Senate, not all from the same party, appointed by the Committee on Committees.

- (2) At its first meeting, the Commission shall elect a Chair and Vice Chair. The Vice Chair shall function as Chair in the Chair's absence.
- (c) Advisors. Advisors to the Commission shall be appointed as set forth in this subsection. The advisors are referred to collectively as the "Act 250 Advisors." The Commission may seek assistance from additional persons or organizations with expertise relevant to the Commission's charge.
- (1) The advisors may attend and participate in Commission meetings
 and shall have the opportunity to present information and recommendations to
 the Commission. The Commission shall notify the advisors of each
 Commission meeting.
 - (2) The advisors to the Commission shall be:
 - (A) the Chair of the Natural Resources Board or designee;
- (B) a representative of a Vermont-based, statewide environmental organization that has a focus on land use and significant experience in the Act 250 process, appointed by the Committee on Committees;
- (C) a person with expertise in environmental science affiliated with a Vermont college or university, appointed by the Speaker of the House;
- (D) a representative of the Vermont Association of Planning and

 Development Agencies, appointed by the Speaker of the House;

(E) a representative of the Vermont Planners Association, appointed by the Committee on Committees;

- (F) a representative of a Vermont-based business organization with significant experience in real estate development and land use permitting, including Act 250, appointed by the Committee on Committees;
- (G) a person currently serving or who formerly served in the position of an elected officer of a Vermont city or town, appointed by the Vermont League of Cities and Towns;
- (H) the Chair of the Environmental Law Section of the Vermont Bar Association;
 - (I) each of the following or their designees:
 - (i) the Secretary of Agriculture, Food and Markets;
 - (ii) the Secretary of Commerce and Community Development;
 - (iii) the Secretary of Natural Resources; and
 - (iv) the Secretary of Transportation; and
- (J) a current or former district coordinator or district commissioner, appointed by the Chair of the Natural Resources Board.
- (3) The Commission and the Chair of the Natural Resources Board each may appoint one advisor in addition to the advisors set forth in subdivision (c)(2) of this section.

(4) Each appointing authority for an advisor to the Commission shall promptly notify the Office of Legislative Council of the appointment when made.

- (d) Meetings; phases. The Commission shall meet as needed to perform its tasks and shall conduct three phases of meetings: a preliminary meeting phase, a public discussion phase, and a deliberation and report preparation phase. The initial meeting shall be part of the preliminary meeting phase, convened by the Office of Legislative Council during September 2017 after notice to the Commission members and the Act 250 Advisors. Subsequent Commission meetings shall be at the call of the Chair or of any three members of the Commission.
 - (1) Preliminary meeting phase.
- (A) The preliminary meeting phase shall include the initial meeting of the Commission and such additional meetings as may be scheduled.
- (B) During the preliminary meeting phase, the Commission shall become informed on the history, provisions, and implementation of Act 250, including its current permitting and appeals processes. This phase shall include:
- (i) Review of available information on the outcomes of Act 250 from 1970 to 2017, including case studies and analyses. When information relevant to this review does not exist, the Commission may request its preparation.

(ii) Review of the history and implementation of land use planning in Vermont, including municipal and regional planning under 24 V.S.A. chapter 117.

- (iii) Receipt of the information and recommendations of the working group described in Sec. 1(c) of this act;
 - (iv) Information prepared by the Natural Resources Board on:(I) the Act 250 application process;
- (II) coordination of the Act 250 program with the Agencies of Agriculture, Food and Markets, of Commerce and Community Development, of Natural Resources, and of Transportation;
- (III) over multiple years, application processing times by district, number of appeals of application decisions and time to resolve, and number of appeals of jurisdictional opinions and time to resolve; and
- (v) Opportunity for the Act 250 Advisors to present relevant information.

(IV) an overview of the history of the Natural Resources Board.

- (2) Public discussion phase. Following the preliminary meeting phase, the Commission, with assistance from the Act 250 Advisors, shall conduct a series of informational and interactive meetings on 2070: A Vision for Vermont's Future.
- (A) The purpose of this phase shall be to accomplish the public engagement set forth in subdivision (a)(2) of this section.

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(B) The Commission shall conduct this phase during adjournment of the General Assembly.

- (3) Deliberation and report preparation phase. Following completion of the public meeting phase, the Commission shall meet to perform the tasks set forth in subsection (e) of this section and deliberate and prepare its written report and recommendations, with assistance from the Act 250 Advisors.
- (e) Tasks; report and recommendations. After considering the information from its public discussion meetings and consultation with the Act 250

 Advisors, the Commission shall perform the tasks set forth in this subsection and submit its report, including:
- (1) A statistical analysis based on available data on Vermont
 environmental and land use permitting in general and on Act 250 permit
 processing specifically, produced in collaboration with municipal, regional,
 and State planners and regulatory agencies.
 - (2) Review and recommendations related to:
- (A) An evaluation of the degree to which Act 250 has been successful or unsuccessful in meeting the goals set forth in the Findings and the Plan.
 - (B) An evaluation of whether revisions should be made to the Plan.
- (C) An examination of the criteria and jurisdiction of Act 250, including:

(i) Whether the criteria reflect current science and adequately address climate change and other environmental issues that have emerged since 1970. On climate change, the Commission shall seek to understand, within the context of the criteria of Act 250, the impacts of climate change on infrastructure, development, and recreation within the State, and methods to incorporate strategies that reduce greenhouse gas emissions.

- (ii) Whether the criteria support development in areas designated under 24 V.S.A. chapter 76A, and preserve rural areas, farms, and forests outside those areas.
- (iii) Whether the criteria support natural resources, working lands, farms, agricultural soils, and forests in a healthy ecosystem protected from fragmentation and loss of wildlife corridors.
- (iv) Whether Act 250 promotes compact centers of mixed use and residential development surrounded by rural lands.
- (v) Whether Act 250 applies to the type and scale of development that provides adequate protection for important natural resources as defined in 24 V.S.A. § 2791.
- (vi) Whether the exemptions from Act 250 jurisdiction further or detract from achieving the goals set forth in the Findings and the Plan, including the exemptions for farming and for energy projects.

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(D) An examination of changes that have occurred since 1970 that may affect Act 250, such as changes in demographics and patterns and structures of business ownership.

- (E) An examination of the interface between Act 250 and other current permit processes at the local and State levels and opportunities to consolidate and reduce duplication. This examination shall include consideration of the relationship of the scope, criteria, and procedures of Act 250 with the scope, criteria, and procedures of Agency of Natural Resources permitting, municipal and regional land use planning and regulation, and designation under 24 V.S.A. chapter 76A.
- (F) An evaluation of how well the Act 250 application, review, and appeals processes are serving Vermonters and the State's environment and how they can be improved, including consideration of:
- (i) Public participation before the District Environmental

 Commissions and in the appeals process, including party status.
 - (ii) The structure of the Natural Resources Board.
 - (iii) De novo or on the record appeals.
- (iv) Comparison of the history and structure of the former

 Environmental Board appeals process with the current process before the

 Environmental Division of the Superior Court.
 - (v) Other appellate structures.

- (G) The following specific considerations:
- (i) Circumstances under which land might be released from Act 250 jurisdiction.
- (ii) Potential revisions to Act 250's definitions of development and subdivision for ways to better achieve the goals of Act 250, including the ability to protect forest blocks and habitat connectivity.
- (iii) The scope of Act 250's jurisdiction over projects on ridgelines, including its ability to protect ridgelines that are lower than 2,500 feet, and projects on ridgelines that are expressly exempted from Act 250.
- (iv) Potential jurisdictional solutions for projects that overlap between towns with and without both permanent zoning and subdivision bylaws.
- (v) The potential of a person that obtains party status to offer to withdraw the person's opposition or appeal in return for payment or other consideration that is unrelated to addressing the impacts of the relevant project under the Act 250 criteria.
- (H) Such other issues related to Act 250 as the Commission may consider significant.
- (f) Due date. On or before December 15, 2018, the Commission shall submit its report and recommendations to the House Committee on Natural Resources, Fish and Wildlife and the Senate Committee on Natural Resources

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and Energy (the Natural Resource Committees). The report shall attach the Commission's proposed legislation.

(g) Assistance.

- (1) The Office of Legislative Council shall provide administrative and legal assistance to the Commission, including the scheduling of meetings and the preparation of recommended legislation. The Joint Fiscal Office shall provide assistance to the Commission with respect to fiscal and statistical analysis.
- (2) The Commission shall be entitled to technical and professional services from the Natural Resources Board and the Agencies of Commerce and Community Development, of Natural Resources, and of Transportation.
- (3) On request, the Commission shall be entitled to available statistics and data from municipalities, regional planning commissions, and State agencies on land use and environmental permit processing and decisions.
- (4) On request, the Commission shall be entitled to data from the Superior Court on appeals before the Environmental Division from decisions under Act 250, including annual numbers of appeals, length of time, and disposition.
- (h) Subcommittees. The Commission may appoint members of the

 Commission to subcommittees to which it assigns tasks related to specific

 issues within the Commission's charge and may request one or more of the Act

 250 Advisors to assist those subcommittees.

(i) Reimbursement.

- (A) For attendance at no more than 10 Commission meetings during adjournment of the General Assembly, legislative members of the Commission shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.
- (B) There shall be no reimbursement for attendance at subcommittee meetings or more than 10 Commission meetings.
- (j) Cessation. The Commission shall cease to exist on February 15, 2019. Sec. 3. ASSISTANCE; PUBLIC ENGAGEMENT

If requested by the Commission established under Sec. 2 of this act, the

Office of Legislative Council may retain professional assistance in the design
and conduct of the public discussion phase set forth in Sec. 2(d)(2) of this act,
provided the cost of this assistance does not exceed \$20,000.00.

- Sec. 3a. ADDITIONAL AUTHORIZED USE; PUBLIC TRUST LANDS

 (a) The General Assembly finds that:
- (1) the General Assembly has the authority to authorize public uses of filled public trust lands in the City of Burlington; and
- (2) the use of the filled public trust lands in the City of Burlington authorized by this act is consistent with the public trust doctrine.
- (b) In addition to the uses authorized by the General Assembly in 1990

 Acts and Resolves No. 274, 1991 Acts and Resolves No. 53, 1996 Acts and Resolves No. 87, and 1997 Acts and Resolves No. 22, the filled public trust

lands within the City of Burlington that are located north of the centerline of

Maple Street extending north to the northern terminus of the Lake Street

extension completed in 2016 and that extend to the waters of Lake Champlain

may be utilized for public markets that benefit Vermont's public and are

available to the public on an open and nondiscriminatory basis.

- (c) Any use authorized under this act is subject to all applicable requirements of law.
- Sec. 3b. 10 V.S.A. § 6607a(g)(1) is amended to read:
- (g)(1) Except as set forth in subdivisions (2), (3), and (4) of this subsection, a commercial hauler that offers the collection of municipal solid waste shall:
- (A) Beginning on July 1, 2015, offer to collect mandated recyclables separated from other solid waste and deliver mandated recyclables to a facility maintained and operated for the management and recycling of mandated recyclables.
- (B) Beginning on July 1, 2016, offer to collect leaf and yard residuals separate from other solid waste and deliver leaf and yard residuals to a location that manages leaf and yard residuals in a manner consistent with the priority uses established under subdivisions 6605k(a)(3)-(5) of this title.
- (C) Beginning on July 1, 2017 2018, offer collection of food residuals separate from other solid waste and deliver to a location that manages food residuals in a manner consistent with the priority uses established under subdivisions 6605k(a)(2)-(5) of this title.

2017

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: May 23, 2017

No. 194. An act relating to rural economic development.

(S.276)

EXCERPT FOR COMMISSION ON ACT 250: SECS. 3, 7, AND 22

* * *

* * * Evaluation; Act 250; Recreational Trails * * *

Sec. 3. ACT 250 JURISDICTION; RECREATIONAL TRAILS; EVALUATION

- (a) In addition to the currently assigned tasks under 2017 Acts and Resolves No. 47 (Act 47), the Commission on Act 250: the Next 50 Years (the Commission) established under that act shall evaluate the strengths and challenges associated with regulation of recreational trails under 10 V.S.A. chapter 151 (Act 250) and alternative structures for the planning, review, and construction of future trail networks and the extension of existing trail networks. The Commission shall include recommendations on this issue in its report to the General Assembly due on or before December 15, 2018 under Act 47.
- (b) To provide information and recommendations to the Commission on
 the issue identified in subsection (a) of this section, the Commissioner of
 Forests, Parks and Recreation or designee and the Chair of the Natural
 Resources Board or designee shall form a recreational trails working group that
 shall include officers and employees of the Agency of Natural Resources

designated by the Secretary of Natural Resources. The working group shall offer an opportunity for submission of information and recommendations from affected parties, including recreational trail and environmental organizations.

The working group shall submit a report to the Commission on or before October 1, 2018.

- (1) With respect to recreational trails, the working group's report shall examine multiple potential planning and regulatory structures, including possible revisions to Act 250; the creation of a trail oversight program within the Agency of Natural Resources that includes best development practices and an agency permitting process, including consideration of a general permit; and other options that the working group may identify.
- (2) In considering alternative structures, the working group shall evaluate how best to foster the development of an interconnected recreational trail network in Vermont while safeguarding the State's natural resources, including water quality, wildlife habitat and populations, and sensitive natural communities and areas, and minimizing potential impacts on neighboring properties and host municipalities.
- (3) The Commission shall consider the report of the working group during its deliberation and report preparation phase set forth in Act 47,

 Sec. 2(d)(3), and shall attach a copy of the working group's report to its own report to the General Assembly.

* * *

Sec. 7. COMMISSION ON ACT 250; REVIEW OF FOREST PRODUCTS PROCESSING

The Commission on Act 250: the Next 50 Years (Commission) established under 2017 Acts and Resolves No. 47 (Act 47) shall review whether permit conditions in permits issued under 10 V.S.A. chapter 151 (Act 250) to forest processing operations negatively impact the ability of a forest processing operation to operate in an economically sustainable manner, including whether Act 250 permit conditions limit the ability of a forest processing operation to alter production or processing in order to respond to market conditions. If the Commission determines that Act 250 permit conditions have a significant negative economic impact on forestry processing operations, the Commission shall recommend alternatives for mitigating those negative economic impacts. The Commission shall include its findings and recommendation on this issue, if any, in the report due to the General Assembly on December 15, 2018 under Act 47.

* * *

* * * Industrial Park Designation * * *

Sec. 22. AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT; INDUSTRIAL PARK DESIGNATION

(a) On or before December 15, 2018, the Secretary of Commerce and Community Development, after consultation with the Secretary of Natural

Resources, the Chair of the Natural Resources Board, Regional Development

Corporations, Regional Planning Commissions, the Vermont Natural

Resources Council, and the Commission on Act 250, shall submit to the Senate

Committees on Agriculture and on Economic Development, Housing and

General Affairs and to the House Committees on Commerce and Economic

Development, on Agriculture and Forestry, and on Natural Resources, Fish,

and Wildlife recommendations for establishing an economic development

program under which defined parcels in rural areas of the State are designated

as industrial parks for the purposes of providing regulatory and permitting

incentives to businesses sited within the industrial park. The report shall

include:

- (1) recommended criteria for establishing an industrial park in a rural area;
- (2) eligibility criteria, if any, for a business to site within a designated industrial park in a rural area;
- (3) recommended incentives for businesses sited within a designated industrial park in a rural area, including permitting incentives, permit fee reductions, reduced electric rates, net metering incentives, and other regulatory incentives;
- (4) recommended technical or financial assistance that a business would be eligible to receive for locating within a designated industrial park in a rural area; and

- (5) draft legislation necessary to implement any recommendation.
- (b) The recommendations in the report shall be designed in a manner so that any recommended process or criteria maintains consistency with the land use goals of Vermont in 24 VS.A. § 4302 and the relevant regional plan adopted under 24 V.S.A. § 4348.
- (c) As used in this section, "rural area" means a county of the State

 designated as "rural" or "mostly rural" by the U.S. Census Bureau in its most
 recent decennial census.

* * *

- 1 Introduced by
- 2 Referred to Committee on
- 3 Date:
- 4 Subject: Conservation and development; land use; natural resources; Act 250
- 5 Statement of purpose of bill as introduced: This bill proposes to make
- 6 revisions to the State land use law known as Act 250, including:
- Proposing revisions to Act 250's Capability and Development Plan to
 address climate change and ecosystem protection.
- Amending Act 250 to include a purpose section that refers to that plan and
 the specific statutory goals for municipal and regional planning.
- Amending the criteria to address climate change, including requiring
 projects to avoid, minimize, or mitigate greenhouse gas emissions and to be
 designed to withstand and adapt to climate change.
- Amending the criteria to address ecosystem protection through protecting
 forest blocks and connecting habitat. The bill also would increase the
 program's ability to protect ecosystems on ridgelines by reducing the
 elevation threshold from 2,500 to 2,000 feet.
- Requiring that, to be used in Act 250, local and regional plans must be
 approved as consistent with the statutory planning goals and clarifying that
 local and regional plan provisions apply to a project if they meet the same
 standard of specificity applicable to statutes.

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- 1 • As part of a balancing of interests to support economic development in 2 compact centers while promoting a rural countryside and protecting 3 important natural resources, amending Act 250 jurisdiction to allow 4 municipalities to ensure compliance with the Act 250 criteria in centers 5 receiving an enhanced designation under 24 V.S.A. chapter 76A and 6 increasing Act 250 jurisdiction in critical resource areas and at interstate 7 interchanges. Because the designation under 24 V.S.A. chapter 76A would 8 affect jurisdiction, the bill provides for appeal of designation decisions.
 - Clarifying the definition of "commercial purpose" so that it is not necessary to determine whether monies received are essential to sustain a project.
- Replacing the Natural Resources Board (NRB) with a Vermont
 Environmental Review Board (the Board), which would hear appeals from
 the District Commissions and the Agency of Natural Resources in addition
 to the NRB's current duties. The Environmental Division of the Superior
 Court would continue to hear enforcement and local zoning appeals.
 - Reaffirming the supervisory authority in environmental matters of the Board and District Commissions, in accordance with the original intent of Act 250 as determined by the Vermont Supreme Court.
 - Revising and clarifying the statutory authority on the use of other permits to demonstrate compliance with the criteria, including ensuring the reliability of those other permits.

1	An act relating to changes to Act 250
2	It is hereby enacted by the General Assembly of the State of Vermont:
3	* * * Revisions to Capability and Development Plan * * *
4	Sec. 1. In 1973 Acts and Resolves No. 85, Sec. 7(a)(20) is added to read:
5	(20) GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE
6	Climate change poses serious risks to human health, functioning ecosystems
7	that support a diversity of species and economic growth, and Vermont's
8	tourist, forestry, and agricultural industries. The primary driver of climate
9	change in Vermont and elsewhere is the increase of atmospheric carbon
10	dioxide from the burning of fossil fuels, which has a warming effect that is
11	amplified because atmospheric water vapor, another greenhouse gas, increases
12	as temperature rises. Vermont should minimize its emission of greenhouse
13	gases and, because the climate is changing, ensure that the design and
14	materials used in development enable projects to withstand an increase in
15	extreme weather events and adapt to other changes in the weather and
16	environment.
17	Sec. 2. 1973 Acts and Resolves No. 85, Sec. 7(a)(2) is amended to read:
18	(2) ECOSYSTEM PROTECTION AND UTILIZATION OF
19	NATURAL RESOURCES
20	(A) Healthy ecosystems clean water, purify air, maintain soil,
21	regulate the climate, recycle nutrients, and provide food. They provide raw

1	materials and resources for medicines and other purposes. They are at the
2	foundation of civilization and sustain the economy. These ecosystem services
3	are the State's natural capital.
4	(B) Biodiversity is the key indicator of an ecosystem's health. A
5	wide variety of species copes better with threats than a limited number of
6	species in large populations.
7	(C) Products of the land and the stone and minerals under the land, as
8	well as the beauty of our landscape are principal natural resources of the state.
9	(D) Preservation Protection of healthy ecosystems in Vermont,
10	preservation of the agricultural and forest productivity of the land, and the
11	economic viability of agricultural units, conservation of the recreational
12	opportunity afforded by the state's hills, forests, streams and lakes, wise use of
13	the state's non-renewable earth and mineral reserves, and protection of the
14	beauty of the landscape are matters of public good. Uses which threaten or
15	significantly inhibit these healthy ecosystems and the state's natural and scenic
16	resources should be permitted only when the public interest is clearly benefited
17	thereby.
18	* * * Revisions to State Land Use Law * * *
19	Sec. 3. 10 V.S.A. chapter 151 is amended to read:
20	Subchapter 1. General Provisions
21	§ 6000. PURPOSE; CONSTRUCTION

1	The purposes of this chapter are to protect and conserve the environment of
2	the State and to support the achievement of the goals of the Capability and
3	Development Plan and of 24 V.S.A. § 4302(c). The chapter shall be construed
4	broadly to effect these purposes.
5	§ 6001. DEFINITIONS
6	In this chapter:
7	(1) "Board" means the Natural Resources Vermont Environmental
8	Review Board.
9	(2) "Capability and Development Plan" means the Plan prepared
10	pursuant to section 6042 of this title and adopted pursuant to 1973 Acts and
11	Resolves No. 85, Secs. 6 and 7, as amended by this act.
12	(3)(A) "Development" means each of the following:
13	(i) The construction of improvements on a tract or tracts of land,
14	owned or controlled by a person, involving more than 10 acres of land within a
15	radius of five miles of any point on any involved land, for commercial or
16	industrial purposes.
17	(ii) The construction of improvements for commercial or
18	industrial purposes on more than one acre of land within a municipality that:
19	(I) has not adopted permanent zoning and subdivision bylaws;
20	<u>or</u>

1	(II) has adopted permanent zoning and subdivision bylaws, if
2	the municipality in which the proposed project is located has elected by
3	ordinance, adopted under 24 V.S.A. chapter 59, to have this jurisdiction apply.
4	(iii) The construction of improvements for commercial or
5	industrial purposes on a tract or tracts of land, owned or controlled by a person
6	involving more than one acre of land within a municipality that has adopted
7	permanent zoning and subdivision bylaws, if the municipality in which the
8	proposed project is located has elected by ordinance, adopted under 24 V.S.A.
9	chapter 59, to have this jurisdiction apply rural and working lands area.
10	* * *
11	(vi) The construction of improvements for commercial, industrial,
12	or residential use at or above the elevation of 2,500 2,000 feet or in a critical
13	resource area below that elevation.
14	* * *
15	(xi) The construction of improvements for commercial or
16	industrial purposes in an interchange area, unless it is within an existing
17	settlement.
18	***
19	(D) The word "development" does not include:
20	(i) The construction of improvements for farming, logging, or
21	forestry purposes below the elevation of 2,500 2,000 feet.

1	* * *
2	(iii) The construction of improvements for commercial or
3	industrial purposes within an area that has obtained an enhanced designation
4	pursuant to 24 V.S.A. chapter 76A.
5	* * *
6	(vii) The construction of improvements below the elevation of
7	2,500 2,000 feet for the onsite on-site storage, preparation, and sale of
8	compost, provided that one of the following applies:
9	* * *
10	(6) "Floodway" means the channel of a watercourse which is expected to
11	flood on an average of at least once every 100 years and the adjacent land area
12	which are required to carry and discharge the flood of the watercourse, as
13	determined by the Secretary of Natural Resources with full consideration giver
14	to upstream impoundments and flood control projects. "Flood hazard area" has
15	the same meaning as under section 752 of this title.
16	(7) "Floodway fringe" means an area which is outside a floodway and is
17	flooded with an average frequency of once or more in each 100 years as
18	determined by the Secretary of Natural Resources with full consideration giver
19	to upstream impoundments and flood control projects. "River corridor" has the
20	same meaning as under section 752 of this title.
21	* * *

1	(12) "Necessary wildlife habitat" means concentrated habitat which that
2	is identifiable and is demonstrated as being decisive to the survival of a species
3	of wildlife at any period in its life, including breeding and migratory periods.
4	* * *
5	(19)(A) "Subdivision" means each of the following:
6	(i) A tract or tracts of land, owned or controlled by a person,
7	which located outside an area that has received an enhanced designation under
8	24 V.S.A. chapter 76A, that the person has partitioned or divided for the
9	purpose of resale into 10 or more lots within a radius of five miles of any point
10	on any lot, or within the jurisdictional area of the same District Commission,
11	within any continuous period of five years. In determining the number of lots,
12	a lot shall be counted if any portion is outside such an area and within five
13	miles or within the jurisdictional area of the same District Commission.
14	(ii) A tract or tracts of land, owned or controlled by a person,
15	which that the person has partitioned or divided for the purpose of resale into
16	six or more lots, within a continuous period of five years, in a municipality
17	which that does not have duly adopted permanent zoning and subdivision
18	bylaws.
19	(iii) A tract or tracts of land, owned or controlled by a person, that

the person has partitioned or divided for the purpose of resale into [number of

1	lots to be determined or more lots, within a continuous period of five years, in
2	a rural and working lands area.
3	(iv) A tract or tracts of land, owned or controlled by a person,
4	which that have been partitioned or divided for the purpose of resale into five
5	or more separate parcels of any size within a radius of five miles of any point
6	on any such parcel, and within any period of ten years, by public auction.
7	(I) In this subdivision (iii) (iv), "public auction" means any
8	auction advertised or publicized in any manner, or to which more than ten
9	persons have been invited.
10	(II) If sales described under this subdivision (iii) (iv) are of
11	interests that, when sold by means other than public auction, are exempt from
12	the provisions of this chapter under the provisions of subsection 6081(b) of this
13	title, the fact that these interests are sold by means of a public auction shall not
14	in itself, create a requirement for a permit under this chapter.
15	(v) A tract or tracts of land, owned or controlled by a person,
16	located in a critical resource area, that have been partitioned or divided for the
17	purpose of resale.
18	(B) The word "subdivision" shall not include each of the following:
19	(i) a lot or lots created for the purpose of conveyance to the State
20	or to a qualified organization, as defined under section 6301a of this title, if the
21	land to be transferred includes and will preserve a segment of the Long Trail;

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2	or to a "qualified holder" of "conservation rights and interest," as defined in
3	section 821 of this title.
4	* * *
5	(38) "Connecting habitat" refers to land or water, or both, that links
6	patches of habitat within a landscape, allowing the movement, migration, and
7	dispersal of animals and plants and the functioning of ecological processes. A
8	connecting habitat may include recreational trails and improvements
9	constructed for farming, logging, or forestry purposes.
10	(39) "Forest block" means a contiguous area of forest in any stage of
11	succession and not currently developed for nonforest use. A forest block may
12	include recreational trails, wetlands, or other natural features that do not
13	themselves possess tree cover and improvements constructed for farming,
14	logging, or forestry purposes.
15	(40) "Fragmentation" means the division or conversion of a forest block
16	or connecting habitat by the separation of a parcel into two or more parcels; the

(ii) a lot or lots created for the purpose of conveyance to the State

construction, conversion, relocation, or enlargement of any building or other

1	constructed for farming, logging, or forestry purposes below the elevation of
2	2,000 feet.
3	(41) "Habitat" means the physical and biological environment in which
4	a particular species of plant or animal lives.
5	(42) As used in subdivisions (38), (39), and (41) of this section,
6	"recreational trail" means a corridor that is not paved and that is used for
7	recreational purposes, including hiking, walking, bicycling, cross-country
8	skiing, snowmobiling, all-terrain vehicle riding, and horseback riding.
9	(43) "Air contaminant" has the same meaning as under section 552 of
10	this title.
11	(44) "Commercial purpose" means the provision of facilities, goods, or
12	services by a person other than for a municipal or State purpose to others in
13	exchange for payment of a purchase price, fee, contribution, donation, or other
14	object or service having value, regardless of whether the payment is essential
15	to sustain the provision of the facilities, goods, or services.
16	(45) "Critical resource area" means a river corridor, a significant
17	wetland as defined under section 902 of this title, land at or above 2,000 feet,
18	and land characterized by slopes greater than 15 percent and shallow depth to
19	bedrock.
20	(46) "Greenhouse gas" means carbon dioxide, methane, nitrous oxide,
21	hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other

1	chemical or physical substance that is emitted into the air and that the
2	Secretary of Natural Resources or District Commission reasonably anticipates
3	to cause or contribute to climate change.
4	(47) "Interchange area" means the land within a 3,000-foot radius of an
5	interstate interchange, except for land within an existing settlement. The
6	radius shall be measured from the midpoint of the interconnecting roadways
7	within the interchange.
8	(48) "Rural and working lands area" means an area that is not an
9	existing settlement or a critical resource area.
10	(49) "Technical determination" means a decision that results from the
11	application of scientific, engineering, or other similar expertise to the facts to
12	determine whether activity for which a permit is requested meets the standards
13	for issuing the permit under statute and rule. The term does not include an
14	interpretation of a statute or rule.
15	§ 6001e COMMERCIAL COMPOSTING FACILITY; CIRCUMVENTION
16	Notwithstanding subdivisions 6001(3)(D)(vii)(I)-(VI) of this title, a
17	permit under this chapter may be required for the construction of
18	improvements below the elevation of 2,500 2,000 feet for the onsite on-site
19	storage, preparation, and sale of compost if the Chair of the District
20	Commission, based on the information available to the Chair, determines that
21	action has been taken to circumvent the requirements of this chapter.

1	* * *
2	Subchapter 2. Administration
3	§ 6021. BOARD; VACANCY, REMOVAL
4	(a) A Natural Resources Establishment. The Vermont Environmental
5	Review Board is created. The Board shall consist of a chair and [structure and
6	membership, including whether to be professional or semiprofessional, and
7	whether to have alternate members, to be determined].
8	(1) The Board shall consist of five members appointed by the Governor,
9	with the advice and consent of the Senate, so that one appointment expires in
10	each year. The Chair, members, and alternate members shall be appointed by
11	the Governor. with the advice and consent of Senate. In making these
12	appointments, the Governor and the Senate shall give consideration to
13	candidates shall be sought who have experience, expertise, or skills relating to
14	the environment or land use.
15	(A) The Governor shall appoint a chair of the Board, a position that
16	shall be a full time position.
17	(B) Following initial appointments, the members, except for the
18	Chair, shall be appointed for terms of four years.
19	(2) The Governor shall appoint up to five persons, with preference giver
20	to former Environmental Board, Natural Resources Board, or District

1	Commission members, with the advice and consent of the Senate, to serve as
2	alternates for Board members.
3	(A) Alternates shall be appointed for terms of four years, with initial
4	appointments being staggered.
5	(B) The Chair of the Board may assign alternates to sit on specific
6	matters before the Board, in situations where fewer than five members are
7	available to serve. Initial appointments to the Board shall be made so that the
8	terms of the Chair and the members expire in a staggered manner. [Length of
9	initial terms to be determined.]
10	(b) Any vacancy occurring in the membership of the Board shall be filled
11	by the Governor for the unexpired portion of the term. Terms; vacancy;
12	succession. The term of each appointment subsequent to the initial
13	appointments described in subdivision (a)(2) of this section shall be [length of
14	terms to be determined years. Any appointment to fill a vacancy shall be for
15	the unexpired portion of the term vacated. A member wishing to succeed
16	himself or herself in office may seek reappointment under the terms of this
17	section.
18	(c) <u>Removal.</u> Notwithstanding the provisions of 3 V.S.A. § 2004, members
19	shall be removable for cause only, except the Chair, who shall serve at the
20	pleasure of the Governor.

1	(d) The Chair of the Board, upon request of the Chair of a District
2	Commission, may appoint and assign former Commission members to sit on
3	specific Commission cases when some or all of the regular members and
4	alternates of the District Commission are disqualified or otherwise unable to
5	serve. Use of alternates. When a member of the Board is unavailable to hear a
6	case, the Chair may appoint an alternate member to hear the case.
7	(e) Retirement from office. When a Board member or alternate who hears
8	all or a substantial part of a case retires from office before the case is
9	completed, he or she shall remain a member of the Board for the purpose of
10	concluding and deciding that case and signing the findings and judgments
11	involved. A retiring Chair shall also remain a member for the purpose of
12	certifying questions of law if a party appeals to the Supreme Court.
13	(f) Completion of case. A case shall be deemed completed when the Board
14	enters a final decision even though that decision is appealed to the Supreme
15	Court and remanded by that Court.
16	(g) Court of record; jurisdiction. The Board shall have the powers of a
17	court of record in the determination and adjudication of all matters within its
18	jurisdiction. It may initiate proceedings on any matter within its jurisdiction.
19	It may render judgments and enforce the same by any suitable process issuable
20	by courts in this State. An order issued by the Board on any matter within its

1	jurisdiction shall have the effect of a judicial order. The Board's jurisdiction
2	shall include:
3	(1) the issuance of declaratory rulings on the applicability of this chapter
4	and rules or orders issued under this chapter, pursuant to 3 V.S.A. § 808; and
5	(2) the issuance of decisions on appeals pursuant to section 6089 and
6	chapter 219 of this title.
7	(h) Hearing officers. One Board member or any officer or employee of the
8	Board duly appointed by the Chair of the Board may inquire into and examine
9	any matter within the jurisdiction of the Board.
10	(1) A hearing officer may hold any hearing on any matter within the
11	jurisdiction of the Board.
12	(2) Hearings conducted by a hearing officer shall be in accordance with
13	3 V.S.A. §§ 809-814. A hearing officer may administer oaths and exercise the
14	powers of the Board necessary to hear and determine a matter for which the
15	officer was appointed. A hearing officer shall report his or her findings of fact
16	in writing to the Board in the form of a proposal for decision. A copy shall be
17	served upon the parties pursuant to 3 V.S.A. § 811. However, judgment on
18	those findings shall be rendered only by a majority of the Board.
19	§ 6022. PERSONNEL
20	(a) Regular personnel. The Board may appoint legal counsel, scientists,
21	engineers, experts, investigators, temporary employees, and administrative

1	personnel, as it finds necessary in carrying out its duties, unless the Governor
2	shall otherwise provide in providing personnel to assist the District
3	Commissions and in investigating matters within its jurisdiction, including
4	oversight and monitoring of permit compliance.
5	(b) Personnel for particular proceedings.
6	(1) Retention.
7	(A) The Board may authorize or retain legal counsel, official
8	stenographers, expert witnesses, advisors, temporary employees, and other
9	research services:
10	(i) to assist the Board in any proceeding before it under this
11	chapter or chapter 219 of this title; and
12	(ii) to monitor compliance with any formal opinion of the Board
13	or a District Commission.
14	(B) The personnel authorized by this section shall be in addition to
15	the regular personnel of the Board. The Board shall fix the amount of
16	compensation and expenses to be paid to such additional personnel.
17	(2) Assessment of costs.
18	(A) The Board may allocate to an applicant the portion of its
19	expenses incurred by retaining additional personnel for a proceeding. On
20	petition of an applicant to which costs are proposed to be allocated, the Board
21	shall review and determine, after opportunity for hearing, the necessity and

1	reasonableness of those costs, having due regard for the size and complexity of
2	the project, and may amend or revise an allocation.
3	(B) Prior to allocating costs, the Board shall make a determination of
4	the purpose and use of the funds to be raised under this section, identify the
5	recipient of the funds, provide for allocation of costs among applicants to be
6	assessed, indicate an estimated duration of the proceedings, and estimate the
7	total costs to be imposed. With the approval of the Board, estimates may be
8	revised as necessary. From time to time during the progress of the work, the
9	Board shall render to the applicant detailed statements showing the amount of
10	money expended or contracted for in the work of additional personnel, which
11	statements shall be paid into the State Treasury at the time and in the manner
12	as the Board may reasonably direct.
13	(C) All payments for costs allocated pursuant to this section shall be
14	deposited into the fund created under section 6029 of this title.

§ 6025. RULES

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(a) The Board may adopt rules of procedure for itself and the District Commissions. The Board shall adopt rules of procedure that govern appeals and other contested cases before it and are consistent with this chapter and chapter 219 of this title.

1	(b) The Board may adopt substantive rules, in accordance with the
2	provisions of 3 V.S.A. chapter 25, that interpret and carry out the provisions of
3	this chapter. These rules shall include provisions that establish criteria under
4	which applications for permits under this chapter may be classified in terms of
5	complexity and significance of impact under the standards of subsection
6	6086(a) of this chapter. In accordance with that classification, the rules may:
7	(1) provide for simplified or less stringent procedures than are otherwise
8	required under sections 6083, 6084, and 6085 of this chapter;
9	(2) provide for the filing of notices instead of applications for the
10	permits that would otherwise be required under section 6081 of this chapter;
11	and
12	(3) provide a procedure by which a District Commission may authorize
13	a district coordinator to issue a permit that the District Commission has
14	determined under Natural Resources Board rules is a minor application with no
15	undue adverse impact.
16	* * *
17	§ 6026. DISTRICT COMMISSIONERS
18	(a) For the purposes of the administration of this chapter, the State is
19	divided into nine districts.
20	* * *

1	(b) A District Environmental Commission is created for each district. Each
2	District Commission shall consist of three members from that district
3	appointed in the month of February by the Governor so that two appointments
4	expire in each odd-numbered year. Two of the members shall be appointed for
5	a term of four years, and the Chair (third member) of each District shall be
6	appointed for a two-year term. In any district, the Governor may appoint not
7	more than four alternate members from that district whose terms shall not
8	exceed two years, who may hear any case when a regular member is
9	disqualified or otherwise unable to serve.
10	(c) Members shall be removable for cause only, except the Chair, who shall
11	serve at the pleasure of the Governor.
12	(d) Any vacancy shall be filled by the Governor for the unexpired period of
13	the term.
14	(e) The Chair of the Board, upon request of the Chair of a District
15	Commission, may appoint and assign former Commission members to sit on
16	specific Commission cases when some or all of the regular members and
17	alternates of the District Commission are disqualified or otherwise unable to
18	serve.
19	§ 6027. POWERS
20	(a) The Board and District Commissions shall have supervisory authority in
21	environmental matters respecting projects within their jurisdiction and shall

1	apply their independent judgment in determining facts and interpreting law.
2	They each shall have the power, with respect to any matter within its
3	jurisdiction, to:
4	(1) administer oaths, take depositions, subpoena and compel the
5	attendance of witnesses, and require the production of evidence;
6	(2) allow parties to enter upon lands of other parties for the purposes of
7	inspecting and investigating conditions related to the matter before the Board
8	or Commission;
9	(3) enter upon lands for the purpose of conducting inspections,
10	investigations, examinations, tests, and site evaluations as it deems necessary
11	to verify information presented in any matter within its jurisdiction; and
12	(4) apply for and receive grants from the federal government and from
13	other sources.
14	(b) The powers granted under this chapter are additional to any other
15	powers which that may be granted by other legislation.
16	(c) The Natural Resources Board may designate or establish such regional
17	offices as it deems necessary to implement the provisions of this chapter and
18	the rules adopted hereunder. The Natural Resources Board may designate or
19	require a regional planning commission to receive applications, provide
20	administrative assistance, perform investigations, and make recommendations.

- (d) At the request of a District Commission, if the Board Chair determines that the workload in the requesting district is likely to result in unreasonable delays or that the requesting District Commission is disqualified to hear a case, the Chair may authorize the District Commission of another district to sit in the requesting district to consider one or more applications.
- (e) The Natural Resources Board may by rule allow joint hearings to be conducted with specified State agencies or specified municipalities.
- (f) The Board may publish or contract to publish annotations and indices of its decisions and the decisions of the Environmental Division, and the text of those decisions. The published product shall be available at a reasonable rate to the general public and at a reduced rate to libraries and governmental bodies within the State.
- (g) The Natural Resources Board shall manage the process by which land use permits are issued under section 6086 of this title, may initiate enforcement on related matters, under the provisions of chapters 201 and 211 of this title, and may petition the Environmental Division for revocation of land use permits issued under this chapter. Grounds for revocation are:
- (1) noncompliance with this chapter, rules adopted under this chapter, or an order that is issued that relates to this chapter;
 - (2) noncompliance with any permit or permit condition;

1	(3) failure to disclose all relevant and material facts in the application of
2	during the permitting process;
3	(4) misrepresentation of any relevant and material fact at any time;
4	(5) failure to pay a penalty or other sums owed pursuant to, or other
5	failure to comply with, court order, stipulation agreement, schedule of
6	compliance, or other order issued under Vermont statutes and related to the
7	permit; or
8	(6) failure to provide certification of construction costs, as required
9	under subsection 6083a(a) of this title, or failure to pay supplemental fees as
10	required under that section.
11	(h) The Natural Resources Board may hear appeals of fee refund requests
12	under section 6083a of this title.
13	(i) The Chair, subject to the direction of the Board, shall have general
14	charge of the offices and employees of the Board and the offices and
15	employees of the District Commissions.
16	(j) The Natural Resources Board may participate as a party in all matters
17	before the Environmental Division that relate to land use permits issued under
18	this chapter.
19	* * *

§ 6030. MAP OF WIRELESS TELECOMMUNICATIONS FACILITIES
CAPABILITY AND DEVELOPMENT MAPS
The Board shall maintain a map that shows the location of all wireless
telecommunications facilities in the State.
(a) Updates. On or before January 1, 2021, the Board and the Secretaries
of Commerce and Community Development, of Digital Services, of
Agriculture, Food and Markets, and of Natural Resources shall complete an
update to the capability and development maps created under this chapter in
1971 for reference in applying this chapter. Maps updated pursuant to this
section shall be consistent with the Capability and Development Plan and shall
include and identify environmental constraints, existing settlements, rural and
working lands areas, critical resource areas, facilities and infrastructure, and
areas targeted for conservation, public investment, and development. The
Board and these Secretaries shall complete further updates to these maps no
less frequently than every eight years. The Board shall lead and coordinate the
completion of updates pursuant to this section.
(b) Process. When updating maps pursuant to this section, the Board and
Secretaries shall, prior to completing the update:
(1) consult with the regional planning commissions; and

1	(2) issue a draft update, provide public notice of the draft update, and
2	offer an opportunity for written public comment and conduct one or more
3	public meetings to receive oral comment on the draft update.
4	(c) Availability. The updated maps shall be maintained as a layer in the
5	Agency of Natural Resources' Natural Resources Atlas and shall be available
6	to the public.
7	§ 6031. ETHICAL STANDARDS
8	(a) The Chair and the regular and alternate members of the Board and the
9	Chair and the regular and alternate members of each District Commission shall
10	comply with the following ethical standards:
11	(1) The provisions of 12 V.S.A. § 61 (disqualification for interest).
12	(2) The Chair and each member shall conduct the affairs of his or her
13	office in such a manner as to instill public trust and confidence and shall take
14	all reasonable steps to avoid any action or circumstance that might result in any
15	one of the following:
16	(A) undermining his or her independence or impartiality of action;
17	(B) taking official action on the basis of unfair considerations;
18	(C) giving preferential treatment to any private interest on the basis
19	of unfair considerations;
20	(D) giving preferential treatment to any family member or member of
21	his or her household;

1	(E) using his or her office for the advancement of personal interest or
2	to secure special privileges or exemptions; or
3	(F) adversely affecting the confidence of the public in the integrity of
4	the <u>Board or</u> District Commission.
5	(3) In the case of the Board, no person who receives or has received
6	during the previous two years a significant portion of his or her income directly
7	or indirectly from permit holders or applicants for a permit under chapter 47 of
8	this title may hear appeals from acts or decisions of the Secretary relating to
9	permits issued under chapter 47.
10	* * *
11	Subchapter 4. Permits
12	* * *
13	§ 6083a. ACT 250 FEES
14	* * *
15	(e) A written request for an application fee refund shall be submitted to the
16	District Commission to which the fee was paid within 90 days of the
17	withdrawal of the application.
18	* * *
19	(4) District Commission decisions regarding application fee refunds
20	may be appealed to the Natural Resources Board in accordance with Board
21	rules.

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(g) A Commission or the Natural Resources Board may require any permittee to file a certification of actual construction costs and may direct the payment of a supplemental fee in the event that an application understated a project's construction costs. Failure to file a certification or to pay a supplemental fee shall be grounds for permit revocation.

* * *

§ 6085. HEARINGS; PARTY STATUS

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(e) The Natural Resources Board and any District Commission, acting through one or more duly authorized representatives at any prehearing conference or at any other times deemed appropriate by the Natural Resources Board or by the District Commission, shall promote expeditious, informal, and nonadversarial resolution of issues, require the timely exchange of information concerning the application, and encourage participants to settle differences.

No District Commissioner who is participating as a decisionmaker decision maker in a particular case may act as a duly authorized representative for the purposes of this subsection. These efforts at dispute resolution shall not affect the burden of proof on issues before a Commission or the Environmental Division Board, nor shall they affect the requirement that a permit may be

1	issued only after the issuance of affirmative findings under the criteria
2	established in section 6086 of this title.
3	* * *
4	§ 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA
5	(a) Criteria. Before granting a permit, the District Commission shall find
6	that the subdivision or development:
7	(1) <u>Air pollution.</u> Will not result in undue water or air pollution. <u>In</u>
8	making this determination, the District Commission shall at least consider: the
9	air contaminants and noise to be emitted by the development or subdivision, if
10	any; the proximity of the emission source to residences, population centers,
11	and other sensitive receptors; and emission dispersion characteristics at or near
12	the source.
13	(A) Air contaminants. A permit will be granted whenever it is
14	demonstrated by the applicant that, in addition to all other applicable criteria,
15	the emission, if any, of air contaminants by the development or subdivision
16	will meet any applicable requirement under the Clean Air Act, 42 U.S.C.
17	chapter 85, and the air pollution control regulations of the Department of
18	Environmental Conservation.
19	(B) Greenhouse gas emissions; climate change. A permit will be
20	granted whenever it is demonstrated by the applicant that, in addition to all
21	other applicable criteria:

1	(i) The construction, use, operation, and maintenance of the
2	development or subdivision will:
3	(I) avoid the emission of greenhouse gases, including
4	greenhouse gases from the vehicular traffic to be generated by the development
5	or subdivision;
6	(II) if it is not feasible to avoid such emissions, will minimize
7	them; or
8	(III) if it is not feasible to avoid or minimize such emissions,
9	will mitigate them in accordance with rules adopted by the Board. Any offsets
10	used shall be third-party verified and enforceable by the applicant and its
11	successors and assigns and by the State of Vermont. The rules shall be
12	adopted in consultation with the Secretary of Natural Resources and shall
13	comply with the greenhouse gas reduction goals of section 578 of this title.
14	(ii) The development or subdivision will employ design and
15	materials that are sufficient to enable the improvements to be constructed,
16	including buildings, roads, and other infrastructure, to withstand and adapt to
17	the effects of climate change, including extreme temperature events,
18	reasonably projected at the time of application.
19	(2) Water pollution. Will not result in undue water pollution. In making
20	this determination it the District Commission shall at least consider: the
21	elevation of land above sea level; and in relation to the flood plains, the nature

1	of soils and subsoils and their ability to adequately support waste disposal; the
2	slope of the land and its effect on effluents; the availability of streams for
3	disposal of effluents; and the applicable Health and Environmental
4	Conservation Department regulations.
5	(A) Headwaters. A permit will be granted whenever it is
6	demonstrated by the applicant that, in addition to all other applicable criteria,
7	the development or subdivision will meet any applicable Health and
8	Environmental Conservation Department regulation regarding reduction of the
9	quality of the ground or surface waters flowing through or upon lands which
10	that are not devoted to intensive development, and which lands are:
11	(i) headwaters of watersheds characterized by steep slopes and
12	shallow soils; or
13	(ii) drainage areas of 20 square miles or less; or
14	(iii) above 1,500 feet elevation; or
15	(iv) watersheds of public water supplies designated by the Agency
16	of Natural Resources; or
17	(v) areas supplying significant amounts of recharge waters to
18	aquifers.
19	(B) Waste disposal. A permit will be granted whenever it is
20	demonstrated by the applicant that, in addition to all other applicable criteria,
21	the development or subdivision will meet any applicable Health and

Environmental Conservation Department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells.

- (C) Water conservation. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the design has considered water conservation, incorporates multiple use or recycling where technically and economically practical, utilizes the best available technology for such applications, and provides for continued efficient operation of these systems.
- (D) Floodways Flood hazard areas; river corridors. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria.
- (i) the development or subdivision of lands within a floodway flood hazard area or river corridor will not restrict or divert the flow of flood waters, cause or contribute to fluvial erosion, and endanger the health, safety, and welfare of the public or of riparian owners during flooding; and
- (ii) the development or subdivision of lands within a floodway fringe will not significantly increase the peak discharge of the river or stream within or downstream from the area of development and endanger the health, safety, or welfare of the public or riparian owners during flooding.

1	(E) Streams. A permit will be granted whenever it is demonstrated
2	by the applicant that, in addition to all other applicable criteria, the
3	development or subdivision of lands on or adjacent to the banks of a stream
4	will, whenever feasible, maintain the natural condition of the stream, and will
5	not endanger the health, safety, or welfare of the public or of adjoining
6	landowners.
7	(F) Shorelines. A permit will be granted whenever it is demonstrated
8	by the applicant that, in addition to all other criteria, the development or
9	subdivision of shorelines must of necessity be located on a shoreline in order to
10	fulfill the purpose of the development or subdivision, and the development or
11	subdivision will, insofar as possible and reasonable in light of its purpose:
12	(i) retain the shoreline and the waters in their natural condition;
13	(ii) allow continued access to the waters and the recreational
14	opportunities provided by the waters;
15	(iii) retain or provide vegetation which that screen the
16	development or subdivision from the waters; and
17	(iv) stabilize the bank from erosion, as necessary, with vegetation
18	cover.
19	(G) Wetlands. A permit will be granted whenever it is demonstrated
20	by the applicant, in addition to other criteria, that the development or

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2	adopted under chapter 37 of this title, relating to significant wetlands.
3	(2)(3) Water supply.
4	(A) Does have sufficient water available for the reasonably
5	foreseeable needs of the subdivision or development.
6	(3)(B) Will not cause an unreasonable burden on an existing water
7	supply, if one is to be utilized.
8	* * *
9	(5)(A) <u>Transportation</u> . Will not cause unreasonable congestion or
10	unsafe conditions with respect to use of the highways; waterways; railways;
11	airports and airways; bicycle, pedestrian, and other transit infrastructure; and
12	other means of transportation existing or proposed.
13	(B) As appropriate, will Will incorporate transportation demand
14	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) However, the District Commission shall consider whether may decline to

<u>require</u> such a strategy, access, or connection constitutes a measure <u>if it finds</u>

that a reasonable person would take not undertake the measure given the type,

scale, and transportation impacts of the proposed development or subdivision.

subdivision will not violate the rules of the Secretary of Natural Resources, as

1	(8) <u>Ecosystem protection; scenic beauty; historic sites.</u> Will not have an
2	undue adverse effect on the scenic or natural beauty of the area, aesthetics,
3	historic sites, or rare and irreplaceable natural areas.
4	(A) Necessary wildlife habitat and endangered species. A permit will
5	not be granted if unless it is demonstrated by any party opposing the applicant
6	that a development or subdivision will <u>not</u> destroy or significantly imperil
7	necessary wildlife habitat or any endangered species; and or, if such
8	destruction or imperilment will occur:
9	(i) the economic, social, cultural, recreational, or other benefit to
10	the public from the development or subdivision will not outweigh the
11	economic, environmental, or recreational loss to the public from the
12	destruction or imperilment of the habitat or species; or
13	(ii) all feasible and reasonable means of preventing or lessening
14	the destruction, diminution, or imperilment of the habitat or species have not
15	been or will not continue to be applied; or
16	(iii) a reasonably acceptable alternative site is <u>not</u> owned or
17	controlled by the applicant which that would allow the development or
18	subdivision to fulfill its intended purpose.
19	(B) Forest blocks.
20	(i) A permit will not be granted for a development or subdivision
21	within or partially within a forest block unless the applicant demonstrates that:

1	(I) the development or subdivision will avoid fragmentation of
2	the forest block through the design of the project or the location of project
3	improvements, or both;
4	(II) it is not feasible to avoid fragmentation of the forest block
5	and the design of the development or subdivision minimizes fragmentation of
6	the forest block; or
7	(III) it is not feasible to avoid or minimize fragmentation of the
8	forest block and the applicant will mitigate the fragmentation in accordance
9	with section 6094 of this title.
10	(ii) Methods for avoiding or minimizing the fragmentation of a
11	forest block may include:
12	(I) Locating buildings and other improvements and operating
13	the project in a manner that avoids or minimizes incursion into and disturbance
14	of the forest block, including clustering of buildings and associated
15	improvements.
16	(II) Designing roads, driveways, and utilities that serve the
17	development or subdivision to avoid or minimize fragmentation of the forest
18	block. Such design may be accomplished by following or sharing existing
19	features on the land such as roads, tree lines, stonewalls, and fence lines.

1	(C) Connecting habitat.
2	(i) A permit will not be granted for a development or subdivision
3	unless the applicant demonstrates that:
4	(I) the development or subdivision will avoid fragmentation of
5	a connecting habitat through the design of the project or the location of project
6	improvements, or both;
7	(II) it is not feasible to avoid fragmentation of the connecting
8	habitat and the design of the development or subdivision minimizes
9	fragmentation of the connector; or
10	(III) it is not feasible to avoid or minimize fragmentation of the
11	connecting habitat and the applicant will mitigate the fragmentation in
12	accordance with section 6094 of this title.
13	(ii) Methods for avoiding or minimizing the fragmentation of a
14	connecting habitat may include:
15	(I) locating buildings and other improvements at the farthest
16	feasible location from the center of the connector;
17	(II) designing the location of buildings and other improvements
18	to leave the greatest contiguous portion of the area undisturbed in order to
19	facilitate wildlife travel through the connector; or
20	(III) when there is no feasible site for construction of buildings
21	and other improvements outside the connector, designing the buildings and

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1	improvements to facilitate the continued viability of the connector for use by
2	wildlife.
3	* * *
4	(9) Capability and development plan. Is in conformance with a duly
5	adopted capability and development plan, and land use plan when adopted.
6	However, the legislative findings of subdivisions 7(a)(1) through (19) of Act
7	85 of 1973 shall not be used as criteria in the consideration of applications by a
8	District Commission.
9	***
10	(F) Energy conservation and efficiency. A permit will be granted
11	when it has been demonstrated by the applicant that, in addition to all other
12	applicable criteria, the planning and design of the subdivision or development
13	reflect the principles of energy conservation and energy efficiency, including
14	reduction of greenhouse gas emissions from the use of energy, and incorporate
15	the best available technology for efficient use or recovery of energy. An
16	applicant seeking an affirmative finding under this criterion shall provide
17	evidence that the subdivision or development complies with the applicable
18	building energy standards and stretch codes under 30 V.S.A. § 51 or 53.

(I) Interchange areas. A permit will be granted for a development or subdivision within an interchange area when it is demonstrated that, in addition

to all other applicable criteria, the development or subdivision complies with the Vermont Interstate Interchange Planning and Design Guidelines applicable to the category of land use as identified for that area in the regional plan. As used in this subdivision (I), "Vermont Interstate Interchange Planning and Design Guidelines" refers to the guidelines by that name published by the Agency of Commerce and Community Development in 2004 or such update to those guidelines as the Commissioner of Housing and Community Development may subsequently publish, provided that the update is at least as protective of existing settlements, scenic beauty and aesthetics, farmland, and natural resources as the 2004 guidelines.

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(K) Development affecting public investments. A permit will be granted for the development or subdivision of lands adjacent to governmental and public utility facilities, services, and lands, including highways, airports, waste disposal facilities, office and maintenance buildings, fire and police stations, universities, schools, hospitals, prisons, jails, electric generating and transmission facilities, oil and gas pipe lines, parks, hiking trails and forest and game lands, lands conserved under chapter 155 of this title, and facilities or lands receiving benefits through the Vermont Housing and Conservation Board under chapter 15 of this title, the State Designation Program under 24 V.S.A. chapter 76A, or the Vermont Downtown and Village Center Tax Credit

Program under 32 V.S.A. chapter 151, subchapter 11J, when it is demonstrated
that, in addition to all other applicable criteria, the development or subdivision
will not unnecessarily or unreasonably endanger the public or quasi-public
investment in the facility, service, or lands, or materially jeopardize or interfere
with the function, efficiency, or safety of, or the public's use or enjoyment of
or access to the facility, service, or lands.
* * *
(10) Local and regional plans. Is in conformance with any duly adopted
local or plan that has been approved under 24 V.S.A. § 4350, regional plan that
has been approved by the Board under 24 V.S.A. § 4348, or capital program
under 24 V.S.A. chapter 117 § 4430. In making this finding, if:
(A) A District Commission shall require conformance with the future
land use maps contained in the local and regional plans and with the written
provisions of those plans.

- (B) A District Commission shall decline to apply a provision of a local or regional plan only if the Commission is persuaded that the provision does not afford a person of ordinary intelligence with a reasonable opportunity to understand what the provision directs, requires, or proscribes.
- (C) If the District Commission finds applicable provisions of the town plan to be ambiguous, the District Commission, for interpretive purposes,

shall consider bylaws, but only to the extent that they implement and are consistent with those provisions, and need not consider any other evidence.

- (c) <u>Conditions.</u> A permit may contain such requirements and conditions as are allowable proper exercise of the police power and which are appropriate within the respect to subdivisions (a)(1) through (10) of this section, including those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and the filing of bonds to insure ensure compliance. The requirements and conditions incorporated from Title 24 may be applied whether or not a local plan has been adopted. General requirements and conditions may be established by rule of the Natural Resources Board.
- (d) Other permits and approvals; presumptions. The Natural Resources
 Board may by rule allow the acceptance of a permit or permits or approval of
 any State agency with respect to subdivisions (a)(1) through (5) of this section
 or a permit or permits of a specified municipal government with respect to
 subdivisions (a)(1) through (7) and (9) and (10) of this section, or a
 combination of such permits or approvals, in lieu of evidence by the applicant.
 A District Commission, in accordance with rules adopted by the Board, shall
 accept determinations issued by a development review board under the
 provisions of 24 V.S.A. § 4420, with respect to local Act 250 review of

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unless it each of the following applies:

subsection (a) of this section.

municipal impacts. The acceptance of such approval, positive determinations, permit, or permits shall create a presumption that the application is not detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. In the case of approvals and permits issued by the Agency of Natural Resources, technical determinations of the Agency shall be accorded substantial deference by the Commissions. The acceptance of negative determinations issued by a development review board under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review of municipal impacts shall create a presumption that the application is detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. Any determinations, positive or negative, under the provisions of 24 V.S.A. § 4420 shall create presumptions only to the extent that the impacts under the criteria are limited to the municipality issuing the decision. Such a rule may be revoked or amended pursuant to the procedures set forth in 3 V.S.A, chapter 25, the Vermont Administrative Procedure Act. (1) The rules adopted by the Board shall not approve the acceptance of a permit or approval of such an agency or a permit of a municipal government

(A) The permit or approval satisfies the appropriate requirements of

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1	(B) The Board finds that the permit or approval is part of a program
2	that reliably meets its goals, such as achieving water quality standards.
3	(2) A presumption created under this subsection may be rebutted by the
4	introduction of evidence contrary to the presumed fact.
5	(3) In the case of approvals and permits issued by the Agency of Natural
6	Resources:
7	(A) There shall be no presumption for a permit or approval
8	authorizing the discharge of a pollutant into a water if uses of that water are
9	already impaired by the pollutant.
10	(B) Admissible evidence of the technical determinations of the
11	Agency shall be accorded substantial deference by the District Commissions.
12	(4) A District Commission, in accordance with rules adopted by the
13	Board, shall accept determinations issued by a development review board
14	under the provisions of 24 V.S.A. § 4420, with respect to local review of
15	municipal impacts under criteria of this section. The acceptance of such a
16	determination, if positive, shall create a presumption that the application is not
17	detrimental to the public health and welfare with respect to the specific
18	requirement for which it is accepted and, if negative, shall create a
19	presumption that the application is so detrimental. Any determinations,
20	positive or negative, under the provisions of 24 V.S.A. § 4420 shall create

1	presumptions only to the extent that the impacts under the criteria are limited
2	to the municipality issuing the decision.
3	* * *
4	§ 6087. DENIAL OF APPLICATION
5	* * *
6	(b) A permit may not be denied solely for the reasons set forth in
7	subdivisions 6086(a)(5), (6), and (7) of this title. However, reasonable
8	Reasonable conditions and requirements allowable in subsection 6086(c) of
9	this title may be attached to alleviate the burdens created. However, a permit
10	may be denied under subdivision 6086(a)(5) of this title if the permit is for
11	development in an interchange area that is not within an existing settlement.
12	***
13	§ 6088. BURDEN OF PROOF; PRODUCTION AND PERSUASION
14	(a) The initial burden of production, to produce sufficient evidence for a
15	District Commission to make a factual determination, shall be on the applicant
16	with respect to subdivisions 6086(a)(1) through (10) of this title.
17	(b) The burden of persuasion shall be on the applicant with respect to
18	subdivisions 6086(a)(1), (2), (3), (4), (8)(A) through (C), (9), and (10) of this
19	title to show that the application meets the relevant standard.
20	(c) The burden shall be on any party opposing the applicant application
21	with respect to subdivisions 6086(a)(5) through (8), (6), (7), exception (8)(A)

1 through (8)(C) of this title to show an unreasonable or adverse effect that the 2 application does not meet the relevant standard. 3 § 6089. APPEALS 4 (a) Appeals of any act or decision of a District Commission under this 5 chapter or a district coordinator under subsection 6007(c) of this title shall be made to the Environmental Division in accordance with chapter 220 of this 6 7 title. For the purpose of this section, a decision of the Chair of a District 8 Commission under section 6001e of this title on whether action has been taken 9 to circumvent the requirements of this chapter shall be considered an act or 10 decision of the District Commission. (b) In an appeal of an act or decision described in subsection (a) of this 11 section, an appellant shall have the burden of proof on the issues raised in his 12 13 or her appeal. The applicant, whether or not an appellant, shall have a burden 14 to produce evidence sufficient to inform the Division of the nature, elements, 15 context, and impacts of the project to which the appeal relates. § 6090. RECORDING; DURATION AND REVOCATION OF PERMITS 16 17 (a) Recording. In order to afford adequate notice of the terms and 18 conditions of land use permits, permit amendments and revocations of permits, 19 they shall be recorded in local land records. Recordings under this chapter 20 shall be indexed as though the permittee were the grantor of a deed.

(b) Permits for specified period.

- (1) Any permit granted under this chapter for extraction of mineral resources, operation of solid waste disposal facilities, or logging above 2,500 feet, shall be for a specified period determined by the Board in accordance with the rules adopted under this chapter as a reasonable projection of the time during which the land will remain suitable for use if developed or subdivided as contemplated in the application, and with due regard for the economic considerations attending the proposed development or subdivision. Other permits issued under this chapter shall be for an indefinite term, as long as there is compliance with the conditions of the permit.
- (2) Expiration dates contained in permits issued before July 1, 1994 (involving developments that are not for extraction of mineral resources, operation of solid waste disposal facilities, or logging above 2,500 2,000 feet) are extended for an indefinite term, as long as there is compliance with the conditions of the permits.
 - (c) Change to nonjurisdictional use; release from permit.
- (1) On application signed by each permittee, the District Commission may release land subject to a permit under this chapter from the obligations of that permit and the obligation to obtain amendments to the permit, on finding each of the following:

1	(A) The use of the land as of the date of the application is not the
2	same as the use of the land that caused the obligation to obtain a permit under
3	this chapter.
4	(B) The use of the land as of the date of the application does not
5	constitute development or subdivision as defined in section 6001 of this title
6	and would not require a permit or permit amendment but for the fact that the
7	land is already subject to a permit under this chapter.
8	(C) The permittee or permittees are in compliance with the permit
9	and their obligations under this chapter.
10	(2) It shall be a condition of each affirmative decision under this
11	subsection that a subsequent proposal of a development or subdivision on the
12	land to which the decision applies shall be subject to this chapter as if the land
13	had never previously received a permit under the chapter.
14	(3) An application for a decision under this subsection shall be made on
15	a form prescribed by the Board. The form shall require evidence
16	demonstrating that the application complies with subdivisions (1)(A) through
17	(C) of this subsection. The application shall be processed in the manner
18	described in section 6084 of this title and may be treated as a minor application
19	under that section. In determining whether to treat as minor an application
20	under this subsection, the District Commission shall apply the criteria of this
21	subsection and not of subsection 6086(a) of this title.

1	* * *
2	§ 6094. MITIGATION OF FOREST BLOCKS AND CONNECTING
3	<u>HABITAT</u>
4	(a) A District Commission may consider a proposal to mitigate, through
5	compensation, the fragmentation of a forest block or connecting habitat if the
6	applicant demonstrates that it is not feasible to avoid or minimize
7	fragmentation of the block or connector in accordance with the respective
8	requirements of subdivision 6086(a)(8)(B) or (C) of this title. A District
9	Commission may approve the proposal only if it finds that the proposal will
10	meet the requirements of the rules adopted under this section and will preserve
11	a forest block or connecting habitat of similar quality and character to the
12	block or connector affected by the development or subdivision.
13	(b) The Board, in consultation with the Secretary of Natural Resources,
14	shall adopt rules governing mitigation under this section.
15	(1) The rules shall state the acreage ratio of forest block or connecting
16	habitat to be preserved in relation to the block or connector affected by the
17	development or subdivision.
18	(2) Compensation measures to be allowed under the rules shall be based
19	on the ratio of land developed pursuant to subdivision (1) of this subsection
20	and shall include:

1	(A) Preservation of a forest block or connecting habitat of similar
2	quality and character to the block or connector that the development or
3	subdivision will affect.
4	(B) Deposit of an off-site mitigation fee into the Vermont Housing
5	and Conservation Trust Fund under section 312 of this title.
6	(i) This mitigation fee shall be derived as follows:
7	(I) Determine the number of acres of forest block or connecting
8	habitat, or both, affected by the proposed development or subdivision.
9	(II) Multiply this number of affected acres by the ratio set forth
10	in the rules.
11	(III) Multiply the resulting product by a "price-per-acre" value,
12	which shall be based on the amount that the Commissioner of Forests, Parks
13	and Recreation determines to be the recent, per-acre cost to acquire
14	conservation easements for forest blocks and connecting habitats of similar
15	quality and character in the same geographic region as the proposed
16	development or subdivision.
17	(ii) The Vermont Housing and Conservation Board shall use such
18	a fee to preserve, in the adjacent geographic area, a forest block or connecting
19	habitat of similar quality and character to the block or connector affected by
20	the development or subdivision.
21	(C) Such other compensation measures as the rules may authorize.

1	(c) The mitigation of impact on a forest block or a connecting habitat, or
2	both, shall be structured also to mitigate the impacts, under the criteria of
3	subsection 6086(a) of this title other than subdivisions (8)(B) and (C), to land
4	or resources within the block or connector.
5	(d) All forest blocks and connecting habitats preserved pursuant to this
6	section shall be protected by permanent conservation easements that grant
7	development rights and include conservation restrictions and are conveyed to a
8	qualified holder, as defined in section 821 of this title, with the ability to
9	monitor and enforce easements in perpetuity.
10	***
11	* * * Resource Mapping; Forest Blocks * * *
12	Sec. 4. 10 V.S.A. § 127 is amended to read:
13	§ 127. RESOURCE MAPPING
14	(a) On or before January 15, 2013, the The Secretary of Natural Resources
15	(the Secretary) shall complete and maintain resource mapping based on the
16	Geographic Information System (GIS) or other technology. The mapping shall
17	identify natural resources throughout the State, including forest blocks, that
18	may be relevant to the consideration of energy projects and projects subject to
19	chapter 151 of this title. The Center for Geographic Information shall be
20	available to provide assistance to the Secretary in carrying out the GIS-based
21	resource mapping.

1	(b) The Secretary of Natural Resources shall consider the GIS-based
2	resource maps developed under subsection (a) of this section when providing
3	evidence and recommendations to the Public Utility Commission under 30
4	V.S.A. § 248(b)(5) and when commenting on or providing recommendations
5	under chapter 151 of this title to District Commissions on other projects.
6	(c) The Secretary shall establish and maintain written procedures that
7	include a process and science-based criteria for updating resource maps
8	developed under subsection (a) of this section. Before establishing or revising
9	these procedures, the Secretary shall provide opportunities for affected parties
10	and the public to submit relevant information and recommendations.
11	* * * Enhanced Designation; Appeal * * *
12	Sec. 5. 24 V.S.A. § 2793f is added to read:
13	§ 2793f. ENHANCED DESIGNATION
14	(a) A municipality that has received or applies for designation of a
15	downtown development district, village center, new town center, or growth
16	center under this chapter may also apply for an enhanced designation pursuant
17	to this section in order to allow the municipality, in lieu of the District
18	Commissions under 10 V.S.A. chapter 151, to ensure that land development
19	within the designated area complies with the criteria set forth in 10 V.S.A. §
20	6086(a). As used in this section, "land development" has the same meaning as
21	in section 4303 of this title.

(b) A municipality seeking an enhanced designation shall:
(1) demonstrate that its bylaws ensure that land development in the
designated area complies with the criteria set forth in 10 V.S.A. § 6086(a);
(2) demonstrate that it has the capability to review land development for
compliance with those criteria and to enforce its decisions;
(3) identify those areas within the municipality that constitute critical
resource areas within the meaning of 10 V.S.A. § 6001; and
(4) satisfy such other requirements as the State Board shall adopt by
rule.
(c) The State Board shall adopt rules to implement this section and may
grant or conditionally grant an application for enhanced designation if it meets
the requirements of this section and the adopted rules.
Sec. 6. 24 V.S.A. § 2798 is amended to read:
§ 2798. DESIGNATION DECISIONS; NONAPPEAL APPEAL
(a) The A person aggrieved by a designation decisions decision of the State
Board under this chapter are not subject to appeal one or more of sections 2793
through 2793f of this title may appeal to the Vermont Environmental Review
Board established under 10 V.S.A. chapter 151 within 30 days of the decision.
If the decision pertains to designation of a growth center under section 2793c
of this title, the period for filing an appeal shall be tolled by the filing of a

1	request for reconsideration under that section and shall commence to run in full
2	on the State Board's issuance of a decision on that request.
3	(b) The Vermont Environmental Review Board shall conduct a de novo
4	hearing on the decision under appeal and shall proceed in accordance with the
5	contested case requirements of the Vermont Administrative Procedure Act.
6	The Vermont Environmental Review Board shall issue a final decision within
7	90 days of the filing of the appeal. The provisions of 10 V.S.A. § 6024
8	regarding assistance to the Vermont Environmental Review Board from other
9	departments and agencies of the State shall apply to appeals under this section.
10	* * * Regional and Municipal Planning * * *
11	Sec. 7. 24 V.S.A. § 4348(f) is amended to read:
12	(f) A regional plan or amendment shall be adopted by not less than a 60
13	percent vote of the commissioners representing municipalities, in accordance
14	with the bylaws of the regional planning commission, and immediately
15	submitted to the legislative bodies of the municipalities that comprise the
16	region.
17	(1) The plan or amendment shall be considered duly adopted and shall
18	take effect 35 days after the date of adoption, unless, within 35 days of the date
19	of adoption, the regional planning commission receives certification from the
20	legislative bodies of a majority of the municipalities in the region vetoing the

1	proposed plan or amendment. In case of such a veto, the plan or amendment
2	shall be deemed rejected.
3	(2) Upon adoption, the regional planning commission shall submit the
4	plan or amendment to the Vermont Environmental Review Board established
5	under 10 V.S.A. chapter 151, which shall approve the plan or amendment if it
6	determines that the plan or amendment is consistent with the goals of section
7	4302 of this title. The plan or amendment shall take effect on the issuance of
8	such approval. The Board shall issue its decision within 30 days after
9	receiving the plan or amendment.
10	Sec. 8. 24 V.S.A. § 4348a is amended to read:
11	§ 4348a. ELEMENTS OF A REGIONAL PLAN
12	(a) A regional plan shall be consistent with the goals established in section
13	4302 of this title and shall include the following:
14	* * *
15	(2) A land use element, which shall consist of a map and statement of
16	present and prospective land uses, that:
17	(A) Indicates those areas proposed for forests, recreation, agriculture
18	(using the agricultural lands identification process established in 6 V.S.A. § 8)
19	residence, commerce, industry, public, and semi-public uses, open spaces,
20	areas reserved for flood plain, and areas identified by the State, regional
21	planning commissions, or municipalities that require special consideration for

1	aquifer protection; for wetland protection; for the maintenance of forest blocks,
2	wildlife habitat, and habitat connectors; or for other conservation purposes.
3	(B) Indicates those areas within the region that are likely candidates
4	for designation under sections 2793 (downtown development districts), 2793a
5	(village centers), 2793b (new town centers), and 2793c (growth centers) of this
6	title.
7	* * *
8	(F) Indicates those areas that are important as forest blocks and
9	habitat connectors and plans for land development in those areas to minimize
10	forest fragmentation and promote the health, viability, and ecological function
11	of forests. A plan may include specific policies to encourage the active
12	management of those areas for wildlife habitat, water quality, timber
13	production, recreation, or other values or functions identified by the regional
14	planning commission.
15	(G) Indicates those areas that constitute critical resource areas as
16	defined in 10 V.S.A. § 6001.
17	* * *
18	Sec. 9. 24 V.S.A. § 4382 is amended to read:
19	§ 4382. THE PLAN FOR A MUNICIPALITY
20	(a) A plan for a municipality may shall be consistent with the goals
21	established in section 4302 of this title and compatible with approved plans of

1	other municipalities in the region and with the regional plan and shall include
2	the following:
3	* * *
4	* * * Appeals * * *
5	Sec. 10. REPEAL
6	10 V.S.A. chapter 220 (consolidated environmental appeals) is repealed.
7	Sec. 11. 10 V.S.A. chapter 219 is added to read:
8	CHAPTER 219. STATE ENVIRONMENTAL PERMIT APPEALS
9	<u>§ 8401. PURPOSE</u>
10	It is the purpose of this chapter to:
11	(1) create an administrative board to hear and decide appeals under this
12	chapter with respect to State environmental permits;
13	(2) consolidate appeal routes for acts or decisions of the District
14	Commissions and the Secretary:
15	(3) standardize the appeal periods, the parties who may appeal these acts
16	or decisions, and the ability to stay any act or decision upon appeal, taking into
17	account the nature of the different programs affected;
18	(4) encourage people to get involved in the permitting process at the
19	initial stages of review by requiring participation as a prerequisite for an appeal
20	of a decision to the Vermont Environmental Review Board; and
21	(5) provide clear appeal routes for acts and decisions of the Secretary.

1	§ 8402. DEFINITIONS
2	As used in this chapter:
3	(1) "Board" means the Vermont Environmental Review Board
4	established under chapter 151 of this title.
5	(2) "District Commission" means a district commission established
6	under chapter 151 of this title.
7	(3) "Person" means any individual, partnership, company, corporation,
8	association, unincorporated association, joint venture, trust, municipality, the
9	State of Vermont or any agency, department, or subdivision of the State, any
10	federal agency, or any other legal or commercial entity.
11	(4) "Person aggrieved" means a person who alleges an injury to a
12	particularized interest protected by the provisions of law listed in section 8410
13	of this title, attributable to an act or decision by a district coordinator, District
14	Commission, the Secretary, or the Board that can be redressed by the Board or
15	the Supreme Court.
16	(5) "Secretary" means the Secretary of Natural Resources or the
17	Secretary's duly authorized representative. For the purposes of this chapter,
18	"Secretary" shall also mean the Commissioner of Environmental Conservation,
19	the Commissioner of Forests, Parks and Recreation, and the Commissioner of
20	Fish and Wildlife, with respect to those statutes that refer to the authority of
21	that commissioner or the department overseen by that commissioner.

1	§ 8403. APPLICABILITY
2	(a) This chapter shall govern all appeals of an act or decision of the
3	Secretary, excluding appeals of enforcement actions under chapters 201 and
4	211 of this title and rulemaking, under:
5	(1) The following provisions of this title:
6	(A) chapter 23 (air pollution control);
7	(B) chapter 50 (aquatic nuisance control);
8	(C) chapter 41 (regulation of stream flow);
9	(D) chapter 43 (dams);
10	(E) chapter 47 (water pollution control);
11	(F) chapter 48 (groundwater protection);
12	(G) chapter 53 (beverage containers; deposit-redemption system);
13	(H) chapter 55 (aid to municipalities for water supply and water
14	pollution abatement and control);
15	(I) chapter 56 (public water supply);
16	(J) chapter 59 (underground and aboveground liquid storage tanks);
17	(K) chapter 64 (potable water supply and wastewater system permit)
18	(L) section 2625 (regulation of heavy cutting);
19	(M) chapter 123 (protection of endangered species);
20	(N) chapter 159 (waste management);

1	(O) chapter 37 (wetlands protection and water resources
2	management);
3	(P) chapter 166 (collection and recycling of electronic devices);
4	(Q) chapter 164A (collection and disposal of mercury-containing
5	<u>lamps);</u>
6	(R) chapter 32 (flood hazard areas);
7	(S) chapter 49A (lake shoreland protection standards);
8	(T) chapter 83, subchapter 8 (importation of firewood); and
9	(U) chapter 168 (product stewardship for primary batteries and
10	rechargeable batteries);
11	(2) 29 V.S.A. chapter 11 (management of lakes and ponds); and
12	(3) 24 V.S.A. chapter 61, subchapter 10 (salvage yards).
13	(b) This chapter shall govern all appeals from an act or decision of a
14	District Commission under chapter 151 of this title.
15	(c) This chapter shall govern all appeals from a district coordinator
16	jurisdictional opinion under chapter 151 of this title.
17	(d) This chapter shall govern all appeals from an act or decision of the
18	Board under this chapter.
19	(e) This chapter shall not govern appeals from enforcement actions under
20	chapters 201 and 211 of this title or from rulemaking decisions by the Board or
21	the Secretary.

§ 8404. APPEAI

- (a) Person aggrieved; time period. Any person aggrieved by an act or
 decision of the Secretary, a District Commission, or a district coordinator
 under the provisions of law listed in section 8403 of this title may appeal to the
 Board within 30 days following the date of the act or decision.
 - (b) Notice of the filing of an appeal.
 - (1) On filing an appeal from an act or decision of a District

 Commission, the appellant shall notify all parties who had party status as of the end of the District Commission proceeding and all friends of the Commission that an appeal is being filed. In addition, the appellant shall publish notice not more than 10 days after providing notice as required under this subsection, at the appellant's expense, in a newspaper of general circulation in the area of the project that is the subject of the decision.
 - (2) On the filing of an appeal from the act or decision of the Secretary under the provisions of law listed in section 8403 of this title, the appellant shall provide notice of the filing of an appeal to the following persons: the applicant before the Agency of Natural Resources, if other than the appellant; the owner of the land where the project is located if the applicant is not the owner; the municipality in which the project is located; the municipal and regional planning commissions for the municipality in which the project is located; if the project site is located on a boundary, any adjacent Vermont

municipality and the municipal and regional planning commissions for that
municipality; any State agency affected; the solid waste management district in
which the project is located, if the project constitutes a facility pursuant to
subdivision 6602(10) of this title; all persons required to receive notice of
receipt of an application or notice of the issuance of a draft permit; and all
persons on any mailing list for the decision involved. In addition, the appellant
shall publish notice not more than 10 days after providing notice as required
under this subsection, at the appellant's expense, in a newspaper of general
circulation in the area of the project that is the subject of the decision.
(c) Requirement to participate before the District Commission or the
Secretary.
(1) Participation before District Commission. An aggrieved person shall
not appeal an act or decision that was made by a District Commission unless
the person was granted party status by the District Commission pursuant to
subdivision 6085(c)(1)(E) of this title, participated in the proceedings before
the District Commission, and retained party status at the end of the District
Commission proceedings. In addition, the person may only appeal those issues
under the criteria with respect to which the person was granted party status.
However, notwithstanding these limitations, an aggrieved person may appeal
an act or decision of the District Commission if the Board determines that:

1	(A) there was a procedural defect that prevented the person from
2	obtaining party status or participating in the proceeding;
3	(B) the decision being appealed is the grant or denial of party status;
4	<u>or</u>
5	(C) some other condition exists that would result in manifest injustice
6	if the person's right to appeal was disallowed.
7	(2) Participation before the Secretary.
8	(A) An aggrieved person shall not appeal an act or decision of the
9	Secretary unless the person submitted to the Secretary a written comment
10	during the comment period or an oral comment at the public meeting
11	conducted by the Secretary. In addition, the person may only appeal issues
12	related to the person's comment to the Secretary.
13	(i) To be sufficient for the purpose of appeal, a comment to the
14	Secretary shall identify each reasonably ascertainable issue with enough
15	particularity so that a meaningful response can be provided.
16	(ii) The appellant shall identify each comment that the appellant
17	submitted to the Secretary that identifies or relates to an issue raised in his or
18	her appeal.
19	(iii) A person moving to dismiss an appeal or an issue raised by an
20	appeal pursuant to this subdivision (A) shall have the burden to prove that the
21	requirements of this subdivision (A) are not satisfied.

1	(B) Notwithstanding the limitations of subdivision (2)(A) of this
2	subsection (c), an aggrieved person may appeal an act or decision of the
3	Secretary if the Board determines that:
4	(i) there was a procedural defect that prevented the person from
5	commenting during the comment period or at the public meeting or otherwise
6	participating in the proceeding;
7	(ii) the Secretary did not conduct a comment period and did not
8	hold a public meeting;
9	(iii) the person demonstrates that an issue was not reasonably
10	ascertainable during the review of an application or other request that led to the
11	Secretary's act or decision; or
12	(iv) some other condition exists that would result in manifest
13	injustice if the person's right to appeal was disallowed.
14	(d) District coordinator jurisdictional opinions.
15	(1) The appellant shall provide notice of the filing of an appeal to each
16	person entitled to notice under subdivisions 6085(c)(1)(A)–(D) of this title and
17	to each person on a list pursuant to subdivision 6085(c)(1)(E) of this title that
18	is approved under subsection 6007(c) of this title.
19	(2) Failure to appeal within the time required under subsection (a) of
20	this section shall render the jurisdictional opinion the final determination
21	regarding jurisdiction under chapter 151 of this title unless the opinion was not

1	properly served on persons listed in subdivisions $6085(c)(1)(A)-(D)$ of this
2	title and each person on a list pursuant to subdivision 6085(c)(1)(E) of this title
3	that is approved under subsection 6007(c) of this title.
4	(e) Stays.
5	(1) The filing of an appeal shall automatically stay the act or decision in
6	the following situations:
7	(A) acts or decisions involving stream alteration permits or shoreline
8	encroachment permits issued by the Secretary; and
9	(B) the denial of party status by a District Commission.
10	(2) On petition by a party or upon its own motion for a stay of an act or
11	decision, the Board shall perform the initial review of the request and may
12	grant a stay. Any decision under this subsection to issue a stay shall be subject
13	to appeal to the Supreme Court according to the Rules of Appellate Procedure.
14	(f) Consolidated appeals. The Board may consolidate or coordinate
15	different appeals where those appeals all relate to the same project.
16	(g) De novo. The Board, applying the substantive standards that were
17	applicable to the District Commission, district coordinator, or Secretary, shall
18	hear and review de novo those issues that have been appealed. The Board shall
19	apply its independent judgement in finding facts and interpreting law.
20	(h) Appeals of authorizations or coverage under a general permit. Any
21	appeal of an authorization or coverage under the terms of a general permit shall

1	be limited in scope to whether the permitted activity complies with the terms
2	and conditions of the general permit.
3	(i) Limitations on appeals. Notwithstanding any other provision of this
4	section:
5	(1) there shall be no appeal from a District Commission decision when
6	the Commission has issued a permit and no hearing was requested or held, or
7	no motion to alter was filed following the issuance of an administrative
8	amendment; and
9	(2) if a District Commission issues a partial decision under subsection
10	6086(b) of this title, any appeal of that decision must be taken within 30 days
11	following the date of that decision.
12	(j) Representation. The Secretary may represent the Agency in all appeals
13	under this section. If more than one State agency either appeals or seeks to
14	intervene in an appeal under this section, only the Attorney General may
15	represent the interests of the State in the appeal.
16	(k) Prior decisions. Prior decisions of the Water Resources Board, the
17	Environmental Board, the Waste Facilities Panel, and the Environmental
18	Division on matters arising under the chapters listed in section 8403 of this title
19	shall be given the same weight and consideration as prior decisions of the
20	Board.

1	(l) Intervention. Any person may intervene in a pending appeal if that
2	person:
3	(1) appeared as a party in the action appealed from and retained party
4	status;
5	(2) is a party by right;
6	(3) is a person aggrieved, as defined in this chapter; or
7	(4) meets the standard for intervention established in the Vermont Rules
8	of Civil Procedure.
9	(m) With respect to review of an act or decision of the Secretary pursuant
10	to 3 V.S.A. § 2809, the Board may reverse the act or decision or amend an
11	allocation of costs to an applicant only if the Board determines that the act,
12	decision, or allocation was arbitrary, capricious, or an abuse of discretion. In
13	the absence of such a determination, the Board shall require the applicant to
14	pay the Secretary all costs assessed pursuant to 3 V.S.A. § 2809.
15	(n) Administrative record. The Secretary shall certify the administrative
16	record as defined in chapter 170 of this title and shall transfer a certified copy
17	of that record to the Board when:
18	(1) there is an appeal of an act or decision of the Secretary that is based
19	on that record; or

1	(2) there is an appeal of a decision of a District Commission and a
2	decision of the Secretary is relevant under a criterion of subsection 6086(a) of
3	this title that is at issue in the appeal.
4	§ 8405. FEES
5	(a) All persons filing an appeal shall pay a fee of \$250.00, plus any
6	associated publication costs. The Board may waive the fee or publication costs
7	if the Board finds that the appellant or initiating party is unable to pay the fee
8	or publication costs. The fee of \$250.00 shall not apply to appeals or other
9	matters brought before the Board under this chapter in the name of the State by
10	public officials authorized to do so.
11	(b) All funds collected pursuant to this section shall be deposited into the
12	fund created in section 6029 of this title.
13	§ 8406. APPEALS TO THE SUPREME COURT
14	(a) Any person aggrieved by an act or decision of the Board pursuant to
15	this chapter may appeal to the Supreme Court within 30 days after the date of
16	the entry of the judgment or order appealed from, provided that the person was
17	a party to the proceeding before the Board.
18	(b) Notwithstanding subsection (a) of this section, an aggrieved person may
19	appeal a decision of the Board if the Supreme Court determines that:
20	(1) there was a procedural defect that prevented the person from
21	participating in the proceeding; or

1	(2) some other condition exists that would result in manifest injustice if
2	the person's right to appeal was disallowed.
3	(c) An objection that has not been raised before the Board may not be
4	considered by the Supreme Court, unless the failure or neglect to raise that
5	objection is excused by the Supreme Court because of extraordinary
6	circumstances. The findings of the Board with respect to questions of fact, if
7	supported by substantial evidence on the record as a whole, shall be
8	conclusive.
9	(d) Only the Attorney General may represent the State in all appeals under
10	this section.
11	* * * Environmental Division * * *
12	Sec. 12. 4 V.S.A. § 34 is amended to read:
13	§ 34. JURISDICTION; ENVIRONMENTAL DIVISION
14	The Environmental Division shall have:
15	(1) jurisdiction of matters arising under 10 V.S.A. ehapters chapter 201
16	and 220;
17	(2) jurisdiction of matters arising under 24 V.S.A. chapter 61,
18	subchapter 12 and 24 V.S.A. chapter 117; and
19	(3) original jurisdiction to revoke permits under 10 V.S.A. chapter 151.

- 1 Sec. 13. 24 V.S.A. § 2283 is amended to read:
- 2 § 2283. APPEALS
- After exhausting the right of administrative appeal to the Board under 19
- 4 V.S.A. § 5(d)(5), a person aggrieved by any order, act, or decision of the
- 5 Agency of Transportation may appeal to the Superior Court, and all
- 6 proceedings shall be de novo. Any person, including the Agency of
- 7 Transportation, may appeal to the Supreme Court from a judgment or ruling of
- 8 the Superior Court. Appeals of acts or decisions of the Secretary of Natural
- 9 Resources or under this subchapter shall be appealed to the Vermont
- 10 Environmental Review Board under 10 V.S.A. § 8403. Acts or decisions of a
- legislative body of a municipality under this subchapter shall be appealed to
- the Environmental Division under 10 V.S.A. § 8503 section 4471a of this title.
- 13 Sec. 14. 24 V.S.A. § 4449(a)(3) is amended to read:
- 14 (3) No permit issued pursuant to this section shall take effect until the
- time for appeal in section 4465 of this title has passed, or in the event that a
- notice of appeal is properly filed, no such permit shall take effect until
- adjudication of that appeal by the appropriate municipal panel is complete and
- the time for taking an appeal to the Environmental Division has passed without
- an appeal being taken. If an appeal is taken to the Environmental Division, the
- 20 permit shall not take effect until the Environmental Division rules in

(a) Applicability.

accordance with 10 V.S.A. § 8504 section 4471a of this title on whether to 1 2 issue a stay, or until the expiration of 15 days, whichever comes first. 3 Sec. 15. 24 V.S.A. § 4471 is amended to read: 4 § 4471. APPEAL TO ENVIRONMENTAL DIVISION 5 (a) Participation required. An interested person who has participated in a 6 municipal regulatory proceeding authorized under this title may appeal a 7 decision rendered in that proceeding by an appropriate municipal panel to the 8 Environmental Division as provided by section 4471a of this title. 9 Participation in a local regulatory proceeding shall consist of offering, through 10 oral or written testimony, evidence or a statement of concern related to the 11 subject of the proceeding. An appeal from a decision of the appropriate 12 municipal panel, or from a decision of the municipal legislative body under 13 subsection 4415(d) of this title, shall be taken in such manner as the Supreme 14 Court may by rule provide for appeals from State agencies governed by 3 15 V.S.A. §§ 801–816, unless the decision is an appropriate municipal panel 16 decision which that the municipality has elected to be subject to review on the 17 record. 18 19 Sec. 16. 24 V.S.A. § 4471a is added to read: 20 § 4471a. ENVIRONMENTAL DIVISION

1	(1) This section and section 4471 of this title shall govern all appeals
2	arising under this chapter, except for appeals under section 4352 of this title.
3	(2) This section shall govern all appeals of acts or decisions of the
4	legislative body of a municipality arising under chapter 61, subchapter 10 of
5	this title relating to the municipal certificate of approved location for salvage
6	<u>yards.</u>
7	(3) This section shall govern all appeals from an act or decision of the
8	Environmental Division under this chapter.
9	(b) Appeals; exceptions.
10	(1) Within 30 days after the date of the act or decision, an interested
11	person as defined in section 4465 of this title who has participated as defined
12	in section 4471 of this title in the municipal regulatory proceeding under this
13	chapter may appeal to the Environmental Division an act or decision made
14	under this chapter by an appropriate municipal panel; provided, however, that
15	decisions of a development review board under section 4420 of this title with
16	respect to review of municipal impacts under 10 V.S.A. chapter 151 are not
17	subject to appeal but shall serve as presumptions in accordance with that
18	chapter.
19	(2) Notwithstanding subdivision (1) of this subsection, an interested
20	person may appeal an act or decision under this chapter if the Environmental
21	judge determines that:

1	(A) there was a procedural defect that prevented the person from
2	obtaining interested person status or participating in the proceeding;
3	(B) the decision being appealed is the grant or denial of interested
4	person status; or
5	(C) some other condition exists that would result in manifest injustice
6	if the person's right to appeal was disallowed.
7	(c) Notice. On filing of an appeal under this chapter, the appellant shall
8	give notice as required under section 4471 of this title.
9	(d) Stays.
10	(1) The filing of an appeal shall automatically stay the act or decision in
11	the following situations if it pertains to the denial of interested person status by
12	a board of adjustment, planning commission, or development review board.
13	(2) Upon petition by a party or upon its own motion for a stay of an act
14	or decision, the Environmental Division shall perform the initial review of the
15	request and may grant a stay. Any decision under this subsection to issue a
16	stay shall be subject to appeal to the Supreme Court according to the Rules of
17	Appellate Procedure.
18	(e) De novo hearing. The Environmental Division, applying the
19	substantive standards that were applicable before the tribunal appealed from,
20	shall hold a de novo hearing on those issues that have been appealed, except in

1	the case of a decision being appealed on the record pursuant to subsection
2	4471(b) of this title.
3	(f) Limitation on appeals. Notwithstanding any other provision of this
4	section, a municipal decision regarding whether a particular application
5	qualifies for a recorded hearing under subsection 4471(b) of this title shall not
6	be subject to appeal.
7	(g) Intervention. Any person may intervene in a pending appeal before the
8	Environmental Division if that person:
9	(1) appeared as a party in the action appealed from and retained party
10	status;
11	(2) is a party by right;
12	(3) qualifies as an "interested person" as established in section 4465 of
13	this title; or
14	(4) meets the standard for intervention established in the Vermont Rules
15	of Civil Procedure.
16	(h) Appeals to Supreme Court.
17	(1) Any person aggrieved by a decision of the Environmental Division
18	pursuant to this section or any party by right may appeal to the Supreme Court
19	within 30 days following the date of the entry of the order or judgment
20	appealed from, provided that:

1	(A) the person was a party to the proceeding before the
2	Environmental Division;
3	(B) the decision being appealed is the denial of party status; or
4	(C) the Supreme Court determines that:
5	(i) there was a procedural defect that prevented the person from
6	participating in the proceeding; or
7	(ii) some other condition exists that would result in manifest
8	injustice if the person's right to appeal were disallowed.
9	(2) An objection that has not been raised before the Environmental
10	Division may not be considered by the Supreme Court unless the failure or
11	neglect to raise that objection is excused by the Supreme Court because of
12	extraordinary circumstances.
13	* * * Revision Authority; Transition; Effective Dates * * *
14	Sec. 17. REFERENCES; REVISION AUTHORITY
15	(a) In the Vermont Statutes Annotated, all references to the Natural
16	Resources Board are deemed to be references to the Vermont Environmental
17	Review Board.
18	(b) In 10 V.S.A. § 6001 as amended by Sec. 3 of this act, the Office of
19	Legislative Council shall:
20	(1) in subdivision (2), replace the reference to "this act" with the
21	specific citation to this act as enacted; and

1	(2) reorganize and renumber the definitions so that they are in
2	alphabetical order and, in the Vermont Statutes Annotated, shall revise all
3	cross-references to those definitions accordingly.
4	(c) In the Vermont Statutes Annotated, the Office of Legislative Council
5	shall:
6	(1) replace "Natural Resources Board" with "Vermont Environmental
7	Review Board";
8	(2) replace "10 V.S.A. chapter 220" and "chapter 220 of Title 10" with
9	"10 V.S.A. chapter 219";
10	(3) in Title 10, replace "chapter 220 of this title" with "chapter 219 of
11	this title"; and
12	(4) when a statute concerns an appeal governed by Sec. 11 of this act, 10
13	V.S.A. chapter 219, replace the reference, if any, to the Environmental
14	Division of the Superior Court with a reference to the Vermont Environmental
15	Review Board.
16	(d) In 10 V.S.A. § 6086, the Office of Legislative Council shall insert the
17	following subsection and subdivision headings:
18	(1) In subdivision (a)(4): Soil erosion; capacity of land to hold water.
19	(2) In subdivision (a)(6): Educational services.
20	(3) In subdivision (a)(7): Local governmental services.
21	(4) In subsection (b): Partial findings.

1	(5) In subsection (e): Temporary improvements; film or TV.
2	(6) In subsection (f): Stay of construction.
3	Sec. 18. RULES
4	(a) Act 250 rules adopted pursuant to 10 V.S.A. § 6025, as that statute and
5	those rules existed immediately prior to the effective date of this act, shall be
6	deemed rules of the Vermont Environmental Review Board under Sec. 3 of
7	this act, 10 V.S.A. § 6025, and the Vermont Environmental Review Board may
8	amend those rules in accordance with 3 V.S.A. chapter 25.
9	(b) The provisions of this act shall supersede any provisions to the contrary
10	contained in the Act 250 rules as they existed immediately prior to the
11	effective date of this act.
12	Sec. 19. ENVIRONMENTAL REVIEW BOARD; BUDGET;
13	POSITIONS
14	As of February 1, 2020, all appropriations and employee positions of the
15	Natural Resources Board are transferred to the Vermont Environmental
16	Review Board.
17	Sec. 20. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION
18	Notwithstanding the repeal of its jurisdictional authority to hear appeals
19	relative to State environmental permits under Sec. 10 of this act, the
20	Environmental Division shall continue to have jurisdiction to complete its
21	consideration of any such appeal that is pending before it as of February 1,

1	2020 if, with respect to such act or appeal, mediation or discovery has
2	commenced, a dispositive motion has been filed, or a trial has begun.
3	Sec. 21. EFFECTIVE DATES
4	(a) This section shall take effect on passage.
5	(b) The remainder of this act shall take effect on February 1, 2020, except
6	that:
7	(1) The authority to make appointments to the Vermont Environmental
8	Review Board shall take effect on passage and each such appointment shall be
9	made on or before December 15, 2019.
10	(2) On or before April 1, 2020, the Vermont Environmental Review
11	Board shall file with the Secretary of State proposed rules to implement Sec. 3,
12	10 V.S.A. §§ 6086(a)(1)(B) (mitigation of greenhouse gas emissions) and 6094
13	(mitigation of forest blocks and connecting habitat).

Sec. 6. Statement of intent

- (a) This act constitutes the capability and development plan provided for in section 6042 of Title 10, and is adopted by the general assembly for the purposes set forth in that section and in section 4302 of Title 24.
- (b) This act is not intended and shall not be construed to limit in any way the freedom of any person to sell or otherwise dispose of his land unless by so doing he will create a subdivision as defined by section 6001(18) of Title 10.

Sec. 7. Legislative findings

, (a) In order to provide general and uniform policies on land use and development to municipal, regional, and state governmental agencies, for their guidance and consideration, and to provide the basis for the Vermont land use plan to be adopted under section 6043 of Title 10, the general assembly hereby finds and declares as follows:

PLANNING FOR LAND USE AND ECONOMIC DEVELOPMENT

(1) THE CAPABILITY OF THE LAND

The capability of land to support development or subdivision provides a foundation for judgment of whether a proposal of development or subdivision is consistent with policies designed to make reasonable use of the state's resources and to minimize waste or destruction of irreplaceable values. Accordingly, such information regarding the physical characteristics of land as is found in the interim land capability and development plan adopted under section 6041 of Title 10, and as may hereafter be adopted as a rule of the environmental board, shall be considered a part of this capability and development plan.

(2) UTILIZATION OF NATURAL RESOURCES

Products of the land and the stone and minerals under the land, as well as the beauty of our landscape are principal natural resources of the state. Preservation of the agricultural and forest productivity of the land, and the economic viability of agricultural funits, conservation of the recreational opportunity afforded by the state's hills, forests, streams and lakes, wise use of the state's non-renewable earth and mineral reserves, and protection of the beauty of the landscape are matters of public good. Uses which

threaten or significantly inhibit these resources should be permitted only when the public interest is clearly benefited thereby.

(3) PUBLIC AND PRIVATE CAPITAL INVESTMENT

(A) A balance of public and private capital investment determines the economic well-being of a town or region. An area of industrial, recreational, or residential growth requires highways, schools, utilities, and services the cost of which is borne in large part by others. A settled area, with a full complement of public services, needs continuing private capital investment to create a tax base to pay for the services. Increased demands for and costs of public services, such as schools, road maintenance, and fire and police protection must be considered in relation to available tax revenues and reasonable public and private capital investment. The location and rate of development must be considered, so that the revenue and capital resources of the town, region or state are not diverted from necessary and reasonably anticipated increased governmental services. Accordingly, conditions may be imposed upon the rate and location of development in order to control its impact upon the community.

(B) Consideration must be given to the consequences of growth and development for the region and the state as well as for the community in which it takes place. An activity or project that imposes burdens or deprivations on other communities or the state as a whole cannot be justified on the basis of local bene-

fit alone.

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(4) PLANNING FOR GROWTH

- (A) Strip development along highways and scattered residential development not related to community centers cause increased cost of government, congestion of highways, the loss of prime agricultural lands, overtaxing of town roads and services and economic or social decline in the traditional community center.
- (B) Provision should be made for the renovation of village and town centers for commercial and industrial development, where feasible, and location of residential and other development off the main highways near the village center on land which is other than primary agricultural soil.
- (C) Planning at all levels should provide for the development and allocation of lands and resources of existing cities, towns, and villages generally in proportion to their existing sizes as related to distribution state-wide and a projection of the reasonably ex-

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pected population increase and economic growth, unless a community, through duly adopted plans, makes the determination that it desires and has the ability to accommodate more rapid

growth.

(D) Consistent with all other policies and criteria set forth in this act, development as defined in section 6001 of this chapter in areas which are not natural resources as referred to in paragraph (9) of this section should be permitted at reasonable population densities and reasonable rates of growth, with emphasis on cluster planning and new community planning designed to economize on the costs of roads, utilities and land usage.

(5) SEASONAL HOME DEVELOPMENT

Seasonal homes not only are convertible to permanent homes out are often so converted and may require increased municipal and public services. There should, therefore, be imposed such conditions upon a seasonal home development or subdivision as should be imposed upon a permanent residential development or subdivision.

(6) GENERAL POLICIES FOR ECONOMIC DEVELOPMENT

- (A) In order to achieve a strong economy that provides satisiying and rewarding job and investment opportunities and suffiient income to meet the needs and aspirations of the citizens of fermont, economic development should be pursued selectively so as o provide maximum economic benefit with minimal environmental mpact.
- (B) Any effort which directly or indirectly accelerates ecoiomic growth should be consistent with local, regional and state bjectives.
- (C) One of the long-range benefits to the community of comnercial and industrial development should be to provide stable imployment opportunities at all economic levels, particularly for dermont's unemployed and underemployed.

(7) SPECIFIC AREAS FOR RESOURCE DEVELOPMENT

The flow of cash into Vermont to pay for goods manufactured a the state, grown in the state, or mined and quarried in the state, and to pay for services offered in the state to out-of-staters is of rimary importance to the state's economy. Enterprises adding he greatest value by conversion of native raw materials or the roducts of the land are particularly beneficial to the public insrest.

(8) PLANNING FOR HOUSING

No. 857

- (A) Opportunity for decent housing is a basic need of all Vermont's citizens. A decent home in a suitable living environment is a necessary element for protecting the health, safety, and general welfare of the public. The housing requirement for Vermont's expanding resident population, particularly for those citizens of low or moderate income, must be met by the construction of new housing units and the rehabilitation of existing substandard dwellings. It is in the public interest that new or rehabilitated housing should be: safe and sanitary; available in adequate supply to meet the requirements of all Vermont's residents; located conveniently to employment and commercial centers; and, coordinated with the provision of necessary public facilities and utilities and consistent with municipal and regional plans.
- (B) Sites for multi-family and manufactured housing should be readily available in locations not inferior to those generally used for single-family conventional dwellings.
- (C) There should be a reasonable diversity of housing types and choice between rental and ownership for all citizens in a variety of locations suitable for residential development and convenient to employment and commercial centers.

RESOURCE USE AND CONSERVATION

(9) NATURAL RESOURCES SPECIFICALLY PROVIDED FOR Those natural resources referred to in section 6086(a) (1) (A) "Headwaters", (B) "Waste disposal", (C) "Water conservation", (D) "Floodplains", (E) "Watercourses", and (F) "Shorelines", and section 6086(a) (8) (A) "Wildlife habitat and endangered species", and section 6086(a) (9) (B) "Primary agricultural soils", (C) "Forests and secondary agricultural soils", (D) "Earth resources", (E) "Extraction of earth resources", and (K) "Development affecting public investments" should be planned for development and use under the principles of environmental conservation set forth in those sections.

(10) RECREATIONAL RESOURCES

(A) The use and development of land and waters should occur in such a way as not to significantly diminish the value and availability of outdoor recreational activities to the people of Vermont, including hunting, fishing, hiking, canoeing and boating, skiing, horseback riding, snowmobiling, and other outdoor recreational activities.

(B) The effects of development and subdivision on availability of and access to lands which provide opportunities for outdoor recreation should be considered, and such availability or access should be provided for where feasible.

(11) SPECIAL AREAS

Lands that include or are adjacent to sites or areas of historical, educational, cultural, scientific, architectural or archeological value, including those designated by the rules of the environmental board, should only be developed in a manner that will not significantly reduce that value of the site or area. Sites or areas which are in danger of destruction should be placed in whatever form of public or private ownership that would best maintain and utilize their value to the public.

(12) SCENIC RESOURCES

The use and development of lands and waters should not significantly detract from recognized scenic resources including river corridors, scenic highways and roads, and scenic views. Accordingly conditions may be imposed on development in order to control unreasonable or unnecessary adverse effects upon scenic resources.

(13) CONSERVATION OF ENERGY

Energy conversion and utilization depletes a limited resource, and produces wastes harmful to the environment, while facilitating our economy and satisfying human needs essential to life. Energy conservation should be actively encouraged and wasteful practices discouraged.

(14) TAXATION OF LAND

Land should be appraised and assessed for tax purposes on the use of the land consistent with this act and any other state or local law or regulation affecting current or prospective use of land.

GOVERNMENT FACILITIES AND PUBLIC UTILITIES

⇒ (15) PLANNING FOR GROWTH

The development and provision of governmental and public utility facilities and services should be based upon a projection of reasonably expected population increase and economic growth, and

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should recognize the limits of the state's human, financial, and natural resources.

(16) PUBLIC FACILITIES OR SERVICES ADJOINING AGRI-CULTURAL OR FORESTRY LANDS

The construction, expansion or provision of public facilities and services should not significantly reduce the resource value of adjoining agricultural or forestry lands unless there is no feasible and prudent alternative, and the facility or service has been planned to minimize its effect on the adjoining lands.

(17) PLANNING FOR TRANSPORTATION AND UTILITY CORRIDORS

The development and expansion of governmental and public utility facilities and services should occur within highway or public utility rights-of-way corridors in order to reduce adverse physical and visual impact on the landscape and achieve greater efficiency in the expenditure of public funds.

(18) TRANSPORTATION SYSTEMS

Safe, convenient and economical transportation is essential to the people and economy of Vermont and should be planned so as to conform to and further the purposes of this act. Highway, air, rail and other means of transportation should be mutually supportive, balanced and integrated. The transportation system should provide convenience and service which are commensurate with need and should respect the integrity of the natural environment. New construction or major reconstruction of roads and highways should provide paths, tracks or areas solely for use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest.

(19) PLANNING FOR WASTE DISPOSAL

Development which is responsible for unique or large amounts of waste should be permitted only if it can be demonstrated that available methods will allow the environment to satisfactorily assimilate the waste and that the public can finance the disposal method without assuming an unreasonable economic burden.

Sec. 8. 10 V.S.A. § 6001 is amended to read:

§ 6001. Definitions

When used in this chapter;

(1) "Board" means the environmental board.

COMMISSION ON ACT 250: THE NEXT 50 YEARS THE ACT 250 CRITERIA

(subject matter of each criterion is bolded for illustrative purposes)
Office of Legislative Council Oct. 24, 2018

10 V.S.A. § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

- (a) Before granting a permit, the District Commission shall find that the subdivision or development:
- (1) Will not result in **undue water or air pollution**. In making this determination it shall at least consider: the elevation of land above sea level; and in relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable Health and Environmental Conservation Department regulations.
- (A) **Headwaters**. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable Health and Environmental Conservation Department regulation regarding reduction of the quality of the ground or surface waters flowing through or upon lands which are not devoted to intensive development, and which lands are:
 - (i) headwaters of watersheds characterized by steep slopes and shallow soils; or
 - (ii) drainage areas of 20 square miles or less; or
 - (iii) above 1,500 feet elevation; or
- (iv) watersheds of public water supplies designated by the Agency of Natural Resources; or
 - (v) areas supplying significant amounts of recharge waters to aquifers.
- (B) **Waste disposal**. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable Health and Environmental Conservation Department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells.
- (C) **Water conservation**. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the design has considered water conservation, incorporates multiple use or recycling where technically and economically practical, utilizes the best available technology for such applications, and provides for continued efficient operation of these systems.
- (D) **Floodways**. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria:
- (i) the development or subdivision of lands within a floodway will not restrict or divert the flow of flood waters, and endanger the health, safety and welfare of the public or of riparian owners during flooding; and
- (ii) the development or subdivision of lands within a floodway fringe will not significantly increase the peak discharge of the river or stream within or downstream from the area of development and endanger the health, safety, or welfare of the public or riparian owners during flooding.
- (E) **Streams**. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision of lands on or

adjacent to the banks of a stream will, whenever feasible, maintain the natural condition of the stream, and will not endanger the health, safety, or welfare of the public or of adjoining landowners.

- (F) **Shorelines**. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other criteria, the development or subdivision of shorelines must of necessity be located on a shoreline in order to fulfill the purpose of the development or subdivision, and the development or subdivision will, insofar as possible and reasonable in light of its purpose:
 - (i) retain the shoreline and the waters in their natural condition;
- (ii) allow continued access to the waters and the recreational opportunities provided by the waters;
- (iii) retain or provide vegetation which will screen the development or subdivision from the waters; and
 - (iv) stabilize the bank from erosion, as necessary, with vegetation cover.
- (G) **Wetlands**. A permit will be granted whenever it is demonstrated by the applicant, in addition to other criteria, that the development or subdivision will not violate the rules of the Secretary of Natural Resources, as adopted under chapter 37 of this title, relating to significant wetlands.
- (2) Does have **sufficient water available** for the reasonably foreseeable needs of the subdivision or development.
- (3) Will not cause an unreasonable **burden on an existing water supply**, if one is to be utilized.
- (4) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
- (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.
- (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 District 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.
- (6) Will not cause an unreasonable burden on the ability of a municipality to provide **educational services**.
- (7) Will not place an unreasonable burden on the ability of the local governments to provide **municipal or governmental services**.
- (8) Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.
- (A) **Necessary wildlife habitat and endangered species**. A permit will not be granted if it is demonstrated by any party opposing the applicant that a development or subdivision will destroy or significantly imperil necessary wildlife habitat or any endangered species; and
- (i) the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision will not outweigh the economic, environmental, or recreational loss to the public from the destruction or imperilment of the habitat or species; or

- (ii) all feasible and reasonable means of preventing or lessening the destruction, diminution, or imperilment of the habitat or species have not been or will not continue to be applied; or
- (iii) a reasonably acceptable alternative site is owned or controlled by the applicant which would allow the development or subdivision to fulfill its intended purpose.
- (9) Is in conformance with a duly adopted **capability and development plan**, and land use plan when adopted. However, the legislative findings of subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria in the consideration of applications by a District Commission.
- (A) Impact of growth. In considering an application, the District Commission shall take into consideration the growth in population experienced by the town and region in question and whether or not the proposed development would significantly affect their existing and potential financial capacity to reasonably accommodate both the total growth and the rate of growth otherwise expected for the town and region and the total growth and rate of growth which would result from the development if approved. After considering anticipated costs for education, highway access and maintenance, sewage disposal, water supply, police and fire services, and other factors relating to the public health, safety, and welfare, the District Commission shall impose conditions which prevent undue burden upon the town and region in accommodating growth caused by the proposed development or subdivision. Notwithstanding section 6088 of this title, the burden of proof that proposed development will significantly affect existing or potential financial capacity of the town and region to accommodate such growth is upon any party opposing an application, excepting however, where the town has a duly adopted capital improvement program the burden shall be on the applicant.
- (B) **Primary agricultural soils**. A permit will be granted for the development or subdivision of primary agricultural soils only when it is demonstrated by the applicant that, in addition to all other applicable criteria, either, the subdivision or development will not result in any reduction in the agricultural potential of the primary agricultural soils; or:
- (i) the development or subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential;
- (ii) except in the case of an application for a project located in a designated area listed in subdivision 6093(a)(1) of this title, there are no lands other than primary agricultural soils owned or controlled by the applicant which are reasonably suited to the purpose of the development or subdivision;
- (iii) except in the case of an application for a project located in a designated area listed in subdivision 6093(a)(1) of this title, the subdivision or development 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
- (iv) suitable mitigation will be provided for any reduction in the agricultural potential of the primary agricultural soils caused by the development or subdivision, in accordance with section 6093 of this title and rules adopted by the Natural Resources Board.
- (C) **Productive forest soils**. A permit will be granted for the development or subdivision of productive forest soils only when it is demonstrated by the applicant that, in

addition to all other applicable criteria, either, the subdivision or development will not result in any reduction in the potential of those soils for commercial forestry; or:

- (i) the development or subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential; and
- (ii) 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
- (iii) 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.
- (D) **Earth resources**. A permit will be granted whenever it is demonstrated by the applicant, in addition to all other applicable criteria, that the development or subdivision of lands with high potential for extraction of mineral or earth resources, will not prevent or significantly interfere with the subsequent extraction or processing of the mineral or earth resources.
- (E) **Extraction of earth resources**. A permit will be granted for the extraction or processing of mineral and earth resources, including fissionable source material:
- (i) When it is demonstrated by the applicant that, in addition to all other applicable criteria, the extraction or processing operation and the disposal of waste will not have an unduly harmful impact upon the environment or surrounding land uses and development; and
- (ii) Upon approval by the District Commission of a site rehabilitation plan that ensures that upon completion of the extracting or processing operation the site will be left by the applicant in a condition suited for an approved alternative use or development. A permit will not be granted for the recovery or extraction of mineral or earth resources from beneath natural water bodies or impoundments within the State, except that gravel, silt, and sediment may be removed pursuant to the rules of the Agency of Natural Resources, and natural gas and oil may be removed pursuant to the rules of the Natural Gas and Oil Resources Board.
- (F) **Energy conservation**. A permit will be granted when it has been demonstrated by the applicant that, in addition to all other applicable criteria, the planning and design of the subdivision or development reflect the principles of energy conservation, including reduction of greenhouse gas emissions from the use of energy, and incorporate the best available technology for efficient use or recovery of energy. An applicant seeking an affirmative finding under this criterion shall provide evidence that the subdivision or development complies with the applicable building energy standards under 30 V.S.A. § 51 or 53.
- (G) **Private utility services**. A permit will be granted for a development or subdivision which relies on privately owned utility services or facilities, including central sewage or water facilities and roads, whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the privately owned utility services or facilities are in conformity with a capital program or plan of the municipality involved, or adequate surety is provided to the municipality and conditioned to protect the municipality in the event that the municipality is required to assume the responsibility for the services or facilities.
- (H) **Costs of scattered development**. The District Commission will grant a permit for a development or subdivision which is not physically contiguous to an existing settlement whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs

of public services and facilities caused directly or indirectly by the proposed development or subdivision do not outweigh the tax revenue and other public benefits of the development or subdivision such as increased employment opportunities or the provision of needed and balanced housing accessible to existing or planned employment centers.

- (J) **Public utility services**. A permit will be granted for a development or subdivision whenever it is demonstrated that, in addition to all other applicable criteria, necessary supportive governmental and public utility facilities and services are available or will be available when the development is completed under a duly adopted capital program or plan, an excessive or uneconomic demand will not be placed on such facilities and services, and the provision of such facilities and services has been planned on the basis of a projection of reasonable population increase and economic growth.
- (K) **Development affecting public investments**. A permit will be granted for the development or subdivision of lands adjacent to governmental and public utility facilities, services, and lands, including highways, airports, waste disposal facilities, office and maintenance buildings, fire and police stations, universities, schools, hospitals, prisons, jails, electric generating and transmission facilities, oil and gas pipe lines, parks, hiking trails and forest and game lands, when it is demonstrated that, in addition to all other applicable criteria, the development or subdivision will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the facility, service, or lands.
- (L) **Settlement patterns**. To promote Vermont's historic settlement pattern of compact village and urban centers separated by rural countryside, a permit will be granted for a development or subdivision outside an existing settlement when it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision:
- (i) will make efficient use of land, energy, roads, utilities, and other supporting infrastructure; and
- (ii)(I) will not contribute to a pattern of strip development along public highways; or (II) if the development or subdivision will be confined to an area that already constitutes strip development, will incorporate infill as defined in 24 V.S.A. § 2791 and is designed to reasonably minimize the characteristics listed in the definition of strip development under subdivision 6001(36) of this title.
- (10) Is in conformance with any **duly adopted local or regional plan or capital program** under 24 V.S.A. chapter 117. In making this finding, if the District Commission finds applicable provisions of the town plan to be ambiguous, the District Commission, for interpretive purposes, shall consider bylaws, but only to the extent that they implement and are consistent with those provisions, and need not consider any other evidence.

* * *



REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

General Assembly Commission on Act 250: the Next 50 Years

MINUTES - SEP. 20, 2017

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), Sec. 2(d), the Office of Legislative Council convened a meeting of the Commission on Act 250: the Next 50 Years (Commission) on Wednesday, September 20, 2017, at 10:00 A.M. in Room 11 of the State House in Montpelier.

Commission members present

Rep. David Deen Rep. Paul Lefebvre Rep. Amy Sheldon Sen. Brian Campion Sen. Dick McCormack Sen. Christopher A. Pearson

Advisors to the Commission or designees of advisors present

Ted Brady, Deputy Secretary, ACCD Elizabeth Courtney Peter Gregory, Two Rivers Karen Horn, VLCT Tom Little, Chair, District 4 Commission Julie Moore, Secretary, ANR Sharon Murray, VPA Diane Snelling, Chair, NRB Brian Shupe, VNRC Gerry Tarrant, VBA

Staff present

Aaron Adler Charlene Dindo Legislative Counsel Committee Assistant

The Commission conducted elections of officers. Sen. Campion nominated Rep. Sheldon to be Chair. On motion of Rep. Deen, the Commission unanimously voted to close the nominations and to elect Rep. Sheldon as Chair. Rep. Sheldon commenced to preside over the meeting.

Sen. Campion nominated Sen. Pearson to be Vice Chair. On motion of Rep. Deen, the Commission unanimously voted to close the nominations and to elect Sen. Pearson as Vice Chair.

The Commission discussed whether to make adjustments to the agenda. On motion of Sen. Pearson, the Commission unanimously voted to adjust the agenda to hear, following a review of its charge, a status report from Natural Resources Board (NRB) Chair Snelling on the work of the Executive Branch working group described in Act 47, Sec. 1(c).

Rep. Sheldon asked if there were any members of the public present who wished to be heard during the public comment portion of the agenda. There were no affirmative responses.

Counsel Adler reviewed the Commission's charge as set forth in Act 47 and answered questions from the Commission.

Chair Snelling provided a status report on the work of the Executive Branch working group described in Act 47, Sec. 1(c) and indicated that the group would be prepared to present to the Commission in October. Chair Snelling also answered questions from the Commission.

The Commission discussed its future process, including implementing the charge; setting up its review of the Act 250 statute, its implementation, and history; and scheduling of future meetings. The Commission requested and heard suggestions from the advisors present, including Ms. Courtney, Mr. Little, Chair Snelling, Mr. Shupe, and Mr. Tarrant.

The Commission set two meeting dates and will work with staff on setting one or more additional dates prior to the 2018 session. The two dates chosen were October 25 and November 15, 2017.

Rep. Sheldon asked again if there were any members of the public present who wished to be heard and received no affirmative responses.

On motion of Sen. Campion, the Commission unanimously voted to adjourn.

The next currently scheduled meeting of the Commission is on October 25, 2017, starting at 10:00 A.M. in Room 11 of the State House in Montpelier.

Respectfully submitted,

Aaron Adler Legislative Counsel



REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

STATE OF VERMONT General Assembly

Commission on Act 250: the Next 50 Years

MINUTES - OCT. 25, 2017

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), the Commission on Act 250: the Next 50 Years (Commission) convened on Wednesday, October 25, 2017, at 10:00 A.M. in Room 11 of the State House in Montpelier.

Commission members present

Rep. Amy Sheldon, Chair

Rep. David Deen

Rep. Paul Lefebvre

Sen. Christopher A. Pearson, Vice Chair

Sen. Brian Campion

Sen. Dick McCormack

Advisors to the Commission or designees of advisors present

Elizabeth Courtney Joe Flynn, Secretary, AOT Peter Gregory, Two Rivers William Keeton, UVM Julie Moore, Secretary, ANR Sharon Murray, VPA

Ernest Pomerleau, Pomerleau Real Estate Michael Schirling, Secretary, ACCD Brian Shupe, VNRC Diane Snelling, Chair, NRB Gerry Tarrant, VBA Anson Tebbets, Secretary, AAFM

Staff present

Aaron Adler Faith Brown Legislative Counsel Committee Assistant

Chair Rep. Sheldon noted that, although not required, minutes are being kept of the Commission's meetings. Since they are not required, the Commission will not act on them.

The Commission heard from the following witnesses regarding a history and overview of Act 250 and land use planning in Vermont: Mr. Adler; Chair Snelling and Greg Boulbol, General Counsel, Natural Resources Board; and Ms. Murray.

The Commission next heard testimony on a report from an executive branch working group on Act 250. Chair Snelling and Secretary Moore overviewed the report and William Coster, Director of Planning for the Agency of Natural Resources (ANR), provided more detailed testimony on the report and answered questions. Secretaries Flynn, Schirling and

Tebbetts were also present for this testimony. Commission members requested the following in response to the testimony:

- Analysis of whether the exemption of farming from Act 250 contributed to lake pollution
- Information from the Governor's Climate Action Commission on the question of updating Act 250 to address climate change
- Examples of and statistics on alleged misuse of the Act 250 process by competitors of proposed projects
- Examples of and statistics on "tactical appeals"
- More information on the concept of "resource-based" jurisdiction for Act 250
- Analysis of moving the regulation of wind turbines on ridgelines from the Public Utility Commission to Act 250

The Commission then discussed presentations by the Advisors to be made at the next meeting, including what the presentations might address and how the meeting would be structured. Several of the Advisors made suggestions. Rep. Sheldon indicated that she would confer with Vice Chair Pearson following the meeting and more specific direction would be provided to the Advisors.

The Commission heard public comment from the following witnesses: Bruce Post, A.J. Wasserman, and Lyle Jepson.

The Commission adjourned at approximately 3:45 p.m. The next meeting of the Commission is on November 15, 2017, starting at 10:00 a.m. in Room 11 of the State House in Montpelier.

Respectfully submitted,

Aaron Adler Legislative Counsel



REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

General Assembly
Commission on Act 250:
the Next 50 Years

MINUTES – NOV. 15, 2017

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), the Commission on Act 250: the Next 50 Years (Commission) convened on Wednesday, November 15, 2017, at 10:00 A.M. in Room 11 of the State House in Montpelier.

Commission members present

Rep. Amy Sheldon, Chair

Rep. David Deen Rep. Paul Lefebvre Sen. Christopher A. Pearson, Vice Chair

Sen. Brian Campion Sen. Dick McCormack

Advisors to the Commission or designees of advisors present

Peter Gregory, Two Rivers Karen Horn, VLCT Tom Little, Chair, District No. 4 Commission Sharon Murray, VPA

Ernest Pomerleau, Pomerleau Real Estate Brian Shupe, VNRC Diane Snelling, Chair, NRB Gerry Tarrant, VBA

Staff present

Aaron Adler Faith Brown

Legislative Counsel Committee Assistant

Pursuant to Act 47, Sec. 2(d)(1)(B)(v), the Commission provided an opportunity for the advisors an opportunity to provide relevant information as part of its preliminary meeting phase. The Commission heard from the following advisors: Mr. Shupe, Mr. Gregory, Mr. Pomerleau, Ms. Horn, Mr. Tarrant, Ms. Murray, Chair Snelling, and Chair Little.

The Commission heard public comment from the following witnesses: James Dumont, Esq. and Tim Taylor, Chair of the District No. 3 Commission.

The Commission then discussed the agenda for its meeting of December 13, 2017, which will start at 10 a.m. in Room 11 of the State House in Montpelier. The Commission adjourned at approximately 4 p.m.

Respectfully submitted,

Aaron Adler, Legislative Counsel



REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

General Assembly
Commission on Act 250:
the Next 50 Years

MINUTES - DEC. 13, 2017

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), the Commission on Act 250: the Next 50 Years (Commission) convened on Wednesday, December 13, 2017, at 10:00 A.M. in Room 11 of the State House in Montpelier.

Commission members present

Rep. Amy Sheldon, Chair Rep. David Deen Sen. Christopher A. Pearson, Vice Chair Sen. Brian Campion Sen. Dick McCormack

Advisors to the Commission or designees of advisors present

Elizabeth Courtney
Peter Gregory, Two Rivers
Karen Horn, VLCT
Tom Little, Chair, District No. 4 Commission
Julie Moore, Secretary, ANR
Sharon Murray, VPA

Ernest Pomerleau, Pomerleau Real Estate Brian Shupe, VNRC Diane Snelling, Chair, NRB Gerry Tarrant, VBA Anson Tebbets, Secretary, AAFM

Staff present

Aaron Adler Faith Brown Legislative Counsel Committee Assistant

Continuing the opportunity for the advisors to be heard pursuant to Sec. 2(d)(1)(B)(v) of Act 47, the Commission began with testimony from Ms. Courtney, who had not been able to testify at the meeting of November 15, 2017.

In preparation for the second phase of its charge (public engagement), the Commission then heard from witnesses on conduct public engagement processes. Susan Clark testified on the subject generally. Chair Snelling testified on the public outreach conducted with respect to legislation on shorelands permitting. Louis Porter, Commissioner, and Mark Scott, Director of Wildlife, both of the Department of Fish and Wildlife, testified on public processes conducted by that Department.

The Commission discussed how to conduct the public engagement process required by Act 47. On motion of Vice-Chair Pearson, the Commission unanimously voted to request,

pursuant to Sec. 3 of Act 47, to request that the Office of Legislative Council retain professional assistance. The Chair and Vice-Chair will work with the Office to create a scope of work for review by the Commission.

The Commission heard testimony from State agencies in response to questions from the Commission at its prior meetings. Witnesses included:

- Chris Cochran and Dale Azaria of the Agency of Commerce and Community Development on state designation programs under 24 V.S.A. chapter 76A
- Billy Coster of the Agency of Natural Resources on the concept of resource-based jurisdiction, the relationship between Act 250 and other State permits, and the issue of moving jurisdiction over wind turbine siting from the Public Utility Commission to Act 250.
- Peter Walke of the Agency of Natural Resources on the Governor's Climate Action Commission.
- Secretary Tebbets and Stephanie Smith of the Agency of Agriculture, Food and Markets on the agricultural exemption from Act 250. Ms. Smith also testified on accessory agricultural enterprises.
- Commissioner Michael Snyder and Deputy Commissioner Sam Lincoln of the Department of Forests, Parks and Recreation on issues relating to Act 250, forest products, and rural economic development.
- Peter Gill of the Natural Resources Board on Act 250 appeals and the issue of "tactical" appeals.

The Commission provided an opportunity for the advisors to respond to the agencies and heard testimony from Ms. Horn, Mr. Little, Mr. Pomerleau, and Mr. Shupe.

The Commission heard public comment from the following witnesses: Justina Gregory and Susan Kelly.

The Commission adjourned at approximately 4 p.m.

Respectfully submitted,

Aaron Adler, Legislative Counsel



REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

General Assembly
Commission on Act 250:
the Next 50 Years

MINUTES - JAN. 18, 2018

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), the Commission on Act 250: the Next 50 Years (Commission) convened on Thursday, January 18, 2018, at 8:00 A.M. in Room 10 of the State House in Montpelier.

Commission members present

Rep. Amy Sheldon, Chair

Rep. David Deen

Rep. Paul Lefebvre

Sen. Christopher A. Pearson, Vice Chair

Sen. Brian Campion

Sen. Richard McCormack

Advisors to the Commission or designees of advisors present

Peter Gregory, Two Rivers Sharon Murray, VPA

Diane Snelling, Chair, NRB Gerry Tarrant, VBA

Staff present

Aaron Adler Faith Brown Legislative Counsel Committee Assistant

The Commission discussed the following:

- A draft request for proposals (RFP) for professional assistance in the public engagement process. Commission members provided suggestions. The Chair and Vice Chair will finalize the RFP working with staff.
- The formation of subcommittees on various issues within the Commission's charge to inform the public engagement process and the Commission's deliberations. Commission members and advisors provided suggestions. The Chair and Vice Chair will finalize the subcommittees, including their structure and charge.

Respectfully submitted,

Aaron Adler, Legislative Counsel

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REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

General Assembly
Commission on Act 250:
the Next 50 Years

MINUTES - MARCH 14, 2018

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), the Commission on Act 250: the Next 50 Years (Commission) convened on Wednesday, March 14, 2018, at 5:15 P.M. in the Legislative Council conference room in the State House in Montpelier.

Commission members present

Rep. Amy Sheldon, Chair Rep. Paul Lefebvre

Sen. Christopher A. Pearson, Vice Chair Sen. Richard McCormack

Staff present

Aaron Adler Faith Brown Legislative Counsel Committee Assistant

On motion of Vice Chair Sen. Pearson, the Commission unanimously voted to go into executive session to discuss the contract proposals submitted in response to the Commission's request for proposals for assistance with the public engagement process under Act 47. Public disclosure would place the Commission at a substantial disadvantage.

After discussion, the Commission, on motion of Sen. Pearson, voted unanimously to exit executive session. On motion of Sen. McCormack, the Commission then voted unanimously that a group of Commission members will interview potential contractors.

The Commission adjourned at approximately 5:45 p.m.

Respectfully submitted,

Aaron Adler Legislative Counsel



REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

STATE OF VERMONT General Assembly Commission on Act 250: the Next 50 Years

MINUTES - APRIL 19, 2018

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), the Commission on Act 250: the Next 50 Years (Commission) convened on Thursday, April 19, 2018, at noon in Room 8 at the State House in Montpelier.

Commission members present

Rep. Amy Sheldon, Chair

Sen. Brian Campion

Rep. Paul Lefebvre

Sen. Christopher A. Pearson, Vice Chair

Rep. David Deen

Sen. Richard McCormack

Advisors to the Commission or designees of advisors present

Dale Azaria, ACCD

Diane Snelling, Chair, NRB

Billy Coster, ANR

Staff present

Aaron Adler Faith Brown Legislative Counsel Committee Assistant

Others present

Paul Dickin, Cope and Associates

The Commission met with Mr. Dickin of Cope and Associates, which has been retained pursuant to Act 47 to assist the Commission with its public engagement process. Development of outreach plan was discussed.

Rep. Sheldon noted that reports from the subcommittees are due by April 30, 2018.

The Commission adjourned at approximately 1:00 p.m.

Respectfully submitted,

Aaron Adler Legislative Counsel

115 STATE STREET MONTPELIER, VT 05633 TEL: (802) 828-2228

FAX: (802) 828-2424

REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

STATE OF VERMONT General Assembly Commission on Act 250: the Next 50 Years

MINUTES - MAY 18, 2018

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), Chair Rep. Sheldon convened the Commission on Act 250: the Next 50 Years (Commission) convened on Friday, May 18, 2018, at 10 a.m. in the Ethan Allen Room at the State House in Montpelier. A quorum of the Commission was not physically present. The Commission discussed topics and took no actions.

Commission members present

Commission members on phone

Rep. Amy Sheldon, Chair Sen. Christopher A. Pearson, Vice Chair Rep. Paul Lefebvre

Sen. Brian Campion Rep. David Deen Sen. Richard McCormack

Advisors to the Commission or designees of advisors present

Diane Snelling, Chair, NRB

Staff present

Mike Ferrant, Deputy Director for Operations

Others present

Paul Dickin and Leah Schulz, Cope and Associates Greg Boulbol, General Counsel, NRB

Mr. Dickin of Cope and Associates walked the Commission through a document regarding the outreach plan for the public engagement process. The Committee's discussion included the following:

- Sen. McCormack recommended that, for each meeting, the agenda be posted online and a press release be issued.
- Sen. Pearson recommended including, under the "Vehicles" heading in the document, legislative leadership, the advisors to the Commission, the Vermont League of Cities and Towns and other interested parties.
- The potential involvement of the Governor, including the preparation of a draft letter to invite the Governor's participation.

- The importance of working with regional planning commissions in areas that are not hosting meetings.
- The possible creation of an external website for the public engagement process to which there is a link on the Commission website.
- The preparation of materials for the public engagement process and the role of the subcommittees.

The Commission also discussed scheduling, including the following tentative schedule for the public engagement process:

5/25/18 - circulate "kickoff" materials for review, by e-mail

6/07/18 – "kickoff" of public engagement process

6/15/18 – Commission meeting at State House

6/27/18 - first public engagement meeting, in Springfield led by Rep. Deen

7/11/18 – second public engagement meeting, in Manchester led by Sen. Campion

7/25/18 – third public engagement meeting, in Randolph led by Sen. McCormack

8/22/18 – fourth public engagement meeting, in the Northeast Kingdom led by Rep. Lefebvre

9/05/18 – fifth public engagement meeting, in Rutland led by Rep. Sheldon

9/12/18 – sixth public engagement meeting, in Chittenden County lead by Sen. Pearson

The Commission adjourned at approximately 12:00 p.m.

Respectfully submitted,

Aaron Adler Legislative Counsel¹

¹ These minutes are prepared based on information received.



REP. AMY SHELDON, CHAIR
SEN. CHRISTOPHER A. PEARSON, VICE
CHAIR
SEN. BRIAN CAMPION
REP. DAVID L. DEEN
REP. PAUL LEFEBVRE
SEN. DICK MCCORMACK

STATE OF VERMONT

General Assembly Commission on Act 250: the Next 50 Years

MINUTES - June 15, 2018

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), Chair Rep. Sheldon convened the Commission on Act 250: the Next 50 Years (Commission) on Friday, June 15, 2018, at 10 a.m. in the Ethan Allen Room at the State House in Montpelier.

Commission members present

Rep. Amy Sheldon, Chair

Sen. Brian Campion

Rep. Paul Lefebvre

Sen. Christopher A. Pearson, Vice Chair

Rep. David Deen

Sen. Richard McCormack

Advisors to the Commission or designees of advisors present

Diane Snelling, Chair, NRB

Dale Azaria, ACCD

Billy Coster, ANR

Staff present

Aaron Adler, Legislative Counsel Mike Ferrant, Deputy Director for Operations

Others present

Paula Cope, Paul Dickin, and Olivia Machanic, Cope and Associates Donna Barlow-Casey and Alexandra Pastor, both of the NRB John Brabant, Vermonters for a Clean Environment Bruce Post

Ms. Cope, Mr. Dickin, and Ms. Machanic presented a draft agenda and materials for the public engagement forums to occur this summer. Commission members asked questions, discussed, and provided feedback on the agenda and materials. Chair Snelling and Messrs. Brabant and Post also provided comments during the meeting.

The Commission directed that materials be redrafted and submitted for further review by the close of business on Monday, June 18, 2018. The Commission agreed to meet again on this topic at noon on Tuesday, June 19, 2018.

The Commission adjourned at approximately 12:00 p.m.

Respectfully submitted,

Aaron Adler Legislative Counsel



REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

STATE OF VERMONT

General Assembly Commission on Act 250: the Next 50 Years

MINUTES - June 27, 2018

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), Rep. David Deen convened the Commission on Act 250: the Next 50 Years (Commission) on Wednesday, June 27, 2018 at 6:08 p.m. in the Nolin-Murray Center in Springfield, Vermont. The Commission conducted a public engagement forum.

Commission members present

Rep. David Deen Sen. Brian Campion Rep. Paul Lefebvre Sen. Christopher A. Pearson, Vice Chair Sen. Richard McCormack

Advisors to the Commission or designees of advisors present

Donna Barlow Casey, NRB

Billy Coster, ANR

Staff present

Rebecca Wasserman, Legislative Counsel

Others present

Paula and Nicole Cope, Dana Gulley, and Scout Precourt, all of Cope and Associates Greg Boulbol and Hannah Dean, NRB Please see attached sign-in sheets for additional attendees

The public engagement forum consisted of the following components:

- Rep. Deen played a "welcome" video from Chair Rep. Amy Sheldon and Diane Snelling, Chair of the Natural Resources Board (NRB).
- Rep. Deen presented on the purpose of the forum and on the background of Act 250.
- Ms. Casey provided an explanation of the Act 250 process.
- Ms. Cope explained the priority setting tool used by her firm, called the "Big Deal."
- Facilitators led groups of forum participants in engagement on Act 250 using that tool.

• After completing the use of the tool and a short survey, Rep. Deen answered questions from participants submitted using index cards and announced the upcoming forums and their dates.

The Commission adjourned at approximately 8:00 p.m.

Respectfully submitted,

Aaron Adler Legislative Counsel¹

enc. (sign-in sheets)

¹ These minutes are prepared based on information received.

Springfield ACT 250 Forum Welcome! PLEASE SIGN IN!

NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
Ehris Pearson	Legislature		
Brian Campaion	State Senu tor Bennington	7	
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JOHN W. SMITH	SPRINGFIED, VT		NEWS PAPER
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Robert Kischko	Springfield	Engineer	Paper - Facebook
Fredda Kerchko	"		online
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Springfield ACT 250 Forum Welcome! PLEASE SIGN IN!

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Christopher Olsen	Dimmerston	Farner	Dunnerston Conservation Commission
Brian Shad	Waterall	VNRC	*
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Alyssa Sabello	WRC	Plenner	Confrere
TODD NEVERS	PLYMONTH	ENGWEER	VT 1266Er
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Springfield ACT 250 Forum Welcome! PLEASE SIGN IN!

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115 STATE STREET MONTPELIER, VT 05633 TEL: (802) 828-2228

FAX: (802) 828-2424

REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

STATE OF VERMONT

General Assembly Commission on Act 250: the Next 50 Years

MINUTES - July 11, 2018

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), Sen. Brian Campion convened the Commission on Act 250: the Next 50 Years (Commission) on Wednesday, July 11, 2018, at 6:09 p.m. at the Inn at Manchester in Manchester, Vermont. The Commission conducted a public engagement forum.

Commission members present

Rep. David Deen Sen. Brian Campion

Sen. Christopher A. Pearson, Vice Chair Rep. Paul Lefebvre

Advisors to the Commission or designees of advisors present

Dale Azaria, ACCD Jon Groveman, VNRC Donna Barlow Casey, NRB

Staff present

Aaron Adler, Legislative Counsel

Others present

Paula Cope, Olivia Machanic, and Scout Precourt, all of Cope and Associates Greg Boulbol, NRB Please see attached sign-in sheets for additional attendees

The public engagement forum consisted of the following components:

- Sen. Campion played a "welcome" video from Chair Rep. Amy Sheldon and Diane Snelling, Chair of the Natural Resources Board (NRB).
- Sen. Campion presented on the purpose of the forum and on the background of Act 250.
- Ms. Casey provided an explanation of the Act 250 process.
- Ms. Cope explained the priority setting tool used by her firm, called the "Big Deal."
- Facilitators led groups of forum participants in engagement on Act 250 using that tool.

After completing the use of the tool and a short survey, Sen. Campion answered
questions from participants submitted using index cards and announced the upcoming
forums and their dates.

The Commission adjourned at approximately 8:08 p.m.

Respectfully submitted,

Aaron Adler Legislative Counsel

enc. (sign-in sheets)

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	NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?		
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5	Ruth Botzow	Powal	retired	D8 Commissione		
6	JOAN GOODRICH	BENDINGTON	consolant	D8 CHAIR		
7	Kathy Hall	Chittenden Town	ret. Teachor	newspaper		
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13	Gretchen Hambre	Wilmington, VT	Econonia Devila	D'ane Snelly		
.14	ERIK BARNES	WEST YOURR VT	VP-Gm	USAA		
15	AL SANDS	GRAFTON, VT	SPETBOARD	EMAIL		
16	BILL NUPP	Smaon, VT	MGC	VSAA		
17	JOAN MENSON	DORSET, VT	retired			
18	BOB MENSON					
19	BRUCE WHITE	DORSET VT	Logge R	NEWS		

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25	John de Bruin	MT. TABOR	TRASFIC CONTROL	MEDIA
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27	MOLLY MANAR	WANTSFIGO	VSAA	2
28	Pauline Moore	MANCHESTER	Eco Dev. Town	
29	Stanley mack	Grafton	'Select board,	
30	Tolf Cavagnino	Straton	Stration Mtu	USAA
31	LINDA Mc GINNIS	DORSET	RETIRED	NEIGHBOR
32	- A	BCRC	Planner,	
33	Greg Meulemans	Jamaica	Selfenplaced 5	JURC
34	Frank Powert	Dorset	CMI Engmoor	Falebook
35	Janet Hurley	Town of Manchester	Planning Director	a)
36	Jos Grovenan	XURC	Alfones	winh
37	laing Sibilia	- State Rop DOUR	Planning	legislator
38	and Berry	Mauchestes	Author	VNRC

Γ	NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
39	Steve Berry	Manchestes	Pastor	VNRC
40	Steve Berry KEN FREDETTE Ruth Stewart	Manchertes	RETIRED	VNRC DAVS POTTER VNRC
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115 STATE STREET MONTPELIER, VT 05633 TEL: (802) 828-2228 FAX: (802) 828-2424



REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

General Assembly
Commission on Act 250:
the Next 50 Years

MINUTES – July 25, 2018

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), Rep. David Deen convened the Commission on Act 250: the Next 50 Years (Commission) on Wednesday, July 25, 2018, at approximately 6:20 p.m. at Vermont Law School's Chase Community Center in South Royalton, Vermont. The Commission conducted a public engagement forum.

Commission members present

Rep. David Deen Sen. Brian Campion

Rep. Amy Sheldon, Chair

Advisors to the Commission or designees of advisors present

Donna Barlow Casey, NRB Peg Elmer Hough, VPA Gerry Tarrant, VBA

Peter Gregory, VAPDA Kate McCarthy, VNRC

Staff present

Aaron Adler, Legislative Counsel

Others present

Paul Dickin, Olivia Machanic, and Scout Precourt, all of Cope and Associates Greg Boulbol and Evan Meenan, NRB Please see attached sign-in sheets for additional attendees

The public engagement forum consisted of the following components:

- Rep. Deen welcomed the attendees.
- Rep. Sheldon overviewed the Commission and the tasks assigned to it.
- Mr. Boulbol, General Counsel of the Natural Resources Board (NRB), discussed Act 250 and provided data on the application process.
- Rep. Deen presented on the purpose of the forum and on the background of Act 250.
- Ms. Casey, Executive Director of the NRB, provided further explanation of the Act 250 process and discussed resources available to the public on that process.

- Mr. Dickin explained the facilitation tool used by his firm, called the "Big Deal."
- Facilitators led groups of forum participants in engagement on Act 250 using that tool.
- After completing the use of the tool and a short survey, Rep. Sheldon spoke on how the Commission will move forward and on additional opportunities for public input, including the ability to submit comments through e-mail and to complete an online survey that will be posted shortly. Ms. Precourt then overviewed the data submitted by the groups of participants.

The Commission adjourned at approximately 8:20 p.m.

Respectfully submitted,

Aaron Adler Legislative Counsel

enc. (sign-in sheets)

	T 2-		COUNTY ON	HOW DID YOU HEAD ADOUT THE APPETINGS
NAME	COI	MMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
1 Jechnette	Klobe Nor	Hyjeld VT	Ops Man.	Internet
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1 Donna to	ster sh	avon	Conservation	713
Kate Longi	ield Bu	rington	Student	TOXICS Action Center
6 Michael Shorm	en Mon	pelier	atizan	Email.
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	NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?		
20	Lathy Leonard	Randolph Ct	Ret.			
21	Tim Reiter	Bethel	Ski Area Konenger	USAA		
22	Graget Lyman	Royalton	86	Facebook		
23	Keter Condans	Montpolice	Forester,	Media		
24	MARK A. MACDUMED	Williame for	State Sanger FARMED	email		
25	JOHAU BRASANT	Calais	Environment Atherst	Wedia		
26	Thean Spuman	East Prandolph	VTRANS	VTC - VAST		
27	JARES CONFORM	いってかれらり	LCC	frac		
28	Erzosothland	Rendelph				
29	Govanna Peebles	Montpelier	Retired D	VT Dirser It high &		
30	David Mouthon	Whiting han	Director	VSAA		
31	Lanier Wherman	Kandolph	Ltrytut.	BALE		
32	David Hirmath	Royaltan	Farmer Legista	Valley News		
33	Stant Lavasseur	Royalton	State"	FB		
34	Michael Saca	Tunbridge	generalist	TURC		
35	Warren Coleman	E. Colony	Attorney	Web		
36	Edharson	Montpelier	Consul. Forester	Web		
37	Kat McCarthy	Montpolin	Land Us Plann	YNRC		
38	Mil Hussman	Waitsfield	Policy Director	VNRC		
39	Aavon Adler	Brookfreld	La. Contl	Vt. GA.		

ſ	NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
40	CHRISTI BOLLMAN	Bethel / Pittsfield ut	frewood	VEPA
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43	Geo Horiston	Roya Hon	Farner	nedia
44	Rob Apple	Montpelier	Planner	notice
45	Stephine SM72		Sov	
46	NATAUR STALL	WEST WINDSOR	ENV. CONJULTANT	E-mai)
47	Émily Ballou	S. Rayaltan	student/ reporter	Herald of Randolph (email)
48	Dee Gish	Sharon	finance ngr	TROPC
49	Beth Gilpin	waterbury	'Consultant	friend [email
50	Pac Elmer Hayen	Cabot of	retired	VPA'
SI	Tran (plassein	loyaton	COmmissac	
52	JOHNA POWERS	ROUTLIBA	?	invited by someone
53	Wick CHARK	SHARON	Renewable Energy	Online '
sy	Conden Latters	Randolph Center	Plumber/Former	Word of Mark
5.5	Dave Wilcox	Berlin	Forester	Word of Month
56	Sam Lincoln	Radolph Ctr	Boreaveret	nord of moth
57	Tto Pierce	Stockbridge	Director Non Pohit	
58	Jessica Lee	Stockbridge	Manager non profet	Online - BALE reusletter

Į	NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
59	Sharna Karper	Mantpelie/	Organize/ Toxis	uton Resear
60	Doty nawlike	90 RO	Ratired busin	
61	Frank Lamson	SO PU	Hotired-medical	Vally Henry
62	Josie Carothers	E. Randyn	wahr	
63	Mark Killey	1)	resired inguiser	of small
64	JEFF GOODPICH	MORWICH	PLANSIN/ENGINEER	jett. godriche pothwaysconsutt. co
65	Jas Smith	Warren	Farcefee	Agove Industries/VT
66	ANNE GOODRILH	porunch	Easterseal?	
57	Knosta Harns	Wordstock		
38	Scott Summarsell	Workstock		Email
9	Saut Mile	Party		
0	Keun Doern	Brasoph Center	Teacher	
n	Brenda Petrella	VVTA/AVC - Norwich	Photographen	VIVTA + AVC
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REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

General Assembly
Commission on Act 250:
the Next 50 Years

MINUTES - Aug. 22, 2018

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), Rep. Paul Lefebvre convened the Commission on Act 250: the Next 50 Years (Commission) on Wednesday, August 22, 2018, at approximately 6:10 p.m. at the American Legion post in Island Pond, Vermont. The Commission conducted a public engagement forum.

Commission members present

Rep. Paul Lefebvre

Sen. Chris Pearson, Vice-Chair

Advisors to the Commission or designees of advisors present

Chris Cochran, ACCD Jon Groveman, VNRC Gerry Tarrant, VBA

Billy Coster, ANR Diane Snelling, Chair, NRB

Staff present

Aaron Adler, Legislative Counsel

Others present

Paula Cope and Olivia Machanic, both of Cope and Associates Donna Barlow Casey and Greg Boulbol, NRB Please see attached sign-in sheets for additional attendees

The public engagement forum consisted of the following components:

- Rep. Lefebvre welcomed the attendees, overviewed the Commission and the tasks assigned to it, and presented on the forum's purpose and on the background of Act 250.
- Ms. Casey, Executive Director of the Natural Resources Board (NRB), provided information on the Act 250 program and how the application process works.
- Mr. Boulbol, General Counsel of the NRB, discussed Act 250 jurisdiction and provided statistics on the permitting process.
- Ms. Cope explained the facilitation tool used by her firm, called the "Big Deal."
- Facilitators led groups of forum participants in engagement on Act 250 using that tool.

• After completing the use of the tool and a short survey, Chair Snelling addressed the attendees, stating that the NRB is currently engaged in making procedural changes to the application process. Mr. Boulbol and Aaron Adler, Counsel to the Commission, then answered written questions.

The meeting adjourned at approximately 8:00 p.m.

Respectfully submitted,

Aaron Adler Legislative Counsel

enc. (sign-in sheets)

NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
Bruce Shields	Eden	retired forestland	1 E-mail
STEVEN PREAM	CANCORD	RETIRE CONTRACTO	R VASA MEETING
Joseph Gressen	the Charcle	reporte	
Physis Parrott	Westman	Retired	
EVENEREUD	CANAAN	TEARHER	
KirstenSultan	Ad250 Staff		Kirster. sultane vermatgor
audrey Reid	Canaan	Instructor	
Chris Fife	Wayerhaouser fours)	Forester Public Affeirs	VFPA
JAHRY FIDEL	VHIZL	FOREST PIZOGRAY	WEE
Craig Nolan	Ayevill- MT6	retired	
MINIMEL BOYLEN	NECLARK & Man (box	RETTRED	NEUSPAPER
Judy Valente	Island POND	Restired tray	VAST
Chuck + Sue Pundeh	Rsland Pond	Reduc	Jast
Ed Barber	Derby	not Daily Express	nowspaper
JOHN BRABANT	Calais	Selectuan	\ 1
Haran Adlar	Brolefre d	Legislatte Cons	d Pommission conse
SANDY REIDER	Nevark	MD	VCR_
Busan Harus	Lyndon	Small Biz	c-mail
D. JEFFREY MOONEY	FELAND POND	BUTINESS OWNER	VAST-FRIENDS

NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
WALT PROCOMED	NEWARK	RCTIAED	UAST MAGACENE
Joe Erwh	Derby	Intern/Stand	NEKTV
BIII D. CARl.	JAY	Ratinel	VAST
Kathy D. Carlo	JAY	17	VAST
Grey Ming	TA	- 1/	
Phylis Ming	IP	11	
Dan Keenan	Norton	ats	e-mail
Marty Feltus	Lyndon	legislator	newspaper
Larry Duner	Orleans	retired	VAST
The mond Rossians	Corventry	refused	VARJ
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Jim HAPS	Wesimone	Ret	Friends
GARY NOCAN	MORRISVILLE	STATE SEP	
Colleen Goodwage	Albany	Goodridg Lbrac	Vermont Forest Products Assoc
Mark Goodridge	Albany	Goodridge Lbr Inc	Verneat Forost Products
MARK Higley	LOWELL	BuiLDER	Log
Ed Larson	Mantpelier	Curs. Forester	VAPA

NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
Jim Michesun	Dorler	Retireel	Internt
Barb NolaN	UTG=	Retired	internet
CLAGRE VAN VLIET	NEWARŁ	SELF EMPLOYED	CHRONICLE
Jean Haich	Croffs bing	Consal town +	Paper
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Mancy Hette	Thewark	Photographer	enciel
RobertKennedy	WESTMONE	Retiral	INTERNET
Gaber Per Muraca	Is and Ind	Retival	email
Steven Gordia	Walden	non-profit dir	email
SM SMA JONES	Walden	farm	Girend
Joel Cope	Brighton	Almin	news paper
More AN WAR	CANADA	self	NYDA EMAIL
Row Janspuns	Westmine	Retred	FMRND
Luke OBrien	Newerk	VT FPR	emeil.
Girelle Chevallay	Newcork	Cook	friend chanicle se

NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
Brad purrell	Holland	Retired	medIT
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Claudia York	Westmore	Retired	Newspaper
El York	U	NA	news perper
Stere Larrabee.	W-Danille		
Bruce Carlson	NewArk	Retirel	Internel
8 TACEY ROESE	15 CAND POND	RETICES - VOLUMER	13
PAUL BROUGE	SUTTON	VOLUNTEER	INTERNET
John Rodgers	Glover	Senaton	Internot
Circly Locke	NEK	VAST ED	
KEN GAMMELL	NEK	VAST DIRECTOR	GOVERNER COUNSEL
Vavid Snedeker	Barton	Blanking Director	Act 250 MRB
Noveen Hession	Newark	Retired 3	
MARK WID TWOTH	NOWAK	Between	
DAWNY NAGE	Handrick	VASA BO	VASVL
JAMMY LOLE	Hondunge	Morg	VASA
Ernesta Danna Wright	Derby	Logger	Goodridge Lumber
LINUWOO MIXER	MAIDSTONE	SHOWING ILER	CT VALLY SNO-RIDGES
JAIE COVEY	ESSEX CO,	FORESTER	WEYERHAEUSER CO,

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REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

General Assembly
Commission on Act 250:
the Next 50 Years

MINUTES - Sep. 5, 2018

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), Chair Rep. Amy Sheldon convened the Commission on Act 250: the Next 50 Years (Commission) on Wednesday, September 5, 2018, at approximately 6:10 p.m. at the Franklin Conference Center in Rutland, Vermont. The Commission conducted a public engagement forum.

Commission members present

Rep. Amy Sheldon Rep. Paul Lefebvre Sen. Brian Campion

Advisors to the Commission or designees of advisors present

Peter Gregory, VAPDA Diane Snelling, Chair, NRB

Brett Long, ACCD

Staff present

Aaron Adler, Legislative Counsel

Others present

Paul Dickin, Olivia Machanic and Scout Precourt, all of Cope and Associates Donna Barlow Casey and Greg Boulbol, NRB Please see attached sign-in sheets for additional attendees

The public engagement forum consisted of the following components:

- Chair Rep. Sheldon welcomed the attendees, overviewed the Commission and the tasks assigned to it, and presented on the forum's purpose and on the background of Act 250.
- Ms. Snelling, Chair of the Natural Resources Board (NRB), provided statistics on the
 application process and spoke broadly on feedback the NRB has received from
 participants in the process and procedural changes on which the NRB is working.
- Ms. Casey, Executive Director of the NRB, provided information on the Act 250 program and how the application process works.
- Mr. Dickin explained the facilitation tool used by his firm, called the "Big Deal."

- Facilitators led groups of forum participants in engagement on Act 250 using that tool.
- After completing the use of the tool and a short survey, Rep. Sheldon addressed the attendees, encouraging them to remain involved in the process through an online survey or e-mailing comments to the Commission, or both, and to follow the Commission's progress through the available avenues on the web.

The meeting adjourned at approximately 8:00 p.m.

Respectfully submitted,

Aaron Adler Legislative Counsel

enc. (sign-in sheets)

Rutland ACT 250 Forum

Welcome! PLEAS	E SIGN	I IN
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NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
GARY JOSEPH	LUNION		PAPER
Scott Garren	Showsburg	retired	amail
MARTX ZYF	RUTLAND TOWN	1,	11
MARIC OLDIZUBURG	11 11	11	10
Beth Moser Inquette	W. Pawlet	Farm/Edu.	Newspaper Mr Ton
anne Hadek	W. Paulet		Mh Times
RAYMOND R. DU QUETTE, SA	e W. PAWLET PR	FARMER 85-RUTLAND CO. FARM	BURGAN PAPER
ED LARSON	RUZA-D CITY	Retired	ONLING
Don MARSH	Mortpelser	Englace	<i>(</i> , <i>ş</i>
Tepry Williams	Poultney	Refired	Internet
JOHN CICLARD	Ruthery	<i>((</i>	
DAUN FUCCI	N. CLARENDON	SECR BURGERO	UXST
Jan Wall Howard	Rithfield A	Admittaker	7
Mary Cohen	Rutland	Chamber Divoctor	email
BRIAN COLLAMORE	VT SENATE		Icgislative email
BILL BURKE	RUT CITY	ACT 250 COURD	
Allan Sullyan	Deesse		
CHARLE FIMBOU	11/00940CK	RETAILEZ - LEG	ISLANDE LEGISLANUE
Amoste Sinton	Domby	ED/VŒ	

NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
CHRISTI BOLLMAN	Bothe	General Way.	Email
Larry CupaLi	Rutcomes City	State legislator	Cupalivre Concart. No
Vennis Carroll	Rutland	OMYa EHS	
Kirsten Ericksen	Rutland	Permit Complian	e Kericksene Killington a
Kula Moradi	P. Itsferd	retired	
Mary Lov Mor	de 11	4	
Peter Gregory	TRORC	Regional Planner	***
VEFF BIASUZZI	WKCHOFORD	ZOMNG-KOMINC	EMAL
Mary Howard	Rutland City	State hears late	5 JM Hing comastret
MERRITT BUDG	W. PUTTONS	SNES	EMAIL
Eign Johnson	Brandon	Sournalist	press release.
Roy Archer	Shrewsbury	Munager	YAST.
Steve SElbo	Killington	R.E. Development	REAC
TraBerge	Ludlau	manager	VAST
JOSEPL BELGE	Lidian		VAST
Sake Reed	Clarendin	ENV. SRec.	facebook
BRET LONG	Quechee	State of W	2
LINDA MCGINNIS	DORSET		l. b. maginnisa hotmail. com
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NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
Tun Follendore	V9LCO	Env. Mangarellanger	Encil
Joff Teple	KPSRP	SKI ROSOTT	ENAIL
Jean Andy	Horse Council Dravet	Horse own.	How Council
Roth Bret	Chathole	Rol	Neighbor
Patrick May	C/	le .	16
Town Seed			
Pathe McCon	Postney	Legislatur	
Lisa Puvoll	Chittenan	nonprot adm	- omail
Jerry HANSEN	Ruthoud	Retired	PRCC/REDL
Scott BRileyA	Rulland	Jales	David Fucci VAST
BlankEnman	P. Hans	Ensinea	A-1-250 Since 1973
Judy Evanourch	Proctor	Busines owner 348	Chamber
SHADDOCK	MUNDON	RREL	
Kathy Hall	Chittenden	vet teacher	newspaper
Carris Morchay	MT HOTH	Carpengrer	VAST
Andrew M.Millan		Environmental Specialist	nork
Rebecca Stone	Betul	Consittant	State net works
Ted Keeps	Deens	Elevelopment	trocks O okeno con
MARK WINSCOW	PITISFORD	SAESS/FARMER	markepapillow-org.com

NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
ZAGRAMY MANGANORO	CHARLOTTE, VT	ATTONEY	unline / News
Chenyay Liu	Butland, UT	lawstudent	friend.
Tyler Nehodson	futland County	ED REDC	
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MARIAH LOVERY	Paranel	Abwer	heieno
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Nick Gutinez	Poultney	Fairy	Friend.
Tim Harrisan	Chittenden	Las keter	
Kate Barrellos	Rulland Hereld.	Reporter	I'm the press.
Aaron Adler	Communision on 250		
Sion PBallar	Spiles UT	Doble - Can	on Board
MIKE STANT	CUTTINGSVILLE VT	PRUS MONT	VAST
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REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

General Assembly
Commission on Act 250:
the Next 50 Years

MINUTES - Sep. 12, 2018

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), Vice Chair Sen. Chris Pearson convened the Commission on Act 250: the Next 50 Years (Commission) on Wednesday, September 12, 2018, at approximately 6:05 p.m. at the Elks Lodge in Burlington, Vermont. The Commission conducted a public engagement forum.

Commission members present

Rep. Amy Sheldon

Sen. Chris Pearson

Advisors to the Commission or designees of advisors present

Billy Coster, ANR Sharon Murray, VPA Diane Snelling, Chair, NRB Karen Horn, VLCT Ernie Pomerleau, Pomerleau Real Estate

Staff present

Aaron Adler, Legislative Counsel

Others present

Paula Cope, Olivia Machanic and Scout Precourt, all of Cope and Associates Donna Barlow Casey, Greg Boulbol, and Evan Meenan, NRB Please see attached sign-in sheets for additional attendees

The public engagement forum consisted of the following components:

- Vice-Chair Sen. Pearson welcomed the attendees, overviewed the Commission and the tasks assigned to it, and presented on the forum's purpose and on the background of Act 250. He discussed the availability of an on-line survey and an e-mail address for submitting comments to the Commission.
- Ms. Snelling, Chair of the Natural Resources Board (NRB), provided data on the application process and spoke broadly on feedback the NRB has received from participants in the process and procedural changes on which the NRB is working.

- Ms. Casey, Executive Director of the NRB, provided information on the Act 250 program and how the application process works.
- Mr. Dickin explained the facilitation tool used by his firm, called the "Big Deal."
- Facilitators led groups of forum participants in engagement on Act 250 using that tool.
- After completing the use of the tool and a short survey, Sen. Pearson answered questions from the participants. Ms. Cope reiterated the availability of the on-line survey.

The meeting adjourned at approximately 8:00 p.m.

Respectfully submitted,

Aaron Adler Legislative Counsel

enc. (sign-in sheets)

Burlington ACT 250 Forum Welcome! PLEASE SIGN IN!

NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
facte Noll	B. ton		FPF
Wolfger Schneider	Charlotte	Retired	
2 Clinton Rechard	Colchester	veter waran	LOCAL TOWN OFFICE
POTEN SILLENDENS	HACIFAX	Eve	on unt
Greg tetro	Johnson	const.	Friends
Andre Murgante	Hnesburg	landscaper	VIVRC
PETER EZZ	LL V	Retional	FPF
Finily Nosse Leiner	carch	planner	VPA histserve
Pan Longin	Culchester	Property net	Permine Compiler
GRWIE JOMER (5141	13 cc-7, y/	RealEsto	Advisor-
Ito Coleman	WARREN	ENGINEER	YNRC
William D Moore	Monrocken	PRESIDENT	CENTRE VI GRAMBER
Kathy Beyer	Hirezbun	RIZ Dev	emast.
Jen Hollan	Montpelkn		nevs
JACOB HEMMERICK	COLHESTER	PLANNER	ENM
Barbara Headrick	Burlington	retired	Act 250 Ffree Districtly
BEAO ALIDERA	Sharme	ENGINEER	Lall' NRB
Sarah van Ryckevorsel	Winoosle	Adcheaolgist	Vermont Archeolocal So
harry Forcier	Burluxtu	retired	WRC,

Burlington ACT 250 Forum Welcome! PLEASE SIGN IN!

NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
Boldoi Rooney	Hydelark Johnson	Community	VAST/Landin Act 250
Zaehary Mayo	Cambridge/waterville	Candidate HOR	FACEBOOK
Ben Avery	Willister VT	Developer	State
Rochel Linensce	Wineski, VT	NRB Condinates	State
Marty Tank	Chrilotte vo	NRB	State
JOEL BURD	Butuffan	Brilda Free Pices	- pur elese
Michael Yantachka	Charlotte VT	State Rep	email
CHRIS ROY	WILLISTON	ATTY	CLRPC
Curt Couter	Jericho	ECON DEU.	Email .
DANIEL POULIN	BURUNGTON	ENGINEER	State
Beth Humstone	Charlotte	Planner	email
Sharan Murray	Bolton	Hanner	emeil
Cother Davis	Jericho	Chamber	email
Manzo Wade	Warten	Planner	email
Ju Westhelle	FATSTON	DEVL	andi
AT Kessman	Birenson	ENDINEER	Lee uebsite
Chris Motter	Colchester	Businessman	Gort
Josh Donabedian	Burlington	North Resource Board	
Ref Jan Mc Cullough	W. History	Cogistolor	

Burlington ACT 250 Forum Welcome! PLEASE SIGN IN!

NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
Jean Krednisch	Huesbury	retired	VNRC
John Killack	SU BTV	retired	
Rev Sister Lawrien Seeber	Beslin, Waitsfield	Priest	VNRC
Amy Danelvanitz	SO BTV	non-probit dev.	8
Hen ROCKIAND-MILLER	Burli	AAFM	AMEM NEB
Mark Tornsed	S. Bulita	legislator	emal fra Dino Dielli
Meagan Tutte	Burlington	Planner	VPA D
ERIC VORWALD	WENDOWN	PUNDE	VPA
Ken M' Grapery	Burlista	Retired	UNRC
Rosy Metcale	Shelbine	Programs Director -	Fellorship of the Wheel/VM }
Karen Horn	Moretown	advocate	VLCT /
Ginny Line	Willis ton	Vr Senate	Various Sources
Kristi Baline	Winooski	Student,	VAS
Eric Dody	Morrisville	law Enforcement	
Ann Tuge	5.B.	STATE REP	
Aaron Adler	Brookfield	lauger	Logislative commission
CHACLE BAKER	CCRAC	Planner	,
Clare Wool	Burlington	BSD Board	Carolode

Burlington ACT 250 Forum Welcome! PLEASE SIGN IN!

NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
Tom wydat	Je ffersmuille	Darelype	Friends
BOJOP 1057	ESSEY	ENV. HISTOUR	
Warren Goleman	Calais	Atty	
Matt Methahan	ETJEX	Coul Affair	
Catherine Goldsmith	Hinesburg	Librarian	CHIS Pearson
William Mchonors	Burlington/Cotchester	Proporty manager	Town of Colchester
Travor Rossey	Colchesta	Ger Affor	Priends
Julie Smith	Colchester	Un prof	DE VPR
Chris Yandow	So. Bullytin	Construction	Collegue
Doug Grandt	Putney	retired	email
Joy M Barney	Burlington	10	heisliand
Stephanie Gamay	Montpelier	VNRC -	7
Carol Ole	Briling	State Rep.	Brilge
Jon Toras	Bure	Charled Com	
Davene & ciloq	Huntington	Referred	TORC -
		9	
	3	1 - 2 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 -	

Burlington ACT 250 Forum Welcome! PLEASE SIGN IN!

NAME	COMMUNITY/TOWN/VILLAGE	OCCUPATION	HOW DID YOU HEAR ABOUT THE MEETING?
Robbie & Tanya WV2 20	Teffersmitte	business owner	business is subject to Het 250
1			0
		2 2 2	*
	0		

115 STATE STREET MONTPELIER, VT 05633 TEL: (802) 828-2228

FAX: (802) 828-2424



REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE SEN, BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

STATE OF VERMONT

General Assembly Commission on Act 250: the Next 50 Years

MINUTES – OCTOBER 11, 2018 (CORRECTED)

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), Chair Rep. Sheldon convened the Commission on Act 250: the Next 50 Years (Commission) convened on Thursday, October 11, 2018, at 10 a.m. in Room 11 at the State House in Montpelier.

Commission members present

Rep. Amy Sheldon, Chair

Sen. Christopher A. Pearson, Vice Chair

Sen. Brian Campion

Rep. David Deen

Rep. Paul Lefebvre

Sen. Richard McCormack

Advisors to the Commission or designees of advisors present

Chris Cochran, ACCD Dan Dutcher, AOT Brian Shupe, VNRC Gerry Tarrant, VBA

Billy Coster, ANR Sharon Murray, VPA Diane Snelling, Chair, NRB

Staff present

Aaron Adler, Legislative Counsel Ellen Czajkowski, Law Clerk

Michael O'Grady, Dep. Director, Legal Mike Ferrant, Dep. Director for Operations

Others present

Paul Dickin, Cope and Associates

Greg Boulbol, NRB Sam Lincoln, Dep. Commissioner, DFW

Diane Snelling, NRB

Donna Barlow Casey, NRB

Elizabeth Humstone, Humstone Assoc.

Cindy Locke, VAST

Michael Snyder, Commissioner, DFW

Mr. Dickin of Cope and Associates presented the draft community input report to the Commission and answered questions from the Commission. The Commission discussed an issue related to identifying information that may be present in e-mails and written comments submitted to the Commission. Mr. O'Grady attended briefly to testify on this issue. The Commission indicated that, when its report is submitted, it would like to redact contact information in the emails and written comments such as e-mail addresses, mailing addresses, and telephone numbers.

Mr. Adler reviewed a draft structural outline of the Commission's report and the results of research into land use regulation in other jurisdictions. He answered questions from the Commission.

Chair Snelling and Messrs. Boulbol and Coster testified on the issue of Act 250 jurisdiction over trails and the working group report related to that issue submitted pursuant to 2018 Acts and Resolves No. 194, Sec. 3. They answered questions from the Commission.

Chair Snelling, Deputy Commissioner Lincoln, and Mr. Boulbol testified on the issue of Act 250 permit conditions for forest processing operations raised by 2018 Acts and Resolves No. 194, Sec. 7, and answered questions from the Commission.

Mr. Boulbol will follow up by sending the Commission statistics cited in his presentations on trails and forest processing operations.

Ms. Humstone, an urban planner and principal at Humstone Associates, testified on the development in the 1970s of Act 250's capability and development plan. Ms. Humstone formerly worked for the Agency of Commerce and Community Development and the State Planning Office.

Mr. Dutcher requested that the Commission allot time at its October 26 meeting to hear testimony from the Agency of Transportation.

Ms. Locke testified on costs relating to disputing Act 250 jurisdiction over trails operated by the Vermont Association of Snow Travelers and to obtaining permits when required.

Ms. Murray and Mr. Shupe stated that they sought to testify at the October 26 meeting.

The Commission discussed scheduling future meetings after October 26. The scheduling will be completed through a Doodle poll.

The Commission then reviewed the issues itemized in the structural outline and discussed whether additional information was needed on these items. It made requests of staff and advisors relative to information needed and potential future testimony.

The Commission adjourned at approximately 4:00 p.m.

Respectfully submitted,

Aaron Adler Legislative Counsel 115 STATE STREET MONTPELIER, VT 05633 TEL: (802) 828-2228 FAX: (802) 828-2424



REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

STATE OF VERMONT

General Assembly Commission on Act 250: the Next 50 Years

MINUTES – OCTOBER 26, 2018

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), Chair Rep. Sheldon convened the Commission on Act 250: the Next 50 Years (Commission) convened on Friday, October 26, 2018, at 10 a.m. in Room 11 at the State House in Montpelier.

Commission members present

Rep. Amy Sheldon, Chair Sen. Christopher A. Pearson, Vice Chair

Sen. Brian Campion

Rep. David Deen

Rep. Paul Lefebvre

Sen. Richard McCormack

Advisors to the Commission or designees of advisors present

Chris Cochran, ACCD Dan Dutcher, AOT

Brian Shupe, VNRC

Billy Coster, ANR Sharon Murray, VPA

Diane Snelling, Chair, NRB

Staff present

Aaron Adler, Legislative Counsel Ellen Czajkowski, Law Clerk

Faith Brown, Committee Assistant

Others present

John Adams, ADS Kate McCarthy, VNRC

Peter Walke, Deputy Secretary, ANR

Jamey Fidel, VNRC

Bruce Post

Mr. Adler reviewed the findings made by the General Assembly in 1970 when it passed Act 250, the findings from 1973 that form the Capability and Development Plan, and the Act 250 criteria.

Mr. Adams presented data related to Vermont's settlement patterns.

Mr. Shupe spoke on issues related to Vermont's settlement patterns and Act 250.

Mr. Post testified on changes to the land over time and the possible inclusion of a criterion related to ecological assessment and protection.

Chair Snelling and Deputy Secretary Walke made recommendations on issues within the Commission's charge.

Ms. Murray presented recommendations from the Vermont Planners Association.

Mr. Adler reviewed draft language for the committee's report related to factual and statutory background on the settlement patterns issue.

Chair Rep. Sheldon requested that all advisors submit their recommendations by the Commission's next meeting, scheduled for November 8, 2018.

The Commission adjourned at approximately 4:00 p.m.

Respectfully submitted,

Aaron Adler Legislative Counsel 115 STATE STREET MONTPELIER, VT 05633 TEL: (802) 828-2228 FAX: (802) 828-2424



REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

STATE OF VERMONT

General Assembly Commission on Act 250: the Next 50 Years

MINUTES - NOVEMBER 8, 2018

Pursuant to 2017 Acts and Resolves No. 47 (Act 47), Chair Rep. Sheldon convened the Commission on Act 250: the Next 50 Years (Commission) convened on Thursday, November 8, 2018, at 10 a.m. in Room 11 at the State House in Montpelier.

Commission members present

Rep. Amy Sheldon, Chair

Rep. Paul Lefebvre

Rep. David Deen

Sen. Richard McCormack

Advisors to the Commission or designees of advisors present

Greg Boulbol, NRB Billy Coster, ANR Peter Gregory, VAPDA Brian Shupe, VNRC Abbey Willard, AAFM

Chris Cochran, ACCD Dan Dutcher, AOT Sharon Murray, VPA Gerry Tarrant, VBA

Staff present

Aaron Adler, Legislative Counsel Ellen Czajkowski, Law Clerk Faith Brown, Committee Assistant

Others present

Michelle Boomhower, AOT Rene Carpenter, Friends of Coburn Rd. Jamey Fidel, VNRC Sam Lincoln, Dep. Commissioner, DFW Ari Rockland-Miller, AAFM Michael Snyder, Commissioner, DFW Peter Walke, Dep. Secretary, ANR Ted Brady, Dep. Secretary, ACCD John Dunleavy, AOT Jackie Folsom Ryan Patch, AAFM Joe Segale, AOT Eric Sorenson, DFW

Mr. Sorenson testified on the development of and principles behind the Vermont Conservation Design.

Mr. Adler reviewed the law on the Act 250's supervisory authority over ancillary permits and approvals and presumptions created by those permits and approvals.

Mr. Shupe presented recommendations from the Vermont Natural Resources Council.

Deputy Secretary Brady testified on a proposal regarding industrial parks in response to 2018 Acts and Resolves No. 194, Sec. 22,

Commissioner Snyder and Deputy Commissioner Lincoln presented on issues related to forest processing operations and Act 250 jurisdiction.

Commissioner Snyder and Mr. Boulbol testified concerning Act 250 jurisdiction over recreational trails.

Ms. Boomhower, and Messrs. Dunleavy, Dutcher, Robie, and Segale requested that the Commission recommend an Act 250 exception for transportation projects that receive federal assistance.

Ms. Carpenter testified concerning the broad and comprehensive review she believed Act 250 provided of a transportation project that affected the area in which she resides.

Ms. Willard and Mr. Rockland-Miller presented a proposal that Act 250 exempt accessory on-farm businesses.

Mr. Cochran testified on the State designation program.

Ms. Folsom testified on the role of Act 250 in addressing issues related to a transportation project in the area of her farm.

The Commission adjourned at approximately 4:00 p.m.

Respectfully submitted,

Aaron Adler Legislative Counsel 115 STATE STREET MONTPELIER, VT 05633 TEL: (802) 828-2228 FAX: (802) 828-2424



REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

STATE OF VERMONT

General Assembly Commission on Act 250: the Next 50 Years

MINUTES – NOVEMBER 16, 2018

Pursuant to 2017 Acts and Resolves No. 47, Chair Rep. Sheldon convened the Commission on Act 250: the Next 50 Years (Commission) convened on Friday, November 16, 2018, at 10 a.m. in the Ethan Allen Room at the State House in Montpelier.

Commission members present

Rep. Amy Sheldon, Chair

Sen. Brian Campion (by phone)

Sen. Richard McCormack

Sen. Christopher A. Pearson, Vice Chair

Rep. Paul Lefebvre

Advisors to the Commission or designees of advisors present

Diane Bothfeld, Dep. Secretary, AAFM Billy Coster, ANR (by phone) Dan Dutcher, AOT Sharon Murray, VPA

Chris Cochran, ACCD Elizabeth Courtney Jamey Fidel, VNRC Diane Snelling, Chair, NRB

Staff present

Gerry Tarrant, VBA

Aaron Adler, Legislative Counsel Ellen Czajkowski, Law Clerk Faith Brown, Committee Assistant

Others present

Greg Boulbol, NRB

Evan Meenan, NRB

Ms. Czajkowski testified on the various exemptions to Act 250 jurisdiction. The Commission discussed the exemptions and asked staff to include information from the discussion in the draft report. During the Commission's discussion, it heard from various advisors and other persons present, including Mr. Adler, Deputy Secretary Bothfeld, Mr. Boulbol, Mr. Cochran, Mr. Coster, Mr. Meenan, Ms. Murray, Chair Snelling, and Mr. Tarrant. The Commission adjourned at approximately 4:00 p.m.

Respectfully submitted,

Aaron Adler, Legislative Counsel

115 STATE STREET MONTPELIER, VT 05633 TEL: (802) 828-2228 FAX: (802) 828-2424



REP. AMY SHELDON, CHAIR
SEN. CHRISTOPHER A. PEARSON, VICE
CHAIR
SEN. BRIAN CAMPION
REP. DAVID L. DEEN
REP. PAUL LEFEBVRE
SEN. DICK MCCORMACK

STATE OF VERMONT

General Assembly Commission on Act 250: the Next 50 Years

MINUTES - NOVEMBER 30, 2018

Pursuant to 2017 Acts and Resolves No. 47, Chair Rep. Sheldon convened the Commission on Act 250: the Next 50 Years (Commission) convened on Friday, November 30, 2018, at 10 a.m. in the Ethan Allen Room at the State House in Montpelier.

Commission members present

Rep. Amy Sheldon, Chair Sen. Brian Campion

Sen. Christopher A. Pearson, Vice Chair

Rep. Paul Lefebvre

Advisors to the Commission or designees of advisors present

Diane Bothfeld, Dep. Secretary, AAFM Chris Cochran, ACCD Elizabeth Courtney Peter Gregory, VAPDA Brian Shupe, VNRC Greg Boulbol, NRB Billy Coster, ANR Peg Elmer-Hough, VPA Joe Segale, AOT Gerry Tarrant, VBA

Staff present

Aaron Adler, Legislative Counsel Ellen Czajkowski, Law Clerk Faith Brown, Committee Assistant Dan Dickerson, Fiscal Analyst

Others present

John Brabant, VCE Jamey Fidel, VNRC Peter Walke, Dep. Secretary, ANR

Stephanie Kaplan Evan Meenan, NRB

Mr. Dickerson testified on the status of the statistical analysis called for in Act 47 and issues regarding the permit processing data received. He answered questions and sought feedback from the Commission.

The Commission discussed tasks assigned to it by Act 47, including revising jurisdiction to achieve the goals of Act 250, protecting important natural resources, addressing forest fragmentation, promoting a settlement patter of compact centers surrounded by rural countryside, amending the Capability and Development Plan and the Act to address climate change, improving the nexus between Act 250 and municipal and regional planning and related statutory

goals, and amending Act 250 jurisdiction with respect to energy facilities generally or on ridgelines in particular.

During the Commission's discussion, it heard from various advisors, staff members, and other persons present.

The Commission also provided an opportunity for public comments. Mr. Brabant and Ms. Kaplan testified.

The Commission adjourned at approximately 4:00 p.m.

Respectfully submitted,

Aaron Adler, Legislative Counsel

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REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

STATE OF VERMONT

General Assembly Commission on Act 250: the Next 50 Years

MINUTES – DECEMBER 7, 2018

Pursuant to 2017 Acts and Resolves No. 47, Chair Rep. Sheldon convened the Commission on Act 250: the Next 50 Years (Commission) convened on Friday, December 7, 2018, at 10 a.m. in the Ethan Allen Room at the State House in Montpelier.

Commission members present

Rep. Amy Sheldon, Chair

Rep. Paul Lefebvre

Sen. Christopher A. Pearson, Vice Chair

Sen. Richard McCormack

Advisors to the Commission or designees of advisors present

Diane Bothfeld, Dep. Secretary, AAFM Chris Cochran, ACCD Dan Dutcher, AOT Peter Gregory, VAPDA Ernie Pomerleau Gerry Tarrant, VBA

Billy Coster, ANR Elizabeth Courtney Peg Elmer-Hough, VPA Jon Groveman, VNRC Diane Snelling, Chair, NRB

Staff present

Aaron Adler, Legislative Counsel Ellen Czajkowski, Legislative Counsel Faith Brown, Committee Assistant

Cindy Locke, Exec. Director, VAST

Others present

John Brabant, VCE Donna Barlow Casey, NRB

Jamey Fidel, VNRC Evan Meenan, NRB

Bruce Post

Greg Boulbol, NRB

Brooke Dingledine

Randy Richardson, Vt. Trails & Greenways Annette Smith, VCE

Messrs. Fidel and Richardson and Ms. Locke testified on the issue of land use regulation of recreational trails and the status of ongoing discussions among their organization.

Ms. Smith presented recommendations to the Commission, including recommendations for public engagement prior to the filing of an application and for a land use panel to review for energy facility siting.

The Commission discussed tasks assigned to it by Act 47, including recreational trails, the process before the District Commissions, the structure of the Natural Resources Board, the interface between Act 250 and other permit processes and approvals, appeals, siting review of electric generation facilities, and forest products processing. The Commission also discussed requests received with respect to federally-assisted transportation projects and rural industrial parks.

During the Commission's discussion, it heard from various advisors, staff members, and other persons present.

The Commission also provided an opportunity for public comments. During this period, Ms. Smith provided additional testimony, and Mr. Post and Ms. Dingledine also testified.

The Commission adjourned at approximately 4:00 p.m.

Respectfully submitted,

Aaron Adler, Legislative Counsel

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REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

STATE OF VERMONT

General Assembly Commission on Act 250: the Next 50 Years

MINUTES - DECEMBER 14, 2018

Pursuant to 2017 Acts and Resolves No. 47, Chair Rep. Sheldon convened the Commission on Act 250: the Next 50 Years (Commission) convened on Friday, December 14, 2018, at 10 a.m. in Room 11 at the State House in Montpelier.

Commission members present

Rep. Amy Sheldon, Chair Sen. Brian Campion Sen. Richard McCormack

Sen. Christopher A. Pearson, Vice Chair Rep. Paul Lefebvre

Advisors to the Commission or designees of advisors present

Diane Bothfeld, Dep. Secretary, AAFM Chris Cochran, ACCD Dan Dutcher, AOT Sharon Murray, VPA Brian Shupe, VNRC Gerry Tarrant, VBA Billy Coster, ANR
Elizabeth Courtney
Peter Gregory, VAPDA
Ernie Pomerleau
Diane Snelling, Chair, NRB

Staff present

Aaron Adler, Legislative Counsel Ellen Czajkowski, Legislative Counsel Faith Brown, Committee Assistant Dan Dickerson, Fiscal Analyst

Others present

John Brabant, VCE Donna Barlow Casey, NRB Jamey Fidel, VNRC Stephanie Kaplan Evan Meenan, NRB Peter Walke, Dep. Secretary, ANR Greg Boulbol, NRB Peg Elmer-Hough, VPA Jon Groveman, VNRC Ari Rockland-Miller, AAFM Ryan Patch, AAFM

The Commission reviewed and discussed its draft report and provided direction on changes to the report. Among the changes it directed to the report were revisions to the proposal to add a climate change criterion to Act 250 and to affirmatively state a recommendation for an administrative board to hear Act 250 appeals, along with administering the Act 250 program and hearing appeals from the Agency of Natural Resources.

During the Commission's discussion, it heard from various advisors, staff members, and other persons present, and provided an opportunity for public comments. Among the persons who testified were Mr. Coster, Mr. Dickerson, Ms. Kaplan, Mr. Patch, Mr. Rockland-Miller, and Mr. Tarrant.

On motion of Sen. Pearson, the Commission unanimously voted to approve the draft report with the changes it had requested during the meeting and pending review of those changes.

The Commission determined to schedule an additional meeting on January 4, 2019. It adjourned at approximately 4:00 p.m.

Respectfully submitted,

Aaron Adler, Legislative Counsel

115 STATE STREET MONTPELIER, VT 05633 TEL: (802) 828-2228 FAX: (802) 828-2424



REP. AMY SHELDON, CHAIR SEN. CHRISTOPHER A. PEARSON, VICE CHAIR SEN. BRIAN CAMPION REP. DAVID L. DEEN REP. PAUL LEFEBVRE SEN. DICK MCCORMACK

STATE OF VERMONT

General Assembly Commission on Act 250: the Next 50 Years

MINUTES – JANUARY 4, 2019

Pursuant to 2017 Acts and Resolves No. 47, Chair Rep. Sheldon convened the Commission on Act 250: the Next 50 Years (Commission) convened on Friday, January 4, 2019, at 10 a.m. in the Ethan Allen Room at the State House in Montpelier.

Commission members present

Rep. Amy Sheldon, Chair

Rep. David Deen

Rep. Paul Lefebvre

Sen. Christopher A. Pearson, Vice Chair

Sen. Brian Campion

Sen. Richard McCormack (by phone)

Advisors to the Commission or designees of advisors present

Gerry Tarrant, VBA Chris Cochran, ACCD Diane Snelling, Chair, NRB

Jamey Fidel, VNRC

Billy Coster, ANR Elizabeth Courtney

Peg Elmer-Hough, VPA

Staff present

Ellen Czajkowski, Legislative Counsel

Faith Brown, Committee Assistant

Others present

John Brabant, VCE Aaron Brondyke, NRB Evan Meenan, NRB

Sandy Levine, CLF Ari Rockland-Miller, AAFM

Jim Oliver Bruce Post Greg Boulbol, NRB Jared Carpenter, Neil Kamman, ANR

Randy Richardson, Vt. Trails &

Greenways

Patricia Gabel, Supreme Court of VT

Kate McCarthy, VNRC

Thomas Weiss

The Commission reviewed and discussed its draft report. Ms. Czajkowski presented the changes from the last draft of the report.

Messers. Coster and Kamman recommended the Commission change the language regarding impaired waters of the State. The Commission discussed the language and its citations and decided not to change it.

Mr. Fidel recommended language be added to clarify that forestland parcels had not been "lost," but converted to other uses. The Commission accepted this recommendation.

The Commission discussed the proposed legislation that will be Appendix 4 of the report. During the Commission's discussion, it heard from various advisors, staff members, and other persons present. The Commission decided that the new administrative board shall be appointed by the Governor with the advice and consent of the Senate. Mr. Boubol suggested clarifying the language regarding the burden of persuasion. The Commission accepted this language.

The Commission also provided an opportunity for public comments. During this period, Mr. Weiss suggested language be added to the draft legislation that would allow the Natural Resources Board to assign personnel to monitor compliance of permit conditions. The Commission accepted the suggestion. Ms. Elmer-Hough recommended amending some of the language in the draft legislation. Ms. Gabel testified on the Performance Standards of the Environmental Division of the Superior Court and presented graphs illustrating that information. The Commission decided to add this information as an appendix to the report.

The Commission adjourned at approximately 3:30 p.m.

Respectfully submitted,

Ellen Czajkowski, Legislative Counsel



Legislative Commission on Act 250
Community Input Report
Rep. Amy Sheldon, Chair
October 17, 2018

Cope & Associates, Inc. 802-951-4200 www.ConsultCope.com

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EXECUTIVE SUMMARY

Cope & Associates, Inc. (COPE) was engaged by the Vermont Legislative Commission on Act 250 to fulfil the public outreach and input elements of their overall charge: to assess the impact of Act 250 to date, and to look forward to improving the legislation in the context of the changing landscape and climate conditions of the next 50 years.

The Commission membership afforded representation from around the state, with each member having experience with Act 250 and a clear desire to assess the effectiveness of its impact. This work was approached with an interest in leveraging the legislation's existing strengths, while seeking improvements and adaptations where gaps were identified, and always with an eye to the future role of legislation in governing land use.

This outreach and input provided a process where Vermonters could learn about Act 250's history to date, interact with information in conversation with fellow community members and business interests, and offer candid insights into both where the legislation meets or falls short of the needs of Vermonters, as well as their individual aspirations for meaningful use of the natural assets of the state.

A representative analysis of the data is presented in the following section, with raw and tabulated data included in appendices for more in-depth review. Comments from public forums, quantitative and anecdotal data from the survey, and comments from social media and email were all integrated into the report. COPE's role was explicitly to support data capture through community engagement; it is the Commission's role to integrate this information with other sources of input. As a result, no conclusions or recommendations are incorporated in this report. COPE is available as a resource should the Commission seek further analyses or recommendations.

Cope & Associates, Inc. wishes to acknowledge and thank all who participated on this project to make it successful: Members of the Vermont NRB, Regional Planning Commissions, and a large group of volunteers.

SCOPE & METHODOLOGY

About Public Outreach and Input

Public outreach and public input are distinctly different activities. Hence, the Commission approved a design that was different from a traditional town hall or open mic format, which lend themselves better to direct comment on localized issues. Instead, public forums were designed to be interactive, seeding some information about the history, intent and processes of Act 250, then engaging community members in a dialogue that encouraged appreciative inquiry, learning from others' perspectives, and weighing in with individual preferences and comments. A survey was created that delved deeper into the application and appeal processes, as well as continuing to gather input on the broader picture of what makes Vermont great with regard to its conservation of natural beauty while accommodating growth and economic development.

Cascading Communications

From the outset, the intent was to create a cascading communications plan to invite active public participation. A change management approach was used to develop a regular and iterative cadence of information, linked to a series of public forums. Learning and knowledge transfer from early forums fed into survey design and informed communications for upcoming forums. All communications were public record and anchored to a website specific to this purpose. Additional outlets included social media (Twitter and Facebook), statewide and local press in an attempt to promote interest and active participation.

Data Sources

Data to inform this report was gathered from a number of sources:

- Website (see Appendix A)
- Social media posts (see Appendix B)
- Public forums (see Appendix C)
- Statewide survey (see Appendix D)

Public Forums:

Public forums are a commonly used platform to invite comment. In this design, the Commission approved an alternative to a traditional open mic, in the interest of promoting a mix of both education and dialogue that supports public discourse, and inputs to inform the Commission's ultimate responsibility to report on potential legislation for the next 50 years. The challenge was to balance meaningful content with manageable limits on what information to use to prompt meaningful conversation. The Commission worked through various iterations before settling on an approach that seeded conversations around (1) public land use broadly in Vermont, (2) the impact of significant disruptors to the landscape (Climate Change and a need for expanding Infrastructure), and (3) Act 250 permitting process key elements. COPE uses a methodology, *The Big Deal*TM, which utilizes cards as a vehicle to introduce content and invoke appreciative inquiry from participants that is more focused on expressing interests, than on stating fixed positions (see Appendix E). The result was a multitude of rich dialogue facilitated at tables of a manageable group size and a heterogenous composition.

The Commission sought to offer locations across the state that would offer access without undue travel. Ultimately, six venues were selected and forums were held in accordance with a public calendar. Each was well-attended:

Location	Date	Number of Attendees
Springfield	June 27, 2018	44
Manchester	July 11, 2018	53
South Royalton	July 25, 2018	81
Island Pond	August 22, 2018	82
Rutland	September 05, 2018	80
Burlington	September 12, 2018	83

Springfield:



Manchester:



South Royalton:



Survey:

While the forums were designed to invite broad and free-thinking expressions on how to improve the impact of Act 250, the survey was designed to dive deeper into the mechanics and the pros and cons associated with the application and appeal processes. The Commission generated a number of drafts in seeking to create a meaningful data capture tool. The forums certainly improved survey response rate, with a total of 913 being submitted by the September closing date.

Of note, there was sufficient comments that suggest that the survey questions were too leading and therefore would result in the commission only hearing what they want to hear. While care was taken to remove bias from the questions in many iterations in design, COPE notes that the Commission comprised members who have experience with, and are routinely exposed to, the impacts of legislation broadly, and of Act 250 specifically. The challenge for the Commission was always to craft data capture mechanisms that allowed for a breadth of commentary, from broad issues of land use to specifics of processes as they play out across the state, recognizing that survey length is a factor that impacts response rate. From these comments about leading questions, we can imply that feelings run deep among survey respondents and forum participants, and that the legislation has an important role in the lives of Vermonters that has to be understood and governed.

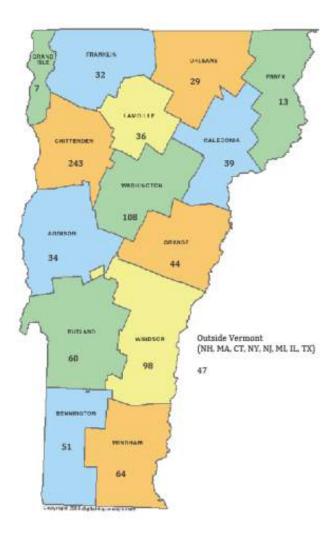
Other:

E-mail and social media posts were all welcomed and incorporated into the data set for this report.

While the data collected through these mechanisms cannot be termed significant statistically as the sample was not randomly generated, the volume of responses and inputs offers meaningful and broad sentiment and opinion from across the state.

DATA HIGHLIGHTS

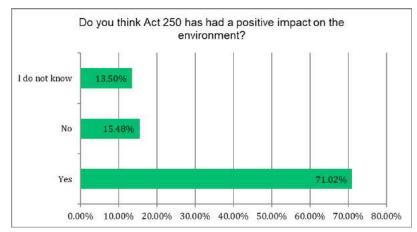
Data was analyzed across all inputs (public forums, online survey, and email submissions) to establish patterns or themes that represent enough weight of opinion to be considered by the Commission. The more prevalent information points are presented in this section of the report; full survey results are attached, both as the complete survey data (see Appendix F) and filtered by county (see Appendix G). A map of survey respondents is provided below by county:



Anecdotal comments from both the online survey and public forums are woven into this analysis, with all narrative responses attached in full (see Appendix I); the same is the case for email responses (see Appendix I).

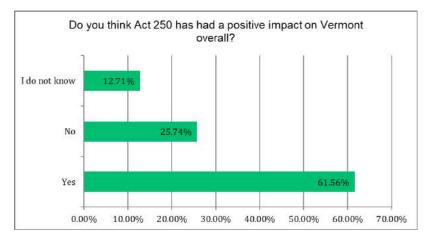
Broad Vermont Land Use Highlights:

Data collection incorporated thoughts from all participants with regard to land use in Vermont that informs depth of feeling on the various ways that the landscape is used for conservation and economic purposes. This inherently lends itself to a better understanding of the trade-offs or the balance that Vermonters are interested or willing to accommodate on these two important elements of a healthy state.

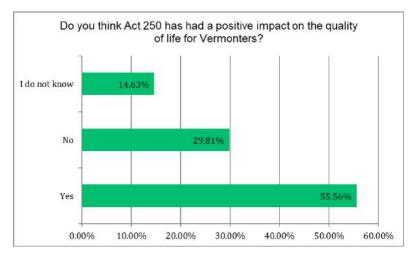


Overwhelmingly, respondents see Act 250 as having a positive impact on the environment.

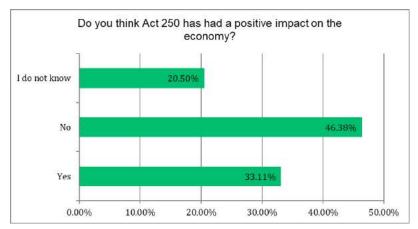
Narrative comments reinforce the quantitative survey data in speaking to the desire to maintain Vermont's natural beauty and accessibility.



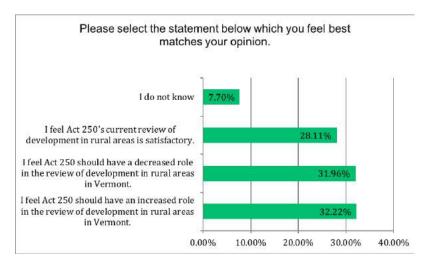
A majority of respondents also see Act 250 as having had a positive impact on Vermont overall. It is seen as legislation that promotes preservation of the best of Vermont and an expression of core values.



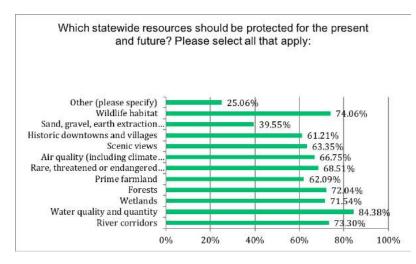
As the questions reframe this notion of impact a less significant majority view the impact on quality of life as positive. Over a quarter of respondents expressed a view that Act 250 has not had a positive impact on the life of Vermonters.



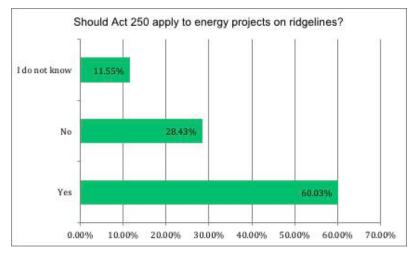
When the question turns to the impact of Act 250 on the economy, we see a different picture; almost half of respondents do not see Act 250 as having a positive impact on the economy.



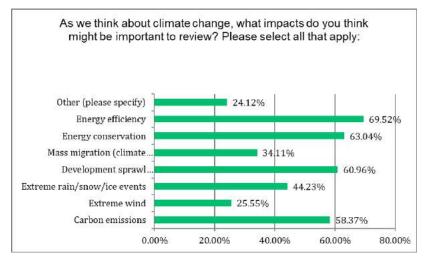
As the legislation affects development more specifically, there is again a large percentage of respondents who believe that Act 250 should have a lesser role in development review.



Regarding which resources are considered highest priority to protect, it is noteworthy that respondents saw value in all options listed, with a lesser concern for extraction. Comments here reference the exemptions and the lower priority placed on these aspects of legislative impact. Analysis of the responses to the "Other" option revealed that recreation and ecology were considered highly important to protect. Recreation refers to recreational opportunities such as trails and access for motorized vehicles such as four wheelers. Respondents felt that these opportunities were key to Vermont's economy as they attract many tourists.



Ecology refers to protecting land features such as alpine zones, riparian zones, and ridgelines. When asked if Act 250 should apply to energy projects on ridgelines, on the online survey, 60% of respondents selected "Yes", further indicating a desire to protect ridgelines, as suggested by the comments on the question above.



With regard to climate change, analysis of the "Other" option revealed that there is a subset of Vermonters that do not accept the rigor of climate change science and therefore think that Act 250 should have nothing to do with it.

Another large group thinks that infrastructure development will be key when it comes to climate change in Vermont. In particular, it will be important to further regulate energy efficiency, establish more renewable energy sources, and building connectivity like internet and roadways. Other topics of note in the

comments section include the importance of sequestering carbon, addressing mass migration issues, addressing the economic impacts of climate change, reducing flooding from extreme weather, and protecting ecology.

The last question in the survey invited a personal statement. Analysis of the comments regarding the question, "What is one thing that you would like to change in Act 250?" revealed a number of trends. General themes are presented in this section using comments representative of the tone of each cluster for the purpose of adding clarity; where a negative/ critical tone persisted, it is indicative from the chosen comments, in no particular order:

Accessibility:

- Act 250 hearings happen at inaccessible times
- The process is too complicated and difficult to understand for the average citizen
- The process is too long
- The process requires citizens to retain a lawyer, which leads to huge expenses

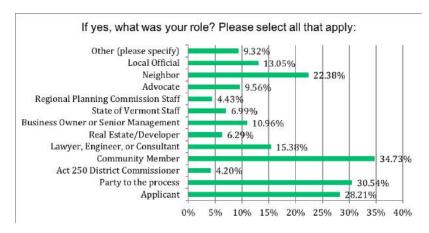
Voice:

- Act 250 needs more voice from local citizens during the process
- A citizen panel of evaluators should be reinstated, particularly during the appeals process

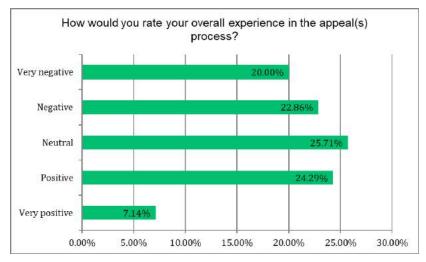
Effectiveness:

- It's too easy to work around the regulations- we need stronger regulation and better enforcement
- There is a lot of concern about the "10-acre loophole"- i.e. the fact that projects under 10 acres do not fall under Act 250 jurisdiction- the regulations need to cover small projects as well as large
- Some regulations duplicate existing regulations, such as from the Agency of Natural Resources
- There needs to be more leniency with regulation over outdoor recreation opportunities
- There are concerns that Act 250 stifles small business- it needs to encourage some form of development so as not to drive business out of the state
- There are concerns that the assessments are not fair and equal
- Some respondents feel that the renewable energy requirements are too restrictive
- Some respondents feel that Act 250 needs to encourage growth in urban areas while protecting rural areas
- Act 250 needs to prevent further fragmentation of Vermont's forests
- Act 250 needs to address climate change

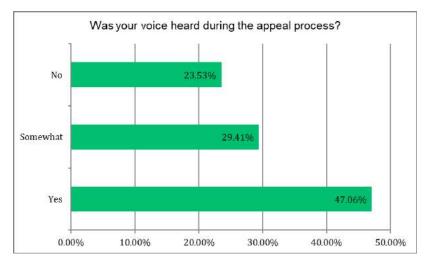
Act 250 Process Highlights (Statewide):



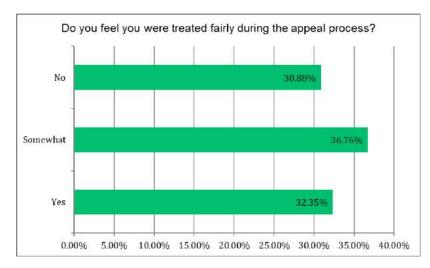
45.19% of survey respondents indicated that they had participated in Act 250 proceedings. Applicants were instructed to select all that apply, so we see double expression in the data to the left. Select highlights with supportive information from narrative data are presented below:



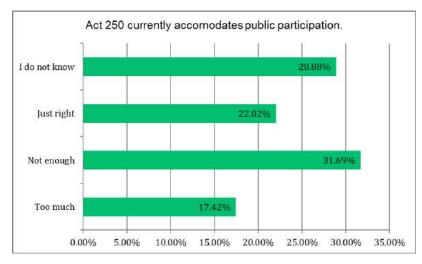
A still-sizable 37.3% of respondents indicated they have participated in an appeals process. Responses here indicate an area of concern; almost 43% of respondents indicate they had a negative or very negative experience in the appeals process.



Similarly, less than half (47%) indicated that their voice was heard during the appeal process.



Further, over two-thirds of respondents indicated that they felt they were not, or only somewhat, treated fairly during the appeal process.

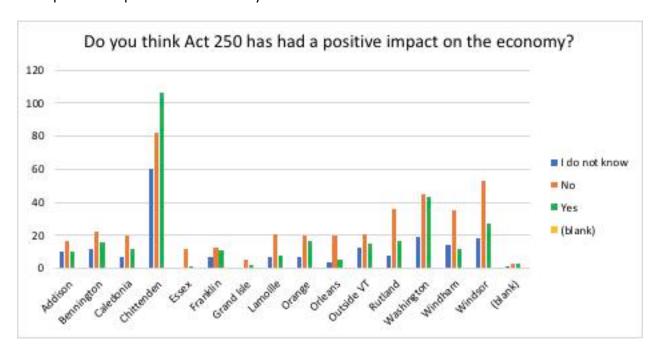


Beyond just the appeals process, respondents weighed in on the broader topic of accommodation of public participation. Results here were mixed, and from narrative comments, likely reflect the varying perspectives of the value of public participation in permitting processes.

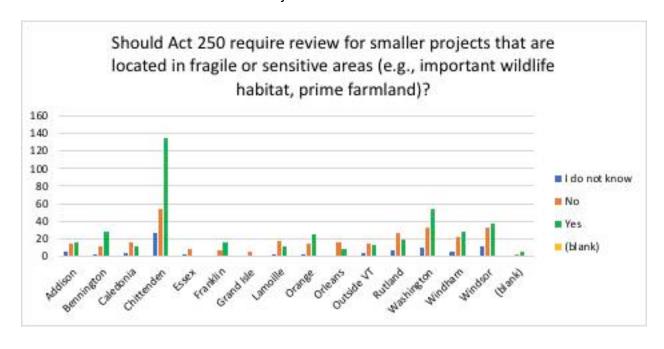
Act 250 Variance Highlights by County:

Act 250 is designed to be administered in a manner that reflects regional flavor within a common process and set of criteria. To capture any regional variances, data has been filtered by county, with select data and supporting narrative presented below.

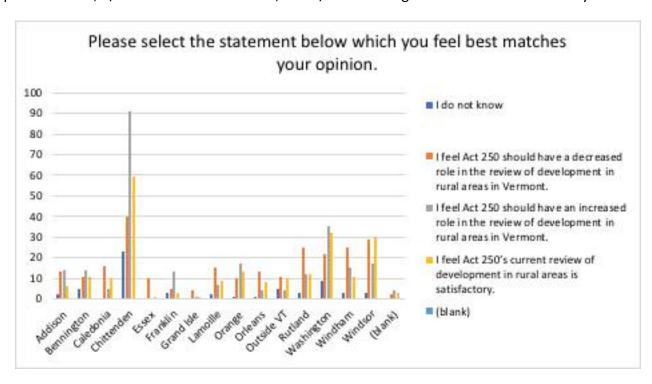
Aside from Chittenden County, all other counties reflect a greater number of respondents believe that Act 250 has not had a positive impact on the economy:



When asked about the jurisdiction of Act 250 specific to fragile or sensitive areas on a smaller project scale, 9/14 counties indicated that Act 250 should have this jurisdiction.



More broadly relating to rural areas, 7/14 counties had a higher response rate in support of an increased role is development review, 6/14 with a decreased role, and 1/14 indicating current state is satisfactory.

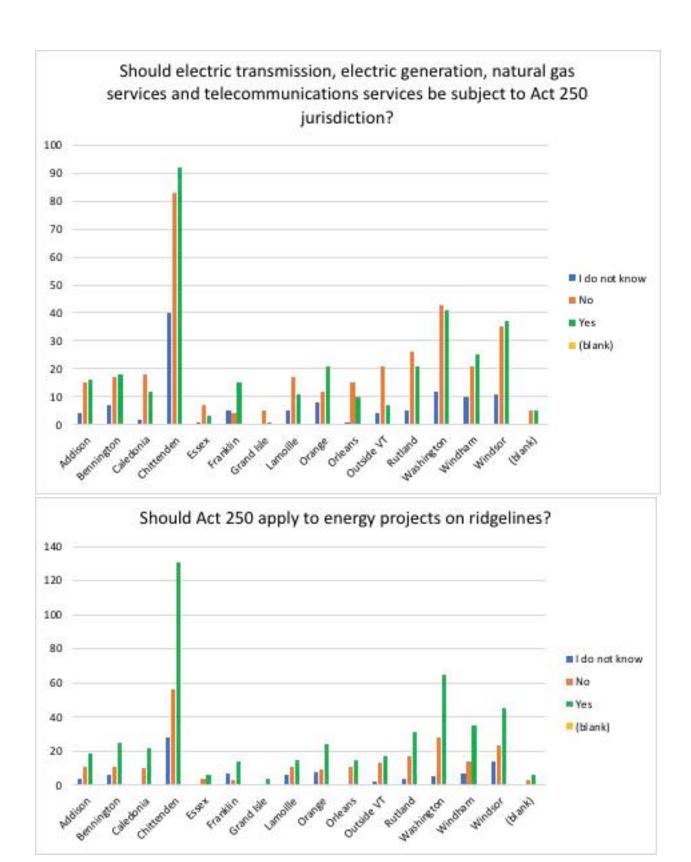


Forum Comment Themes by County:

Counties have been grouped according to their closest forum.

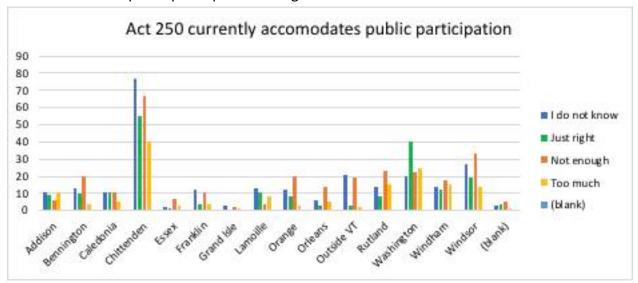
Springfield/South Royalton themes:

- Planning for the impacts from climate change is essential
- There should be more regulation on the energy industry and its impact on the environment- this is
 consistent with the data from the survey- a majority of respondents from Windsor, Windham, and
 Orange counties felt that electric transmission, generation, and natural gas services should be subject to
 Act 250 jurisdiction, as well as energy projects on ridgelines



- There needs to be more focus on economic development in order to keep people, especially young people, from leaving Vermont
- There should be more regulation preventing forest fragmentation

 The process should be less complex and should include more citizen involvement- a majority respondents to the online survey from Windham, Windsor, and Orange counties felt that Act 250 does not accommodate public participation enough



- There needs to be more consistency across the state regarding assessment of applications
- Quarries should not be exempt from regulation

Manchester themes:

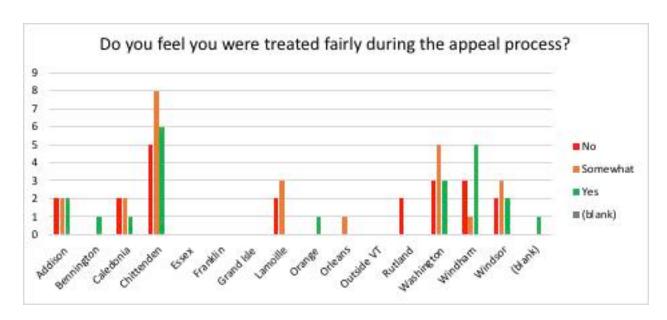
- There needs to be more consistent regulation across industries
- District coordinators have too much power

Island Pond themes:

- Maple operations are too big and have too large of an impact to be exempt from regulation
- There needs to be more regulation on the renewable energy industry (wind & solar)

Rutland themes:

- Redundant or duplicate regulation between the Agency of Natural Resources and Act 250 needs to be removed
- There needs to be fair and consistent review of Act 250 applications- on the online survey, a majority of respondents from Rutland county felt that they were not treated fairly during the appeals process
- The process needs to be more streamlined



Burlington themes:

- Remove redundancies with other state regulations (Agency of Natural Resources)
- There needs to be fair and consistent review of Act 250 applications- on the online survey, a majority of respondents from Chittenden county felt that they were treated somewhat fairly during the appeal process (see graph above)
- The process needs to be more streamlined

Statewide themes:

- Remove redundancies with other state regulations (Agency of Natural Resources)
- Review of Act 250 permit applications needs to be more consistent and fair across the state
- The process needs to become less complex and more streamlined for efficiency
- Current exemptions should be evaluated and/or removed, especially regarding the maple and energy industries

SUMMARY

COPE's role was three-fold in this aspect of the Vermont Legislative Commission on Act 250's mandate as defined in Vermont Act 47:

- 1. Develop and Implement an outreach plan;
- 2. Develop education materials; and
- 3. Execute a public engagement plan

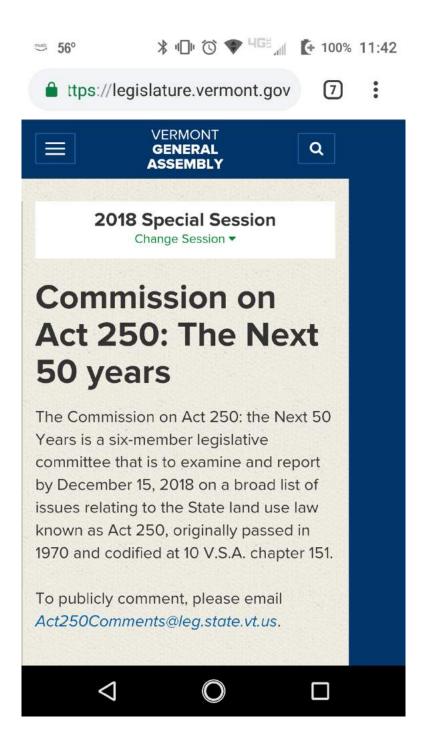
Throughout the engagement, we observed the Commission's passion and desire to provide an informed, thoughtful and open-minded report to inform potential legislation that would support a robust and meaningful refresh of Act 250. Vermont, like all other communities, is experience shifts in climate, in demographics, and in the economic makeup in a Twenty-first Century global economy. Vermont is a patchwork of tight communities, with rich history, strong core values, and pragmatic solutions to problems. This important scope of work affecting vital elements of our lives is about a complex, dynamic and evolving confluence of needs, aspirations and perspectives. Inherently, there is conflict and tension. Additional information not referenced in the body of the report is available:

Citizens wanting to be contacted (Appendix J)
Public Forum Exit Preference Sheets (Appendix K)

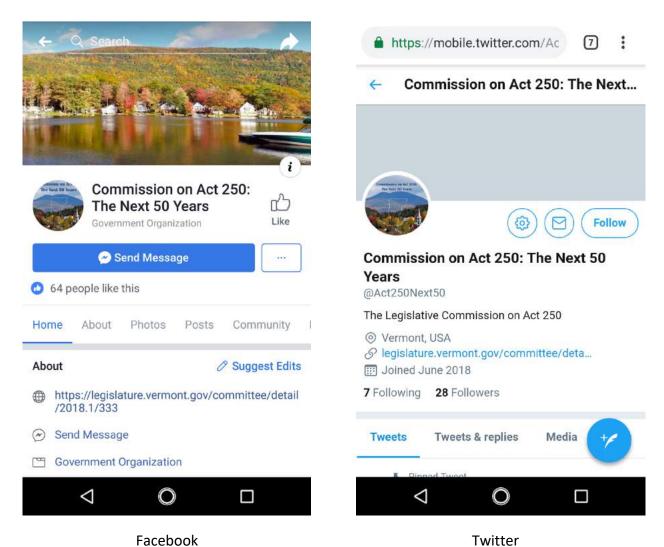
This process, and the manner in which the Commission has approached its work with integrity and a spirit of inquiry, has invited public opinion in a spirit of understanding one another's underlying interests, rather than reacting to stated positions. This has allowed for open and civil engagement that has yielded rich discourse for consideration by the Commission in its final report. It has been a pleasure to support this essential process.

APPENDICES

Appendix A: Website



Appendix B: Social Media



Appendix C: Public Forum Comments

Springfield:

- 1) "More renewable energy generation is important to mitigate climate change"
- 2) "Get rid of de novo! You create a process that is based on discussion, input and hearings, and then in the end you throw all that away in an appeal? Doesn't make sense. Keep context?"
- 3) "Thank you. Act 250 is a necessity for its protection of our state. Future planning given impact of climate change is essential. Forward thinking!"
- 4) "I have practiced engineering 34 years in VT and about 50 Act 250 projects and firmly believe in Act 250 in and the mechanical process works well. Please keep FTP and email submittals as I am [not] computer savvy and fancy software is problematic and not warranted."
- 5) "Ideally [Act 250] should be regional & some consistency + predictability from region to region."
- 6) "Imperative that Act 250 covers electrical facilities and its impact on VT."
- 7) "I am concerned about losing almost 50 years of legal precedent depending upon what changes are made."
- 8) "There is serious lack of support for applicants in the Act 250 process in fact most Vermonters do <u>not</u> know what it is. The websites have broken links. Enforcement + regulations has greater emphasis than support to folks interested in protecting + building in Vermont."
- 9) "Less focus on aesthetics and more focus on environmental data. And jobs for young people are important. Thank you."
- 10) "I'm not sure you are asking the right questions. This process is too scripted and does not allow for new ideas."
- 11) "Strengthening Act 250 to better protect Vermont's natural resources is critical increase jurisdiction to address forest fragmentation."
- 12) Renewable Energy Generation should become DISRUPTOR and Climate Change should become STATEWIDE (Purple Card)
 - a. "All are worried about climate change."
 - b. "Been dealing with climate change all along."
 - c. Solar on existing structure, not land (renewables)
- 13) "Overall, we saw food moving up in importance [with the addition of climate change], as well as ecosystem protection."
- 14) "Electric generation should NOT be on Act 250."
- 15) "Settlement patterns nice theoretical, but a challenge in rural areas."
 - a. Would like to see a more "holistic approach"
- 16) Maintain the existing infrastructure
- 17) "Not dealing with infrastructure as a state."
 - a. "Could not get permit for 91 today because 250."
- 18) "Economic Development needed for infrastructure development."

- 19) "Aesthetics" criteria seems very subjective for the public
- 20) Scenic & Natural Beauty "doesn't pay taxes or support population."
- 21) Appeals process is pointless de novo makes no sense
- 22) Profile testimony/appeals are too time & paper intensive whole process needs to be streamlined
- 23) Jurisdiction How to relieve land of Act 250 requirements once applied?
- 24) Act 250 makes people/developers to "not want to do big projects"
 - a. "Do not need more regulation"
- 25) "Stats not reality 30 days not realistic (even as coordinator)" Bill Jewell
- 26) "Good ideas get drowned by regulation. Perhaps need ombudsmen."
 - a. "Any development is bad development."
- 27) "Where can you get an audience with the governor?"
- 28) "Exempt" needs to be re-examined
- 29) "Role of District Coordinator" can be too powerful, is it truly a citizen board?"
- 30) "Mining we would have never had to go through Act 250."
- 31) "Most problems with ANR, not Act 250."
- 32) "A bit of propaganda for existing law is one concern."
- 33) Forest Productivity what guiding principles exist to guide development so that the forests regenerate and support biodiversity?
- 34) How do we get staff and commissioners to respond in a timely manner?
- 35) Why does Act 250 not address rural, scattered residential development? It should be strengthened to address forest fragmentation.

Manchester:

- 1) "Please consider our ecosystem as the overriding concern it makes the rest of [the] others work"
- 2) "Why hasn't the per diem paid to the commissioners changes in 25 years?"
- 3) "This forum and process makes no sense. Awkward, missed the point subverts meaningful discussion."
- 4) "Act 250 missing words like logic, reasonable, balance, and fairness. People are leaving Vermont. Where is the opportunity? Cost of permitting and cost of doing business too costly!"
- 5) "Agriculture and forest industry need to meet the same standards of environmental protection as other industries."
- 6) "I worry criteria 9L (strip development) will disadvantage small communities by forcing commercial development away from them (and their grand list) toward larger communities."
- 7) "I don't believe projects should be stopped by anybody just because they don't like it."
- 8) "Use science to determine criteria and decisions."
- 9) "1 Updated easier process. 2 Think covered by other state agencies. 3 Would be nice because areas are so different but difficult to implement."
- 10) "The district coordinator has too much control over the process. Additional, more localized coordinators would help!"

- 11) "Overall this process did not work for me. It assumes we know very little about Act 250 instead of asking what we feel is valuable."
- 12) "As I was recently part of an Act 250 process that took 5 ½ years to resolve, it seems more staff are needed to facilitate project review rather than adding restrictions on appeals to their reports."
- 13) "I feel more resources need to be available to guide applicants through the process correctly then allowing them to proceed and find problem/issue after issue. Which slows the permitting process."
- 14) Unequal enforcement farmers cause a lot of environmental impact, yet they get away versus ski areas that can not
 - a. Agricultural regulations impact the whole state
 - b. Farmers don't want to be regulated
- 15) Integrate fully into the review process criteria looks at the local view; climate change is a more of a global view
- 16) Act 250 takes too long
- 17) Why isn't our state agency looking at impacts?
 - a. Too much of a burden on the citizens
- 18) Permitting is pricey "cost of doing business in Vermont"
 - a. There is a cost associated with allowing voice and access with lawyers
 - b. Permits have become too hard, technical, and expensive to pursue without a consultant
- 19) Vermont is not economic development friendly
- 20) "Act 250 is unique and people come here because of our environment." Martha Heilemann
- 21) Have to develop the state, in order to create jobs and improve the opportunity for development
 - a. Developers want to know what their getting into
 - b. Easing [Act 250] process would help Economic Development, but criteria is still important
- 22) Ecosystem Protection is covered by other sources
- 23) "Resilient Communities" are necessary for Vermont's future
 - a. Ability to withstand disruptors (climate change/infrastructure) and stay flexible during changes within their community
- 24) Infrastructure challenges climate change (one card)
 - a. Hard infrastructure and natural infrastructure (river meandering)
- 25) Act 250 should be targeted for each district versus statewide
 - a. Need a statewide plan for synchronicity, but that's impractical
- 26) Focus on infrastructure that separates the land (major highways and man-made water sources)
- 27) Small business can make a large impact together, just as a large business
- 28) Act 250 costs are only a portion of the environmental permitting process
- 29) District Coordinator grew too much power (one person)
- 30) Access and voice is what makes Vermont special
- 31) "Please don't scrap Act 250; it's more positive than negative."

- 32) "If you take care of agricultural & forest productivity and economic development, then they will take care of the rest [of the Statewide Cards]."
- 33) Problems with access include non-experts providing inaccurate information people trying to exploit Act 250

South Royalton:

- 1. Disagreement about the cards NOT the content
- 2. Look at Settlement Patterns Students are leaving Vermont
- 3. People are trying to get around Act 250
- 4. Act 250 is one of three of the greatest pieces of Vermont legislation
 - o However, it is not fulfilling its original intention
- 5. Act 250 does not involve the people few people have the means to vote against a project
- 6. Forests are not adequately addressed in Act 250
- 7. Ecosystem protection is not the right language
- 8. "feels like a game"
- 9. Scenic & natural beauty is kind of archaic people aren't coming to Vermont
- 10. Climate change is too vague unknown impacts
- 11. "Right now pushback is not around the law, it's around the complexity
- 12. Purely discussing the Act 250 process from the beginning would have been more helpful
- 13. Act 250 should function more as a clearing house for ANR and other state permitting processes. Streamlining would help alleviate opposition for the Act 250 process.
- 14. Why are forest production and agriculture treated as separate factors from economic development?
- 15. The National Forest Service feel they have the ability to issue permits on NIFS lands and an Act 250 permit is not required. Owners or permit holders are forced to apply to both NFS and Act 250.
- 16. Please communicate better with the public. What is the next step? What happened to the event at VLS in spring? What happened to those comments?
- 17. Competence of soils should be always considered along with infrastructure.
- 18. Would like to see more efficiency and predictability in the process. Less duplication with ANR and other permits use these to satisfy some of the (applicable) criteria. Have appeals be heard on the record vs. De novo.
- 19. Act 250 is important to Vermont. We need to maintain its relevance and effectiveness as the world changes. Public access must be maintained. We also need to make hard decisions and protect key resources like river corridors (development should be prohibited) and forests (we need to be very careful) and Act 250 should look at forests. Please also consider revising the legal-fiction of the process by revisiting something like the E-board. Also please consider removing exemptions for state quarries.
- 20. Act 250 needs to protect ecosystems as a top priority: -the environment is the basis for all economies. We need healthy people, sufficient food, clean air, less flooding and less stress on our social and

- economic systems. Healthy people = a stronger economy. —Compact settlement patterns are also dependent on a healthy ecosystem so as to balance population with nature for the health of all. Promoting, compact settlement is indeed a boom to our ecosystem and our environment.
- 21. It is possible to have Act 250 star projects and publish information/photos of the BEST Act 250 projects for each region, each year? This would inform and inspire comparable projects that promote Act 250 goals and desirable economic development and environmental stewardship.
- 22. My biggest question is how the Act 250 application can be different for different categories of development, aka small scale, large scale, agricultural, rural, etc.?
- 23. My one greatest concern with the future of the Act 250 process is that is be used for guide and enhance rural economic development not stop it!
- 24. How will you incorporate environmental justice principals into the criteria?
- 25. Group Question: Why does Act 250 continue to follow a piece of property it has sold?
- 26. Group Question: Could there be a *certification process so that if a project was approved locally it can be exempt or expedited for those aspects under Act 250? (*Certification of rigorous municipal zoning process and by laws)
- 27. Group Question: How can Act 250 require that a project both acknowledge and contribute to its impact on education and the health of a community?
- 28. Would like Act 250 to be managed more locally or statewide, rather than regionally.
- 29. In regards to question one: "Impacts all but special consideration needed to preserve natural beauty and agricultural concerns." In regards to question 3: "Regional planning has a better idea on the health of the area involved whereas the municipals may be short sighted." In regards to question 4: "We need to protect the vanishing regions and not be so much in a hurry to chase the almighty dollar." Final Comments: "Close the loopholes. Developers are able to get around the rules too easily look at how the unpermitted developments solved their problem."
- 30. In regards to question two: "Permit applications shouldn't be one-size-fits-all, there needs to be different applications for different types."
- 31. "I would love to see the bill be a vehicle for economic development rather than an inhibitor in an already difficult environment for small businesses, individuals, and non-profits."
- 32. "This process needs much attention. The consensus at our table is that the specific cards, their explanations, and process issues are quite flawed."
- 33. "Clean water is too important to be reckless with."
- 34. "ATV, Snowmobiles, horses, there are so many uses/interests to encourage growth. Act 250 should be aware of "economics," large business farms should they be exempt?
- 35. "Act 250 should decrease duplication with other local and state permit process and should be more focused on incremental impacts of growth and strengthen the need of regional planning."
- 36. Regarding question 4: "Increase ability of neighbors to understand and engage in process."
- 37. "Uncertain as to what question 4 means, it is saying that more people should be voicing opinions on projects that they have no connection with?"

- 38. Regarding question 2: "Some projects need to be looked at, others no longer do."
- 39. Regarding questions 2: "Commercial scale renewable energy projects in particular when it comes to permit applications."
- 40. "I'd like to understand where "economic development" as used here tonight, factors into the Act 250 process, which is intended to "protect the environment" when large economic developments are proposed."
- 41. "What are the metrics for performance in processing Act 250 permits? Accountability!!"
- 42. "The legislature and agency employees who are responsible for evaluating Act 250 applications should be facilitating these forums. Addressing process in efficiencies and meetings outlined timelines needs to have higher accountability."
- 43. Regarding question 1: "Updates in Act 250 in response to climate change need to be intimately tied to public transportation, maintaining settlement patters, land use planning, etc."
- 44. Regarding questions 2: "More types of permit applications would need more staff if it goes that way."
- 45. Regarding questions 2: "Expand permit applications for solar arrays greater than 10 acres."
- 46. "Would like to know how Act 250 will be updated and strengthened in response to climate change data, how would this be addressed?"
- 47. Regarding question 1: "Legislature should look at other issues than Act 250 to address climate change."
- 48. Regarding question 2: "No, Act 250 shouldn't cover more types of development because it's too slow and drawn out process.
- 49. "Regarding question 3 I think it should be more regionally managed if the regional plans are strengthened."
- 50. "Act 250 is already managed regionally 9 district commissions but there needs to be more consistency between the district commissions processes."
- 51. "Permit costs and time is a concern to me. Projects that support the working landscape should be supported by Act 250 and the State in general. The commission should work to keep landowners involved in the process."
- 52. "My tendency was to rank the cards in a circle, then create web linkages between them. The Impact cards were technical in nature, and I felt less secure in rating them."
- 53. "Be consistent in district offices who process and approve Act 250 permitting."
- 54. "It would be great if the methodology of the choice of cards was explained/presented. Additionally, what will be the outcome of this aggregation?"
- 55. Regarding question 1: "there's existing language in the law that could be applied, but the law needs to add in new language to specifically address multiple aspects of climate change under several criteria."
- 56. Regarding question 2: "Some exemptions, like state quarries, were simply political and should be repealed. Development in large forest and agricultural traits should be ID'd and covered."
- 57. Regarding question 3: "They're all important and need to be integrated, along with planning better communication and coordination."
- 58. Regarding question 4: "Any way I can help regain its hero status until I die."

- 59. "When it comes to more types of permitting applications, get rid of exemptions and create tiers of review."
- 60. "#1: I'd like to see a limit to appeals (forcing stronger and focused applications). #2: Might we consider eliminating ALL EXEMPTIONS and cowering up with a simplified review system for smaller projects. #3: Need to come up with a more constructive term for economic development as we need income to live sustainably."
- 61. "The response to climate change data should include social, economic, environmental, and agro ecological, as well as access equity."
- 62. "I trust this is the first step in a very complicated process and rash decisions will be made (witnessed Act 46 backlash threatening communities)."
- 63. "I am approaching the end of my life so these questions are better considered by younger folks and I hope they are up to the task!"
- 64. "Act 250 is managed regionally at the district commission level. Eliminate Act 250 criteria that are already covered by ANR permits."
- 65. "I would like Act 250 to encompass a projects likely impact on and contribution to the education and the health of the community."
- 66. "When it comes to updating Act 250 in response to climate change data, it is an impossible question, no objective guidance. More types of permit applications for energy generation siting and size. This was an interesting but very frustrating process."
- 67. "Q2: To me, it's not as much about "types of permit applications" (which is reforming to uses). It's about ensuring it protects key locations and encourages development in smart growth locations. Q3: Isn't it administered regionally now? Awkward question."
- 68. "I would like Act 250 to rethink the categorization of criteria and how the criteria are interrelated. I also take issue with criteria 8 being rhetorically boiled down to aesthetics when research has shown the real socio-economic impacts that historic and archaeological resources has as well as their multivalent significance of cultural/working landscapes and ecological habitats."

Island Pond:

- ANRs wetland designation is a concern
- Lack of enforcement also a concern
- Scale of maple operation is too big to be exempt
- Same priorities depend on stage of life i.e. retired versus early career
- Trials are the #1 priority
- Biggest concerns are how changes to Act 250 will harm the natural ecosystem
- Act 250 processing slow and costly
- Utilities shouldn't be exempt
- Beauty stands apart from others

- Protect ridgelines
- Move sugaring from agriculture to forestry
- Economic development should be created in the appropriate scale
- o Question on process cards as to whether jurisdiction & exemption should really be on the same card
- We need a process that is simple, timely, and less costly for the average citizen
- Love the idea of Act 250 and the general mission is great
- Need something for towns with no zoning options
- Ecosystem Protection Do not agree with the question should Vermont create an Ecosystem Protection Plan to complement Act 250?
- Land protection should consider negative economic impact of reduced tax revenue (exp. w/ non-profits). Perhaps develop PILOT method in non-profit/tax exempt organization. Distributes <u>burden</u> on local tax payer = not good
 - Tax revenue is essential for supporting community development and local resources
- The Commission should read the 236-page report dated January 14, 2017 from the VT Bar Association, young lawyer division (Title) Act 250 THE GOOD, BAD, UGLY
- o Industrial sugaring should NOT be Act 250 exempt as an agricultural use
- "Economic Development" sounds to me like industrial wind development Bill Stenger & Arial Quiros
 EB5 scams promising jobs but extracting and exploiting the natural world and the residents of Vermont for their profits. It is always top down."
- "What is needed is meaningful livelihood. Meaningful work that connects us to the land and others in our communities. Not getting all of us on board to be exploiters. I don't want my kids to scrub toilets for Bill Stenger!"
- Natural world has greater importance in NEK
- Can't lose the tax base with Act 250 on trails
- o "Is there going to be any specific outdoor recreation forums?"
- o "God help us!"
- o "We feel the citing of energy projects (wind, solar) needs to be governed by Act 250 as opposed to Section 248."
- o "Why not require towns to enact zoning (regulations/laws)?"
- o "Utilities should not be exempt from Act 250."
- o "How is Act 250 going to change to eliminate the nasty neighbor veto over rural businesses?"
- o "Can the number of times that someone can have impact on the same project be limited?
- o "Development needs to be permitted when planned and executed in a manner responsible to the environment. Process needs to be clear & predictable & prompt."
- o Promote ridgelines; move energy siting from section 248 to Act 250; NRB is negating the ability of permits to appeal instead of resolving in ways that allows party to go to Environmental Court.

 Decisions made in district areas should be respected; Cases are being mismanaged by the NRB. NRB

needs to be reeled back in.

Rutland:

- 1) "Be fair and evenhanded to all applicants. Equal before the law is still a goal to be sought."
- 2) "How are all the stats for permitting broken down by district?"
- 3) "How will the state improve enforcement? What happens where there are admitted/proven violations of Act 250 Permit conditions? Repercussions?"
- 4) "What are the numbers on what Vermont did for the state versus what it cost?"
- 5) "Root cause issues me with ANR inconsistencies/ Act 250 process fair and smooth. One person's party status with funding as opposition is Achilles heel."
- 6) "Remove all criteria for which an ANR permit is needed."
- 7) "Act 250 is still too subjective and labor intensive needs to be more consistent across the state."
- 8) "Act 148 mandates universal recycling and compost, but Act 250 need to restrict less compost facilities. Compost should be regulated by DEC only not Act 250."
- 9) "Less regulations."
- 10) "Think more of small towns not just shire towns."
- 11) "The question cards seemed to support more regulation; there should be less. The application should be simplified and less expensive, especially for small projects."
- 12) "Act 250 needs less oversight ANR/VTRANS/Municipal should be dispositive (criteria 1-5). I have been consulting on Act 250 since 1975, I'm a civil engineer."
- 13) "Electronic applications are a positive step, need to be more predictive as a process."
- 14) "Keep things local, look at power infrastructure."
- 15) "Regarding question 3, already is administered regionally."
- 16) "Efficiency VT and small windmill manufacturing in E. Dorset, ect. Are already doing this without government. However, Act 250 needs to be administered fairly and evenly for all."
- 17) "The process should have one stop shopping for the natural and cultural resource data, such as, a more comprehensive ANR Natural Resource Atlas. While one of projects create jobs for environmental professionals, it is complicated and inefficient to execute the assessments independent of each other."
- 18) "Act 250 needs to be reduced. It is restrictive for Vermont's future in jobs. Regulations are choking our economic future."
- 19) "Application process should be more streamlined and timely. Permits should be cost reasonable."
- 20) "Regarding question 4, I believe citizens already have opportunities to engage."
- 21) "The process must be streamlined to work effectively."
- 22) "We need more evenly applied and streamlined systems."
- 23) "District commissions should have one publicly elected position exemption loopholes need to be closed particularly when it comes to forming and public utilizes.

Burlington:

- Act 250 needs to be empowered to do more it can help with an honest evaluation of projects, without political options attached
- Would like to see more conditions in permits holding appliers to their word
- o In the reimagining of Act 250 is there a way to include a public good component?
 - 1) "Boundaries should not determine how Act 250 is managed the area of impact should determine how it is reviewed. Statewide Impact = statewide review. Local input more local review."
 - 2) "Please protect our groundwater."
 - 3) "Speed of the process is not a substitute for fairness. Streamline don't eliminate participation."
 - 4) "Inheritably difficult balance. Humans are a part of the environment and inspired regulation of humans in harmony with their planet it's tough!"
 - 5) "I strongly agree that the current exemptions need to be looked at and if the review plans on removing the exemptions than yes, there should be more types of permit applications."
 - 6) "More predictability in process. Shorten review process. Difference should be given to local land use and ANR decisions."
 - 7) "Act 250 process should be adjusted to reflect (not duplicate) other permitting and regulatory programs in order to ensure effectiveness and public support."
 - 8) "A lot of this discussion depends upon who should make decisions who addressed these issues today. PVC, ANR, Local, etc."
 - 9) "The potential for population surge due to climate change needs addressed. I heard need for state planning vs. regulatory approach as important point to discuss."
 - 10) "Consistent state (act 248) review of all development. Should reflect good planning at all levels (local, regional, and state)."
 - 11) "Jurisdiction should be based on location based and local capacity factors."
 - 12) "need consistent state review at a board. Needs to connect more with permitting."
 - 13) "There needs to be context for what is being considered. Will there be more restrictions, less restrictions, something else? Act 250 should be a true state process when multiple jurisdictions, agencies, or municipalities are involved. Municipalities with local staff and local planning/controls should be exempt."
 - 14) "Settlement patterns need to stress consolidated development on cluster development separated by open land, conserved or agricultural."
 - 15) "While I think that planning for climate change impacts and developing to avoid climate change impacts is extremely important, I'd rather have any applicable

- standards apply to all development, rather than just Act 250."
- 16) "Existing Act 250 projects that want to make moderate changes that are approved by local zoning process should not need Act 250 amendments."
- 17) "Update terminology, streamline process of appeals."
- 18) "I want statewide criteria followed equally by the important, district commissions."
- 19) "Give more jurisdiction to NRB board."
- 20) "You have one size fits all development each county, each town, are all unique and different. You need to change your one size fits all thought process."
- 21) "I would take regional plans but must be okayed by state? Like education, maybe locals should decide. The legislation should be responsive to the evolving environment or we'll ruin Vermont with immigration. We're getting more people we need to take them in and keep Vermont with settlement patterns as Act 250 envisions, clean environment, good beauty!"

Appendix D: Survey



Survey for the Commission on Act 250: The Next 50 Years

WELCOME

For almost fifty years, Act 250 has reviewed certain developments and the subdivision of land to mitigate their impact on our environment and communities. The Commission on Act 250: The Next 50 Years was established to:

- · review the goals of Act 250;
- · assess the outcomes of Act 250;
- · engage Vermonters on their priorities for the future of the Vermont landscape; and
- · address relevant issues that have emerged since 1970.

For more information about the Commission, including a copy of the statue that created the Commission, visit our web page: https://legislature.vermont.gov/committee/detail/2018.1/333

In addition to this survey, six public forums are being held around the State, and you may also send general comments to this e-mail address: Act250Comments@leg.state.vt.us

Thank you for taking the time to fill out this survey. Your feedback is valuable and will inform the Commission as we make findings and recommendations about Act 250 in our report due December 15th, 2018.

Please complete the survey by September 15. It will take approximately ten minutes. Your responses will be kept confidential.

If you have any questions regarding the survey, please feel free to contact Olivia Machanic, Project

Assistant at Cope & Associates, Inc. at 802-951-4200 or Olivia@ConsultCope.com.

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Survey for the Commission on Act 250: The Next 50 Years

1. Diocea provide	viour zin aada ta	hala ua undarata	and the current reach	(ontor E digit 7	ın

	mple, 00544 or 94305)
2. C	o you think Act 250 has had a positive impact on Vermont overall?
0	Yes
0	No.
0	I do not know
3. C	o you think Act 250 has had a positive impact on the environment?
0	Yes
0	No
О	I do not know
4. C	To you think Act 250 has had a positive impact on the economy?
0	Yes
0	No
0	I do not know
5. C	Oo you think Act 250 has had a positive impact on the quality of life for Vermonters?
0	Yes
0	No
	I do not know



Survey for the Commission on Act 250: The Next 50 Years
PARTICIPATION
* 6. Have you participated in Act 250 proceedings?
Yes
○ No
7. If yes, what was your role? Please select all that apply:
Applicant
Party to the process
Act 250 District Commissioner
Community Member
Lawyer, Engineer, or Consultant
Real Estate/Developer
Business Owner or Senior Management
State of Vermont Staff
Regional Planning Commission Staff
Advocate
Neighbor
Local Official
Other (please specify)
8. Act 250 currently accomodates public participation.
○ Too much
○ Not enough
_ Just right
O I do not know



Survey for the Commission on Act 250: The Next 50 Years
PERMIT APPLICATION PROCESS
* 9.1 have completed an Act 250 permit application and participated in the review process. Yes No
10. Please identify the outcome of your Act 250 permit application and review process.
Approved as submitted
Approved with changes
Denied
Withdrawn by applicant In process



Survey for the Commission on Act 250: The Next 50 Years
APPEAL PROCESS
* 11. Have you participated in an Act 250 appeal? Yes
○ No
12. If yes, where was the appeal(s) handled? Please select all that apply: Environmental Board Superior Court, Environmental Division (sometimes called "Environmental Court") Supreme Court
Please identify the outcome of your appeal. Appeal successful, project denied
Appeal successful, project approved Appeal unsuccessful, project denied Appeal unsuccessful, project approved
Appeal process remains ongoing
14. Was your voice heard during the appeal process? Yes
Somewhat No
15. Do you feel you were treated fairly during the appeal process? Yes Somewhat
○ No



16.	How would you rate your overall experience in the appeal(s) process?
0	Very positive
0	Positive
0	Neutral
0	Negative
0	Very negative





Survey for the Commission on Act 250: The Next 50 Years

LOOKING AHEAD

The Commission is charged with looking at how Act 250 addresses:

- Water quality
- · Forest Fragmentation and Settlement Patterns
- · Jurisdictional thresholds
- Exemptions from Act 250
- . Whether and how Act 250 can address climate change

17.	Which statewide resources should be protected for the present and future? Please select all that apply
	River corridors
	Water quality and quantity
	Wetlands
	Forests
	Prime farmland
	Rare, threatened or endangered species habitat
	Air quality (including climate change)
	Scenic views
	Historic downtowns and villages
	Sand, gravel, earth extraction resources
	Wildlife habitat
	Other (please specify)

7



	As we think about climate change, what impacts do you think might be important to review? Please
sele	ect all that apply:
	Carbon emissions
	Extreme wind
	Extreme rain/snow/ice events
	Development sprawl (scattered development)
	Mass migration (climate refugees)
	Energy conservation
	Energy efficiency
Н	Other (please specify)
	Otter (please specify)
10	Places select the statement helevy which you feel heat matches your enjoing
19.	Please select the statement below which you feel best matches your opinion.
U	I feel act 250 should require higher energy efficiency construction, to meet the goal of near-zero emissions.
O	I feel act 250 should not require higher energy efficiency construction, to meet the goal of near-zero emissions.
0	I do not know
600	
20.	Please select the statement below which you feel best matches your opinion.
0	I feel act 250 should require new development to include on-site renewable energy, to meet the goal of near-zero emissions.
0	I feel act 250 should not require new development to include on-site renewable energy, to meet the goal of near-zero emission
0	I do not know





Survey for the Commission on Act 250: The Next 50 Years

JURISDICTION
21. Should Act 250 be amended to address incremental subdivision of large parcels of forest land into smaller parcels?
Yes
No No
O I do not know
22. Should Act 250 require review for smaller projects that are located in fragile or sensitive areas (e.g., important wildlife habitat, prime farmland)?
Yes
○ No
I do not know
23. Please select the statement below which you feel best matches your opinion.
I feel Act 250 should have an increased role in the review of development in Vermont's compact areas, like downtowns and villages.
I feel Act 250 should have a decreased role in the review of development in Vermont's compact areas.
I feel Act 250's current review of development in compact areas is satisfactory.
O I do not know
24. Please select the statement below which you feel best matches your opinion.
I feel Act 250 should have an increased role in the review of development in rural areas in Vermont.

I feel Act 250 should have a decreased role in the review of development in rural areas in Vermont.

I feel Act 250's current review of development in rural areas is satisfactory.

I do not know

9



	A number of uses are currently exempt from Act 250, including the ones on the list below. Which of
tolic	owing uses do you think should remain exempt from Act 250? Please select all that apply:
	Commercial development on less than 10 acres (or 1 acre if town lacks zoning bylaws)
	Housing development of fewer than 10 units (or fewer if no zoning)
	Farming
	Logging (below 2,500 feet; permits required above 2,500 feet)
	Slate quarrying
	Developments pre-existing Act 250
	Priority Housing Projects (Priority Housing Projects must be within certain designated centers and must meet certain affor thresholds)
26.	Should electric transmission, electric generation, natural gas services and telecommunications serv
	subject to Act 250 jurisdiction? (Currently, they are reviewed by the Public Utility Commission under
sep	arate permitting process called Section 248.)
0	Yes
0	No
0	I do not know
27.	Should Act 250 apply to energy projects on ridgelines? Yes
0	No
0	I do not know



The Next 50 Years Survey for the Commission on Act 250: The Next 50 Years
FINAL THOUGHTS
28. What is one thing you would like to change in Act 250?
THANK YOU FOR TAKING THE TIME TO RESPOND, WE APPRECIATE YOUR FEEDBACK.
If you have more to share, please email Act250Comments@leg.state.vt.us and if you have any questions, please feel free to contact Cope & Associates, Inc. directly at 802-951-4200.
Commission on Act 250: The Next 50 Years Rep. Sheldon, Sen. Pearson, Sen. Campion, Rep. Deen, Rep. Lefebvre & Sen. McCormack
Please click DONE at the bottom to submit your responses.



Appendix E: The Big Deal™ Cards





IMPACT



EXEMPT FROM ACT 250

(may be regulated elsewhere)

- Commercial development on less than 1 or less than 10 acres
- Farming and farm buildings below 2,500 feet
- Logging below 2,500 feet
- Electric generation and transmission facilities, regulated by the Public Utility Commission
- Small-scale and on farm composting

I 2

IMPACT

BLUE CARD

Cope & Associates Inc.

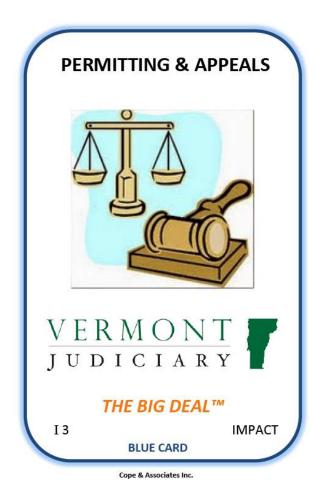
ACCESS & VOICE

- The statute defines "any person" as :
 - An Individual
 - An Association
 - A Business
- Particularized interest:
 - The project affects the person specifically, as opposed to the general public
- Effect falls under the Act 250 criteria:
 - Air Pollution
 - Runoff/water pollution
 - Aesthetics
 - Traffic
 - Noise & Odors

I 1

BLUE CARD







IMPACT



JURISDICTION

- Act 250 is regulatory legislation
- Act 250 is triggered by the size and type of project
- The Vermont Agency of Natural Resources, which is separate from Act 250, issues other environmental permits; these permits can be used to meet some Act 250 criteria

PERMITTING & APPEALS

- "Act 250 is based on citizen participation before a citizen board"
- "Applications are approved, approved with conditions, or denied"
- Appeals are heard by the Court's Environmental Division, and then may go to the Vt. Supreme Court
- Two-thirds of Act 250 permits are issued in less than 60 days.
- Almost 90% of applications do not require a hearing

I 4 IMPACT

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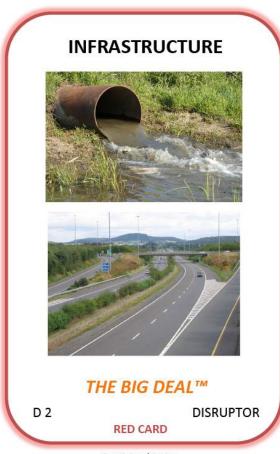
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Cope & Associates Inc.

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INFRASTRUCTURE

- Do roads disrupt the landscape?
- Do traffic volume and patterns cause disruption?
- Impact on environment and scenic beauty
- Infrastructure to support communities and economic activity

CLIMATE CHANGE

- Increased emissions from the project and related traffic
- In-migration due to climate change
- Standards for energy use and efficiency
- Protection of the ecosystem (i.e. air, water, and wildlife)
- Assuring projects are designed for climate change

D 2 DISRUPTOR

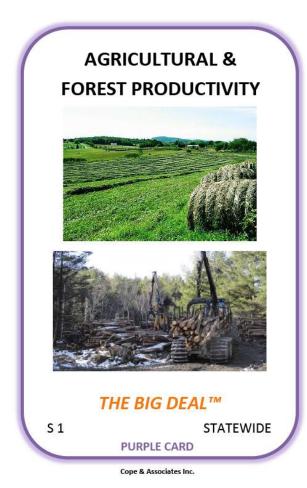
RED CARD

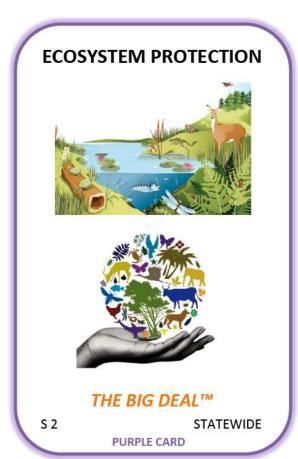
Cope & Associates Inc.

D 1 DISRUPTOR

RED CARD









ECOSYSTEM PROTECTION

- "Public trust" is the legal concept that natural resources like water and wildlife are generally owned by all the people and are managed for the public good
- Act 250 reviews project impacts on air and water quality, and wildlife habitat
- Should Vermont create an ecosystem protection plan to complement Act 250?

AGRICULTURAL & FOREST PRODUCTIVITY

- Use of primary agricultural soils
- Support for jobs through a working landscape
- · Preservation of land
- Land use for recreation

S 2 STATEWIDE

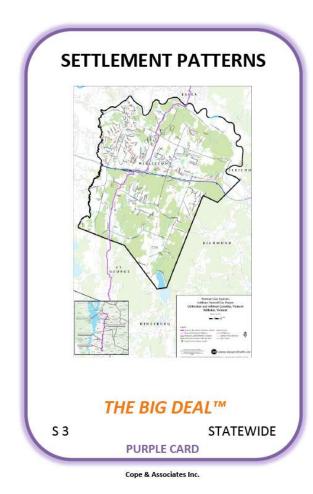
PURPLE CARD

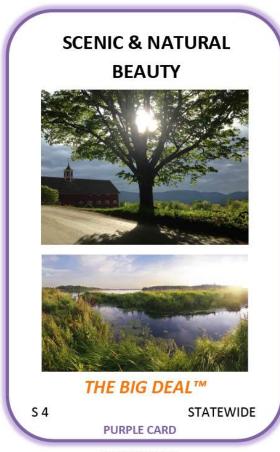
Cope & Associates Inc.

S 1 STATEWIDE

PURPLE CARD









SCENIC & NATURAL BEAUTY

- The project cannot have an undue adverse effect on scenic or natural beauty, aesthetics or historic sites
- Does the project fit into the landscape?
- If not, then:
 - Does it comply with scenic beauty provisions in the town plan?
 - Will it be shocking or offensive to the average person?
 - Is there sufficient mitigation?

S 4 STATEWIDE

PURPLE CARD

Cope & Associates Inc.

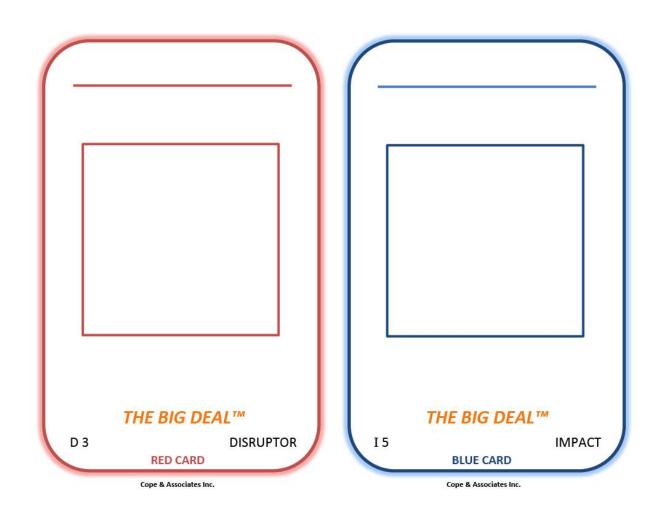
SETTLEMENT PATTERNS

- Preserve Vermont communities
- Promote compact centers surrounded by a working rural landscape
- Target investment in managed municipal centers
- Concentrate development to protect the environment
- Consider cost of scattered versus dense development

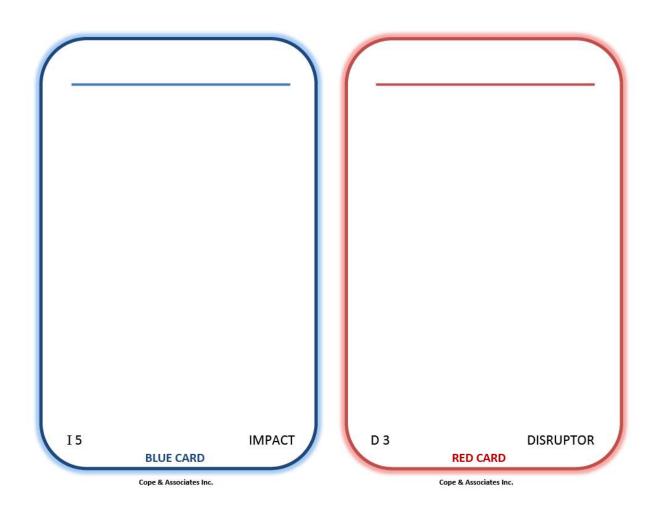
S 3 STATEWIDE

PURPLE CARD

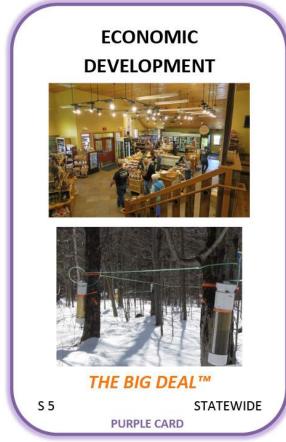


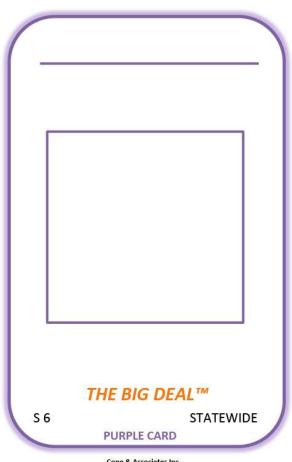














S 6 STATEWIDE PURPLE CARD Cope & Associates Inc.

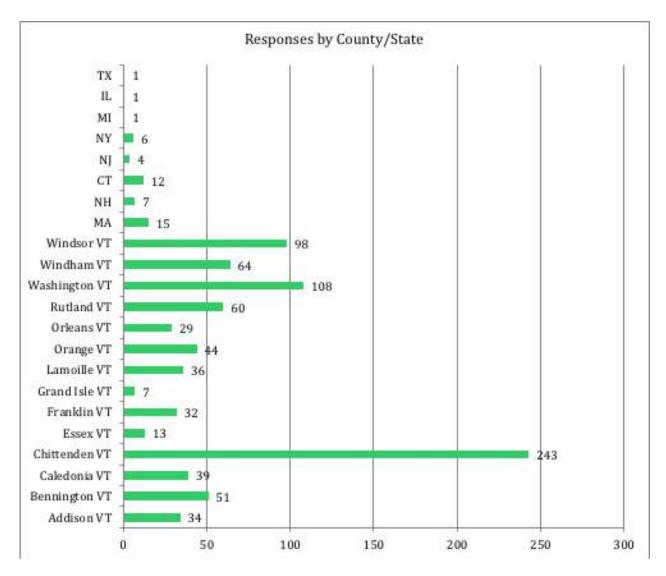
ECONOMIC DEVELOPMENT

- Create job opportunities
- Promote economic, political, and social well-being among individuals
- Ensure that projects do not create public costs that exceeds their public benefits

S 5 STATEWIDE PURPLE CARD



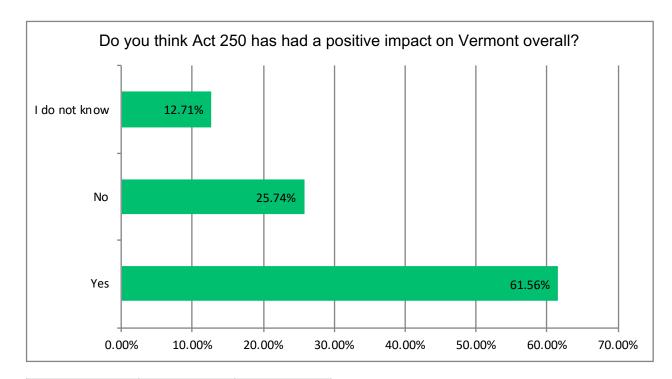
Appendix F: Survey Quantitative Results (Statewide)





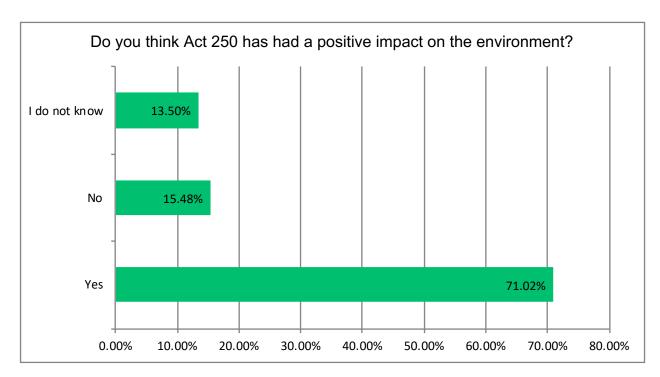
County	Total
Addison VT	34
Bennington VT	51
Caledonia VT	39
Chittenden VT	243
Essex VT	13
Franklin VT	32
Grand Isle VT	7
Lamoille VT	36
Orange VT	44
Orleans VT	29
Rutland VT	60
Washington VT	108
Windham VT	64
Windsor VT	98
MA	15
NH	7
CT	12
NJ	4
NY	6
MI	1
IL	1
TX	1
Grand Total	905





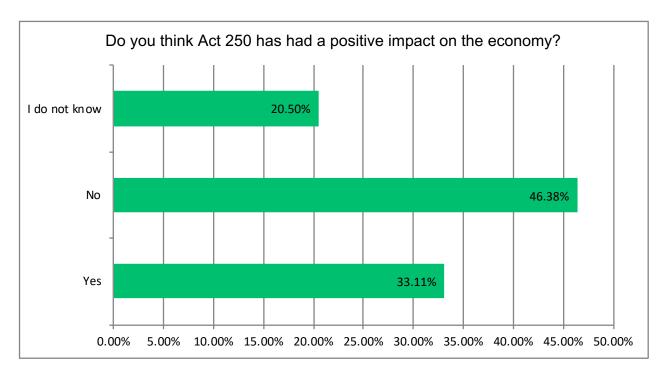
Answer Choices	Responses	
Yes	61.56%	562
No	25.74%	235
I do not know	12.71%	116
	Answered	913
	Skipped	28





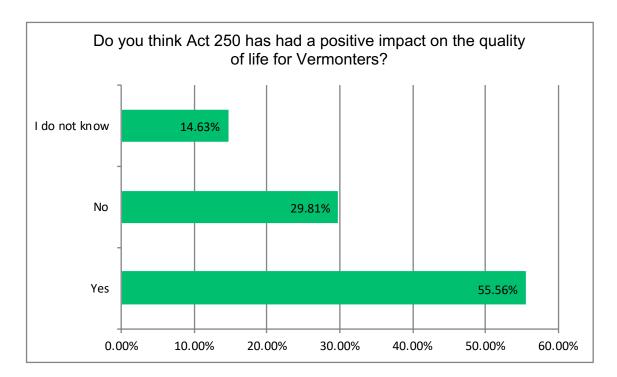
	Skipped	30
	Answered	911
I do not know	13.50%	123
No	15.48%	141
Yes	71.02%	647
Answer Choices	Resp	onses





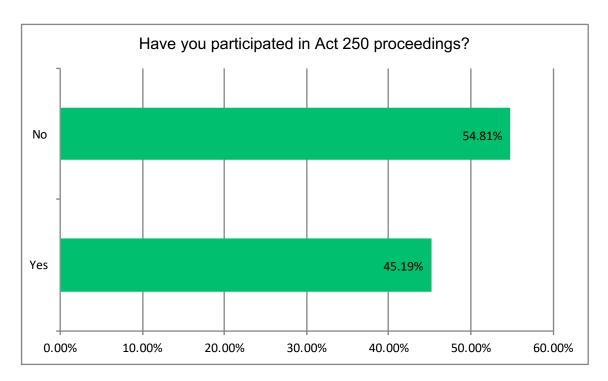
	Skipped	29
	Answered	912
I do not know	20.50%	187
No	46.38%	423
Yes	33.11%	302
Answer Choices	Respo	onses



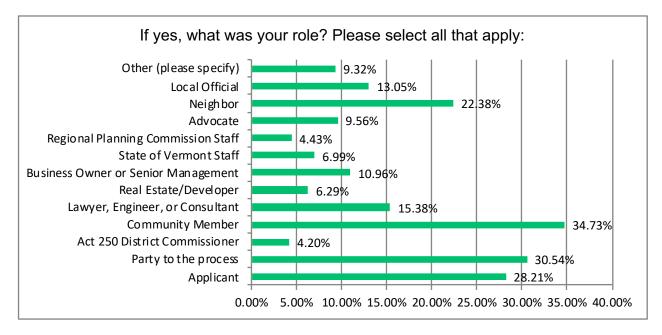


Answer Choices	Responses	
Yes	55.56%	505
No	29.81%	271
I do not know	14.63%	133
	Answered	909
	Skipped	32



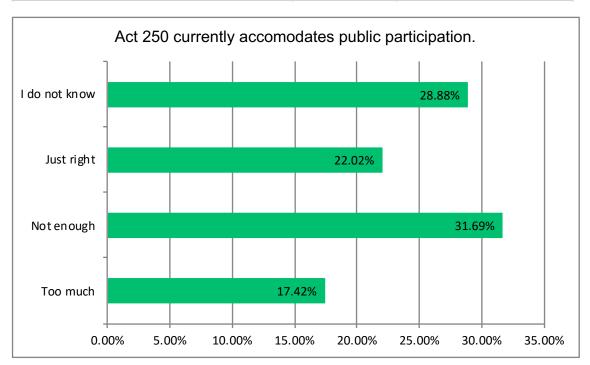


Answer Choices	Resp	onses
Yes	45.19%	413
No	54.81%	501
	Answered	914
	Skipped	27



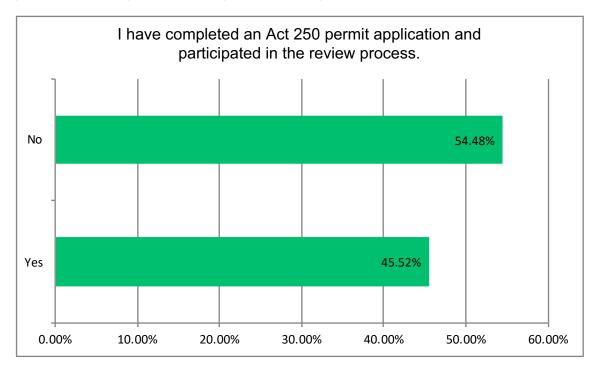


Answer Choices		Responses
Applicant	28.21%	121
Party to the process	30.54%	131
Act 250 District Commissioner	4.20%	18
Community Member	34.73%	149
Lawyer, Engineer, or Consultant	15.38%	66
Real Estate/Developer	6.29%	27
Business Owner or Senior Management	10.96%	47
State of Vermont Staff	6.99%	30
Regional Planning Commission Staff	4.43%	19
Advocate	9.56%	41
Neighbor	22.38%	96
Local Official	13.05%	56
Other (please specify)	9.32%	40
	Answered	429
	Skipped	512



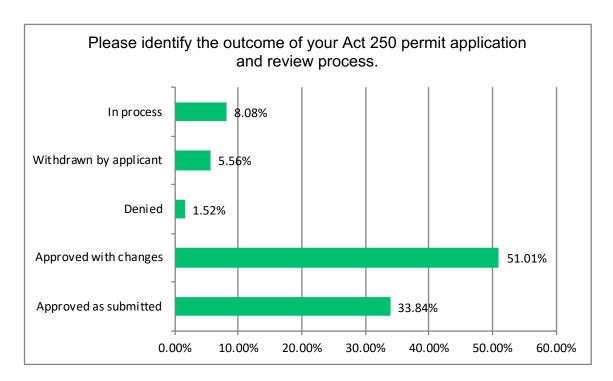


Answer Choices	Respo	onses
Too much	17.42%	155
Not enough	31.69%	282
Just right	22.02%	196
I do not know	28.88%	257
	Answered	890
	Skipped	51



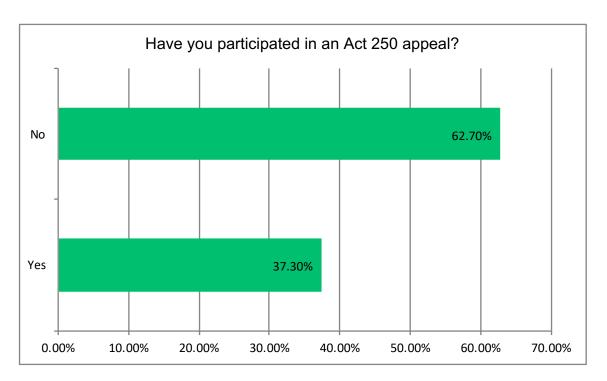
Answer Choices	Responses	
Yes	45.52%	188
No	54.48%	225
	Answered	413
	Skipped	528





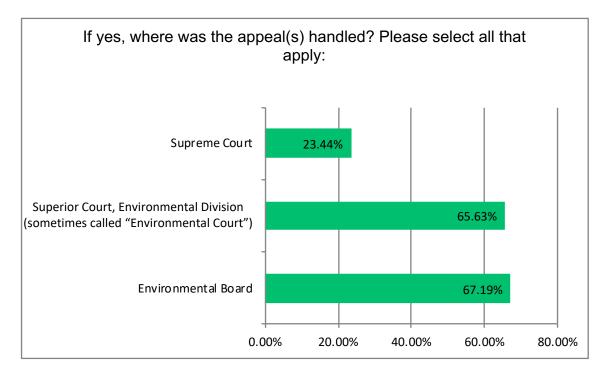
Answer Choices	Responses	
Approved as submitted	33.84%	67
Approved with changes	51.01%	101
Denied	1.52%	3
Withdrawn by applicant	5.56%	11
In process	8.08%	16
	Answered	198
	Skipped	743





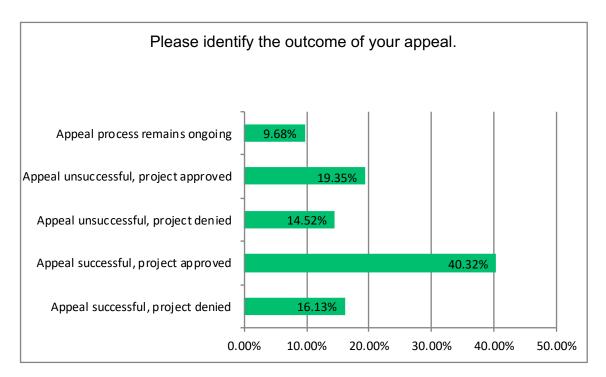
Answer Choices	Resp	onses
Yes	37.30%	69
No	62.70%	116
	Answered	185
	Skipped	756





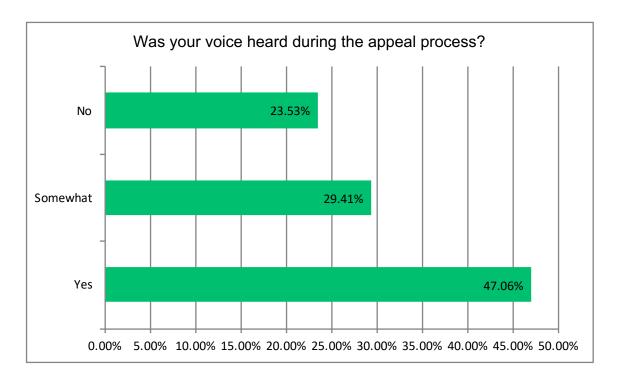
	Skipped	877
	Answered	64
Supreme Court	23.44%	15
Superior Court, Environmental Division (sometimes called "Environmental	65.63%	42
Environmental Board	67.19%	43
Answer Choices	Resp	onses





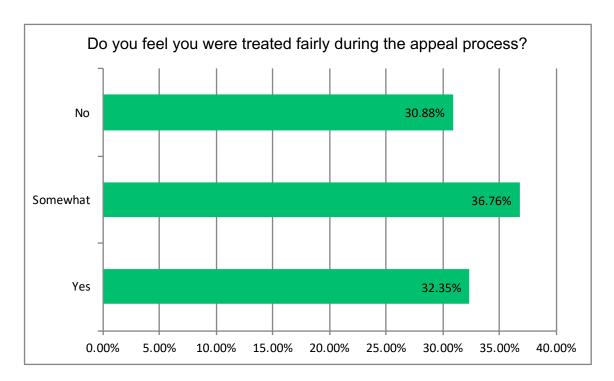
Answer Choices	Responses	
Appeal successful, project denied	16.13%	10
Appeal successful, project approved	40.32%	25
Appeal unsuccessful, project denied	14.52%	9
Appeal unsuccessful, project approved	19.35%	12
Appeal process remains ongoing	9.68%	6
	Answered	62
	Skipped	879





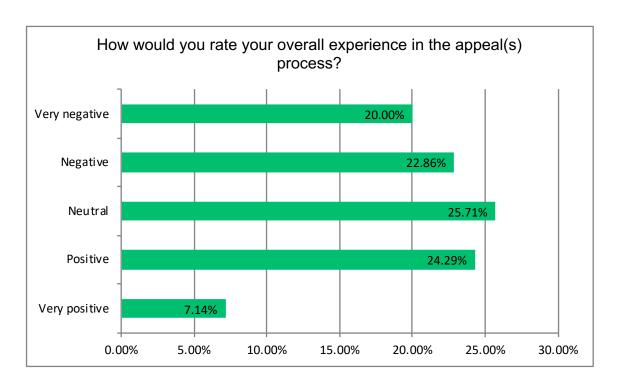
Answer Choices	Respo	onses
Yes	47.06%	32
Somewhat	29.41%	20
No	23.53%	16
	Answered	68
	Skipped	873





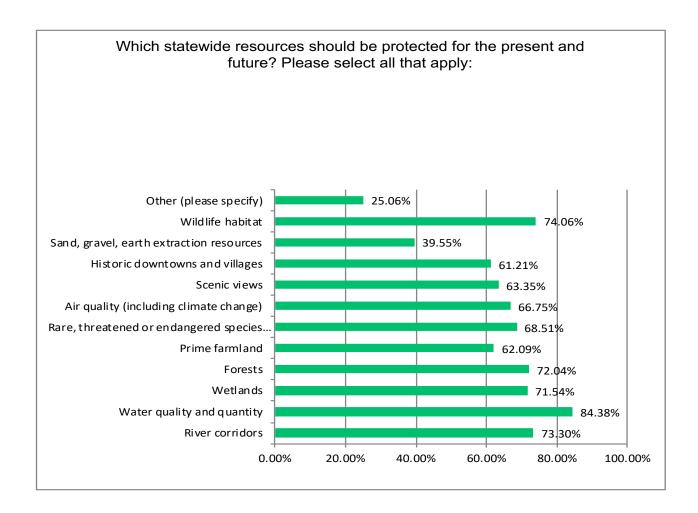
Answer Choices	Responses	
Yes	32.35%	22
Somewhat	36.76%	25
No	30.88%	21
	Answered	68
	Skipped	873





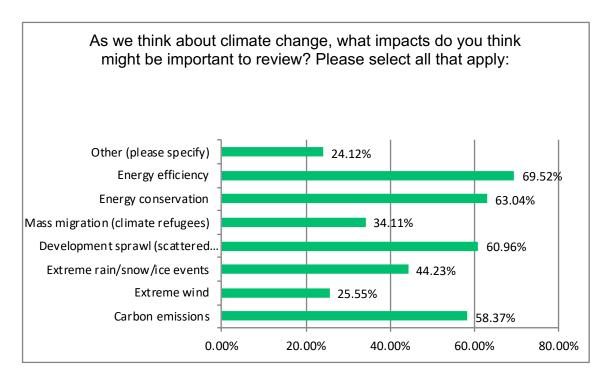
Answer Choices	Respo	onses
Very positive	7.14%	5
Positive	24.29%	17
Neutral	25.71%	18
Negative	22.86%	16
Very negative	20.00%	14
	Answered	70
	Skipped	871





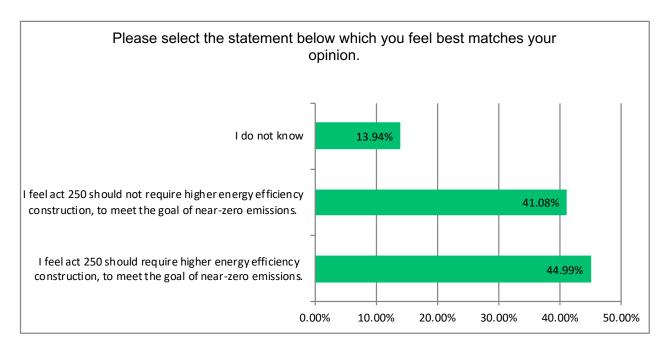
Answer Choices		Responses
River corridors	73.30%	582
Water quality and quantity	84.38%	670
Wetlands	71.54%	568
Forests	72.04%	572
Prime farmland	62.09%	493
Rare, threatened or endangered species habitat	68.51%	544
Air quality (including climate change)	66.75%	530
Scenic views	63.35%	503
Historic downtowns and villages	61.21%	486
Sand, gravel, earth extraction resources	39.55%	314
Wildlife habitat	74.06%	588
Other (please specify)	25.06%	199
	Answered	794
	Skipped	147





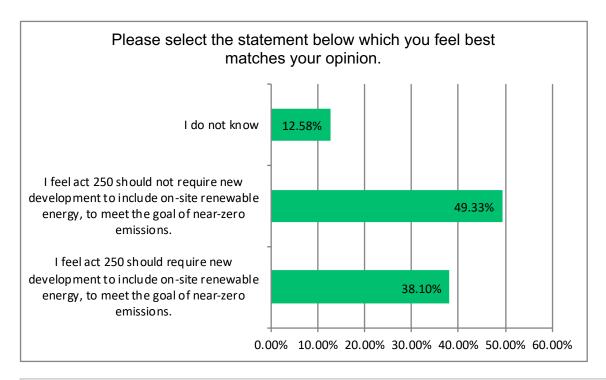
Answer Choices		Responses
Carbon emissions	58.37%	450
Extreme wind	25.55%	197
Extreme rain/snow/ice events	44.23%	341
Development sprawl (scattered development)	60.96%	470
Mass migration (climate refugees)	34.11%	263
Energy conservation	63.04%	486
Energy efficiency	69.52%	536
Other (please specify)	24.12%	186
	Answered	771
	Skipped	170





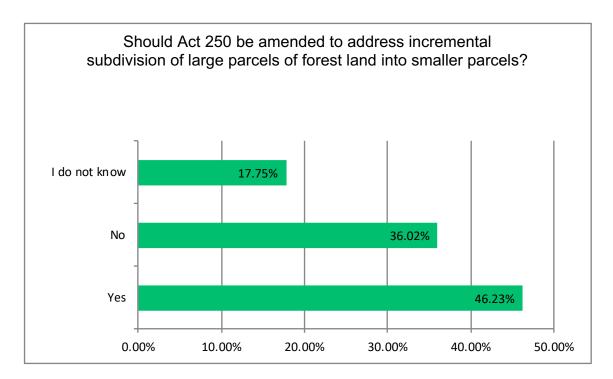
Answer Choices	Resp	onses
I feel act 250 should require higher energy efficiency construction, to meet	44.99%	368
I feel act 250 should not require higher energy efficiency construction, to n	41.08%	336
I do not know	13.94%	114
	Answered	818
	Skipped	123





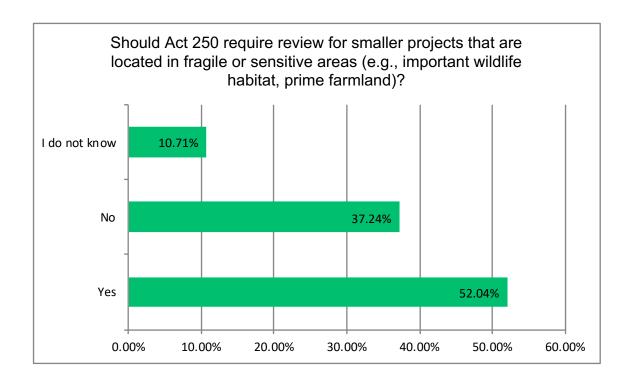
Answer Choices	Respo	onses
I feel act 250 should require new development to include on-site renewable	38.10%	312
I feel act 250 should not require new development to include on-site renew	49.33%	404
I do not know	12.58%	103
	Answered	819
	Skipped	122





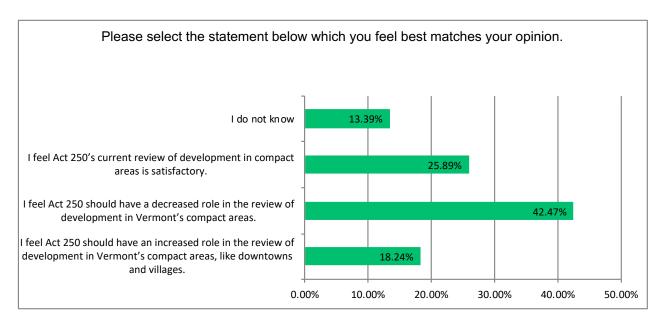
Answer Choices	Respo	onses
Yes	46.23%	362
No	36.02%	282
I do not know	17.75%	139
	Answered	783
	Skipped	158



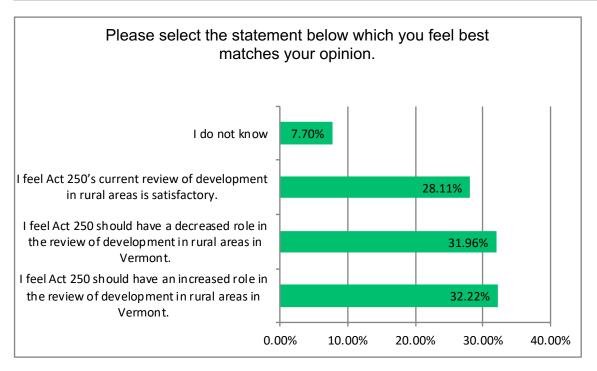


	Skipped	157
	Answered	784
I do not know	10.71%	84
No	37.24%	292
Yes	52.04%	408
Answer Choices	Respo	onses



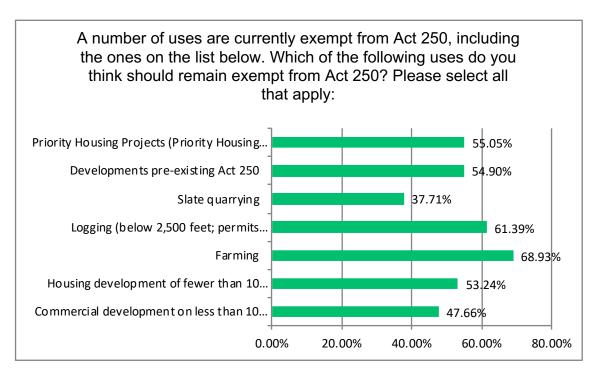


Answer Choices	Respo	onses
I feel Act 250 should have an increased role in the review of development	18.24%	143
I feel Act 250 should have a decreased role in the review of development in	42.47%	333
I feel Act 250's current review of development in compact areas is satisfact	25.89%	203
I do not know	13.39%	105
	Answered	784
	Skipped	157



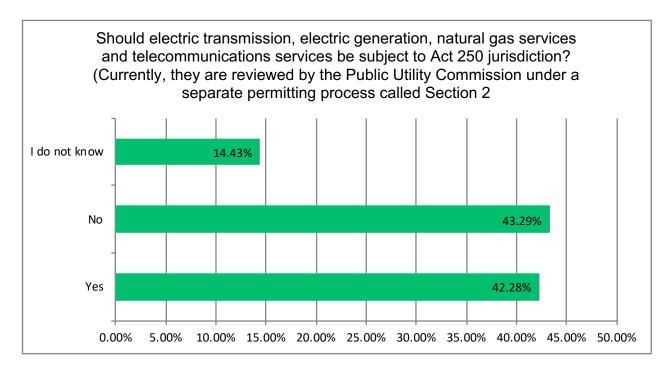


Answer Choices	Respo	onses
I feel Act 250 should have an increased role in the review of development	32.22%	251
I feel Act 250 should have a decreased role in the review of development i	31.96%	249
I feel Act 250's current review of development in rural areas is satisfactory	28.11%	219
I do not know	7.70%	60
	Answered	779
	Skipped	162



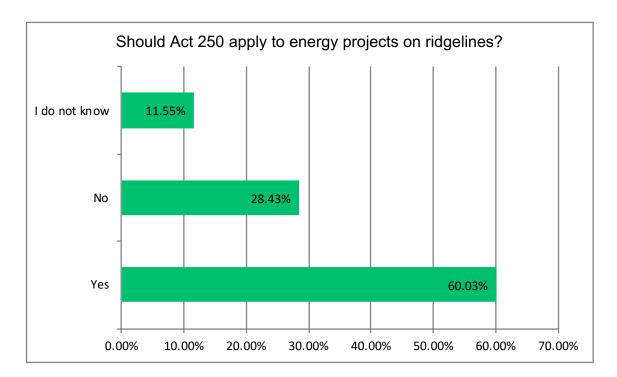
Answer Choices	Respo	onses
Commercial development on less than 10 acres (or 1 acre if town lacks zo	47.66%	316
Housing development of fewer than 10 units (or fewer if no zoning)	53.24%	353
Farming	68.93%	457
Logging (below 2,500 feet; permits required above 2,500 feet)	61.39%	407
Slate quarrying	37.71%	250
Developments pre-existing Act 250	54.90%	364
Priority Housing Projects (Priority Housing Projects must be within certain	55.05%	365
	Answered	663
	Skipped	278





Answer Choices	Responses			
Yes	42.28%	334		
No	43.29%	342		
I do not know	14.43%	114		
	Answered	790		
	Skipped	151		

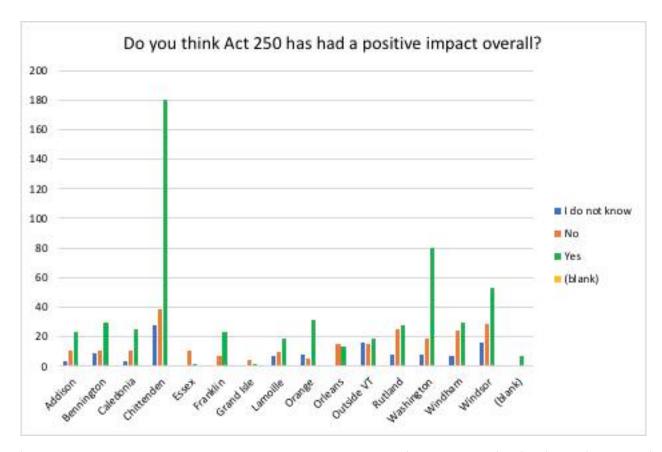




Answer Choices	Responses				
Yes	60.03%	473			
No	28.43%	224			
I do not know	11.55%	91			
	Answered	788			
	Skipped	153			

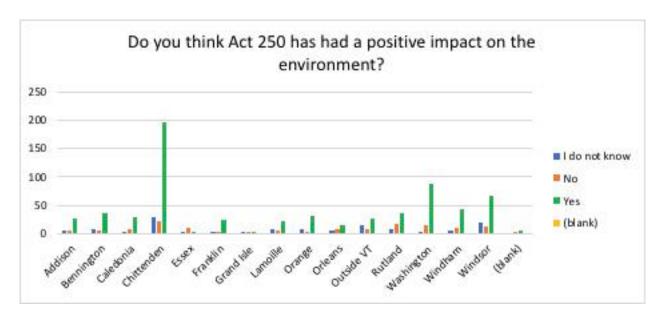


Appendix G: Survey Quantitative Results (By County)



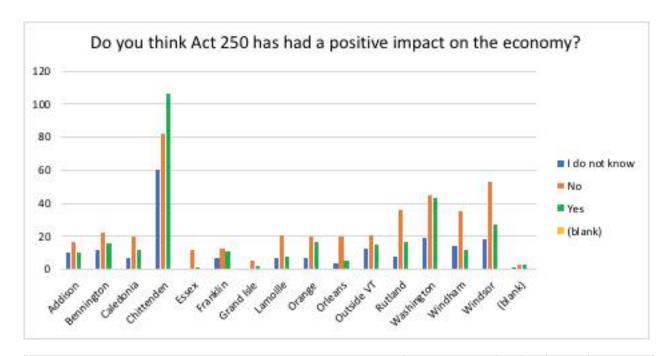
Count of Do you think Act 250 has had a positive impact on Vermont overall?	Column Labels					
Row Labels	I do not know	N	o	Yes	(blank)	Grand Total
Addison		3	11	23		37
Bennington		9	11	30		50
Caledonia		3	11	25		39
Chittenden	:	28	39	180		247
Essex			11	2		13
Franklin		1	7	23		31
Grand Isle		1	4	2		7
Lamoille		7	10	19		36
Orange		8	5	31		44
Orleans		1	15	13		29
Outside VT		16	15	19		50
Rutland		8	25	28		61
Washington		8	19	80		107
Windham		7	24	30		61
Windsor		16	29	53		98
(blank)			1	7		8
Grand Total	1	16 2	37	565		918





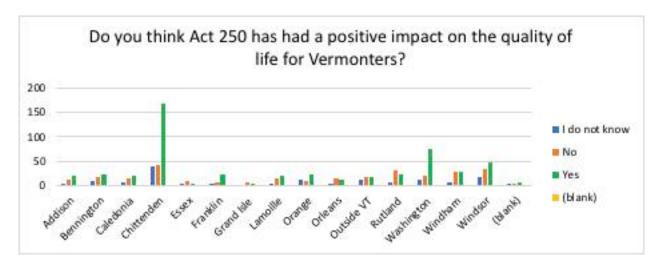
Count of Do you think Act 250 has had a positive impact on the environment?	Column Labels				
Row Labels	I do not know	No	Yes	(blank)	Grand Total
Addison		5 6	26		37
Bennington	-	7 6	37		50
Caledonia	:	2 7	30		39
Chittenden	30	21	196		247
Essex		10	2		13
Franklin	4	1 3	24		31
Grand Isle	:	L 3	3		7
Lamoille	9	5	22		36
Orange	8	3 4	32		44
Orleans	(5 9	14		29
Outside VT	1.	5 9	26		50
Rutland	•	7 18	36		61
Washington	4	15	88		107
Windham	!	5 11	44		60
Windsor	19	13	66		98
(blank)		1	6		7
Grand Total	12:	3 141	652		916





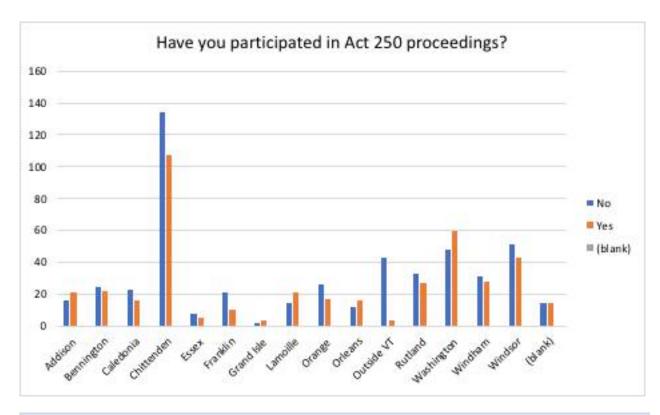
Count of Do you think Act 250 has had a positive impact on the economy?	Column Labels					
Row Labels	I do not know		No	Yes	(blank)	Grand Total
Addison		10	17	10		37
Bennington		12	22	16		50
Caledonia		7	20	12		39
Chittenden		60	82	106		248
Essex			12	1		13
Franklin		7	13	11		31
Grand Isle			5	2		7
Lamoille		7	21	8		36
Orange		7	20	17		44
Orleans		4	20	5		29
Outside VT		13	21	15		49
Rutland		8	36	17		61
Washington		19	45	43		107
Windham		14	35	12		61
Windsor		18	53	27		98
(blank)		1	3	3		7
Grand Total	1	L87	425	305		917





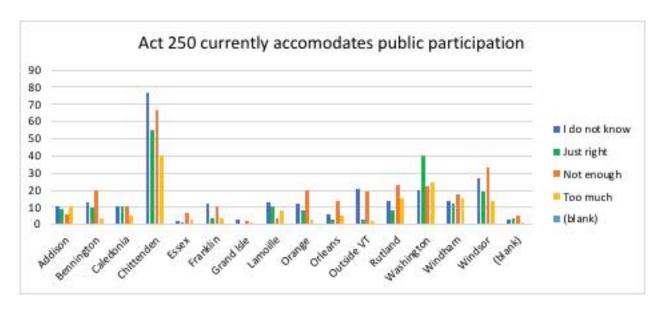
Count of Do you think Act 250 has had a positive impact on the quality of life for Vermonters?	Column Labels			
Row Labels	I do not know	No	Yes	(blank) Grand Total
Addison	4	12	21	37
Bennington	9	16	24	49
Caledonia	5	14	20	39
Chittenden	38	41	169	248
Essex	1	10	2	13
Franklin	2	7	22	31
Grand Isle		5	2	7
Lamoille	3	14	19	36
Orange	11	10	23	44
Orleans	3	15	11	29
Outside VT	12	18	18	48
Rutland	6	30	24	60
Washington	13	20	74	107
Windham	7	27	27	61
Windsor	18	33	47	98
(blank)	1	1	5	7
Grand Total	133	273	508	914





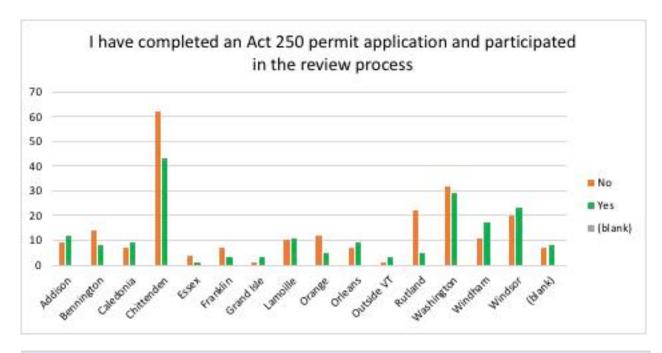
Count of Have you participated in Act 250 proceedings?	Column Labels			
Row Labels	No	Yes	(blank)	Grand Total
Addison	16	21		37
Bennington	25	22		47
Caledonia	23	16		39
Chittenden	134	107		241
Essex	8	5		13
Franklin	21	10		31
Grand Isle	2	4		6
Lamoille	15	21		36
Orange	26	17		43
Orleans	12	16		28
Outside VT	43	4		47
Rutland	33	27		60
Washington	48	60		108
Windham	31	28		59
Windsor	51	43		94
(blank)	15	15		30
Grand Total	503	416		919





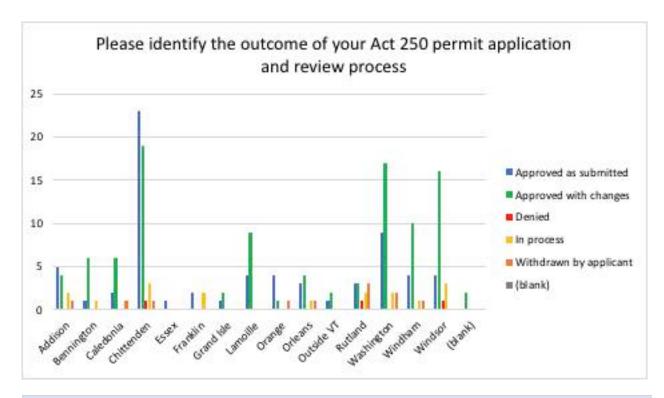
Count of Act 250 currently accomodates public participation.	Column Labels					
Row Labels	I do not know	Just right	Not enough	Too much	(blank)	Grand Total
Addison	11	9	6	11		37
Bennington	13	10	20	4		47
Caledonia	11	11	11	5		38
Chittenden	77	55	67	40		239
Essex	2	1	7	3		13
Franklin	12	4	11	4		31
Grand Isle	3		2	1		6
Lamoille	13	11	4	8		36
Orange	12	8	20	3		43
Orleans	6	3	14	5		28
Outside VT	21	3	19	2		45
Rutland	14	8	23	15		60
Washington	20	40	22	25		107
Windham	14	12	18	15		59
Windsor	27	19	33	14		93
(blank)	3	4	5	1		13
Grand Total	259	198	282	156		895





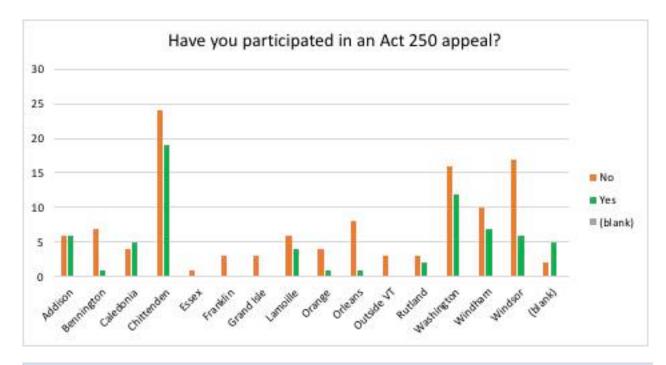
Count of I have completed an Act 250 permit application and participated in the review process.	Column Labels			
Row Labels	No	Yes	(blank)	Grand Total
Addison	g	12		21
Bennington	14	8		22
Caledonia	7	' 9		16
Chittenden	62	43		105
Essex	4	1		5
Franklin	7	' 3		10
Grand Isle	3	. 3		4
Lamoille	10	11		21
Orange	12	. 5		17
Orleans	7	' 9		16
Outside VT	3	. 3		4
Rutland	22	. 5		27
Washington	32	29		61
Windham	13	. 17		28
Windsor	20	23		43
(blank)	-	' 8		15
Grand Total	226	189		415





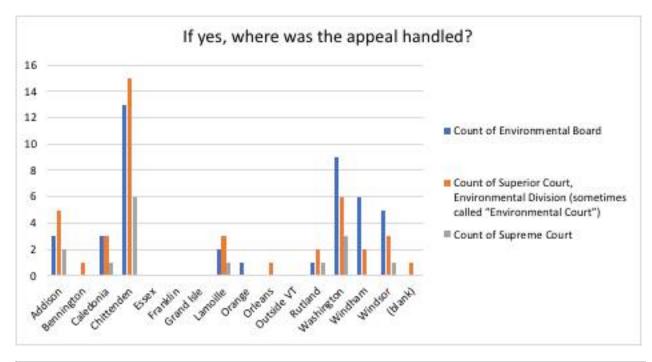
Count of Please identify the outcome of your						
Act 250 permit application and review						
process.	Column Labels					
Row Labels	Approved as submitted	Approved with changes	Denied	In process	Withdrawn by applicant	(blank) Grand Total
Addison	5	4		2	1	12
Bennington	1	6		1		8
Caledonia	2	6			1	9
Chittenden	23	19	1	3	1	47
Essex	1					1
Franklin	2			2		4
Grand Isle	1	2				3
Lamoille	4	9				13
Orange	4	1			1	6
Orleans	3	4		1	1	9
Outside VT	1	2				3
Rutland	3	3	1	2	3	12
Washington	9	17		2	2	30
Windham	4	10		1	1	16
Windsor	4	16	1	3		24
(blank)		2				2
Grand Total	67	101	3	17	11	199





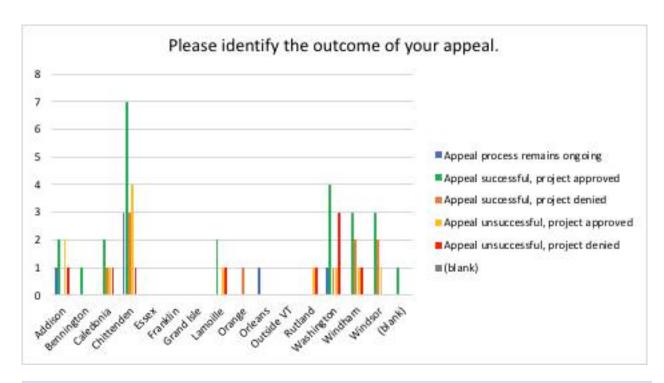
Count of Have you participated in an Act 250 appeal?	Column Labels			
Row Labels	No	Yes	(blank)	Grand Total
Addison	6	6		12
Bennington	7	1		8
Caledonia	4	5		9
Chittenden	24	19		43
Essex	1			1
Franklin	3			3
Grand Isle	3			3
Lamoille	6	4		10
Orange	4	1		5
Orleans	8	1		9
Outside VT	3			3
Rutland	3	2		5
Washington	16	12		28
Windham	10	7		17
Windsor	17	6		23
(blank)	2	5		7
Grand Total	117	69		186





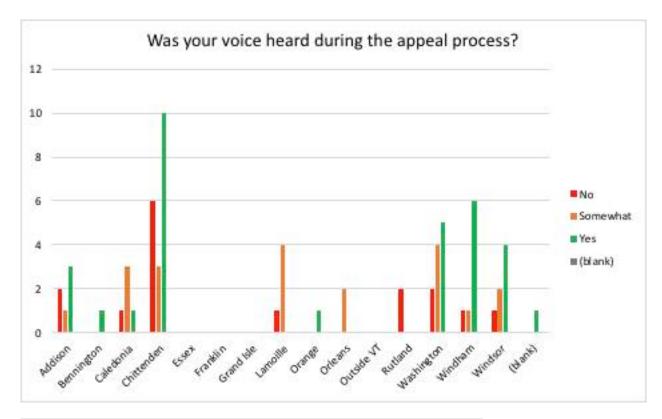
Row Labels	Count of Environmental Board	Count of Superior Court, Environmental Division (sometimes called "Environmental Court")	Count of Supreme Court
Addison	3	5	2
Bennington		1	
Caledonia	3	3	1
Chittenden	13	15	6
Essex			
Franklin			
Grand Isle			
Lamoille	2	3	1
Orange	1		
Orleans		1	
Outside VT			
Rutland	1	2	1
Washington	9	6	3
Windham	6	2	
Windsor	5	3	1
(blank)		1	
Grand Total	43	42	15





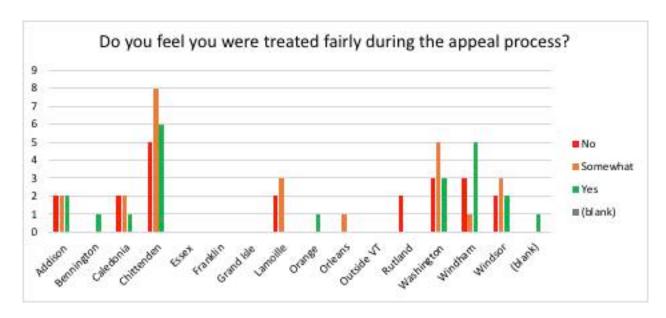
Count of Please identify the outcome						
of your appeal.	Column Labels					
	Appeal process	Appeal successful,	Appeal successful,	Appeal unsuccessful,	Appeal unsuccessful,	
Row Labels	remains ongoing	project approved	project denied	project approved	project denied	Grand Total
Addison	1	2		2	1	6
Bennington		1				1
Caledonia		2	1	1	1	5
Chittenden	3	7	3	4	1	18
Essex						
Franklin						
Grand Isle						
Lamoille		2		1	1	4
Orange			1			1
Orleans	1					1
Outside VT						
Rutland				1	1	2
Washington	1	4	1	1	3	10
Windham		3	2	1	1	7
Windsor		3	2	1		6
(blank)		1				1
Grand Total	6	25	10	12	9	62





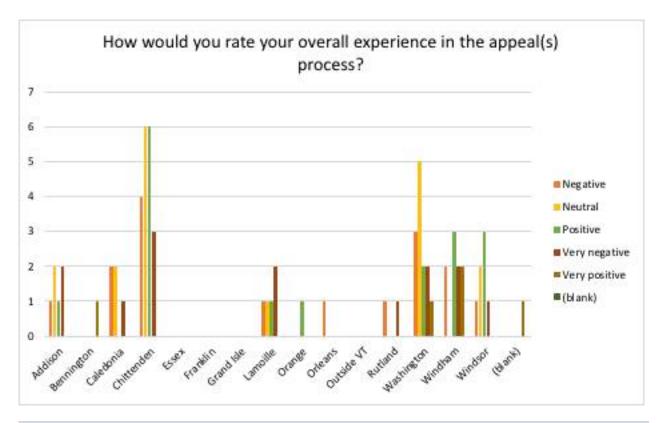
Count of Was your voice heard during the appeal						
process?	Column Labels					
Row Labels	No	:	Somewhat	Yes	(blank)	Grand Total
Addison		2	1	3		6
Bennington				1		1
Caledonia		1	3	1		5
Chittenden		6	3	10		19
Essex						
Franklin						
Grand Isle						
Lamoille		1	4			5
Orange				1		1
Orleans			2			2
Outside VT						
Rutland		2				2
Washington		2	4	5		11
Windham		1	1	6		8
Windsor		1	2	4		7
(blank)				1		1
Grand Total		16	20	32		68





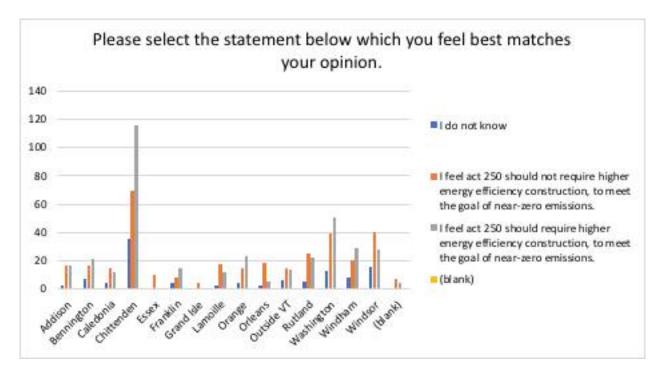
Count of Do you feel you were treated fairly during						
the appeal process?	Column Labels					
Row Labels	No		Somewhat	Yes	(blank)	Grand Total
Addison		2	2	2		6
Bennington				1		1
Caledonia		2	2	1		5
Chittenden		5	8	6		19
Essex						
Franklin						
Grand Isle						
Lamoille		2	3			5
Orange				1		1
Orleans			1			1
Outside VT						
Rutland		2				2
Washington		3	5	3		11
Windham		3	1	5		9
Windsor		2	3	2		7
(blank)				1		1
Grand Total		21	25	22		68





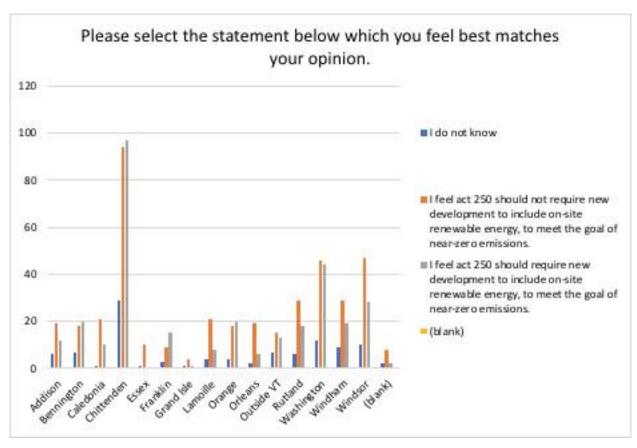
Count of How wou	ılı Column Labels					
Row Labels	Negative	Neutral	Positive	Very negative	Very positive	(blank) Grand Total
Addison	1	. 2	1	2		6
Bennington					1	1
Caledonia	2	2 2		1		5
Chittenden	4	. 6	6	3		19
Essex						
Franklin						
Grand Isle						
Lamoille	1	. 1	1	2		5
Orange			1			1
Orleans	1	=				1
Outside VT						
Rutland	1	=		1		2
Washington	3	5	2	2	1	13
Windham	2	<u> </u>	3	2	2	9
Windsor	1	. 2	3	1		7
(blank)					1	1
Grand Total	16	18	17	14	5	70





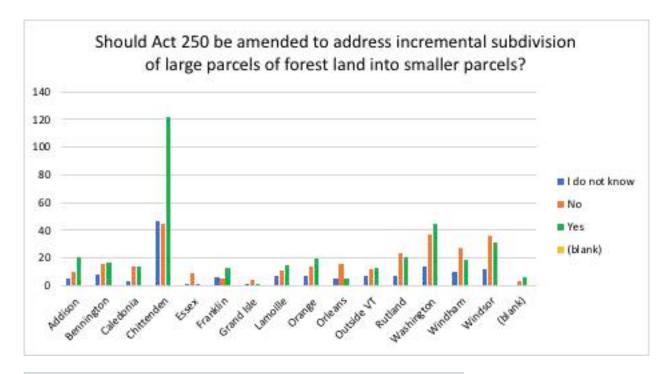
Count of Please select the statement below which you feel best matches your opinion.	Column Labels			
		I feel act 250 should not require higher energy efficiency construction, to meet		
Row Labels	I do not know	the goal of near-zero emissions.	meet the goal of near-zero emissions.	Grand Total
Addison	3			37
Bennington	7		21	45
Caledonia	4	. 15	12	31
Chittenden	36	69	116	221
Essex		10	1	11
Franklin	4		15	27
Grand Isle	1	. 4	1	6
Lamoille	3	18	12	33
Orange	4	15	23	42
Orleans	3	19	5	27
Outside VT	6	15	14	35
Rutland	5	25	22	52
Washington	13	39	51	103
Windham	8	20	29	57
Windsor	16	40	28	84
(blank)	1	. 7	4	12
Grand Total	114	338	371	823





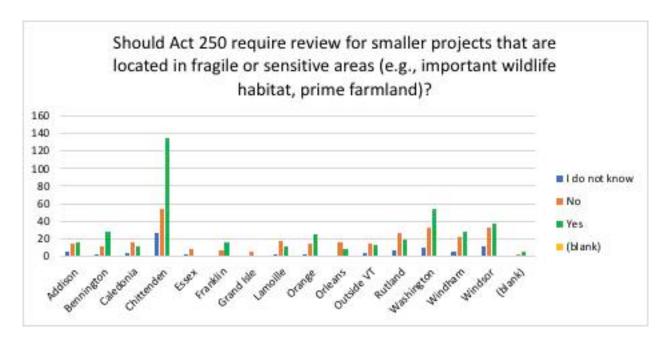
Count of Please select the statement below which you				
feel best matches your opinion.	Column Labels			
,		I feel act 250 should not require new	I feel act 250 should require new development	
		development to include on-site renewable	to include on-site renewable energy, to meet	
Row Labels	I do not know	energy, to meet the goal of near-zero emissions.		Grand Total
Addison		5 19	-	2 37
Bennington		7 18	20) 45
Caledonia		1 21	. 10	32
Chittenden	2	94	97	7 220
Essex		1	ı	11
Franklin	:	3	15	5 27
Grand Isle		1 4		1 6
Lamoille		4 21		3 33
Orange		18	20	0 42
Orleans		2 19	•	5 27
Outside VT		7 15	13	35
Rutland		5 29	18	53
Washington	1	2 46	44	102
Windham	!	9 29	19	57
Windsor	1) 47	28	85
(blank)		2 8	1	2 12
Grand Total	10	407	313	824





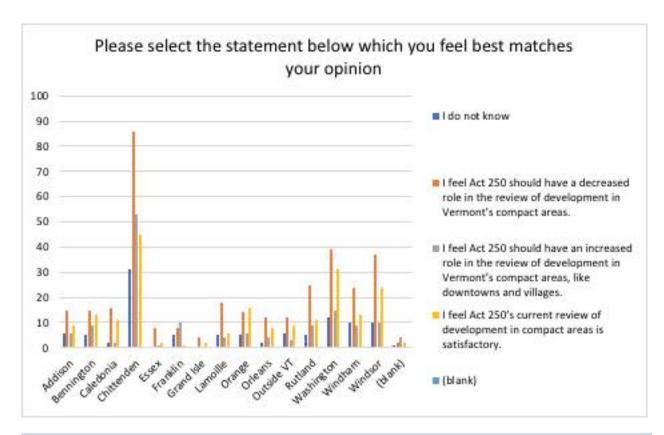
Count of Shoul	d Column Labels					
Row Labels	I do not know		No	Yes	(blank)	Grand Total
Addison		5	10	21		36
Bennington		8	16	17		41
Caledonia		3	14	14		31
Chittenden		47	45	122		214
Essex		1	9	1		11
Franklin		6	5	13		24
Grand Isle		1	4	1		6
Lamoille		7	11	15		33
Orange		7	14	20		41
Orleans		5	16	5		26
Outside VT		7	12	13		32
Rutland		7	24	21		52
Washington		14	37	45		96
Windham		10	27	19		56
Windsor		12	36	31		79
(blank)			3	6		9
Grand Total		140	283	364		787





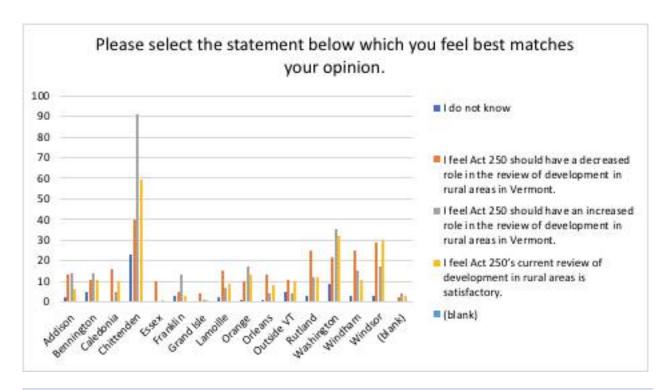
Count of Should	d Ac Column Labels					
Row Labels	I do not know		No	Yes	(blank)	Grand Total
Addison		6	14	16		36
Bennington		2	11	28		41
Caledonia		4	16	11		31
Chittenden		26	54	134		214
Essex		2	8	1		11
Franklin		1	7	16		24
Grand Isle			5	1		6
Lamoille		3	18	11		32
Orange		2	14	25		41
Orleans		1	16	9		26
Outside VT		4	14	13		31
Rutland		7	26	19		52
Washington		10	33	54		97
Windham		5	22	29		56
Windsor		11	33	37		81
(blank)			3	6		9
Grand Total		84	294	410		788





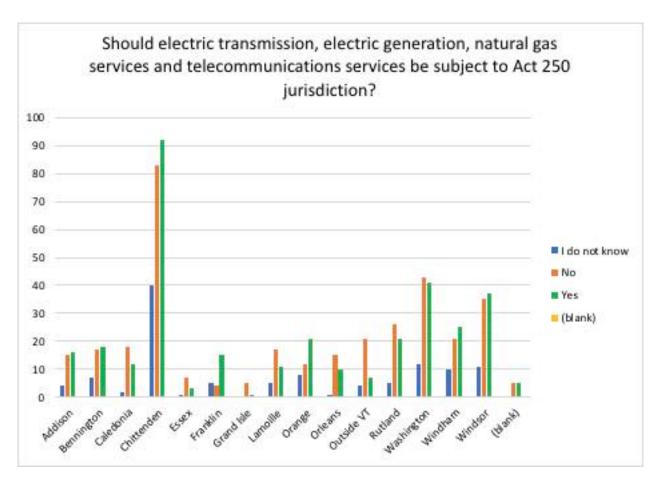
Count of Please select the statement below which you feel best matches your opinion.					
	role	in the review of development in	I feel Act 250 should have an increased role in the review of development in Vermont's	I feel Act 250's current review of development in compact	
Row Labels	I do not know Vern	nont's compact areas.	compact areas, like downtowns and villages.	areas is satisfactory.	Grand Total
Addison	6	15	6	9	36
Bennington	5	15	9	13	42
Caledonia	2	16	2	11	31
Chittenden	31	86	53	45	215
Essex		8	1	2	11
Franklin	5	8	10	1	24
Grand Isle		4		2	6
Lamoille	5	18	4	6	33
Orange	5	14	6	16	41
Orleans	2	12	4	8	26
Outside VT	6	12	3	9	30
Rutland	5	25	9	11	50
Washington	12	39	15	31	97
Windham	10	24	9	13	56
Windsor	10	37	10	24	81
(blank)	1	2	4	2	9
Grand Total	105	335	145	203	788





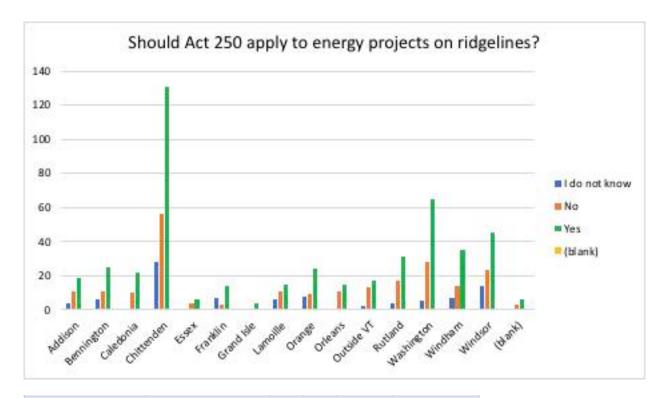
Count of Please select the statement below which you feel					
best matches your opinion.	Column Labels				
			I feel Act 250 should have an increased		
		role in the review of development in	role in the review of development in	review of development in	
Row Labels	I do not know	rural areas in Vermont.	rural areas in Vermont.	rural areas is satisfactory.	Grand Total
Addison	2	13	14	6	35
Bennington	5	11	14	11	41
Caledonia		16	5	10	31
Chittenden	23	40	91	59	213
Essex		10		1	11
Franklin	3	5	13	3	24
Grand Isle		4	1	1	6
Lamoille	2	15	7	9	33
Orange	1	10	17	13	41
Orleans	1	13	4	8	26
Outside VT	5	11	4	10	30
Rutland	3	25	12	12	52
Washington	9	22	35	32	98
Windham	3	25	15	11	54
Windsor	3	29	17	30	79
(blank)		2	4	3	9
Grand Total	60	251	253	219	783





the Public Utility Commission under a separate permitting process called Section 248.)	Column Labels				
Row Labels	I do not know	No	Yes	(blank)	Grand Total
Addison	4	15	16		35
Bennington	7	17	18		42
Caledonia	2	18	12		32
Chittenden	40	83	92		215
Essex	1	7	3		11
Franklin	5	4	15		24
Grand Isle		5	1		6
Lamoille	5	17	11		33
Orange	8	12	21		41
Orleans	1	15	10		26
Outside VT	4	21	7		32
Rutland	5	26	21		52
Washington	12	43	41		96
Windham	10	21	25		56
Windsor	11	35	37		83
(blank)		5	5		10
Grand Total	115	344	335		794





Count of Shoul	d A Column Labels					
Row Labels	I do not know		No	Yes	(blank)	Grand Total
Addison		4	11	19		34
Bennington		6	11	25		42
Caledonia			10	22		32
Chittenden		28	56	131		215
Essex		1	4	6		11
Franklin		7	3	14		24
Grand Isle		1	1	4		6
Lamoille		6	11	15		32
Orange		8	9	24		41
Orleans			11	15		26
Outside VT		2	13	17		32
Rutland		4	17	31		52
Washington		5	28	65		98
Windham		7	14	35		56
Windsor		14	23	45		82
(blank)			3	6		9
Grand Total		93	225	474		792



Appendix H: Survey Anecdotal Responses

Question 7: If yes, what was your role?

Respondents	Other (please specify)
1	witness
2	Interested citizen
3	Professional Urban & Environmental Planner and Engineer
4	Exit 4 Open Space
5	I have not "actively" participated. We have only been here 6 years. I am a rep. to our Regional Planning Commission and on the local Energy Committee. I have recently learned more about Act 250 thru your Webinar and asking others and on the internet.
6	Played various rolls from applicant for municipality to party in the process and community member.
7	realtor for the person subdividing
8	consultant to the District Commission, responsible for specific monitoring and reporting during construction
9	Member of former Environmental Board
10	Charitable institution
11	expert witness for citizens groups and VNRV
12	VAST MEMEBER
13	delivered documents by hand to director at the time, for a developer
14	Executive Director of the Catamount Trail Association
15	Club and town officer
16	Town planning commission
17	Interested citizen
18	VAST member
19	RPC Commissioner and Committee Chair
20	Recreational Trail Planner
21	Commercial Real Estate Broker
22	abutter
23	Non-profit trail organization
24	represented citizens
25	architect
26	Na
27	nonprofit group
28	Forestry
29	Family member of Applicants
30	Member of former Environmental Board
31	Trail manager
32	Saw all the red tape my dad had to go through to build a house & change use of a building, ridiculous when large companies rape the land & resources.
33	Regional Planning Commission Member
34	Heard and read on act 250 on planning and development criteria for savoring VT
35	no new gun laws



Question 7: If yes, what was your role?

36	Contractor
37	Employee of company that lost work due to projects not getting Act 250 approval
38	Followed discussion threads about how difficult it is to accomplish anythingunder this overly intrusive act.
39	employee of company that was going through also VAST club volunteer/officer
40	seller of property under rfeview



Question 17: Which statewide resources should be protected for the present and future? Please select all that apply:

1	Quality of life
2	Of course they should be protected but with balance. It's not a fair question.
3	Community
4	Historic structures and places. The people.
5	We need to protect the space and systems that allow us to achieve a sustainable
·	society on a plant in a climate, biodiversity and human living standards crisis.
	We need a plan and tools to supplement regulations.
6	Historic natural resource sites (e.g. the sandplain forest in Burlington)
7	Mountain ecology and views
8	Rail corridors - past and potential, either for reuse for rail or for bike/ped, rights of
	way along roads for bike/ped, Lake Champlain
9	forest fragmentation, destruction & disruption of wildlife habit by these 10 acre
40	'kingdoms'
10	recreational lands
11	Ridge lines, intact ecosystems, Mountains, forest fragmentation,
12	Outdoor natural recreational opportunities
13	affordable housing stock
14	Public trails for non-motorized use. Restricted trail bikes
15	noise and light pollution
16	protect existing state lands and add acreage, if possible and consider coming up
	with a statewide plan for development that incorporates local and regional
17	planning, as well as the tenants of Act 250 The ability to find housing.
18	Our dirt roads should remain dirt!
19	Connectivity in the landscape, riparian areas, rare or uncommon physical
19	features
20	Pedestrian and non fueled transport of people between communities/ walk run
	bike for health of people and planet
21	All of these. We should be protecting important environmental, cultural,
	agricultural and other resources to support a strong, independent, resilient
	Vermont and drive development into town and compact community centers.
22	I believe that Act 250 should incorporate a state sponsored program to
	"unsubdivide" land. That is, give tax credits, etc., for people and organizations who take land that has been parcelized and erase property lines. This is a
	common sense approach to the balance of property subdivision and open space
	creation in the long term.
23	working Vermonters
24	Noise pollution
25	Hiking trails, other recreational resources (swimming holes etc.)
26	High elevation lands; unfragmented forest blocks; downtowns in general
27	economic brand, values, identity
28	noise and hours of operation
29	solar access
30	The projects that are exempt such as electrical generation, VTRANS
-	applications, etc.
31	All of the above, but within reason. Over regulation to achieve perfect outcomes
	defeats the purpose.



32	forest fragmentation; land at interstate exchanges; keep the current list of criteria protections
33	Connectivity areas for wildlife habitat (not just core habitat)
34	habitat connectivity/wildlife corridors
35	All valued resources should be managed and conserved and/or protected in accordance with a statewide land use plan adhering to statewide goals. Without a statewide plan and vision for meeting statewide goals, then the roll of Act 250 becomes less clear, confusing, added risk to developers (in time, cost and unpredictable events in the process). The only effort in Act 250 should be on developing a statewide land use plan with realistic understanding of what its going to take to address the global climate crisis.
36	Economic development opportunities
37	All the above
38	ridgelines, high elevation biomes
39	areas susceptible to climate events
40	High elevation vegetation
41	The State's economy and affordability
42	Our human population
43	Mountain sides and larger hillsides kept free of development
44	Large forest blocks, for conservation and ecosystem protection; to this end, a state-wide land use plan is needed, to identify where development is encouraged and facilitated, and areas to be conserved
45	community participation
46	All historic and archaeological resources should be protected, and habitat fragmentation should be avoided and/or corrected.
47	They are all important, but above all - water sources must be preserved.
48	It would have been better to rank this question
49	The act should be repealed and a law to attract business should be passed.
50	Keep economic and building development in town centers and prevent sprawl. Without Act 250, Vermont would look like NJ or CT.
51	our entire environment
52	Density and affordable homes in towns that include sidewalks and bicycle lanes. Innovative tiny homes or homes that can be expanded moderately as family income increases. Dual residences and homes built in communities with town greens/ public parks and contained areas to run dogs off leases.
53	compact, efficient residential development patterns
54	Soil
55	Riparian Zones along streams and lakes
56	Settlement pattern of physically and visually well-defined compact settlements surrounded by rural countryside
57	settlement patterns, public investments in infrastructure
58	working forests/forest products economy
59	People
60	I believe it should all be protected of course, but to what extend? Vermonters need to be able to enjoy the forests, etc. through trails.
61	state and local transportation infrastructure. We can't afford to build more roads and mitigate the impact of traffic to accommodate new development. Stop



	calling changes to roads and intersections "improvements".
62	Floodplains
63	Mountain tops
64	Archaeological resources
65	MOUNTAIN sides and tops! What has happened in Dorset (which I have no idea how THAT was allowed to happen!) as well as the huge clear cuts for private housing is deploarable. Even Hawk resorts was made to disgiuse and tone down their prescence on Hawk Mountain Clean air depends upon OLD forest growth by the way, so don't allow those to be harvested, please.
66	Recreational use (trails)
67	Trails for recreational uses
68	None
69	Xxx
70	Light and noise pollution
71	VAST Trail System due to economic benefits
72	Character of neighborhoods
73	All subject to location of project
74	most are already protected by ANR permits and Act 250 is duplicative
75	Snowmobile trails
76	The ability of people to use their property and make a living
77	Working lands, prevention of overdevelopment
78	Ridgelines
79	Noise, light pollution
80	I don;t think Act 250 is the only tool to preserve natural, cultural, or social resources, or to encourage appropriate development in the right location. This survey frames Act 250 as the only venue to achieve protections. This is a poorly written survey
81	native american sites
82	Nothing disband Act250
83	economic opportunity and property rights. Yes, many of the above items are worth protecting, but Act 25o has gone way too far.
84	"Protection" of these values is often over done to the point that folks like trail users may not get to enjoy their recreational preference if trails wind up coming into further Act 250 oversight.
85	protect at what cost
86	Riparian habitats
87	Unicorns
88	Trails, Class IV and ancient roads
89	Not that Act 250 is necessarily the best protection
90	Solar field locations, obstructing views from highways.
91	None-the state already has too many regulations.
92	Eco tourism like leaf peeping
93	no fragmentation
94	Rural and family farm economic health
95	MUST PROTECT VERMONT RIDGE LINES FROM INDUSTRIAL WIND DEVELOPMENT



96	Trails
97	Historic farms and farm structures, including fences & stone walls
98	trail systems for recreation
99	Vermonters access to enjoy the above, trails, paths, etc
100	Trail systems
101	Leave the slate valley alone, stop using dynamite it pollutes the water and damages the land.
102	Trails
103	slate quarrying
104	they should all be protectedbut without going to extremes!
105	Clean air
106	They should all be protected but people need to come first. The level of protection has gotten out of hand. ANR is not realistic. We can't even use our own land anymore.
107	private property ownership, compensation when owner is prevented from profiting from their land in sales, which curtail use due to act 250 rules.
108	Healthy recreation, healthy tourism
109	Outdoor recreation (trails etc)
110	ridgelines
111	public recreational trails
112	slate quarries, ridge lines above 1500 feet
113	Mountains
114	Trail systems
115	Recreation areas
116	high paying jobs
117	Public Access to recreation trails, lakes, rivers, etc
118	Trails! Outdoor recreation areas
119	Trail systems
120	trail corridors
121	All need to be done with common sense, not heavy handed one size fits all regulations!
122	Mountain Tops
123	Prime recreational locations
124	Recreation opportunities like multi-use trail systems.
125	All of these things should be protected; and so too should our access to these treasures on our feet and bikes!
126	Forests without trails and primative areas are critical to wildlife.
127	Trail Networks
128	Trails
129	Mountian bike and Hiking trails
130	Multi-use trail access so people can enjoy and appreciate what we are preserving
131	Act 250 should regulate items that do not require an applicant to obtain additional permits. For example, if a prospective developer is required to obtain ANR wetlands permits, once the approval is received, the project should receive jurisdictional approval for that particular criteria in the Act 250 process.



 ${\bf Question~17:} \ {\bf Which~statewide~resources~should~be~protected~for~the~present~and~future?~Please~select~all~that~apply:$

132	Economic vitality/ sustainability
133	Recreational Trails
134	
135	Dark night time sky - star gazing
136	Trail networks
	government intervention in these often has negative consequences. protecting threatened species causes land owners to try to STOP their land from becoming habitat for threatened species for fear the government will limit their use of the land
137	Recreational trails are statewide resource, too, and becoming even more important to our economy.
138	All are important but, if this question is geared toward creating more restriction then my list gets shorter
139	All should be protected however not to the extent that does not allow one to create ways for us to enjoy the outdoors and does not make the process too cumbersome and costly that VT dies not expand it's economic growth
140	Areas for motorized recreation
141	Trail Networks
142	Protected is a hard word to quantify. We need to live with and in our landscape. I promote sensible impact
143	Recreational Trails
144	Recreation trails
145	I suppose all of them, but this question lacks breadth. Outdoor recreation is a major element in the quality of the lives of Vermonters. Air quality, forests, etc. aren't enjoyed to their fullest extent without a great trail infrastructure.
146	recreational trail both existing and future trails
147	Alpine Environments
148	Trails and class 4 roads
149	open land for recreation
150	All but Act 250 is too burdensome
151	Quietness -ATVs are destroying our silence
152	Highest Priority Connecting Forest Blocks
153	Outdoor recreational oppertunities
154	Trails for non motorized and motorized recreation
155	This is a poor and misleading question, What do you mean? Under 250? Some of this stuff is, it depends. Badly worded.
156	Trails - walking, bicycle, snowmobile
157	They are all important but when our own native people can't afford to live & make a living here you need to take another look at your rules & regs.
158	Freedom from excessive noise
159	Act 250 is absolute bull shit and should be disbanded!
160	People's rights to control their own property.
161	None
162	Jobs and the economy
163	public investments, shorelines
164	all of above but with a different approach
165	And to protect current landowners from outside buyers buying land lots and



	trying to develop housing developments for personal gain rather than protecting natural resources of the environment and the beauty of the wildlife that is so needed to be increased with the cultivation of the forestry. Eliminating diseased forestry to provide new growth for wildlife to survive is vital to species that can become extinct with lack of food source which also provides a healthy air quality with healthy forests.
166	Historic rural communities, development aesthetics overall
167	*Trail organizations and users are conservationists, completely dedicated to environmentally friendly and sustainable trails *Over 70% of trails are on private land - we need regulation that will support the generosity of landowners and encourage even more trails and conservation *Trails have a low environmental impact with great benefits, including the inspiration of greater conservation and environmental protection. Therefore, trails should not be considered "development" and lumped into the same regulation categories as other construction projects *Currently, Act 250 limits Vermont's ability to fully realize the benefits that could come with greater support for trails and outdoor recreation *Trails and outdoor recreation not only make Vermonters healthier with over 72% of Vermonters participating, but they also provide over 50 thousand, or roughly 1 in 7, of the jobs in Vermont. (Outdoor Industry Association)
168	Unobstructed access to the great outdoors. Cut the regulations
169	define protected
170	We need to protect all that we can while still allowing growth.
171	This question is too broad for a reasonable response. All of the above are reasonable to protect in some cases, and reasonable to mitigate in others.
172	archeological and historic sites
173	should be used as it was started for, not to make a trailer park in the middle of housing development, but as usual vermont wants to control everything and anything, the funds raised mostly go toward the entitlement programs that our state can no longer support
174	no new gun laws
175	All within reason. Meaning it is unreasonable and burdensome to protect every square foot of wetland, every hint of a wild newt, and selectively enforce minute stormwater potential runoff sites when hundreds/thousands of miles everyone's "favorite dirt roads" have far greater dust, erosion and silt impacts.
176	VAST trails
177	The problem is with the level of "protection" locking up the land from the citizens is not the way to protect the great way of life in Vermont.
178	citizen access
179	Act 250 should focus on what it was intended for, development, and leave all of the above to the experts working for ANR and other state agencies
180	Working landscapes
181	Current access to trails
182	They all should be, however, you need to balance the protections with adequate opportunities to bring Vermon into the 21st century
183	snowmobile trails
184	This is a very leading question. Of course we should protect the above, however, it doesn't weight the results appropriately
185	I believe so called Protections have far exceeded common sense, as well as



	private property rights.
186	Cities dumping sewage into Lakes
187	Multi-use trails
188	Absolutely nothing. It's my land. Leave me alone. You have destroyed my assets and my life.
189	Recreational trails walking and snowmobile
190	orderly and central use and developement
191	Recreation Trails (motorized and non) need to be protected!
192	Everything should be protected but not restricted from use. You can enjoy the natural beauty of Vermont without restricting or forbidding use of motorized vehicles.
193	While these resources should be protected, I don't think Act 250 is the best mechansim to protect most of them.
194	ALL urban neighborhood place & building types
195	Mountain tops
196	A lot of this depends on how its "protected". For instance, extraction is needed and can be done responsibly; I prefer dynamic downtowns over downtowns that are static museums to history that push development into greenfields; scenic views are important (but we also need to be able to adapt to change).
197	NOTE: Selecting all these just means these are important not that they should be reviewed by Act 250
198	Limited Access Highways - Allowing curb cuts on higher speed corridors may support short term economic development goals, but it quickly degrades the asset. Widening roads is expensive and is proven to do little to reduce traffic or emissions for that matter.
199	Cultural and archaeological resources



1	
	Biomass use; stormwater mitigation
2	Again, it's not about including more impacts, it's about execution and balance.
3	Impacts that Vermont can make a difference on
4	We need compact, walkable, transit linked, affordable communities that can provide for current and future Vermonters (including displaced pe
5	Floods and high/low water levels in L. Champlain
6	removing tax penalties for converting a small number of acres of agricultural land to community solar use
7	ACT 250 doesn't affect what some people call climate change.
8	AGRICULTURE practices of raw manure spread, also floods, dams (do they help or hurt?), Internet/fiber - to increase telecommute & decrease
9	Act 250 should remain focused on land use. Adding unrelated criteria will weaken that focus and weaken Act 250.
10	2. Move energy siting from section 248 to Act 250 (siting decisions being subject to Act 250 & restricting Section 248 to project development)
11	Food security
12	Agricultural production re: current & projected needs
13	Environmental diversity/degradation
14	renewable energy, heat pumps, electric vehicles
15	Maintaining dispersal corridors for flora and fauna to migrate and adapt
16	soil carbon sequestration and the role of farms as a solution
17	impact to working landscape. what will climate change do to the types of crops that are farmed or the types of trees that can be harvested? we need to think not just about what is charming in our working landscape, but what kind of activities we engage in now and into the future the compound already known impacts of climate change (wetter summers, warmer winters, migration of invasive species and their impact on our current ecosystem, to name a few)
18	Location allowing developers to come in !
19	carbon sequestration and storage
20	None, it's weather
21	Virus and fungal outbreaks from encroachment on wild land habitat, extrem weather event disorder of ecology and mass influx of economic ar and violence refugees at a high rate beyond capacity to treat new infections resulting from crowded and temporary communal arrangements.
22	Drought, transportation (supporting options to the single occupancy vehicle)
23	Is climate change a proven scientific fact?
24	energy storage, transportation
25	Drought and flooding (extreme weather)



- 26 Interconnectedness so that plant and animal species have uninterrupted water, forest, and landscape land to move north. Also, thoughtful plaishould take place related to increasing populations in villages to provide for housing and jobs and cut down on energy use and keep the open (esp. farm lands) open. "Smart growth"
- 27 non-climate benefits aligned with climate benefits
- 28 resilient back-up energy, food and economic infrastructure
- 29 Human diseases, species extinctions, invasive species
- 30 Transportation Carbon
- 31 I dont understand how 250 review can address mass migration. while it may be a future issue, it seems a planning issue not a regulatory one
- 32 Impact on forests & wildlife, esp. migratory birds
- 33 Again, all of the above are matters for public policy to consider, but not all fit within the confines of Act 250, and others become so burdened be excessively detailed regulation that the purpose is defeated. Furthermore I doubt the funds appropriated will ever suffice to support a reasonaregulatory process to cover this breadth of issues.
- 34 rural development as effecting habitat, forest blocks, settlement patternsms
 - 35 Renewable energy and Vermont forests: opportunity for biomass, district heating, wood energy
- 36 Again, focus on a statewide land use plan that is mindful and advancing low carbon development and you'll be playing an important roll. Do n or duplicate the DPS PUC permit review process. It will add unnecessary time, cost and complexity.
- 37 methane emissions,
- 38 Impact on the economy
- 39 controling carbon does not mean a carbon tax
- 40 energy/food/water emergency planning
- 41 requirements that applications identify resiliency components, alternative energy and in some instances redundant energy systems
- 42 All are important not only because of climate change but for present day quality of life
- 43 Resilience to flooding
- 44 Enable compact development footprints out of flood hazard
- 45 health impacts from pollution, poor air or water quality; also vermont becoming more of an agricultural resource for growing food for other area country as they get compromised
- 46 Strategic location of development w/r/t transit, excess renewable energy on local distribution circuits, and minimizing VMT, along with incorpor net zero practices and technologies and EV charging infrastructure.
- 47 Extreme storms and flooding
- 48 Disagree with the premise of the question presumes acceptance of the issue, which is far from a given
- 49 Declining cap on gasoline, diesel, propane, kerosene and methane brought into VT by any means of transport and declining cap on sales with



	borderd in prefer to reduce combustion and emissions in verifiable 6% annual linear decline and force the acceleration of carbon-free replacer 15-20 years as well as CDR (Carbon Dioxide Removal) technology installations to align with Healthy Climate (300ppm) objectives. Reducing result in a. 'de facto' carbon surcharge through market supply-demand response, creating the effective price signal we need to drive the economiest and replacement decisions.
50	All important. All scary.
51	Polices to attract business and people to the state. Businesses and wealthy people are leaving the state. There is no labor pool here and laws Act 250 contribute to the mass exodus.
52	The impact of climate change on forests and the types of trees we have: without maple trees, we eventually loose foliage tourism and maple s
53	Public transportation & bicycle and walking lanes
54	automobile-dependent residential development patterns
55	Zero dscharge (as in washwater, greywater, stormwater and human and other animal excrement).
56	Response to the impacts of extreme events should be incorporated into individual criteria where appropriate
57	Headwaters (Seeps, Class 0 streams, etc.) Steep slopes (development capacity, landslides, erosion, etc.)
58	transportation options available at each development
59	Influx of "climate refugees" from different countries/cultures
60	Rethink transporation and reduce need for it
61	AS climate change is considered it is critical to think about impact on all people and not make Vermont into an enclave for the wealthy. Mass may mean that more people will be building second or third homes and make themselves safe while the rest of the population in Vermont and deal with the impacts of overconsumption and unsustainable lifestyles
62	Energy utility companies need to increase returns for investors. Energy conservation and efficiency initiatives necessarily reduce consumptior reduces revenues. In order to keep shareholders happy, those revenues need to be made up somehow - usually in the form of higher election. The PUC and DPS need to be clear about these results and do a better job of protecting consumers.
63	promotion of utility scale renewable energy to replace fossil generated energy
64	Floodplains
65	misplaced wind turbines and solar factories
66	A consultant needed for each, huge \$\$\$, not for average Vermonters!
67	incentives to promote energy conservation & efficiencies
68	Maintaining forests for air quality and ensuring wetlands are present to prevent closing and treat water runnoff
69	Economic impact of climate-related disasters, such as Irene some years ago.
70	Sewer Discharge from the Cities
71	encourage forest product use



72	None
73	Flooding and Erosion
74	recreation development that promotes more tourism, our ability to grow more of our own food
75	recreation
76	Industrial energy systems considereded renewable; cradle to cradle consideration of energy technologies; habitat change and loss
77	Cost of energy efficiency standards not making a return on investment
78	Answer limited to role of Act 250
79	Extreme temperatures
80	"Climate change" has happened since Earth was created. The global warming believers have just changed to this name, because of the global non-science was putting. "Climate change" has no place in Act 250.
81	weather events can't be controlled
82	BS
83	All others listed are important but more applicable to Building Code issues than Land Use issues. Too specific, related to architectural design codes and not land use. Increased Energy efficiency standards and renewable energy should be required/reviewed as part of Building/Constr Permit process and not Act 250.
84	animal agriculture
85	water quality
86	It's about land use, not climate change. What are you thinking? Using act 250 as the regulatory sledgehammer that it is will snuff out what few entrepreneurs we have left.
87	riparian structures
88	renewable energy sources
89	impacts to natural resources (farmland and forests) that can help in mitigation through carbon sequestration.
90	None it's ridiculous!
91	Climate change is well within natural variations, ad even if carbon is a significant input, Vermont is globally insignificant and cannot afford to "f
92	The criterion other than the single one I checked are too subjective and speculative.
93	The PSB should be/is charged with this responsibility
94	Do not believe in it
95	Noise
96	Animal agriculture
97	Increased threat of tropical storms and hurricanes to Vt



98	None until there is proof of the theory.
99	carbon sequestration in plants/soils/regenerative farming practices/ecological/wildlife friendly residential landscaping
100	Carbon sinks and other items in our landscape that protect
101	Existing energy code should be enforced, no need right now to increase standards (see next Q)
102	drinking water quality
103	We have too little population to matter. We aren't that big!
104	Public & Private wells/water
105	none of those the whole category is a make work project for engineers
106	plant and animal species changes
107	None of these should be considered in ACT 250
108	Who are climate refugees?
109	encourage innovative solutions to the above
110	excessive population growth
111	connectivity
112	the role of mountains, such as infiltration of water, the ability to reduce runoff, wildlife corridors, carbon sequestration
113	Extreme heat
114	Fossil fuel infarstructure
115	Extreme weather patterns, flooding, etc.
116	let the feds handle it
117	Grazing & crop lands. Too much. We need re-forestation.
118	supporting proper nonmotorized recreation and proper trail building as climate change will transform Vermont's economy away from skiing
119	Let's focus on cleaning up our local messes (e.g. water) before worrying about climate change
120	Affect of rising temps and diminishing clean water
121	The effect of climate change on Vermont's tourism economy
122	Climate change is a hoax
123	Climate change is a cycle. We have recorded 100 plus years of data and call a 1 degree change climate change. What about the ice age and have today. That was big climate change!
124	None
125	Really terrible question phrasing here it should only be important for Act 250 to review if it's not already being reviewed by another qualified (e.g., PUC, functional local government, ANR).



126	Sustainably built recreation access/trails.		
127	None for act 250		
128	All should be protected in a reasonable way, the current act 250 process is too cumbersome and costly for most to make it economically fe		
129	What does land use have to do with climate change. The latter should be looked on a national or regional basis. We have enough Ven hubris without adding to it.		
130	These will all get selected. Priorities will be a matter of politics.		
131	Black carbon from wood burning and methane/nitrogen from farming		
132	The dump in Newport- water quality		
133	None		
134	What has climate change to do with limiting development?		
135	Too many solar farms and restricted areas around wind turbines		
136	Population since it is humans directly affecting the environment		
137	Adaptation		
138	Again, they are all important but let's stop the real polluters like the large companies that produce plastics, mine, dump fuel into the atmospholanes, spray pesticides unchecked, etc etc. Yes the little guy can be mindful but let's look at the big picture.		
139	Question is confusing. Is energy efficiency an impact, eg?		
140	Climate change is bull shit!		
141			
142	None		
143	Should not influence a development permit		
144	Emissions of other greenhouse gases such as methane; auto dependency		
145	This should NOT be connected to act 250.		
146	Spraying of chem trails		
147	Sorry, But I believe "climate change" is a political term which aims to extract more dollars from citizens for no benefit.		
148	Natural disasters like that of hurricane Irene and the damage caused by water and wind can damage the natural surroundings and cause of towns and environmental issues. Also with the chemicals being put down such as calcium chloride in our roads has a longing effect as it so ground. If this rots metal faster than natural salt then what is it doing to earth?		
149	Conservation of forests and encouraging carbon sequestration		
150	Foreign gov pollution? I know every bit helps, but really, VT needs to be business friendly and affordable.		
151	It's all bullshit more fake news by the shadow government to scare the ??		



152	All of the above are already addressed by other regulators	
153	I do not want to see any more ridge line views ruined from wind turbines"mint hurts wildlife habitat and can destroy tourism in the areas affects okay with solar farms which damage views for a very restricted area but turbines ruin the mountain views for many miles around! In all directive think there should be incentives for energy conservation and efficiency hit not forced on people, especially For individuals with limited econom I would like to see more in state businesses contracted for efficiency projects, not out of state companies and contractors. I would like to see required to include more energy efficient features in their building projects, especially large commercial development.	
154	What does act 250 have to do with climate change?	
155	Climate change has been happening for millions of years. It's Mother Nature!	
156	The concept of homocentric climate change is ridiculous. This place has been both tropical and buried under a mile of ice. With 15 ice ages subsequent "global warming" in the geological record, it's time to move on.	
157	What does act 250 have to do with climate change?	
158	climate change is fake	
159	Community Building for Resilience	
160	0 it is the natural course of the earth and can not be controlled or changed, but through fear and fake news you have managed to make per can, stupid	
161	None of these. EPA already is invloved too much in these	
162	no new gun laws	
163	How can we address climate change without destroying the state recreational uses of our forests.	
164	Fewer shopping malls	
165	none. it is already too burdensome.	
166	Act 250 should have nothing to do with climate change. Again focus on what it was intended for	
167	rainforest deforestation that has occured for the past 50 years by US companies	
168	Climate change should not be addressed	
169	Act 250 should not be expanded to include more criteria without creating an avenue to reduce the criteria and burden whenever possible.	
170	Spend Less and allow bussiness to grow without all the millions in red tape	
171	Just be smart. The climate has been changing for millions of years without us and will continue to change after we are gone.	
172	Wildlife habitat fragmentation and overdevelopment (look at South Burlington for example). Avoid filling farm fields and wildlife habitat with so Reserve solar for already impermeable surfaces.	
173	Are you nuts?! Of course you are.	
174	some of the above could be reviewed better within other agencies	
175	Act 250 should have NOTHING to do with "climate change"	



185 186	NOTE: How do you use a regulatory program to review extreme wind and mass migration? transportation infrastructure		
184	The most important thing we can do is "pull" development into compact centers by making them the most accessible and appealing places to while pushing development out of working farmland, forestland, natural resources, and open spaces. In the question below, requiring higher efficiency would push more development oustide of Act 250's jurisdiction and subjurisdictional, incremental devlopment means we're not co expanding our compact settlements.		
183	Number and mix of building types		
182	See comment above. These are important issues, but not necessarily within the purview of Act 250.		
181	Energy independence		
180	What does climate change have to do with a devlopment permit?		
179	Cooperative and/or small-scale community run energy production.		
178	None		
177	Its important to review climate alarmist claims		
176	Erosion		



Question 28: What is one thing you would like to change in Act 250?

63	I think Act 250 should be integrated into more land uses as land becomes more fragile, more valuable, more central to us responding to climate change.
64	Urban areas with land use regulations and professional staff should be completely exempt from Act 250.
	Let's focus growth in our downtowns and urban areas and protect our rural areas.
65	Could the actual process be made smoother and less expensive yet reach the same goals of oversight and environmental protection?
66	Stronger enforcement and not self enforcement by the effected agency
67	I think it should not duplicate local or regional regulations which are accomplishing the same goals and slow down some of the changes we are trying to accomplish as Climate Change charges ahead. Also, It can be burdensome for applicants in time and \$. If a town has a Planning Commission, ZBA, Historic Preservation Committee, Energy Committee, local non-profit environmental group, Town Zoning administrator, close relationship with the County Regional Planning Commission, upgraded By-laws etc, I feel a project that has been approved should not have to go to Act 250.
	Re question # 18. Do you mean "instead of the PUC" or "in addition" to the PUC? We have enough regulation without doubling up. Also, we should wait and see how the PUC works out with Act 174.
68	The long term subdivision and parcelization of property, from large parcels to smaller parcels, even under the current Act 250, is an issue that needs to be addressed empirically from the governmental level. Individual development and subdivision projects must fit into a legislated bird's eye plan of statewide and/or regional land use. This would be a truly progressive and novel social/governmental/ecological premise for judicious government in the context of modern ecological understanding. Vermont can continue to be the leader here!
69	Forest based industries are agricultural and should exempt from Act 250 as is agriculture, including prime ag mitigation.
70	the amount of time it takes to get a permit, esp. when there is a hearing.
71	Make the process more efficient. Currently (from what I hear from others) it simply takes too long.
72	Greater support for community participation, e.g., notice to all abutters when a project application is received.
73	Increase ability of public to participate by lessening the standards for general party status
74	Overseeing the restrictions that have been put in place!!



Question 28: What is one thing you would like to change in Act 250?

75	name/branding
76	easier access for neighbors to participate in the process without the need to hire an attorney
77	I think Act 250 should not require on-site energy generation in new developments, because as desirable as that often is, it is not always the best way to go. Consideration of onsite energy should be required, but use of it should not be required unless the site is favorable.
78	A greater emphasis on air, water, and noise pollution and stop conserving land just to conserve land. (Those who don't want development in there town) Land that is conserved with public or state funds should have public access
79	the process of state review from the various state department stakeholders must be better coordinated and when one department priority/policy runs up against another state department priority/policy the resolution of that conflict should be taken up by the state and not through the act 250 application process.
80	The lack of evaluation of cumulative impacts of development fo projects below the jurisdictional threshold is a significant gap in Act 250. The state should significantly lower the jurisdictional triggers for development in or impacting critical areas such as wetlands, floodplains, wildlife corridors and forest blocks below the current trigger of ten lots or ten acres. This incentivizes and encourages piecemeal development in these areas and removes their potential for flood protection and climate refugia.
	Act 250 should require communities to designate the critical areas in which the lowered jurisdictional thresholds would be triggered. These critical areas should be designated as part of a regional planning process involving municipal governments and led by the regional planning commissions. The critical area designations should be required to meet minimum state criteria to be developed by the Agency of Natural Resources.
81	Eliminate continuing jurisdiction on lands that are no longer par of the original or any subsequent Act 250 qualifying development plan.
	Make administration more pragmatic. Require regulators to consider when the incremental benefit of an application of rules defeats a larger purpose or goal than those rules are narrowly intended to address.
82	that the other permits process ie ANR and VTRANS are more participary, transparend, and most importantly follow the same



Question 28: What is one thing you would like to change in Act 250?

	review process that ACT 250 does or they should not be admitted as sufficient as part of the 250process
83	current exemptions (such as in question 25) have created huge poor planning consequences statewide. I would like most eliminated; some tightened down with restrictions. "If we don't take care of what we have, what will be left to care for?"
84	Require that all information be made available online as it comes in.
85	Please develop and pass a statewide land use plan, that should be your number one priority. Local and Act250 permitting is crippling development and progress to meeting our statewide goals.
	Answer 20 should have had more options or a way to comment. Without good resource maps and understanding whether a site can accommodate RE, how can you require it. I'm an advocate of developing RE where-ever you can, but, fear the Act 250 Commission, state staff and consultants and developers need a dose of reality on Vermont's shortfall in RE and progress toward meeting 90% renewable x 2050.
	We need a plan and a shared VISION for where Vermont must head on its path to be avert more climate crisis.
	Without a VISION and leadership, you might as well close up shop and step out of the way of progress.
	My fear is that like Act 174, progress to zero net energy and 90% renewable by 2050 won't happen fast enough.
	Already, Ghg's are growing, not declining in the transportation sector, and I would bet the same in the other sectors. Vermont lost 350 renewable energy jobs last year! What is that saying about our energy policies and the actions of Vermont's utilities?
	Will Act250 be another factor in slowing Vermont's ability to generate its own clean power? Wind is the most cost effective renewable energy source. If Act250 Enters the energy development process, it'd surely add to much risk for



Question 28: What is one thing you would like to change in Act 250?

	developers and investorskilling any private investments that will save Vermont and our planet for this and future generations. Don't fix something that is not broken, but do fix the problems to simplify, streamline and let go of developed areas and stop stipulations and State agencies from extorting money from developers to keep their programs going.
86	Gut the thing. Way too onerous and drive up costs for everyone. Costco gas station is prime example.
87	Address the incremental fragmentation occurring in our forests from projects which do not trigger review. Amend jurisdictional triggers to cover these projected, and amend criteria to include Core Priority Forest Blocks and Habitat Connectivity Areas. Consider minor application status for forest processing facilities, and more parity between Ag. and Forestry. Consider more support (eg. permit specialists) to assist applicants and reduce costs. Strengthen Act 250 while reducing administrative burden and cost to applicant.
88	I'm under the impression that all appeals under ACT 250 are de novo proceedings. Given the professional staff, careful review process, and documentation of the Act 250 commissions and the open process for public participation, I strongly urge The Next 50 Years committee to consider dropping or modifying this appeal procedure. De novo appeals are both expensive and frequently delay projects for years—externalities that discourage development in Vermont.
89	Act 250 should be amended to address incremental subdivision of large parcels of land into smaller parcels.
90	Bureaucratic cumbersomeness. Faster process.
91	Make it easier and cheaper for project opponents to be heard and have impact.
92	Act 250 should be much more definitive about what areas simply should not be developed (similar to Oregon's approach). Core forests, wildlife connectivity and endangered species habitat zones, prime agricultural lands, water bodies need specific identification and protection to prevent negative impacts.
93	 - Large farms are much larger then they were in 1970. I think the Act 250 commission needs to create a threshold for when a farm is no longer exempt because people around the area need to have a way to be heard about their concerns relating to air quality and traffic (more trucks driving on dirt roads are making people not be able to open up their windows during the summer) and water quality (getting the correct permits during construction). - I also think a subdivision or commercial building under 10 acres that is going to clear forested land should not be exempt and that Act 250 commission should also create a threshold



Question 28: What is one thing you would like to change in Act 250?

	winter for much of its tourism revenue. Families such as ours have been inspired by Vermont's beauty to buy vacation homes here and add revenue to the town's tax base. We don't want crazy development, but do want to be good stewards of this incredible state of Vermont.
442	We need more development and jobs in VT with out making good developers go through a lengthy and costly Act 250 process. Example the Walmart in Derby — what it take the developer ten years and millions to complete the process. I'm surprised Davis, just didn't walk away!
443	Dissolve act 250
444	Be more business friendly.
445	renewable energy requirements should be lowered or eliminated. Allow the market to dictate vs. regulation.
446	Act 250 should not be involved in the construction of the Rail Trail for snowmobiles, walkers bikers etc.
447	I think the protection of shoreline property should be looked at on a case by case basis.
448	decrease control ,make it easier and affordable , while still protecting our resources
449	I would change how a landowner can come in and create havor with buying multiple parcels just to increase chances due to radius to develop a rural area. I believe that Vermont should stay with natural and try to maintain big parcels and not let it become a city and pollute the air quality as in other states by being too congested or allowing building houses adjacent or close together with septic systems. Also act 250 should consider the many landowners that have multiple junks or vehicles or masses of old junk in their yards that are possibly leaking fluids from age into the earth causing contamination. I do believe that allowing more development and increasing the allowance to develop smaller parcels could be damaging for air quality along with power lines causing possible terminal disease or deformities in humans and future generations. Land should be preserved and carefully considered.
450	More transparency to general public- more communication about objectives and process with the general public.
451	Trails! Low impact, low disturbance trails should be exempt!
452	Start listening to the real Vermont, not the liberal progressive berny sanders Prius lovers.
453	Shorten the process
454	I feel the intent of Act 250 was noble it has increased in scope to become a burden to property owners and driven the stagnation of the economy of this state
455	give it all encompassing authority over the entire state with current exemptions eliminated
456	Encourage recreational non motorized trail development. Trails have an environmental impact that should be regulated, especially when users pay a fee. However, regulating recreational trail development within the same framework



Question 28: What is one thing you would like to change in Act 250?

	concieved to limit commercial development is a departure from the original spirit of Act 250. Trails bring a great deal of economic benefit to this otherwise below average region of the state in terms of affluence and employment opportunities.
457	Absolute involvement in maintaining rural, scenic areas, absolutely no more ridge line turbines, and maintaining our forests and wild lands.
458	Make it easier, cheaper and take less time for those who want to develop within the state. We are not business friendly at all.
459	Thank you. Nothing. Leave it the way it is.
460	Act 250 is largely regarded as a monstrous impediment to economic development. The state should be taking a smaller role in regulation of its citizens and their activities. The concept of an omniscient government overseeing the daily lives of the ignorant peasants fell out of favor centuries ago and it's time VT caught up to that.
461	There is no one thing. The entire Act is offensive to prosperity of Vermont and its occupants. That is one reason young people graduating leave VT and why corporations will not invest in VT.
462	should not apply to any recreational trails
463	transparency in the proceedings. More general public and resident input
464	Less regulation on individuals, losing farm land to solar panels, killing birds with wind farms,
465	get rid of it all together, it is a waste of taxpayer money and holds up crucial development in our state keeping new jobs out and creating an environment that keeps business from wanting to come here in the first place, craazy
466	The time it takes for a permit and the confusion the state has with where they want development
467	The entire act should be repealed and has strangled development in the state. This I'll conceived act has reduced jobs, investiment, and development making VT undesirable to most businesses.
468	let business come into rutland ,we are dying here
469	no new gun laws
470	Repeal it.
471	Nothing for now
472	I understand and appreciate that a minority voice should be heard in a process, but Act 250 doesn't seem to have the intestinal fortitude to say that a majority consensus and reasonable accommodations can be the basis of a final judgment. I feel that sometimes a single NIMBY and/or unreasonable protester (or legal union) can torpedo a project that is 99% positive and constructive.
473	length of time to get permits



Question 28: What is one thing you would like to change in Act 250?

474	Do not create so much red tape that recreational trails and outdoor activities are affected.
475	I would like to see specific language identifying snowmobile trails, trails maintenance, grooming and snowmobile transit be exempted from this Act. I see nothing in this act but potential language that could be used to make participation in this recreational activity more cumbersome for the mostly volunteer run trail system. This activity brings a tremendous amount of revenue to the state as people spend money to ride on trails here, visit restaurants, hotels, buy homes, buy snowmobiles and pay taxes on all of the above. If we make it harder for the volunteer clubs to operate, this activity will dry up and Vermont will have to look to find damaging ways to exploit the rural beauty, instead of allowing visitors an opportunity to view and appreciate it.
476	consideration in preserving VTs trails systems and access to land. Snowmobiling is a great way for people to connect with the land while having a relatively low environmental impact
477	I honestly believe act 250 economically hurts the state of Vermont. The areas it should be applied to are exempt and where it shouldn't be are subject to it. It kills any kind of business development.
478	Take the consideration of the People over the land.
479	It is time for an overhaul of Act 250! The State of Vermont will never attract business and create jobs, that will keep our kids in state if we do not allow for growth. Act 250 is the bottleneck to this process and change.
480	It has restricted job growth opportunities in many areas. Our children are moving out of VT so they may get full time good paying jobs. To keep our youth in VT we need to find ways to develop entry level jobs that may grow into middle management or caree type jobs. I wan my kids to stay and not move to New Hampshire.
481	I probably would reduce the number of criteria
482	Reduce the redundancy and overlap with ANR permit programs.
483	Less intrusive and more practical.
484	ACT250 should be clarified and easier to navigate. Any goal of allowing business to exist in our state in a harmony with the goals of the act's original intent of protecting our natural resources. It should be the sentry of large housing complexes, address water runoff and quality issues, protect green space, and preserve farmland by limiting development of farmland in river-valleys. Focusing on 'Climate Change' is a broad and lofty goal which means different things to different people. Encourage common sense preservation and thoughtful developments which will enrich our state instead of making it look devoid of mature trees and cookie cutter like everywhere else in the US which has experienced heavy development.
100000-10	Less oversight of industry.



Question 28: What is one thing you would like to change in Act 250?

486	Recreational Trails should be exempt from Act 250
487	Improve lake and river water quality now before it's too late!
488	Act 250 should not get involved with VAST trails, and VASA trails on private land.
489	eliminate it entirely. it is not good for the economy at all. it is stifling business.
490	Its direction. It should not be interested in controlling the use of the land for recreational trails and activities. Parks and Forestry as well as Fish and Game are developed agencies tasked with overseeing proper legal use and maintenance. We do not need additional layers of oversight, rules and restriction. Nor do we need to increase the State's already hefty payroll. More bureaucracy equals more feather bedded jobs and higher taxes. Additionally we should not be making it harder to make a living in Vermont, after all it has become known as the "challenge you to make a living" State.
491	I am an avid hiker and snowmobiler. I would see snowmobile trail maintenance and development as a form of public use that promotes conservation of Vermont natual lanscape, promotes jobs and economic growth in our rural towns, and promotes tourism. I would not want to see trail development and maintenance subject to the same regulation as real housing, commeercial, or energy development projects.
492	I feel the Act 250 permit process takes lifelong Vermonters out of the picture. The only people that can afford to do projects that involve Act 250 are big business, the wealthy, the State, and out of state developers. The average Vermonter can't afford or have the time to go through the process. Big business, including the State of Vermont, utilities have money and staff and they always get their permits. I truly want to protect our beautiful state but we are going to far with rules, regulations and then tax dollars to support all the these rules. Feeling like I won't even be able to give my children land to build on, keep them in Vermont, because they will not be able to afford the permits and taxes. Please find a way to continue protecting our state and its residents without forcing Vermonters out. Making Vermont a state for the rich and very poor only. No additional rules and regulation, please. We have enough now. I heard that the state is thinking about not even letting us have trails on our property without Act 250 permits. Those trails do a lot more good than harm. Many have been there for generation and so many have and do enjoy them like property owners and their family, friends and tourists For example, hiking, cross country skiing, snowmobiles, bird watchers, mushroom hunting, berry picking, cutting fire wood, amature photography, hunting,
	atv's, logging, and for some handicapped and elderly people the only way to use our great Vermont forests. Please don't go overboard with regulations. Let us have a chance to enjoy Vermont as we have for generations. There is no sense having



Question 28: What is one thing you would like to change in Act 250?

	a beautiful State to live in if we can't use and enjoy the peaceful beauty that Vermont has to offer. Leaving it to the rich and powerful only.
493	Recreation should be exempt as long as basic management practices and other state rules/regulations are being followed. The term Development needs to be clearly defined and recreation trails should not be included and in fact should be excluded specifically from this definition. Act 250 cannot become any more far reaching than it already is with its current staff or projects will never be seen through completion in this state.
494	Act 250 is essentially legalized extortion. If you want to "buy your way out" of Act 250 restrictions the commission is more than happy to let you, if you can afford to purchase their required amount of "mitigation land" somewhere else. The problem with this is that only big developers can afford to do this, every day Vermonters who just want to use their own land the way they see fit, can't. Act 250 was a good thing back in the 1970's. Now it's just a bureaucratic roadblock to prosperity and success, making Vermont one of the least business-friendly states in the nation. Enjoy living here when the only people that can afford to are the trust fund babies that moved here to live out their days in this quaint and quirky little state. This native Vermonter will be moving south to a better climate, and I'm not talking about the weather.
495	Relax
496	The public needs to more involved and informed on the proceedings.
497	Exemption of snowmobiles since we already have controls that benefit the environment.
498	Less regulation. Protect against pollution but don't make climate change sound like something we can control.
499	act 250 should not be expanded to include trails. the majority of trails in vt are on private land. private landowners should not be discouraged from trail development on their land by act 250.
500	Act 250 should not affect current recreational trails used by VAST or others.
501	tourism is all Vermont has left that hasn't been regulated out of competitiveness and our borders. don't apply Act 250 to limiting tourism access to lands: snowmobiling, ATV, Skiing, etc.
502	Eliminate it
503	More friendly towards snowmobiling and other recreational activities.
504	Allow more access to Vermont forests for snowmobiles and four wheelers, motorcycles. NH currently has great programs but VT limits access to lands to only a few activities that very few can take advantage of. Act 250 is to political and time consuming, costly. If you have friends it works if not you need tons of money. Wonder why businesses / working class are



Question 28: What is one thing you would like to change in Act 250?

	leaving? Taxes and Act 250.
505	Get rid of Act 250 all together! It is too stringent and will affect the off road community (ie VAST, VASA, and other) and where they can ride. Vermont needs to embrace all recreational activities not just hiking.
506	I have lived in Vermont for only the last 7 years but have been coming here my entire life as a second home owner. While I love the natural beauty of this state I fear that if the overreaching power of Act 250 isn't curtailed it will eventually sniff out any business that is looking to grow and push them to other states. From businesses to homeowners to town managers, everyone knowledgeable that I have spoken to are overwhelmed with what Act 250 has become and the power over everything that it has.
507	The Act 250 process often does not take into account the economic impacts of it's regulatory process nor does it take into account the seasonal recreational/tourism business that is so important to Vermont's overall economy. Some things have to be decided in the best interests of the livelihood of the people who live and work in Vermont and not just on scientific data based on a standard created by persons with a limited agenda.
508	Make it easier and faster to navigate and complete the process
	Please don't change anything to make it more difficult to build and maintain outdoor recreation trails (bike, hike, ski, snowmobile, ATV, etc.) that so many Vermonters use and that bring so much out of state money to our state. Please change regulations to allow I 289 (the circ) to finally be completed to alleviate congestion in the greater Burlington area.
510	I think it should support more the snowmobile trails.
511	The process takes entirely too much time. It needs to be more streamlined and efficient. It can add significant costs to a project and that's just not right. Hiking, biking, ATV, snowmobile trails and roads should not be subject to Acct 250 permitting.
512	This was a truly slanted survey aimed at enlarging the scope of the law. It is a horrible example of claiming opinion to favor a point of view. Almost all off the answers could have included "depends" as most of the questions had an incredible amount of gray areaBAD JOB!
513	Stop trying to change things that we don't have any control of. The earth can take care of itself. Do something about the cities dumping sewage into lake Champlain.
514	Repeal the regulation
515	Act 250 does not always seem to differentiate among different uses that in fact have different impacts. For instance, a winter



Question 28: What is one thing you would like to change in Act 250?

	trail v. a summer trail.
516	The application process is confusing and unpredictable
517	Get rid of it. It is not good for Vermont.
518	REPEAL ACT 250! It is such a economy destroying farce.
519	
520	Leave The Vast trail system alone
521	Remove Act 250.
522	Make process simpler and less expensive
523	Waste Water easements for single family dwellings.
524	Act 250 is state wide zoning implemented under the pretext of environmentalism. It is a fraud and should be eliminated entirely.
525	Think of everyone's opinions, not just the watch groups. The opinions of Vermont residents are the important ones, not those of special interest groups who "think" they speak for us all.
526	Nanny state
527	ACT 250 has NO PLACE interfering with recreational trails. The impact is not significant (or nonexistent) enough to have to be overseen by these strict regulations. Recreational trails get people outside to enjoy nature and wildlife and learn respect for it. Act250 should not be making it harder to build and maintain recreational trails.
528	Protecting snowmobile trails - these should remain fully allowable under any future ACT 250 revisions. Modern snowmobiles are increasingly quiet and low emissions, with virtually no impact to land, water, or wildlifeyet provide enjoyment to residents and non residents alike, while bolstering VT's economy and fostering small businesses.
529	Act 250 too often interferes with the private landowner wanting to develop their property. This should be left to the towns to best decide what to do not the state. By adding the second layer of complexity and cost to the process Act 250 has made Vermont very unaffordable and driven out our younger generation.
530	Exemption for recreational trail construction and maintenance falling under VAST or VASA jurisdiction.
531	To be more friendly to the modern economy and Vermont's housing needs. It should also allow for more municipal and regional say in housing development that loops in Act 250 jurisdiction. If a regional and local plan say it's okay, why should Act 250 trump that? Act 250 really should only play a heavy-hand in very large new developments, or when there is no/sub-par local regulations. Some old Act 250 permits really shouldn't even need Act 250 review. Some projects/parcels under Act 250 that look to expand or re-permit need to have an easier way to get those approvals because, for example, if gravel pits



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500	can't get those approvals, and few/no new pits are approved, that has a direct, negative effect on our road infrastructure (cost, access to, negative impact on water quality, quality of gravel, etc.) That's just one example that comes to mind. It's things like that that just don't make sense - cause more harm than good - and need to be updated moving forward.
532	I would like to see recreation trails exempt from ACT 250 since it is not the "development" that ACT 250 was based on when it was enacted. More regulation does not make a better Vermont. Recreational trails in Vermont are the backbone of many small towns and hamlets that rely on them for jobs. The trail groups that run these trail systems are all environmentally friendly with the goal of getting folks out into nature, while respecting Vermont's lands, forests, animals and waterways.
533	Additional incentives for rural economic development.
534	Jurisdiction. The current crazy quilt of what Act 250 does and doesn't apply to does not allow the State to regulate a lot of development, while it does regulate projects that are not likely to have significant environmental or land use impact.
535	Exempt any designated growth center from ALL Act 250 requirements - AND open growth center statute to a minimum threshold-standard
536	Amend Act 250 to exempt the definition of trail projects that are part of the Statewide Trail System and develop alternate standards to guide development, maintenance, and operation of trails designated under the Statewide Trails System.
537	Jurisdiction should exempt areas well-planned for growth and capable of development, such as municipalities that have done the up-front planning and regulation to protect resources and have the capacity to do high-quality development review of projects that do not have a regional or statewide significance (such as extractive activities [quarry], major trip generators [stadium], or major sewer service area expansions).
538	Jurisdictional triggers: The factors driving where a dwelling or commercial project is built are complex, but cost is always an important consideration. The conventional wisdom is that development costs tend to be cheaper where regulations are lax or they do not exist. While the capacity and sophistication of state and local regulations was limited 50 years ago, municipal and state permitting framework have advanced and matured since the creation of the Act.
	Many believe Act 250 would do a better job protecting what Vermonter's care about if it were modernized to recognized this change. A more nuanced and strategic approach to jurisdiction would be for Act 250 to spend less time reviewing projects in areas with robust local regulations. This would free up staff time to fill gaps where the local ability and capacity to regulate is



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	limited (which speaks to the Act's original intent).
	While 10 acres of impact/10 unit subdivision creates a bright line, many projects are intentionally designed to be subjurisdictional (practitioners estimate that Act 250 participates in less than 5% of all development).
	Wherever the line is drawn, it's inevitable that projects will be designed to avoid review. However, if the Act is to remain relevant for the next 50 years, a smarter approach to jurisdiction is needed.
539	Jurisdiction. It needs to be designed in such a way that the kinds of development we want to encourage are below the threshold for an Act 250 permit. Because rational people do what they can to avoid extra permitting and we should make sure the thresholds themselves drive a form of development that minimizes impacts.
	Also the thresholds should be designed to recognize the high levels of permitting capacity that exist in some municipalities (the existing 1/10 acre thresholds are not a meaningful way to recognize local capacity) as well as at ANR, and seek to either fill the gaps or provide coordinated permitting for large, multipermit or multi-municipal projects.
	In general, it should be strengthened.



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	because Act 250, Criterion #8 (and towns/villages) requires that the project conforms to existing architecture and/or has an adverse aesthetic effect on existing structures. In short, Frank Gehry would have a hard time building a structure (other than residential) in Vermont.
31	Remove act 250 all together and Vermont will do fine on it's own with local control !!
32	It needs to be more of a citizen friendly environmental review and less of a politically motivated legal process.
33	Move energy siting from section 248 to Act 250 (siting decisions being subject to Act 250 & restricting Section 248 to project development)
34	More protection and recognition of the importance of forests and the value that they provide to our health and welfare. Forests should have, at a minimu, the same recognition and protection as farmland. Forests provide clean air and clean water. They should be protected from fragmentation.
35	Giving more voice to local residents in the Act 250 process!
36	Simplify the application and all administrative procedures so they are less onerous and time consuming.
37	Have qualified individuals on commission - should be interview process (not just someone who can grow tomatoes on a small plot of land)
38	More support of citizens throughout the process & full enforcement when permits are violated
39	Criterion 5 - transportation. A traffic study is an incomplete analysis of a multi-modal system and too much emphasis is still placed on relieving traffic congestion. Consider rewording Criterion 5 to emphasize that a proposed development "improves pedestrian access" (i.e. the ability of a pedestrian to reach their destination). Every trip has a pedestrian component. Every person can be a pedestrian (a commuter, the young, the elderly, the disabled, and visitors to the state. Compact settlements and village/urban centers are based on pedestrian designs and land use patterns. The pedestrian should be the "design vehicle" rather than the automobile.
40	The less than 10 acres "loophole"
41	Decrease the bereaucracy. Keep the oversite, decrease the complexities.
42	The public review process. It would be good to see the board work WITH citizens who are trying to protect wetlands/village centers, rather than against them.
43	More attention to citizen voices
44	Making it easier for the average citizen to participate in without having to hire an expensive lawyer.
45	see survey
46	It seems as thought people don't see compact downtowns as an economic driver for the state. There needs to be more dialogue around the value of our landscapes for tourism and for quality of life and concerted effort to address concerns that Act



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	250 hates all development.
47	it need teeth to survive/deflect the corporate onslaught to enrich few at the cost of many.
48	It should be more comprehensive and cover more projects. The incremental, small projects are more harmful than we realize
49	If Act 250 could be tweaked to actually address and limit spraw and development that fragments habitat, that would be great. Also it would be awesome to keep Act 250 review to major issues in a project, not nitpick small or insignificant aspects of the project.
50	I do not have enough knowledge of Act 250 to adequately respond to the question.
51	It applies to projects that are too small and benign. As a small business owner, I wanted to hold a farmers market at my place of business but was told I'd have to get an Act 250 permit since it was a commercial enterprise. Really? Act 250 is intended to prevent me from letting neighbors sell tomatoes in my parking lot? That's crazy.
52	and loss of Vermont's forests.
53	Better reflect the new realities facing Vermont 50 years after its inception. In particular, updating it to be as strong a tool as possible to mitigate and adapt to climate change.
54	The perception of it! It needs a marketing rebrand!
55	To make it less confusing for the public and for permit applicants. Expand jurisdiction so that the full extent of development that has a substantial impact on the environment is regulated under Act 250 instead of falling under different organizations (eg, wind turbines under PUC)
56	Not sure. Have not been following recent Act 250 discussions, but do feel strongly that Act 250 is the only statewide expression that exists that can at least try to implement the "compact settlements surrounded by working landscapes" policy.
57	Incentives for redevelopment in commercial ares, cumulative impacts
58	I would like to see policy that does not penalize developers of residential property. Under current policy to avoid the long expensive process developers are building fewer and thus more expensive homes which is causing a housing crisis all the way to the rental market and increasing homelessness.
59	Less willingness to let developers turn country living into suburban living!
60	There should be regulation which requires all Act 250 jurisdictions be subject to similar execution of regulation. Commercial development under 1acre should be required to
	follow the same rules as that over 1 acre.
61	follow the same rules as that over 1 acre. A simplified process for applicants.



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	creation of tiny paths through the woods so that people can experience the natural environment. Furthermore, the permitting process is inefficient and lengthy, and costly for small clubs to expense.
	These activities occur in our state by generous landowners and volunteers so that the beauty of the environment can be experienced. Environmental stewardship and conservation is top of mind with trail development. Consider, too, that these activities bring valuable commerce and tourism to our towns and state as a whole.
	Therefore, the permitting of trails should consider the differences and ACT250 should be updated/changed.
316	
317	
	There should also be exceptions for trails built by non-profits. Guidelines for building trails for water quality would be enough.
318	Not sure, just be thoughtful of how ACT 250 impedes or hinders recreational opportunitieslike mt. biking and hiking trailswe want people to get out and to enjoy your natural areas and by doing so, they will want to care for them
319	I would like see Act 250 not consider the construction of non- motorized, recreational trails as "development." This activity should not fall under Act 250 review
320	I am involved with recreational trail development and management as President of the Woodstock Area Mountain Bike Association. (WAMBA) This is a volunteer role, in a volunteer led community organization.
	I am a life long Mountain Biker, skier, hiker, and paddler - having grown up in Randolph, Vermont. My time spent on a bike in the woods helped me through difficult times in High School, and led me to pursue an incredible education at the University of Vermont's School of Natural Resources (Now the Rubenstein School) Like many young Vermonters do - I left after college to see some other places. Family connections, combined with Vermont's incredible recreation opportunities brought my young family back to the State of Vermont, after 10 years in the Pacific Northwest.



WAMBA manages approximately 8 miles of trails on 358 acres of private property in Woodstock Vermont. Many of these trails are 30 years old. Our Chapter was established in 2016 and took over formal management and improvements. The trails are widely used by bikers, runners, hikers, and dog walkers. We host regular youth and family rides, and the High School Mountain Bike club team uses our trails for training.

Our trails have recently come under Act 250 review because of what we believe to be an unfortunate circumstance resulting from the law as currently written.

Our trails at the Aqueduct have come under Act 250 jurisdiction because of a Water Storage tank built in 1986. Once there is an Act 250 permit on a property, anything you do in the future has to go through a permit process to amend the initial permit. Because of the 1986 permit, we are required to go through the amendment process. IF there were no pre-existing Act 250 permit on the property, our trail system would not meet the disturbance threshold required to undergo Act 250 review.

Essentially, the Aqueduct Trails have come under Act 250 review because of a 32 year old permit for a completely unrelated development on the other side of a town road.

WAMBA leadership has been working through the process with the State of VT since January, and to date, our volunteer time spent is in the hundreds of hours. We are far from done - we now need to hire a Wetlands Specialist, and perhaps a permitting specialist to help us through the rest of the project.

We're all very pro - environment here, but the current Act 250 process puts trail projects in the same review process as development of shopping plazas, and doesn't recognize that we are trying to create tiny paths through the woods so that people can experience the natural environment.



Permitting of trail projects needs to occur in a way that reflects a true understanding of trail impacts (or lack thereof) and the State of Vermont needs to understand what a benefit trails represent for communities and residents across our State.

Our recent and ongoing efforts to comply with the requirements of Act 250 have diverted our chapter's volunteer hours away from trail improvements, signage, maps, and community events. We are spending membership dollars on permitting and specialists that could instead be spent on making our trail system better, and more environmentally friendly.

We would like Act 250 changed to have a more straightforward, and appropriate path for permitting trails in Vermont.

Please consider the following facts about recreation trails in Vermont:

Trails are invaluable pathways to better health, rural economic stability and conservation in Vermont

Cumbersome permitting fees attached to "development" are a deal breaker for nonprofits. Our trail infrastructure is not built by volunteers for commercial purposes

Trail organizations and users are conservationists, completely dedicated to environmentally friendly and sustainable trails

Over 70% of trails in Vermont are on private land – we need regulation that will support their generosity and encourage even more trails and conservation

Trails have a low environmental impact with great benefits, including the inspiration of greater conservation and environmental protection. Therefore, trails should not be



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(1	considered "development" and lumped into the same regulation categories as other construction projects
	Currently, Act 250 limits Vermont's ability to fully realize the benefits that could come with greater support for trails and outdoor recreation
	Trails and outdoor recreation not only make Vermonters healthier with over 72% of Vermonters participating, but they also provide over 50 thousand, or roughly 1 in 7, of the jobs in Vermont (Outdoor Industry Association)
	Seth Westbrook,
	WAMBA President
321	Trail development within the forest should not require an ACT 250 permit. There should be a basic environmental review.
322	Its a very slow cumbersome process with each agency protecting its turf. There appears to be very little coordination and prioritization of the issues. There is no recognition of the time value of money and the risks that the developer is incurring.
323	Drastic changes of use to properties with existing Act 250 should be considered exempt - for example low impact development of hiking and and bicycle trail networks meant for outdoor recreation. Trail networks that if not for the existing permit from another/past project would be exempt should not be put through the same permitting requirements.
324	Act 250 should not apply to hiking, and biking trails, or should have completely different set of guide lines as for someone putting in a shopping mall!
	Trails are invaluable pathways to better health, rural economic stability and conservation in Vermont
	Cumbersome permitting fees attached to "development" are a deal breaker for nonprofits. Our trail infrastructure is not built by volunteers for commercial purposes



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	Trail organizations and users are conservationists, completely dedicated to environmentally friendly and sustainable trails
	Over 70% of trails are on private land – we need regulation that will support their generosity and encourage even more trails and conservation
	Trails have a low environmental impact with great benefits, including the inspiration of greater conservation and environmental protection. Therefore, trails should not be considered "development" and lumped into the same regulation categories as other construction projects
	Currently, Act 250 limits Vermont's ability to fully realize the benefits that could come with greater support for trails and outdoor recreation
	Trails and outdoor recreation not only make Vermonters healthier with over 72% of Vermonters participating, but they also provide over 50 thousand, or roughly 1 in 7, of the jobs in Vermont (Outdoor Industry Association)
325	The cumulative counting of lots by a developer and how Act 250 applies to a developer. The standard for small residential lots & neighborhoods should be the same for a "developer" as for a small builder. i.e. my 3-lot subdivision should not require Act 250 review (because I have been through Act 250 before) if 'Joe Blow's" does not require review. Small developments should NOT be subject to Act 250.
326	Abolish it. It is redundant with other oversight. It has dramatically harmed the economy on VT. VT's economy is in a dangerous position. Without a good economy we will have no ability to do any good social and environmental services.
327	Make exempt or allow for a streamlined, inexpensive way for land owners to develop Mountain biking, back country skiing and other outdoor recreation opportunities. Act 250 should not be an obstacle for land owners, non profits and others looking to make land available to help increase the overall health of the Vermont population and our visitors. We should be encouraging and paving the way for this type of development, especially with the relatively low amount of public land and the



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	large amount of privately owned land in the state.
328	Allow streamlined permitting for recreational trail building in areas that have an existing act 250 permit. Groups looking to develop trails have very little money that is usually raised to improve trails and work for the groups that use those trails. Not to hire lawyers, wetland specialists, etc. Use of these trails is typically light and should be controlled locally.
329	As someone who loves public multiuse trails and a member of VMBA. I stand with them!
	VMBA and the Council fully supports the work of the Commission as conservation and environmental protection are core values for all of us. However, we are also concerned because Act 250 regulation can and has created confusion, expensive and time consuming obstacles to improving and maintaining trails.
330	I would like its purposes to be more readily available and understood by the general public.
331	Act 250 regulation can and has created confusion, expensive and time consuming obstacles to improving and maintaining trails in Vermont. Currently, Act 250 limits Vermont's ability to fully realize the benefits that could come with greater support for trails and outdoor recreation.
	Trails are invaluable pathways to better health, rural economic stability and conservation in Vermont. Trails have a low environmental impact with great benefits, including the inspiration of greater conservation and environmental protection. Trails and outdoor recreation not only make Vermonters healthier with over 72% of Vermonters participating, but they also provide over 50 thousand, or roughly 1 in 7, of the jobs in Vermont (Outdoor Industry Association.
	It is critical that any potential reforms consider the irreplaceable benefits of Vermont trails. We must inform our legislators and state leadership charged with modernizing the law understand that support of the trails and volunteers is required at this time. Creating cumbersome and confusing obstacles for the landowners, towns, nonprofits and volunteers that create, build and maintain virtually all of the trail infrastructure for the public good will have tremendously negative impacts. Therefore, trails should not be considered "development" and lumped into the
332	same regulation categories as other construction projects. Simplify the process and lower costs for private land owners regarding development/maintenance of recreation trails and paths for hiking and mountain biking. Hiking and Mountain Bike



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	trails could have large impacts on our state in terms of bringing tourists and their money to our economy as this is a very lucrative business.
333	Include trails for people and bikes in exempt status
334	The political bullshit
335	We need to ensure the Act 250 process does not hinder or impede the sport of MT biking in the state. The idea that building MT bike trails should be considered as development is ridiculous.
	Do we consider all the trail maintenance and rerouting of the Long trail development?
	Come on, let's use some common sense as MT bike Trails are invaluable pathways to better health and conservation in Vermont.
	Placing permitting fees attached to "development" are a deal breaker for building a responsible trail system as MT trails are not built for commercial purposes, but as a community resource.
	Currently, Act 250 limits Vermont's ability to fully realize the benefits that could come with greater support for trails and outdoor recreation, let's make a change and start leading by example.
336	The ability fro for mountain bike trails in vermont to be built. They are low impact to the land and bring needs recreational opportunities to the region.
337	higher costs and delays
338	Eliminate the entire Act. By far the most useless piece of legislation in any of the 50 states.
339	Trails are invaluable pathways to better health, rural economic stability and conservation in Vermont
	Cumbersome permitting fees attached to "development" are a deal breaker for nonprofits. Our trail infrastructure is not built by volunteers for commercial purposes
	Trail organizations and users are conservationists, completely dedicated to environmentally friendly and sustainable trails
	Over 70% of trails are on private land – we need regulation that will support their generosity and encourage even more trails and conservation
	Trails have a low environmental impact with great benefits, including the inspiration of greater conservation and environmental protection. Therefore, trails should not be



	considered "development" and lumped into the same regulation categories as other construction projects • Currently, Act 250 limits Vermont's ability to fully realize the benefits that could come with greater support for trails and outdoor recreation • Trails and outdoor recreation not only make • Vermonters healthier with over 72% of Vermonters participating, but they also provide over 50 thousand, or roughly 1 in 7, of the jobs in Vermont (Outdoor Industry Association) Creating cumbersome and confusing obstacles for the landowners, towns, nonprofits and volunteers that create, build and maintain virtually all of the trail infrastructure for the public
	good will have tremendously negative impacts. Over 70% of our trails are hosted and maintained on private land and made possible through 100,000+ volunteer hours annually
340	Fundamentally, Act 250 serves a critical role in preserving the qualities of Vermont many, including myself, hold close to the heart. That said, I strongly encourage the review to consider how changes in Act 250 could make Vermont a better (more vibrant) place. Act 250 should be working with local communities, in the planning and development to designate and preserve areas of prime agricultural and forest values, while also designating areas for growth and development. Many communities have seen numerous subdivisions, where a 100 acre parcel becomes a few lots. The lots are sold and split until that 100 acre parcel of rural land now becomes 5, 10 and 15 acre house lots, no longer capable of supporting significant agriculture or forest conservation practices. In addition, changes in regulation to allow for modern updates in aesthetic characteristics, so that "cookie cutter" type developments are not the prominent finished product of the process would be great. Imagine a 40 lot housing development in Williston that consisted of Brick Colonials, Cedar Shake Capes and Split level ranches. It would make for much more aesthetically pleasing developments.
341	Speed and efficiency of the process.
342	Reduce the power of unaccountable government bureaucrats. Simplify the law and create predictable outcomes. Regulation through obfuscation increases risks, and reduces affordability and economic activity.
343	Incentives for landowners for development of new recreational trails and inter connectivity of existing trails.
344	A better understanding of what the review process is for the public to eliminate the sound bites that developers and others



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	use.
345	Trails aren't exempt from Act 250 (used by conservationists, low impact and important for tourism), but Agriculture is (Agriculture has a huge negative impact on water quality and wildlife corridors). It would be great if Act 250 was less cumbersome on trail development and provided some oversigh on Ag with respect to water quality and wildlife corridors.
346	Issuance of DEC permits prior to submission of an Act 250 permit should prohibit any further discussion at a hearing related to any Criteria which has been satisfied by the issuance of the DEC permit.
	Act 250 hearings should be for non-DEC Criteria only, not a public hearing to discuss the merits of an issued DEC permit.
	Also hearing requests should not be granted if they are only to discuss DEC related Criteria (Water, Sewer, Stormwater, etc.) There is now a public process for those permits so there is not need for further public participation overlap by Act 250 which is a laymen board as it pertains to DEC related Criteria.
347	Needs to be reasonable. Hysteria has taken hold especially concerning lakes and ponds. The state should not be isolating ponds by closing class 4 roads and blocking off accesses. The hysteria concerning water resources is way out of control.
348	There should be an exemption or added flexibility to waive criterion 9B (prime ag) in areas where towns have specifically zoned/ planned for growth/development as part of their approved town plans.
349	The jurisdictional triggers are currently inadequate and should be changed to address easier development in designated centers, and have modified triggers in towns with more sophisticated planning/zoning. Reduce redundancy between state permits and criteria. Reduce opportunities for appeals, increase opportunities for mediation.
350	Make reviews of land that truly could be impacted not just a global ruling. One by one approach.
351	Hand-built trails should be exempt from review.
352	Adding permits for trail building is a step in the wrong direction
353	Get rid of it. It is a significant impediment to economic growth in our state.
354	Decouple telecommunications and broadcast from Act 250 altogether — those types of development should be regulated by the PUC under 248a to use a comprehensive, planning-based approach to improved wireless service and access to high speed broadband (similar to what is done with electrical transmission / generation).



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355	I am concerned about the access to recreational activities in our state - which can increase the economy - and its interface with Act 250.
356	Streamline and or remove some regulations. Force the state to provide evidence that a project will be not compliant instead of the applicant trying to prove that their project will be compliant.
357	Must be business friendly, dramatically reduced time frame to approval, competent review staff
358	Its negative impacts on recreational trail networks.
359	eliminate it
360	It is redundant. It should be used for its original purpose of slowing down large developments and nothing else. It should not get involved in things like water quality which already have their own rules every development has to follow. Also, public assets such as recreation trails and roads should be exempt.
361	The process. I'm not anti-ACT250 and for the most part support the concepts and goals. I am a fourth generation Vermonter and have been involved in over 30 ACT250 projects over the past 28 years. I have been a consultant, an applicant, an abutter and an expert witness. The biggest issue I have is the lack of predictability and the layers of redundancy. If the legislature is serious about improving ACT250, they need to begin with the process, how it's administered, training of District Commissions, Coordinators, etc.
362	There should be on-the-record review of District Commission decisions.
363	Why is it so cumbersome to work with private landowners to connect recreation paths/trails in the state? More and better access means more participation in healthy activities for Vermont residents and visitors.
	Trails are invaluable pathways to better health, rural economic stability and conservation in Vermont
	Cumbersome permitting fees attached to "development" are a deal breaker for nonprofits. Our trail infrastructure is not built by volunteers for commercial purposes
	Trail organizations and users are conservationists, completely dedicated to environmentally friendly and sustainable trails
	Over 70% of trails are on private land – we need regulation that will support their generosity and encourage even more trails and conservation
	Trails have a low environmental impact with great benefits, including the inspiration of greater conservation and environmental protection. Therefore, trails should not be considered "development" and lumped into the same regulation categories as other construction projects



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	Currently, Act 250 limits Vermont's ability to fully realize the benefits that could come with greater support for trails and outdoor recreation
	Trails and outdoor recreation not only make Vermonters healthier with over 72% of Vermonters participating, but they also provide over 50 thousand, or roughly 1 in 7, of the jobs in Vermont (Outdoor Industry Association)
364	STOP being so controlling and getting rid of all our fun
365	Allow motorcycle to traverse the trail system. Motorcyclists are more conservative and environmentally conscientious than 4 wheelers
366	I feel your regulations are making property very expensive to buy, and expensive to higher engineers so you can build.
367	This survey was to simplistic to provide meaningful input. I believe it was created to justify conclusions the panel has already reached. I believe it will find Vermonters overwhelmingly support ACT 250 and want to expand its jurisdiction, except in places it wants to build. In those places it recognizes Act 250 is overly burdensome and will release jurisdiction. I find that Ironic and disingenuous. If Act 250 is going to work, Act 250 should apply equally to all projects that meet the threshold for development necessary for statewide review. I do not believe those thresholds should be lowered.
	Act 250 has done good things. It serves as very good checklist for things to think about as one develops or chooses not to develop land. However, it is also a smorgasbord of options for NIMBY opponents trying to deny a project because it lies in their back yard. It also adds significant upfront, at risk costs to projects. Have you ever wondered why there are no medium sized housing developers in Vermont? Economically, all either choose to go under Act 250's thresholds, or they are large enough to enjoy the moat Act 250 risk and expenses create.
	Act 250 should work to narrow its criteria and make them as objective as possible.
	I understand the land use development process in Vermont very well. I will never invest any of my own money in developing a new project in the State of Vermont. Between the local municipal process, the State regulatory agencies (All of



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	which are demanding expanded jurisdiction) and ACT 250, it is simply to risky an investment.
368	Human powered recreational trails should NOT trigger Act 250. This is economically irresponsible.
369	Make it easier for trail development and matinenance.
	Also, lots created with an Act 250 should not continue to be under Act 250 supervision.
370	Fees should be paid to obtain permit after the review and appeal process rather than up front. Significant funds can be spent up front without assurance of approval with reasonable conditions. Banks won't loan on projects, including permit fees, until permits are valid and therefore the applicant's cash flow has to be significant to even get through engineering and permitting. The process is becoming exclusive to the largest developers with funds to gamble on permits and discourages new players in the market.
371	Either simply the process or increase resources so the process can move faster
372	Dissemination of real data from the State on the overall ease/difficulty of permitting, i.e., not just widespread anecdotes about specific projects' permit successes or failures. Also, I feel that Act 250 gets blamed for many other regulatory snafus.
373	We need to help commercial projects navigate the process. Vermont need to attract taxable entities so the ACT250 administration should shoulder the burden of assisting commercial entities with the process. IT should not be a year long fight it should be executed in a timely manner.
374	Reviews for farming and logging especially in sensitive watersheds
375	Abolish act 250.
376	Act 250 puts up roadblocks on a lot of projects that benefit community, I'd like that to change. I.e., mtb/hiking trails should never have to deal with act250
377	Not necessarily Act 250 per se, but self-certification by licensed engineers for wastewater disposal and storm drainage that their stamp on drawings certifies that the work meets the regulatory requirements of the State. Consulting engineers are more qualified than State employees for starters, anything they do must meet regulatory requirements, and they are liable, and they have errors and omissions insurance. What more do we want? There is no justification for idiotic and time consuming reviews by individuals that are less qualified and competent than those who are doing the engineering.
	Ironically, most of the whining and complaining about sprawl results from projects that have been developed after the enactment of Act 250. By that standard, the Act is a failure.



	The whole process has been hijacked by consultants and lawyers who profit from it. And the only those deep pocket developers and subsidized entities, including regulatory agencies and planners, can afford the cost and the time it takes to navigate Act 250. Vermont's economy is suffering from it. Act 250 has outlived it's original purpose. There are enough regulations on the books at all levels that makes the process cumbersome and redundant, but it can be said that it provides employment, for whatever that's worth.
	We rely on property taxes to pay for education, and municipal services, including public development, and yet we willfully hinder the development of real property that underwrites essential services. That's the Vermont definition of insanity.
	The State of Vermont is not over developed. It's a myth.
378	Speed and costs of getting through the permitting process.
379	Most recreation resources developed by communities and non- profits such as recreation trails should be exempt from Act 250 review. The associated development brought by the trail or resource developed will already be subject to Act 250. Most of these project further protect and conserve open-space, ag & forest land promote stewardship of natural resources.
380	I'd like to highlight the importance of considering recreational trail development in the review of Act 250.
	Trails are invaluable pathways to better health, rural economic stability and conservation in Vermont
	Cumbersome permitting fees attached to "development" are a deal breaker for nonprofits. Our trail infrastructure is not built by volunteers for commercial purposes
	Trail organizations and users are conservationists, completely dedicated to environmentally friendly and sustainable trails
	Over 70% of trails are on private land – we need regulation that will support their generosity and encourage even more trails and conservation
	Trails have a low environmental impact with great benefits, including the inspiration of greater conservation and environmental protection. Therefore, trails should not be considered "development" and lumped into the same regulation categories as other construction projects



	Currently, Act 250 limits Vermont's ability to fully realize the benefits that could come with greater support for trails and outdoor recreation
	Trails and outdoor recreation not only make
	Vermonters healthier with over 72% of Vermonters participating, but they also provide over 50 thousand, or roughly 1 in 7, of the jobs in Vermont (Outdoor Industry Association)
381	I am writing as somebody who appreciates the vital role that Act 250 has played in keeping Vermont, Vermont. It has shielded our state from becoming suburban sprawl and strip malls like our neighbors. It also has provided important environmental protections. All of this is very positive and I am generally supportive of the role of Act 250.
	However, I am writing to ask that human-powered (Mountain Bike, Backcountry Ski, Hiking), non-commercial recreation trails be exempt from Act 250 review regardless of size. These trails are often built and maintained by volunteer-led organizations, which are generally supportive of Act 250's goals of conservation and protecting natural resources. These projects lend minimal impact to the land, encourage recreation, tourism and offer many community benefits. They also already go through a thorough planning process, especially when they are on state land.
	Once Act 250 jurisdiction is triggered on a human-powered non-commercial trail network, it serves as a death sentence for the project, as the volunteers do not have the resources or time to go through the Act 250 review process.
	Please exempt human powered non-commercial trail networks from Act 250 review.
	Thank you for your time.
382	Be reasonable. The process to adhere to Act 250 for land development can seem confusing and non-applicable. Forest management and certain setbacks should allow for better plant life and wildlife. Act 250 constraints don't take into account particular nuances of a land area.



Question 28: What is one thing you would like to change in Act 250?

	lin .
383	Make it easier to develop local trail networks
384	Remove Act 250 entirely in downtowns, village centers, growth
	centers, neighborhood development areas, etc.
385	Time and expense to get through the process.
386	Stop closing recreational opportunities. Try to be a bit like NH by allowing OHRV.
387	It should be abolished or decreased significantly. It made sense in the seventies. But now there is a regulatory body for every natural and cultural resource concern ever dreamed up by the state. Act 250 review is a redundant regulatory body that drives businesses away, keeps new businesses out, and takes land owner rights away from tax paying citizens. It also empowers neighbors to allow them to have more right to neighboring land uses than the actual land owner.
388	Act 250 should not be involved in recreational trail development.
389	Make it easier for landowners and trail organizations to create and maintain recreational trails. Make the process more business friendly to allow for local exemptions with regards to economic development.
390	Vermont's trail based community is an assembly of thoughtful trail professionals that are responsible for the lion's share of all outdoor recreation economic activity in Vermont. This is done on the backs of volunteers and private landowners - they state pays virtually nothing for trail networks.
	Cumbersome, expensive and confusing permitting has become a major hurdle for these nonprofits as they approach private landowners seeking more opportunities to build trails. Why? Modern trails are built and maintained to a level that would make any Act 250 regional coordinator raise an eyebrow with surprise. Trails to be lumped into a broad definition of "development" is an absolutely tone deaf and an obstinate position on the state's part.
	I've personally sat across the table from regional coordinators and asked questions only to see heads nod and shake simultaneously. They have zero clue about their own system relative to trails. Their oversight shifts from region to region. It's time to modernize relative to trails. Please also consider the following:
	* Cumbersome permitting fees attached to "development" are a deal breaker for nonprofits. Our trail infrastructure is not built by



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	volunteers for commercial purposes
	* Trail organizations and users are conservationists, completely dedicated to environmentally friendly and sustainable trails
	* Over 70% of trails are on private land – we need regulation that will support their generosity and encourage even more trails and conservation
	* Trails have a low environmental impact with great benefits, including the inspiration of greater conservation and environmental protection. Therefore, trails should not be considered "development"
	and lumped into the same regulation categories as other construction projects
	* Currently, Act 250 limits Vermont's ability to fully realize the benefits that could come with greater support for trails and outdoor recreation
	* Trails and outdoor recreation not only make Vermonters healthier with over 72% of Vermonters participating, but they also provide over 50 thousand, or roughly 1 in 7, of the jobs in Vermont.
	(Outdoor Industry Association)
	Thank you for considering this feedback.
391	Consider economic impacts.
392	Multi-use recreational trails should be exempt
393	Act 250 as created too many barriers for recreational trail development. Outdoor recreation is the largest industry in our state and much of the work is accomplished through non-profit organizations and volunteer hours. The barriers in place by Act 250 have had a negative impact in our ability to build and maintain trails which in turn has a negative impact on our economy! People traditionally visit VT for the beauty of our state and the outdoor recreation opportunities that can be found here. Recreational trail development for non-motorized use should not be part of Act 250 reviews!
394	Commercial developments under 10 acres should be included
395	The constant lawsuits and delays of projects to benefit Vermonters. The concept is good but in practice, it is being used to stop important and necessary projects from occurring. (ie. Costco Gas, etc.)
396	Less applicability to small-scale projects supporting outdoor recreating, e.g. hike and bike trails.



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397	Act 250 makes it really difficult for private landowners to develop trails, inhibiting the expansion of recreation. This is a public health issue and an economic issue. Vermont is poised to benefit from the further expansion of non-motorized trails, be
	they for bikes, skis, or foot traffic. Act 250 is a hindrance in this process in a way that seems wildly unnecessary. Landowners should be encouraged to open their land to public recreation and Act 250 does just the opposite, scaring folks into keeping their land private. Vermont does not have enough accessible
	public land, so the use of private landowner networks is paramount. Act 250 must accommodate this better in the future.
398	The appeal process is cumbersome and appellants can appeal based on vague issues. It promotes NIMBY appeals and takes much too long.
399	I want to make sure that trails for recreation are easy to build if they're done in a way to does not significantly disturb sensitive habitats. I also wish this survey included a link to know more about act250 i know it affects my life hugely but I don't know exactly how!
400	Trails should not be considered development and included in the same categories as other construction projects. We need to encourage trails as conservation measures. Many are built by volunteers and non profits - cumbersome fees can be a dealbreaker
401	Streamline the review process. The act puts a huge burden on the applicant and creates unacceptable time delays.
402	Act 250 SHOULD NOT be applied to VAST and VASA
403	Tough to say. The Act 250 process can be cumbersome, but process wise and substantively. But, as I see the only way to make it smoother is to restrict the ability of non-applicant parties to participate and/or scale back the review criteria, such as not reviewing aesthetics. Overall, I think Act 250 strikes a good balance and I think it does not need any major changes.
404	Continuity in district coordinators
405	We can't forget the past and organizations like the Vermont Traditions Coalition need to be heard. Thank you.
406	Get rid of CBES
407	less restriction and regulation, not more. Residents, businesses and local government of vermont are perfectly capable of policing themselves
408	the whole thing is a scam all it is the state to gets rape the tax payer yet again typical Vt government screw the small business person
409	Keep recreation in VT free of ACT 250!!
410	Consistency among District Coordinators in their interactions with applicants, particularly in recommendations to Commissioners on the adjudication of the presumption of compliance, for criteria satisfied by other statutorily authorized
	permit programs (e.g., wetlands, stormwater, WW).



Question 28: What is one thing you would like to change in Act 250?

412	Less expensive, burdensome and bureaucratic regulations. More common sense, best practice and timely regulations to encourage development that has good benefits for economic prosperity for Vermonters. We do not need ACT 250 for jurisdiction for recreational trails like snowmobile trails. Most are on private lands and maintained by volunteers with no compensation. WE DO NOT need that bureaucratic, useless bull threatening the survival of these recreational endeavors that is so important to Vermont's recreational industry. We need state employees on these regulatory boards who are willing to listen to what is needed instead of pushing THEIR agendas upon us. Vermont is slowly dying, we need to change that.
414	The cost and an easier process with a quicker time resolution! We need to keep our businesses in the state, not move out to cheaper locations out of state due to the act 250 cumbersome process.
415	Recreational use of act 250 preservation land is too restrictive.
416	exemption for businesses located on more than ten acres but utilizing less than 10 acres of the parcel for operations in a 10 acre town
417	Act 250 has been in large part responsible for the sprawl it was supposedly passed to prevent. The 10+ acre exemption has caused way too much fragmentation and only laid the groundwork for more development in wild areas.
418	Less restrictions
419	ACT 250 should hold accountable the municipalities that are dumping raw sewage into Vermont's waterway's [Lake Champlain etc.]
420	Simplify, streamline and make less expensive
421	ACt 250 can hinder construction- when people want to put time, resources and create jobs- this needs to be fixed.
422	Nothing
423	More consistency from county to county. Definitions that would work no matter which commission was hearing the application
424	As an avid outdoors person, I overall like what Act250 is doing to preserve what we all love about Vermont. I am active in my snowmobile club. Snowmobiling is a sport run by volunteers and brings a lot of tourism \$ into our town. I am just concerned that if changes to Act250 make trail maintenance and trail reroutes become too involved with red tape and expense that snowmobiling will fall apart. Volunteers and small clubs simply do not have the bandwidth to handle it. There only few volunteers and many have day jobs. If snowmobiling goes down, a lot of restaurants and hotels/motels, plow guys, etc. will suffer. Thank you for giving me the opportunity to have a voice.
425	The average Vermonters struggle to keep their land to pass on to family is a dying dream. The estate tax & cost to divide, survey, put in septic & power if their children wanted to build has become insurmountable. My husband & I built our own



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	home, if my children wanted to lots of luck, the banks require contractors & licensed electricians etc for a loan. Vermont was originally built on blood, sweat & Yankee ingenuity. If you were a hard worker you could get somewhere. Now you need deep pockets to grease a politicians hand. Out of staters come in here & buy up everything & then want something for nothing. Well you wanted an opinion, you got it.
426	Stress the importance of supporting intact ecosystems, habitats and wildlife corridors, and limit the size of solar installations. Removing forests and prime ag soils for corporate RE projects should be prohibited.
427	I like vermont the way it is. That's the attraction. I would continue to focus on natural resources and renewable energy. It's also important to continue to accomade public use like snowmobiling or hiking trails.
428	Definitely not more restrictive.
429	Act 250 should be abolished! It is not needed with local zoning and environmental court! It has ruined VT and taken away all right of property owners! Your questions on this survey are slanted to produce more act 250 bullshit! I spent 13 years and over 1.6 million dollars on a project just to have the court state we would have to start all over again because of one jerk in our town who hadn't even lived here 2 years! We went through ACT 250 Denovo it was a circus run by the head monkey Jeff Greene! Disgusting! The disrtict commissioners act like CZARS they should be replaced every four years so you don't get little dictators! This state has zero business and people fleeing because of the property taxes every day yet you wan more regulation! This survey made me want to puke!
430	It is lawyers run amok. There should be less micro managing of project details which run Engineering and legal costs up before Permit is issued. No one in there right mind would build a business in Vermont to meet a market need due to undefined time line for permits. Act 250 needs to be streamlined and more timely in decision process. Too many people leave the State due to lack of good paying jobs.
431	There needs to be much more oversite of the regional offices and they should be reminded frequently that there job is to ensure development is done in a positive and environmental friendly way not to find ways to stop it completely.
432	reduce the expense and burdensome regulatory process for businesses.
433	Nothing
434	Less regulation for private land owners.
435	What does climate change have to do with ACT 250?



3) Why was it not explained to everyone there the difference between ACT 250 and other required permitting like Storm Water and Wetland permitting so folks understood what they were being asked? In regards to the VAST trail network: We fully support the work of the Commission as conservation and environmental protection are core values for all of us. However, we are also concerned because Act 250 regulation can and has sometimes created confusing, expensive and time consuming obstacles to improving, maintaining and conserving trails. It is critical that any potential reforms fully consider the irreplaceable benefits of Vermont trails and the unique, complex and somewhat vulnerable nature of the system making them accessible to all of us. We must remind everyone who is considering these reforms how important it is to support rather than obstruct the landowners, towns, nonprofits and volunteers doing virtually all of their work for the public good. Over 70% of our Vermont trails are hosted and maintained on private land and maintained with over 100,000 annual volunteer hours 436 Repeal the Act 437 Give better access to snowmobilers It needs to move at a faster pace. 438 Allow jurisdiction to lift if a JO finds that the project site is fully reclaimed to pre-development conditions (or to conditions as set in an Act 250 permit if temporary jurisdiction for all projects becomes an option). 440 Act 250 should not impact the VAST snowmobile trail system. Trails are not the same thing as roadways and big development and should not have the same level of permitting regulations. There should be more incentives for landowners who open their private lands for public use such as snowmobiling, mountain biking, hiking and reasonable recreational activities. This opens up a whole new world of beauty for all who participate in these activities. Many times some of the most beautiful pieces of Vermont are on private property and this would allow people the opportunity to see hidden areas of this state. Snowmobiling brings in much revenue from out of staters who brave the Vermont winters to catch a piece of this tranquility. Don't forget that Vermont is a state that relies heavily on a snowy and cold



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10	
	quibbling; make all submitted documents available at local library; get qualified people as commissioners; have at least half of hearings in evenings; let people participate in hearings, whether by submitting testimony or interrogating presenters; develop a systematic method for evaluating impact of proposed projects; for a crucial survey to ask whether Act 250 has had a positive impact, overall or on environment, economy, or QoL reflects a true ignorance by the survey makers — the natural environment and the developing social infrastructure are very complex systems and to expect a participant to know the cumulative impact of Act 250, positive or negative, is really very naive (by Cope); and the implication of answer #3 I do not know, clearly implies an ignorance on the part of the participant, when it is probably the only intelligent answer.
6	Reduce the burdensome and expensive process.
7	More coherent and timely end to end process. No need for rulings to take years.
8	Give Act 250 some teeth. Developers complain about Act 250, but also say compared to developing in other states, Vermont's Act 250 is easy to get around.
9	To have the review happen next time in LESS THAN 50 years. Things are changing rapidly in our state, and Act 250 needs to keep up.
10	consistent implementation throughout all DECs, a reasonable timeline,
11	Better participatory process
12	Increase regulation of water resources, water ways, wetlands.
13	Act 250 should apply to siting energy projects.
14	dump the PUC & control vermont's power, fossil fuels, and telecomunications through act 250
15	It's WAAAAAY too easy to "mitigate" and get a project passed. I want stricter standards. Make it hard to do a project that is going to have impacts on those resources/ criteria that are so important.
16	Make it stronger to protect our rural character and also provide alternative renewable energy sources.
17	Provide for and encourage expedited local review where the local review carries equivalent or higher standards.
18	Increase jurisdiction to include commercial projects in 1 acre towns. Or at least in the rural towns.
19	Exempt communities with professional staff from Act 250 jurisdiction. Act 250, as a statewide initiative, could still apply to major projects that involve multiple municipalities, multiple federal or state agencies, or similar instances to help coordinate the process. The State of Georgia has a good example for "Developments of Regional Impact" where the state gets involved, or doesn't.
20	The law needs to better address scattered development. The law needs to ensure that development is better located and/or is located on already existing water and sewer infrastructure.



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	These needs to be combined with additional concentration at a state level at helping municipalities pay for water and sewer infrastructure.
21	reinstate the 800 foot rule
22	The jurisdictional triggers should be overhauled so that the size of a project is NOT what requires Act 250, but the location of a project. Don't require it in existing settlement areas so we can incentive growth there. Do require it in environmentally sensitive areas and critical resource areas for the State.
23	The perception that it is not good for Vermont. We need to promote it as a benefit to all - business as our well as state resources and its people.
24	The overlap and redundancy between ANR/Act 250 and Local/Act 250 review processes.
25	Your survey doesn't allow for other answers, but the ones you want. Give the respondent an opportunity to write in their thoughts then. That said ACT250 shouldn't be required for most projects over 2,500 feet. Logging, landowner's and trail projects should be allowed without issue. Many projects require review by other Vermont agencies. Why duplicate with ACT250? Return Vermont to a business friendly state. Stop requiring applicants to pay thousands of dollars while working their way through the ACT250 process. This survey and the public meeting were typical of the State of Vermont. The agency or committee only wants to hear what they want to hear. Meeting contents are directed that way by means of the cards or writing down comments on an easel. There's no doubt what with be the results of the meetings. The Northeast Kingdom's meeting's comments won't be considered as important as those at a meeting in a metro area like Chittenden county.
26	Expand exemptions for projects in planned growth areas within municipalities with adequate development review processes
27	Eliminate the Environmental Court as the appeals forum and establish an administrative board with at least 5 members to hear appeals.
28	Reduce thresholds - developers avoid Act 250 with 9 unit subdivisions. Also, same land that is sequentially subdivided by each new owner should be subject to reviews, even though landowners changed. More use of online notices (not only bulletins posted or newspaper articles) and notices should go to communities, not only abutters, since resources affect entire community/multiple generations.
29	More common sense in creating and applying regulations - not such a power happy attitude and how powerful I am attitudemore of a teamwork process. Shorter time periods for approval or disapproval and
-	simplification of an often complicated bureaucratic process
30	Contemporary architecture has little room in most reviews



	provide funds for legal aid in those situations, similar to a public defender, to help level the playing field. Otherwise citizens are dependent on the help of pro-bono experts and outside groups for help, which are often not available to help in all cases.
	The big developers and their top law firms know that Act 250 is ultimately a war of resources, and they often approach it that way, figuring if they do not get what they want in the Act 250 process, they will take it to the environmental court if they have to, and if they want to. That is not how the process was originally intended to work.
	I hear some people in the business community whining about how Act 250 is "bad for business", but yet those very same people who say that are running businesses that seem to be thriving, so clearly that is not the case. Some of them just resent things that get in the way of their unbridled greed and actually protect the interests of the broader community and health of the environment.
	Also, 97% of Act 250 applications get approved, so clearly it is not causing a major road block to business. In the best cases, it is preventing really bad, poorly planned and detrimental development from happening, which Vermont does not need. Act 250 is the reason Vermont still looks like Vermont.
142	Repeal the act and start over and provide a law that will attract investment creating a climate for business opportunity and a reason for young people to stay in the state or move here. Act 250 has been detrimental to business growth and expansion and the mass exodus of young people and wealthy citizens is evidence of this. Government needs to regulate less and create a business climate that will grow the economy and expand the skilled labor pool. Please do something about the state of our business environment in Vermont. Thank you.
143	Act 250 should be deeply considered in solar and wind development. Question 21 shows the real intent of this survey. As a Vermont citizen, I would like to know who develop this questionnaire? Please let me know at rd.carroll@comcast.net Richard Carroll 802-447-3084.
144	speed up appeals processes
145	Should not be so complicated for small projects we all don't
	have lawyers ready to defend our wishes.
146	There is not enough communication with ANR. For example ANR will approve expansion of the landfill because it "appears"



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(A)	fine to them. (within their parameters).It is unlikely that Act 250 will allow this. Cooperation between the 2 would be great
147	Get back to basics. The permitting process and conditions have become too burdensome.
148	The many agencies that feed into the process do not work together nor work in a timely fashion, thereby making the entire process cumbersome and tedious. The purposes of Act 250 may be commendable, but the process almost makes me wish it didn't exist.
149	Change jurisdictional triggers to reduce review in designated growth centers (inc. villages and neighborhoods) where local standards are robust and increase review outside growth centers.
150	Reinstitute land capability and development plan, maps for use in Act 250 review particularly under Criterion 9, as intended (e.g., to address siting/location, cumulative impacts, scattered development, public investment, etc.).
151	Permitting should be more predictable for the applicant - time and expense.
152	I will be writing to the Commission about this. This survey was very difficult to answer. You should have had a place to offer caveats to answers. I couldn't answer some of the questions because they were so simplistically stated.
153	appeals process - the Environmental Board was much more efficieent and resulted in better outcomes than the court
154	VAST TRAILS SHOULD NOT HAVE TO GO THROUGH ACT 250 AND THIS PROCESS HAS BEEN MISLEADING!!
155	make it easier for the genral vErmont population to understand its scope and how citizens can be engaged.
156	Where there is strong municipal regulations that basically mirror the ACT 250 review they should stand down and concentrate on the gaps in the review process. Those who object to a proposal should only be heard if they have valid planning reasons. renewable enrgy should be review as any other proposal is reviewed. For example do the proposal meet the vermont brand standard which is compact settlements surrounded by productive open farmland.
157	Easier public engagement with decisions and approval of projects. Attorneys should not be necessary for individual entrepreneurs starting projects in rural or compact areas.
158	Ideally, a project would get one "state permit" for all things state and get one "local permit" for all things local. VERY cumbersome to bounce around 12 state agency/departments for the average investor that doesn't have a development team.
159	Make it more useful by considering multiple public goods.
160	remove trails from juristiction
161	* Cumbersome permitting fees attached to "development" are a deal breaker for nonprofits. Our trail infrastructure is not built by volunteers for commercial purposes



-	* Trail organizations and users are conservationists, completely dedicated to environmentally friendly and sustainable trails
	* Over 70% of trails are on private land – we need regulation that will support their generosity and encourage even more trails and conservation
	* Trails have a low environmental impact with great benefits, including the inspiration of greater conservation and environmental protection. Therefore, trails should not be considered "development"
	and lumped into the same regulation categories as other construction projects
	* Currently, Act 250 limits Vermont's ability to fully realize the benefits that could come with greater support for trails and outdoor recreation
	* Trails and outdoor recreation not only make Vermonters healthier with over 72% of Vermonters participating, but they also provide over 50 thousand, or roughly 1 in 7, of the jobs in Vermont.
	(Outdoor Industry Association)
162	I believe Act 250 could be improved to make it easier to develop where we want it - in our downtowns and villages - while better protecting our natural resources and working lands. We also must address climate change, which will dramatically impact the state over the next 50 years.
163	Increase oversight of large downtown projects like the Burlington Mall.
164	Transparency Better communication and coordination between local planning and permitting process in overall natural resource evaluation and analysis and engagement of VTrans and local officials in development of transportation infrastructure. Don't let VTrans have a separate process. There needs to be greater transparency and accountability between developers and VTRans.
165	Allow more mountain bike/ski trails.
166	Clean energy projects, if approved (and note that I disagree with ruining fields and ridge lines with power projects), need to benefit the communities in which they exist. Almost all large-scale projects that have been built recently benefit energy consumers in other states south of us. Large corporations are devastating Vermont's landscapes and sending the power elsewhere. Regulatory agencies and elected officials promote Vermont as a "clean energy state" as though Vermonters use clean energy. Regulatory agencies are complicit in the deception being perpetrated on Vermont consumers. The whole



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	concept of carbon credits and how they are used and traded to benefit entities that ruin our environment is a disgrace. The only reasons the public tolerates this is because either they don't really understand what it's about, or they feel powerless and stay silent. The Act 250 Commission needs to do a much, much better job of telling the truth.
167	Allowing trails and other outdoor activities to be exempt from act 250.
168	More leniency in regards to constructing community recreation opportunities.
169	There is a public interest component (health, clean water, clean air and carbon sequestration) in all open rural lands so Act 250 should accommodate more input and testimony from the general public to promote these benefits.
170	Bring the Water Resources Panel and the Land Use Panels back. Remove the environmental court from the process. Project district coordinators from top down pressure from management. Insulate decisionmakers (commissioners) from administration influence. Protect the environment and its people. Reduce exemptions.
171	I have never applied for nor been involved in any Act 250 hearings but we constantly hear how ornerous the process is. Can the process be streamlined and yet still meet the goals of Act 250.
172	Strip malls and cookie-cutter housing developments must be prevented at all costs! They are a blight on our landscape! How are these allowed through Act 250? They are detrimental to preserving contiguous forest and cause harmful suburban sprawl. Also, there should be penalties for having grass lawns (that are not hayed but just mowed with a garden mower) over a certain square feet for personal property. Mowing those kinds of lawns leads to carbon emissions and lawns cause biodiversity deserts. We need to incentivize people to grow food on their property or to let it go wild. Thanks for this survey! I hope that Act 250 can keep expanding to preserve the health of our state!
173	Act 250 already covers a lot and does a good job. I don't think it should further expand beyond where it is.
174	Stronger enforcement!
175	have it address suburban sprawl and smaller housing developments (9 and below)
176	The idea that ownership of mountains is allowed If anything should be protected, it should be the mountains that make the state. People have always lived along rivers, but there has never been as much hillside development as there is now. It is impacting streams, wildlife and people who like to adventure into the country side for health and peace-of-mind. And, actually, lakeside living is a much more 20th century trend than riverside living. That seems to be reserved for the very well heeled Champlain has become a lot like Lake Michigan. Let's



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	be more like Acadia!
177	Shorten the permit process time to boost construction and
	convince companies to move here to provide jobs for our children.
178	Reform it to get more people on the state and keep more people.
179	Towns that have adopted town plans and zoning regs in effect do not need Act 250 review. In 1970 very few towns had plans & zoning. Local control is a smarter approach.
180	Jurisdiction is unpredictable and the process is WAY to costly for any average person, especially for small "commercial" operations on >10 acres.
181	Act 250 must be ammended for public use trails. It cannot be the same for giant developments and for non motorized trail projects. It is insane that a housing development is exempt but small nonprofits doing trail development have to jump through massive, I hoops with language that is unclear. Near my house 5 housing units were built with no restrictions on the same land where a very small trail project was denied. The trails would have been a benefit to the community, used by the schools, and had zero negative impact on water quality.
	but backfilling and paving and building these homes (one of which still hasn't sold in over two years since it was built) got away with it.
	Private landowners are confused and don't want to deal with ACT 250 so many trail projects can't get off the ground. How can these non-profits wwho do the work of the "R" in FPR continue to thrive and create recreational opportunities. Opportunities that the state of VT loves to show off but can't seem to help make happen. The trail non-profits, specifically VMBA have been at the forefront of addressing this and have been able to get nowhere. They are offered lip service in three languages but no action follows. They have thrived in spite of the state in these regards. It MUST be simplified so that landowners that want to participate in trail projects are not slopped into the ACT 250 queue for their agreement to participate in public use trails. It makes no sense. The trails are professionally designed by people who take sustainability seriously.
	Act 250 has done a lot to preserve and maintain the beauty of Vermont. It has a place and a purposejust not on the trails.



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	Thank you for seeking public comment.
182	Simplified application process.
183	energy efficient construction, I agree that the Vermont Energy Stretch Codes should continue to apply to Act 250 development while ALSO being required for all development in the state. The way the question was written did not allow me to express this.
184	Their management.
	Local staff are great but they are horribly mismanaged and treated very poorly by current Managers.
185	Don't let Neighbors, community members, regional planning commissions, and local officials use the Act 250 to Blackmail and extort money out of businesses or individuals in order for them to go along with a project like it looks like they did to the Diamond Run Mall in Rutland.
186	A more streamlined review application/review process (especially AAs) I also would like to see more communication between state agencies involved in the Act 250 review process. It's tough when different agencies (i.e. highway, fish/wildlife, Historic Preservation, etc.) make conflicting recommendations/comments on applications.
187	The permit process
188	make it more friendly to business and housing development
189	Repeal
190	Make act 250 apply to more projects
191	Add in the protection of scenic views.
192	Focus on the basics for the VT quality of life including: air and water quality, VT rural esthetics, healthy forests, and dovetailing them with how to address our needs to combat climate change
193	Flexibility of the Act to meet case by case contexts and specifics. One size does not fit all.
194	be strict on water quality rules and enforcement
195	certain land area criteria.
196	The return on investments must be looked at. The more efficient your heating source, the less return on investment you building insulation becomes. Don't make people spend money on insulation if they will never reap the financial benefits as advertised.
197	My opinion is that Act 250 has cost us numerous jobs as employers have left the state because of difficulty in obtaining necessary permits for building their businesses.
	The amount of time needed to obtain an Act250 permit in ludicrous. There needs to be a defining time in obtaining a permit so that the process isn't drawn on for an infinite amount



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	of time.
198	that it be better integrated or respect local zoning and permitting, there is currently no connection.
100	The Carlotte Control of the Control
199	Reasonable accommodation of trails for recreational use.
200	The process needs to be streamlined in time frame and in the steps needed. I think most people agree that there are too many redundancies in the process. This includes people who believe the process is valuable. It needs to be streamlined.
201	Reduce the Restrictions and regulations pertaining to state forest usage.
202	I think the whole philosophy of act 250 should change. The attitude of the regional directors is to limit growth as much as possible not help business. Job development seems to be perceived as a negative thing. The charge of act 250 should be to allow and encourage environmentally responsible development not discourage it. I've been involved with the process many times and I have found it to be a frustrating descriminatory and expensive process. Because of this small businesse growth is limited. As a direct result of this law our state is the second oldest in the countryside and many of our best and brightest are forced to leave. My company employs 55 people and it has become increasingly difficult to fill those positions. It is my opinion that the real impact of 250 is now becoming reality. The state has aged. We're loosing our young people and with that there earning power and taxe revenue. State worker and teachers need to be payed their promised benefits but where is the revenue to come from? If this law continues to move down the path it's going we will end up with the National Park of Vermont with little revenue or
	good paying jobs.
203	complete repeal
204	I'm concerned Act 250 will stifle any economic progress in VT. It's all about responsible land management so if we can be open to development while making those responsible for their impact that's the end goal. It appalls me to see the city of Burlington, Rutland and Winooski dump millions of gallons of raw sewage and runoff into the lake and "it's OK" yet we hammer our farmers, any form or motorized recreation and soon even any trail work even for hiking and bicycles will be blocked. It's a delicate balance I know, but with the rate we're loosing young people, lack of quality jobs/employment and recreation for all ages we won't be able to afford to take care of what we have.
205	Transparency and public access to the process is important. Communities and citizens need better access and representation in energy project reviews than what happens now. Developers want to benefit from creating new business in a community. Should we ask What is the benefit and positive impact for the community. Act 250 is vital and should be kept



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	strong.
206	Applied to large development projects with tougher criteria
207	-Make it harder to build single family homes in forestland/important wildlife corridors/mountaintops
	-Make it much easier for commercial development in areas designated for growth/downtowns etc
	-Appeals should be on the record
208	IT NEEDS TO BE REDUCED IN ITS SIZE AND SCOPE. Act
	250 is strangling growth needed for new jobs and increased
	economic activity. It's far overreach on private landowners is
	almost unconstitutional.
209	Act 250 needs to work hand in hand with the goal of
	strengthening economic development opportunities for
	businesses in Vermont. Business owners/ developers should
040	be able to work with Act 250 to make their projects happen.
210	Let us cut our own ski trails on our own property.
211	Reduce permitting cost and paper work
212	The state of the s
213	Control Contro
214	It is far FAR too weak on Sprawl - and local towns are too close
	to the issues - ACT 250 needs to come down much harder on sprawl - as the WHOLE STATE will impacted by a few towns going crazy.
215	Commissions should have adequate resouces to fully review
2.0	applications, when deemed complete, and engage experts if needed
216	Reducing the need for permit amendments for small,
	inconsequential development where previous Act 250
	jurisdiction runs with the land, thus triggering permits for one
	house or residential addition, change to a sign or lighting
	fixtures, or increases in impacts already covered by other state
	permit processes (redundancy). There is an enormous
	expense associated with the permit application process, not just
	the fees, that is imbalanced given the scope and scale of small
047	projects and their potential impacts.
217	Simplify where possible.
218	Do not consider trails for outdoor recreation as development as
	these are mostly maintained by volunteers and created
	sustainably. Vermonters need trail access for health and wellness and most trails rely on cooperation of private
	landowners, not corporate development.
219	I would like to see State-level funding for the initial
210	Historic/Cultural Resources assessments of Act 250 project
	applications much as State Fish&WL enjoy. This would help
	preserve that non-renewable resource base while giving project
	proponents an early "heads up" without incurring a cost - a cost
	which might result in the abandonment, re-design, or other



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220	modification of their plans. Currently the developer often has the burden of paying for these early stage surveys, field work or assessments which may well work against his/her best (economic) interests. If the State paid for or performed those early assessment and there ARE resources requiring investigation or mitigation, then the choice to proceed and pay for that can be part of the larger mix of the project's estimated cost. This seems like a win-win and would also contribute to even better working relationships between developers and archaeologists or historic preservation folks. I realize this is an anonymous survey, but if there is interest in discussion this further I can be reached at dmlacy51@gmail.com. Many of the Act 250 criteria area duplicative of existing ANR/DEC permits and are no longer a necessary part of Act
221	Currently, Act 250 limits Vermont's ability to fully realize the benefits that could come with greater support for trails and outdoor recreation. Trails have a low environmental impact with great benefits, including the inspiration of greater conservation and environmental protection. Therefore, trails should not be considered "development"and lumped into the same regulation categories as other construction projects. With over 70% of trails located on private land, we need regulation that will support landowner generosity and encourage even more trails and conservation. Trail organizations and users are conservationists, completely dedicated to environmentally friendly and sustainable trail building and maintenance, Act 250 is currently too static in my view in its role and policies making them dated and cumbersome for Vermont. Act 250 must find more agile ways to set policy allowing it to take a more dynamic role in how Vermont moves forward. Being able to accommodate more diverse needs in its role, as well as being able to adapt to changing and shifting environmental and economic demands will ensure Act 250 maintain and grow its relevancy in development and land use.
222	Make it less subjective.
223	bring agriculture and public utilities under Act 250 jurisdiction
224	Ensure no impact on the snowmobiling industry in Vermont.
225	For those who administer it to have to go through it when they want to do anything with their own property.
226	It needs to be seen as pro business, while protecting the environment. What's good for the environment is ultimately good for business.
227	Less strict regulations.
228	To limit neighbors from filing consecutive complaints; to reserve from permits not simply "farming" but also the economic activity which pays for farming, and similarly with logging, and the associated trucking.
229	Pay attention to the unintended consequences of exemptions such as the 10 acre rule.



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230	 Most energy projects are really about land use and therefore should be under Act 250.
	2. The entire appeals process needs to be overhauled.
	Act 250 is not the real problem, the real issue is the total
	morass of state permits required. A complete streamlining of
	the permit process needs to be undertaken.
231	The length of time to get the okay from Act 250 Process is too long.
232	Prevent frivolous challenges/appeals - maybe refine the criteria for such challenges
233	Questions 19,20 and 23 are not proper survey questions and should be removed. There was no choice for NO!
234	Eliminate oversight of trails. That's over reach. Do not pass the forest fragmentation bill. Do not prevent development on the basis of wildlife corridors. For example, in the Bolton area both sides of the interstate contain miles upon miles of woods and open space. Wildlife corridor designations are totally unnecessary, subjective, speculative, and should not be a basis for stopping development.
235	Clear and concise rules with predictable results.
236	Remove the power of one voice to control the outcome. 10 acre zoning should be the only trigger not weather or not a town has zoning regs.
237	The Environmental Court should not hear the appeals. Too legalistic. Should be a board or commission.
238	The cumbersome navigation, it's processing inefficiencies, and it's costs. I think VT should create zone for development and zones that are off limits for development. P
239	Not sure
240	Synchronize with local regulation better so there is not
	duplicative and sometimes contradictory permitting
241	Repeal it.
242	Everything
243	It has held the vt economy back for years and people are struggling with the lack of jobs. Get rid of it
244	Higher review of location of solar fields. Should be obscure.
245	Location of hearings. They should all be within 20 miles of projects
246	All towns in Vermont should be either 10 acre towns, or 1 acre towns. There should not be any difference. This discrepancy likely gives 10 acre towns a significant advantage in commercial growth, at least in many cases.
247	Anything subject to Act 250 should require Net Zero in alignment with the CEP.
248	Remove any barriers or challenges for landowners to host non- commercial, human-powered (hike, bike, ski etc) trails crossing their lands.



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249	It has not saved the farm landscape and it has stopped affordable housing and business from coming here. A complete overhaul and fewer limitations are required.
250	for it to be more restrictive of development of any kind so that climate/energy and wildlife/wildness take precedent over human aggression/destruction
251	Include industrial scale renewable energy development within Act 250 regulations.
252	make it less costly
253	Industrial Wind Development on VT ridgelines should be banned forever going forward. However, if the legislature is short sighted enough to continue to allow industrial wind development, then meeting ACT250 requirements must be necessary
254	exempt recreational trail systems from A250 provided those systems adhere to best practices developed by the Agency after public input.
255	Consider forest fragmentation more.
256	Simplify the application process. The application process is too complicated for an average landowner to complete without hiring lawyers and/or consultants even for relatively small projects. This creates an unfair advantage for wealthy landowners who have the resources to hire all the specialists needed.
257	All trails of a certain length, including VAST trails, should be required to meet Act 250 guidelines especially as regards natural resource protection (e.g., wetlands, wildlife), parking, and other high impacts. Application of Act 250 on trail systems should be uniform across the state.
258	Act 250 needs to very carefully make distinction between 'development' and trail building. Trails built for human powered usage (hiking/biking/skiing) should not be subject to Act250 review. It is plainly ridiculous and a severe waste of time/resources as well as being completely counterproductive to afford a human powered trail the same level of scrutiny as a strip mall or even ATV trail. This should include the development of such trails/trail networks on site with an existing Act 250 permit. Human powered trails are exactly what VT needs more of to balance out and from which to appreciate the lack of development that Act 250 has provided us with.
259	Streamline and shorten the permitting process while retaining its robustness.
260	D
261	I have no idea what this is all about. How about someone laying this out with all the issues in layman terms so everyone can understand and make informed choices. Very confusing!
262	Tighter deadlines for process, especially including appeals.
263	I have a lot of things! But if I had to pick one, I would say there should be a project size threshold. For some of the projects I have worked on, for small non profit organizations who are



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	doing minor improvements or renovations, under \$250k they should not be required to go through full Act 250 review. In these cases the cost of the permitting process can exceed the cost of the actual construction project! Maybe a more nuanced definition of what defines "commercial use" is in order. I think it is also worth mentioning one of the biggest challenges from the perspective of the applicant is getting a realistic idea of the length of time for the permitting process. In numerous cases we were on a tight design and construction timeline, and submitted all our application materials, only to have state agencies request extensions over and over, delaying the
	It is also unclear as an applicant what to do when different state agencies give you conflicting requirements. In the cases I worked on, we had historic preservation telling us we couldn't touch the historic buildings, while simultaneously being told we had to meet stretch energy code or the floodplain people telling us we had to raise our building by 3 ft but the historic preservation people telling us we couldn't. Who decides when the various agencies disagree? That has not been clear throughout the process.
	(Also the survey is somewhat flawed in that it did not allow for multiple responses on the question "what was the resolution of your Act 250 application?". I have represented the applicant in a number of Act 250 permits and have had them accepted, accepted with changes, and denied.)
264	Exempt recreational trail development from Act 250 review requirements, especially if nonprofit organization and free use.
265	It has created a very cumbersome process that hurts Vermont's already poor economy. I am also very concerned about it's impact on volunteers being
266	able to create new recreation trails. Get rid of it. Bad for business. Bad for VT. Too expensive.
267	Too time consuming. Hack it now! Increase or decrease the acreage to be preserved according to the site specific maximum or minimum acreage needed for that land to serve its function. For example: a wetlands needs to be large enough to fulfil its natural function; if farmland needs to be a certain size to obtain a viable agricultural income for its highest best use, that size should be determined and limited accordingly. As well, if any given use is to be protected for an intended use, it should have an appropriately-sized buffer to protect that use, and to protect the use of adjacent land, and/or within the particular water basin.



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268	Make CBES standards more flexible and streamline the Act 250 process.
269	Less public input on projects causing delays in development and business growth.
270	Keeping pre existing trail systems maintained and improved without scrutiny for the well being of the states economy, whether it be for biking hiking or snowmobiling horseback riding etc. Very, Very important to the states revenue and future survival.
271	Recreation trails should Not be subject to act250
272	I am a CT resident who owns a house in VT and plans to move to VT within the next year or so. I am active in my snowmobile club as a volunteer. I like what Act250 does, however, I am concerned that putting too much red tape on VAST trails will force many trails to close. We have hardly enough volunteers as it is and to make those few (already tapped) volunteers have to do even more could possibly fold the sport. Folding the sport could have serious impact on a lot of towns in VT that rely on the tourism \$ that snowmobiling brings. Thanks for hearing my concerns.
273	How it handles the planning and construction of non-motorized
	recreational trails.
274	Make it easier for very small projects with low impact. I.e. responsible trail use or small farmers or individual home owners. Larger projects should not be exempt and should be the ones to undergo highest scrutiny.
275	I would like to change the current application of Act 250 on volunteer trail development and maintainence projects. High permitting costs associated with private "development" can quickly make non-profit community trail projects economically unviable. In large part, these trail projects encourage conservation through public use & education, and are minimally invasive, ecologically. I believe that this type of project is hugely beneficial for Vermont residents, and should not be lumped into the same development category as commercial projects.
276	Redundancy with municipal and state technical permit processes.
277	let think about laws for protecting the slate valley land, acres, and forest.
278	Blackmail by abutters. I hate your project but for \$10,000 I will love your project.
279	Making sure that it is less confusing for landowners as they contemplate opening their lands for public use (ie. trails for walking, hiking, biking)
280	THE PROCESS. No accountability by state act 250 to get reviews completed on a timely basis. The current system is not friendly to the realities of small businesses trying to execute plans. Act 250 often results in delays and cost overruns that make it extremely hard for small businesses to start-up or improve so that jobs are retained or added to in the state.



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	Having been through the review process multiple times, businesses are often met with a "silo" mentality from all the ANR and DEC divisions. Act 250 lacks the understanding of businesses needs and that permit delays and "one size fits all" regulatory approval makes the state unattractive for small business. Businesses want to do right by the environment but the Act 250 process is way to slow and meandering with no oversight from the state to drive a particular project forward with no repercussions to project delays and permitting cost overruns by Axt 250 offices. It's only the businesses that has to deal with the realities of the marketplace. Every project needs an advocate within Act 250 to see it through on an agreed to timetable. That way businesses can more accurately plan and budget. ANR and DEC should be accountable to act 250 offices to deliver paid for resources as all businesses pay for permitting and should get a reasonable service back for their money.
	Act 250 has done much good for the environment. But silo approach leaves no overarching authority driving the process. This needs to change quickly if Vermont's economy and businesses are to grow. We need balance. We need support for our agencies. We need accountability to deliver service of permits on a timely basis with someone to partner with on each project permit to see it through to a successful conclusion that helps the state and its businesses.
281	Party status should be narrowly defined for abutters and formal groups, not just ad hoc groups that get together because they don't like a project or the applicant. They should show real impacts on their property.
282	Timeliness and consistency across commissions
283	The slate quarry exemption is preposterous. If codified into law for the next 50 years the slate quarries will be a prime object of interest for large mining companies like OMYA to buy out the locals.
284	this act has been used more and more by people with financial means to thwart any projects they happen to not like for various, usually personal, reasons. They make any kind of development more trouble and more expensiveand in the end, most times not worth it. More and more they are also stifling recreation (unless i't's the recreation of their particular choice) opportunities in Vermont, particularly any motorized.
285	Nothing, this year (2018) I was involved in ACT 250 on 6 different properties. ACT 250 is perfect the way it is. The critics of ACT 250 are interested in their own profit motives only & Vermont belongs to all of it's residents.
286	Permit process is too subjective. The rules need to be black and white so you know going in if you will get a permit. Process takes too long and is way, way to expensive. Most Vermonters



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	can not afford to get a permit.
	Make the process easy, set clear rules.
287	
207	and don't try to fit them into the same process used for larger scale developments.
288	For applicants, the gathering information and the process itself is intimidating and costly. Streamline the process so that applicants don't feel that they have to hire lawyers to prepare their cases. It can be overwhelming. Possibly have a agency who can help with this process.
	It is also hard to maintain unbiassed review of some applications, too small of a state to not form opinions of some applicants.
289	Act 250 should be overhauled. It's negative impact on Vermont's economy is substantial.
290	It allows small people with a NIMBY agenda to halt progress and development that we desperately need in our state. Limit the power individuals have.
291	Should not be applied inappropriately to projects as it has been
292	I believe farmers should have the right to sell their 'Ag Land'. Farms are going out of business every day because of low milk prices. For farmers selling their property is their retirement fund. There is a lot of property already that is barred from development, forests, etc. Allowing sale of ag land would lower land costs for Vermonters. Now only the wealthy can afford property in Vermont.
293	Process & policies seem to be the same regardless of what the "project" is and this causes significant tine & money for the applicant and the state There should be a review and process to simplify projects like building a nature / hiking / Mtn Biking trail on land that had a Act 250 permit years ago for a totally unrelated project (water storage tank) Over all I feel Act 250 has stunted economic growth for our state hindering job growth and creative development that fits the VT uniqueness and thus affordable for young families to stay or move here.
294	assistance for low income landowners in complying with Act 250
295	ACT 250 should not apply to single track mountain biking trails. These trails are important economic drivers for our state and barely impact the wilderness through which they are built. ACT 250 should focus upon buildings, roads, and infrastructure, not hiking and biking trails that can barely be seen from approximately 20 feet away.
	approximatery at reet away.



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	building within VT, most of which currently occurs on private land, we need to ensure the small non-profit groups managing these efforts, much of which includes volunteer labor, have an
	easier time managing the process. Theses trails are a major economic benefit to local communities, improve the health and well being of residents, are sustainable and if necessary reversible.
297	Act 250 is damaging to our economy and in my opinion, a large contributor to our financial difficulties.
298	The complexity and duration of the processreally puts a damper on some projects that are good for people, good for economy, energy-efficient, etc, and the costs get really high by the time you hire all the requisite engineers and specialists.
299	When projects are already for renewable energy or building more mountain bike trails not subject them to the Act 250 permitting because it is very timely and may deter landowners from doing these projects which are ment to help the community.
-	Thank you!
300	Public recreational trails need to be handled in a uniform manor amongst ALL districts. In the past, the different treatment that long distance trails received from the various Act 250 administrators drove trail managers to distraction. Ideally, public recreational trails should not come under Act 250 jurisdiction because the threat of getting involved in Act 250 and having an Act 250 permit encumber their properties deters many landowners from hosting public trails. If we are to continue to improve our public trail networks (an important economic asset for VT) we need to remove as many barriers as possible so private land owners will be willing to host trails. Reduce the participation of corporate lawyers and curtail the
301	quasi-judicial process while giving more weight and consideration to the opinions of ordinary citizens in Act 250 proceedings.
302	Although I have not been involved in Act 250 hearings, processing time seems to be the biggest complaint of those who have. I would like to see this changed to be more efficient. Thank you for welcoming feedback from Vermont residents.
303	remove recreational trail construction from "development" category. Not for profit recreational trails systems should not trigger Act 250. Nor should their proposal on existing Act 250 properties, be viewed as opportunities to revisit larger issues, or be considered a negative impact
304	The way the NRB and district commissioners are appointed, so they are independent of the governor's political interference.
	Since you offered no other place to make comments, some of



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305	the questions did not have answers that I agreed with but I was forced to choose one and would have preferred to write a comment. The result is that I had to check boxes for things I didn't agree with but were closer than the others. This survey is superficial and is not asking the right questions. For instance, why isn't there a question about Environmental Court, about people's experience with it, about whether it should remain or be replaced and if so, by what? Why isn't there a question about the district commission process and how it is working? There is so much more to discuss, but between this survey and the cards at the public forums it has not been possible to provide meaningful input, as much as I would like to.
305	Act 250 should have a new criterion: Ecosystem review. It would essentially encompass the other criteria, which now are considered in almost an individual smoke stack manner without considering the interrelationship of all the parts.
306	Act 250 is at its best in the projects that don't even make it there- the ones that it prevents from even being considered.
307	The useless waste of our tax dollars
308	Make recreational trails and landowners who allow these trails exempt! Snowmobile trails bring huge money to this state and leave almost zero environmental negative impacts. Making and creating new trails need to be made easier, not harder.
309	Exempt Act 250 review for mixed use high density development in town centers and cities. Any development within 1 mile of a rail station should be exempt. Act 250 with the 10 acre loophole forced people to the rural areas and increased the use of cars and energy. We must move people to towns again to live and work. We no longer have cheap fossil fuels and we must stop using them.
310	Allow for full public input on development proposals, less constrained by legal status (abutters etc.) The way to improve Act 250 is to strengthen it, not weaken it. Act 250 has helped save Vermont from many unfortunate development mistakes and should be appreciated and strengthened. Thank you for engaging the public on Act 250.
311	Please consider the following related to how Act 250 affects the volunteer created and maintained trail networks in VT, particularly for mountain biking and hiking on private land.
	Trails are invaluable pathways to better health, rural economic stability and conservation in Vermont
	Cumbersome permitting fees attached to "development" are a deal breaker for nonprofits. Our trail infrastructure is not built by



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	volunteers for commercial purposes
	Trail organizations and users are conservationists, completely dedicated to environmentally friendly and sustainable trails
	Over 70% of trails are on private land – we need regulation that will support their generosity and encourage even more trails and conservation
	Trails have a low environmental impact with great benefits, including the inspiration of greater conservation and environmental protection. Therefore, trails should not be considered "development" and lumped into the same regulation categories as other construction projects
	Currently, Act 250 limits Vermont's ability to fully realize the benefits that could come with greater support for trails and outdoor recreation
	Trails and outdoor recreation not only make
	Vermonters healthier with over 72% of Vermonters participating, but they also provide over 50 thousand, or roughly 1 in 7, of the jobs in Vermont (Outdoor Industry Association)
312	I would create an exemption for recreation development, such as hiking, cross country and backcountry skiing, and mountain bike trails. These trail systems have little impact on the land, increase tourism (and tourism revenue), increase healthy options for Vermonters and make up a large part of the Identity of Vermont. They should be easier to develop and maintain.
313	Not specifically related to changing Act 250, but would be helpful for community members if there were more awareness about Act 250 and what it tries to accomplish.
314	Run by people who are representative of the public.
315	Trails in Vermont:
	The permitting of trail projects needs to be changed!
	The current Act 250 process puts trail projects (mountain biking and snowmobile) in the same review process as development of shopping plazas. This process doesn't recognize the difference between large commercial developments and the



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Respondents	Responses
1	Act 250 should help business development find solutions to
	environmental challenges, rather than being the roadblock.
2	Have it based on a broad, state-wide plan that focuses
	development in already developed areas and protects rural areas.
3	As a preface, my thoughts are that the process I witnessed was extremely "clubby", with the applicant's lawyer behaving very chummy with the District Commissioner. It was like being in one of the old-fashioned "smoke-filled rooms", except that they used fig leaves to pretend that the outcome was not pre-determined: they were not embarrassed stating in front of the public audience that they would work around obstacles "like we did with [a previous project]", and they treated the public commenters and even the spokespeople for State Agencies like annoying flies. The applicant's lawyer ran the hearings in his demeanor and top-dog body language. The Commissioners seemed abject and subservient, almost apologetic.
	I came to learn from people in the system that few-to-no projects are ever rejected by the Act 250 process, and that developers ask for the moon so that they can be seen to be "compromising" in the final equation.
	Perhaps there is nothing that can be changed in the Act, since it is just human nature to pervert things in a devious and ultimately self-deluding fashion. "Out of the crooked timber of humanity, no straight thing was ever made." (Kant)
	The state's suicidal desire for "growth" and "development" is counter-productive, as we kill the land that nourishes us. Thus, the entire concept of "development", to my mind, is doomed from the get-go. You can't eat concrete (or solar panels, or wind-turbines). Forests and farmland and watersheds will continue to experience immane pressure (one new craze now is pellets), and we will die with dust in our mouths.
	The best thing I can say about the Act 250 process is that I'm sure elsewhere things are worse, so there is that
4	Predictability in timelines
5	Make hearings open to public input; reduce the amount of legal



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	depending on how many cleared forest acreage they will take out and how high up in the watershed they are. This is also due to water quality impacts that will occur due to the deforestation. The higher up in the watershed will effect how much for water will go downstream and thus will effect the water quality downstream.
94	More sensitivity to local economic development concerns.
95	I do not know.
96	Remove guidance on "strip development".
97	Increase enforcement Decrease bureaucratic personnel
	Increase local authority
98	Improve access to implementation, enforcement, public reporting of violations of Act 250 AND create a team that investigates problems in the field.
99	Renewable energy projects should be subject to Act 250 guidelines and review.
100	Having lived near an area that was an illegal use and violation of Act 250 and taken out of that status along with adjacent parcels, merely because the Act 250 Commission bows down to pressure from out-of-state land owners. They also held site visits and hearings at time that were not convenient for residents. The general feeling amongst the community is Act 250 is not VT resident friendly.
101	stronger and longer teeth - with broader reach
102	making the process less cumbersome for applicants
103	streamline the process so that projects don't become cost prohibitive, driving up housing costs and making it impossible to build affordable housing in other words if the housing, to be built, is designated affordable make the process simpler and less expensive, so that the desired outcome is possible.
104	Exempt recreational trail development, including mountain biking trails, even if the land already has an existing Act 250 permit
105	Reestablish a citizen-based appeal panel. I.E. the prior Environmental Board.
106	Public misconception and confusion of ANR and Act 250.
107	The Appeals Process
108	Speedier review and approval process
109	Develop physical design standards so criteria are clear, predictable and complement surroundings. Very pleased to discuss further. KateLalley@comcast.net
110	A better document system for processing of applications
111	Reduce restrictions on recreational, unmotorized, trail and land- use development.



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	appeal.
113	act 250 needs to go away
114	Tie Act 250 to a stronger planning framework to enhance predictability and ensure that development decisions are made with respect to the overall settlement pattern.
115	I think Act 250 should require plans for new development
	to demonstrate effective control of energy use and incorporate systems that use renewable energy.
116	The "under 10 unit" developments which are not subject to
	review, has created an excess of 8 and 9 unit ugly little
	developments in some communities
117	Maybe a more coordinated online Act 250 permit with other state permits (like Stormwater or Waste Disposal) so that the applicant doesn't have to be repetitive.
118	It must apply to residential subdivisions of three lots or more in
118	rural areas .
119	ten-acre towns should be removed from the list if they do not
119	review applications as thoroughly as under Act 250 review.
120	Act 250 as currently set up is too difficult for the public to
120	participate. Hearing dates, notification, location, and times are inconvenient. More deference should be given to those who
	submit feedback but cannot attend the meeting. It also is not implemented adequately by the commissioners in my region, who appear to have a pro-development, anti-environment bias. This needs to change! Chittenden County is becomming a horrible place to liveI don't even recognize it as Vermont anymore.
121	Act 250 capacity has recently been diminished at the state and district levels, leading to brain drain and diminished staff morale, and undermining the program at large. To the extent consideration is being made of modernizing or expanding the program - all worthy goals - this is a key consideration.
122	On the record appeals of Act 250 permits
123	simplify the process
124	Only one?:)
	The appeals process should be simplified so that developers and neighbors can participate without long delays and without spending a lot of money on attorneys.
125	Enhance public outreach of the law and the permit participation process.
126	I'd like the Chair of the NRB to be replaced. Also, the management, including the Chair, has created a toxic regulatory environment undermining its function partially because they are corrupt and partially because they are incompetent. Enforcement and appeals are carried out unfairly



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1	Los
	and unequally benefitting those who carry political weight with the Governor.
127	The 10 acre loophole should be corrected
128	The current Administration and its toxic management of the program.
129	I think the current appeal process, using the Environmental Court, is too slow.
130	party status, should only people involve this project and community groups, not national and out state organizations
131	bring back an a 250 appeals process that applies the law with more accuracy and rigor
132	This survey, for starters - it presumes a lot of feelings that are not necessarily universal. It also presumes that Act 250, as currently constructed and implements, works well. I noticed there were no questions about the current process (other than appeals) and certainly none about the lack of consistency from District Coordinators and their outsized authority, relative to the actual District Commissioners.
133	Elimination of duplicative review of technical environmental topics already addressed through federal and state agency environmental permits.
134	I wanted to comment about your survey that it would be helpful if you started with a basic overview of Act 250 including the criteria used to review projects.
135	New resident and will educate self starting now. I don't want VT to go the way of my birthplace CA, which has gotten closer to crisis in my 71 year lifetime.
136	Change legal framework for enforceability of language in town plans under criterion 10 so that aspirational plan language can have regulatory effect in light of the hortatory nature of town plan goal statements
137	Repeal the entire act! It has stifled small business.
138	Act 250 should have a simpler process for approving low impact development that is being done for non-commercial purposes, such as mountain bike or hiking trails.
139	Education - people need to understand how and why Act 250 is working all around them.
140	Simplifying the process so that it moves along more quickly.
141	It is not an equal playing field when wealthy developers with unlimited money can come to the table with an army of lawyers and paid experts, while normal Vermont citizens are left to fend for themselves in the Act 250 process. The average working Vermonter is not familiar with the technical workings of the Act 250 process, and how to participate in it, so they are at a major disadvantage when attempting to participate in the process, particularly when going up against another party that has a team of paid lawyers and experts who know all the fine details, procedures and workings of the process. The state should



Appendix I: Email Responses

Valerie A. Rooney MD

"Thank you for soliciting public input.

As one of the Planning Commissioners in Grafton, I have spent quite a bit of time researching and thinking about the issue of protecting our ridgelines. Also, as you probably know, Grafton had lengthy community discussions, followed by a vote, regarding proposed industrial wind installations on our ridgelines. You also probably know that the proposal was voted down overwhelmingly by both Grafton and Windham residents.

Based on the information I reviewed, I am writing to encourage you to protect Vermont ridgelines from similar projects. I am sure you have all read the research about the environmental impacts of these installations, so I will not include the long list of reasons why I am requesting that you recommend that NO MORE of these types of projects be permitted in Vermont."

Thank you. Sincerely, Valerie A Rooney MD Grafton, Vermont

George T. McNaughton

I am attaching comments that I delivered upon arrival at the meeting in Springfield. After listening to the discussion, I have the following comments:

- 1. While there is currently no specific "ecology criterion" the subject is thoroughly beat to death in the other Criterion given the fact that most of those are redundant with ANR permits it would be better to either eliminate those criterion, or have the conditions of the ANR permits which govern those criterion set by Act 250. But duplicate regulation is not necessary.
- 2. Most of the issues for which Act 250 was created could be resolved by simply concentrating on Settlement Patterns and Scenic Beauty if you concentrate on those two factors the agriculture/forestry production becomes a non-issue, the eco-system incursions become much less, and you don't really interfere with economic development as it is encouraged to be within the developed portions of the community.
- 3. I am concerned by the comments made at the closing by the Representative. Under no circumstances should we go back to having the appeals heard by a bureaucratic "citizen" board like was the case when the appeals went to Environmental Board. If anyone has any doubt about how badly that worked, they should look at the transcript of the McLean Quarry case in Cavendish.
- 4. In addition, we should not under any circumstances go to a pre-filed testimony procedure like happens before the PSB that would be drastically bad for real citizen participation and for small project applicants.



5. Finally, consistent with Vermont traditions, we need to move the majority of the Act 250 decision-making back to the local Town Planning Commissions, with the District Coordinators reporting to the local planning commissions when a Town has a Town Plan, Subdivision Control and Zoning Ordinances – or at the very least those portions of the Towns which are served by municipal water and sewer." **

Sincerely, **GT McNaughton**

Wednesday, June 27, 2018

Legislative Committee For Act 250 [Hand Delivered at Public Forum]

Suggested changes:

- 1.) Lands which triggered Act 250 because of lot size before the Town adopted a Town Plan or Zoning and Subdivision Regulations, which would not otherwise be subject to Act 250 Jurisdiction if created or developed today should be released from Act 250 Jurisdiction.
- 2.) There needs to be a new Criterion which requires some form of balancing test between the public good to be accomplished by restrictions, and the cost of compliance.
- 3.) Where CAP has been agreed to and imposed upon a property, its terms apply and Act 250 jurisdiction cannot impose more restrictive restrictions.
- 4.) Act 250 Jurisdiction should not extend to areas within a Town which are served by municipal water and sewer, if the Town has adopted a Town Plan and Zoning and Subdivision regulations.

George T. McNaughton



Lou Magnani – Wells, VT

To all committee members:

I attended the July 11 meeting of the Act 250 commission and have negative comments I would like to make. I left the meeting just before 8 because I was physically uncomfortable so I don't even know what the results of the meeting were. Nevertheless, my comments follow:

Firstly, the format was, in my opinion, deeply flawed. If you wanted to know the answers to how people feel about aspects of Act 250 (e.g. too hard or too easy to get a permit), we could have simply filled in a survey. Leave a little space to write in a particular gripe and ask a bunch of questions. Get lots of data from lots of people and get a sense of how the public genuinely feels.

But the format of trying to get a table of 6 to reach consensus on issues that they didn't even bring to the table felt very contrived. One woman at our table, after hearing the facilitator talk about what he wanted us to do, said something like; "this sounds all really good but I'm not buying it". With that she expressed the distrust we all felt in a process that seemed to have a design inconsistent with why each of us came to the meeting. The only thing we reached a consensus on was that the process was wanting. Most of us expressed a distrust of the process.

I came to the meeting to express my complete dissatisfaction with the fact that Act 250 permits an entire industry, the slate quarrying business, to circumvent the Act 250 process. It is a legislative injustice to the people in the handful of towns effected by this exemption. It would be no less absurd to exempt marble, granite, gravel, or any other mining operation from the protection of Act 250. The people who have had to fight the industry over the years this law has been in effect, have had to do so without the use of Act 250. It is the only tool we have to prevent the use or abuse of land inconsistent with the well being of the citizens who live near them. Yet the slate quarry exemption was not even on the "exempt card" that we were supposed to reach consensus on.

I came to the meeting to ask everyone on the commission to view the hearing held by David Deen (Vimeo.com/126458374) and the bill he introduced shortly thereafter to revoke the slate quarry exemption (H.662). Instead of having that opportunity I was instructed to "reach consensus" on other issues.

If you really want input from the community, revise this method before you continue taking this show on the road. You could ask the same questions on a questionnaire and get enough data to derive what the consensus is among Vermonters on where Act 250 should be going for the next 50 years. Put the questionnaire on the web and get all the input you want from



Vermonters who would like to have a say in this process but don't want to go to public meetings.

Thanks for hearing me out, if you do.

Lou Magnani, Wells, VT

Act 250 should be deeply considered in solar and wind development. Question 21 shows the real intent of this survey. As a Vermont citizen, I would like to know who developed this questionnaire.

Richard Carroll

I would like to see state-level funding for the initial historic/cultural resources assessments of Act 250 project applications much as State Fish & Wildlife enjoy. This would help preserve that non-renewable resource base while giving project proponents an early "heads up" without incurring a cost- a cost which might result in the abandonment, re-design, or other modification of their plans. Currently, the developer often has the burden of paying for these early stage surveys, field work, or assessments which may well work against his/her best (economic) interests. If the state paid for or performed those early assessments and there ARE resources requiring investigation or mitigation, then the choice to proceed and pay for that can be part of the larger mix of the project's estimated cost. This seems like a winwin and would also contribute to even better working relationships between developers and archaeologists or historic preservation folks. I realize this is an anonymous survey, but if there is interest in discussing this further, I can be reached at



Marilyn Allen

Dear legislators:

I attended the forum in Manchester last week and would like to pass along my impressions and concerns.

My group was composed of 7 individuals all of whom were articulate and concerned residents who were participating in good faith. We discovered early on in the discussions that we were all wary of the way issues were presented and that the design of the cards was a bit too constricting. We wanted to be sure that any changes considered would clarify our priorities. The process of settling on a "list of priorities" was simply not the way we as a group wanted to be heard.

Some concerns that I expressed focused on ANR and the fact that some of the changes we have heard were being considered reflected an awareness that ANR is understaffed and underfunded. Rather than focus on curtailing the process of appeal I suggested that the important work of ANR, especially in Act 250 processes, should be funded to allow more "boots on the ground" assessments rather than concentrate on more abstract issues and data that cannot really see the environment that is being evaluated.

The rules of ANR also need to be updated to reflect concern for climate change. In an Act 250 application in our town, Halifax, the rule for planning for floods is still set at 100 year flood levels. We had Irene with its 500-year flood damage and the loss of 4 bridges. It is true that climate change was mentioned as a "disrupter" but there were other potential disrupters mentioned in our group. A sudden shift to fewer appeal options to speed the Act 250 process was also mentioned as a potential risk factor. Since 98% of applications are approved, that possibility seems problematic. It is also important to make sure that the 10 Criteria are allowed to function as they were intended to function; eg. if a project will not bring jobs or financial benefit to the town as a whole (i.e., only the developer wins), then that should be a real problem in the permit process.

It is reassuring that Vermont is taking the time to hear from as many Vermonters as possible. It is also important that the public continues to be informed of potential changes that are being discussed. I hope that this will continue!

Thank you so much for considering this feedback! Sincerely,
Marilyn Allen



West Windsor, Vermont

July 27, 2018

West Windsor has commented to State officials on two occasions recently that Vermont's development regulatory process – culminating in, but not necessarily limited to Act 250 – has become unduly burdensome on entities struggling to enhance local economies and community services. On both occasions we were urged to testify before a legislative group, the Commission on Act 250, currently evaluating Vermont's land use law. To date West Windsor has not done so, principally because:

- · conveying our experiences in brief testimony is not easy, and
- potentially complicating on-going permit negotiations is not in our interest.

Nonetheless, we have concluded that this advice, repeated to us twice now, cannot be ignored. We therefore submit the following outline of issues that we think warrant review by the Commission. We recognize that there is nuance behind each one of these points that would make our perspective just one side of a complicated matter. Nonetheless you must hear "our side," since operators on the other, State, side often seem to lack much appreciation for the validity these opinions.

Issues to Consider

- 1. Continuing jurisdiction A late 1980's plan for development at Mount Ascutney prompted a comprehensive master plan for development of a four season resort. This plan was never built out, yet the Act 250 jurisdiction it triggered still runs with all of the land it covered, which is now in fractured ownership. As a result, the threshold for development review is still what is would be for the now non-existent master plan imposing an undue burden on property owners who have no connection with the original development plan. Case in point: mowing a narrow bike trail on a field hayed annually and unconnected in terms of ownership and geography to the established "resort area" required Act 250 review delaying "development" of the trail one year.
- 2. Storm water control Another 80's era plan, this one for storm water control, now covers an area in fractured ownership, with no single entity ready to accept responsibility for system governance (maintenance, permitting, etc.). The permit for the system has lapsed. The State's solution is that a new "managing association shall be developed to administer the operational responsibility of the renewed storm water authorization to discharge." No precedent for creation any such association has been cited and simply mandating that it must happen is not helpful. The individual entities, most of which had no knowledge of their inclusion in this system, do not understand the requirement, are struggling just to get by with their individual day-to-day challenges, and resist such direction from "on high." As a result, the problem remains unresolved while every application for development review is held up pending either some settlement with the State or an alternate often costly remedy. Case in point: The intractability of this issue (and unwieldiness of the mandated resolution) resulted development of the new Ascutney Outdoors Center incurring a large unexpected outlay to engineer and develop its own on-site storm water treatment system in order to obtain a permit, despite the fact that this property is within the previously permitted storm water treatment area.
- Regulatory overreach Regarding the permits that have been issued, many of the conditions attached seem unnecessarily burdensome, naively intended to achieve a perfect, at the expense of a practical,



outcome. One of the buildings built as part of the original resort master plan has fallen into disuse, largely as a result of the collapse of that plan. The current owner, one of the many now operating within the original plan area, wants to demolish it. An Act 250 permit is required, a circumstance we do not dispute. In addition, however, to being held up for the reasons described in #2 above, a proposed permit attaches many other seemingly excessive conditions. Case in point: One of the conditions for this straight forward demolition project reads as follows, "The Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed or two years from the date of this permit, whichever shall occur first. Application for extension of time for good cause shown may be made to the District Commission. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittee shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin St, Montpelier, VT 05633-3201; Attention: Certification."

Ours is a bottom-up view of the process and one which we readily acknowledge is limited to some extent by narrow interests. There are many other details we could add and other complaints we might make, but these three broad aspects of a process we have reluctantly come to resent should hopefully give you a sense of our frustration as we strive to rebuild our community's economic possibilities.

This paper is submitted by the chairs of the West Windsor Selectboard, Ascutney Outdoors and Sport Trails of the Ascutney Basin ("STAB"). In each case the submission is being made by us as individuals before endorsement of our respective organizations given time constraints, although we fully expect that these endorsements will be readily forthcoming.

West Wind or Selectboard Edwin Johnson, Chair

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Ascutney Outdoors Owen Crihfield, Chair

STAB

Michael Bell, Chair



25 July 2018

To the Act 250 Commission,

As you consider revisions to Act 250 I hope you will remember that preserving Vermont's landscape is not a zero-sum game with economic vitality. Using a systems perspective approach is very helpful. Everything is connected; we cannot value the economy over the environment, nor the environment over the economy and the well-being of Vermont's people. They all go together. When one segment is healthy, the likely of the others being healthy is increased. In fact the ecosystem is a great model for building a vibrant society and economy.

Act 250 has done a good job of protecting Vermont's working landscape. Let's not sacrifice that as we move forward to include additional protections in a new version of the law.

Sincerely

Lindy Biggs

190



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	In my humble opinion, Act 250
	as originally conceived is broken Although
	help fil in some expects to guiding state development,
15	the Act 9 is personed implementing it is out of belonce
	with many of the people of this itse It often
	has become a tool of the wealthy the 200 home
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	is composed of its people as well.
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	ble the state and applicant stated that the proposed
	development asould have no impact on our historic home
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	Is now being built blocking the easker Viewshed from the
	Center. In other word what is pern then by And 2500
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	Keun Doering



Janet Eldridge-Taylor – Brattleboro, VT

Act 250: The Next 50 Years public forum in Manchester, VT – July 11, 2018

Act250Comments@leg.state.vt.us

To Whom It May Concern:

As a resident of the town of Halifax in southern Vermont, I am a member of the Halifax Conservation Group which formed in 2012 primarily to oppose a quarry development project in the designated Conservation District of the town. This district is densely forested and essentially undeveloped, comprises more than ¼ of the land in Halifax and is important wildlife habitat. The Halifax Conservation Group has 80 – 100 members who actively participated in Act 250 hearings as well as hearings for a Conditional Use Permit with the Halifax Zoning Board. The permit processes continued for 5 ½ years and resulted in both the Zoning Board and the Act 250 commission denying permits for the quarry. We were scheduled for Environmental Court this fall when the developer withdrew from this project. The process was time consuming and costly for both sides but we were fortunate to have the opportunity to present our arguments to protect the natural resources in our town from the adverse effects of the proposed quarry. The appeal for Environmental Court would have been de novo review (a new review) and in the past 5 ½ years several significant changes have occurred that we planned to add in support of our opposition to the guarry. It now appears that Act 250 wants to end the de novo review process and not allow such appeals in the future. This would disrupt our right as residents adversely impacted by a project and tip the balance in favor of development which might not be compatible with the proposed project location or in the best interest of town residents.

The 2016 Legislative Session passed the most comprehensive forestry legislation in the past 20 years, Act 171, which focuses on maintaining healthy forest integrity. The proposed quarry site was in an area now designated as "highest priority interior forest". Keeping this forest block intact has also been given a high priority designation with the Connectivity Initiative. Information from Act 171 and the Connectivity Initiative were not available to us at the beginning of our Act 250 hearings and would have been essential for arguments in Environmental Court to help us stop the proposed quarry project in the Conservation District in Halifax.

Act 250 should have an appeals process that is accessible to the public and at the same time is efficient and affordable.

Respectfully submitted, Janet Eldridge-Taylor



(Name withheld per submitter's request)

Opportunities for environmentally sustainable tourism development in Vermont are being undermined by Act 250's overreach into the realm of recreational trails. If Act 250 is applied to mountain bike and recreational trail networks, many host landowners will cancel their agreements with trail networks, and significant tourism revenue in rural Vermont will be lost.

One case is an independent trail entrepreneur, who made 8 repeated unsuccessful attempts to contact the VT Trails and Greenways Council over a 6 week period to learn about joining the "State Trails Network." The only response were apologies for being unresponsive. Without entree into the elusive "Network", the bike trails are apparently deemed "commercial" and would thus fall under Act 250 jurisdiction. Faced with possible Act 250 jurisdiction, the landowner plans to cancel the lease with the entrepreneur and convert the trails into wider logging roads for a future (Act 250 exempt) timber harvest and is considering subdivisions or a lucrative granite quarry opportunity. There needs to be a place for small businesses to operate trail networks without the threat of Act 250 to their host landowners. And, inclusion in this network does not make sense and is not even possible without a clear conduit or an obligation for some sort of timely response.

Furthermore, applying Act 250 to recreational trail networks by designating them as "development" undermines the intent of the Act itself: Trails by their existence on the land, deter parcelization, conversion, and conventional commercial development. Trails are viewed by communities as local resources and landowners are more likely to keep farmland and forest intact for trail systems when they know that they are serving a community.

Applying Act 250 to trail networks will discourage landowners from hosting trails. Without hosting trails the landowner is more likely to consider subdividing their land or seeking commercial development opportunities requiring Act 250 which would be profitable. Under these alternative scenarios, small tourism business opportunities are lost, healthy recreational opportunities for Vermonters are lost and the carbon mitigation capacity of Vermont's forests are diminished as well.



Appendix J: Contact Information for Citizens Wishing to be Contacted

- "I would like to see more participation from the general populace perhaps a VT PBS
 program or series of programs to explain why Act 250 has evolved, how it's been applies
 & how it can protect VT in the future."
 - Julia Lloyd Wright
- 2) "I have already discussed my views on the on-line questionnaire. No one followed up. I elaborated and was explicit."
 - Daniel Kornguth
- 3) (No Comment)
 - Hannah Dean
- 4) "ANR science is influenced by politics, such as wetland science in regard to renewable energy versus building ski area development"
 - Justin Lindholm
- 5) "Better coordination on solar (PV) and power generation between section 248 & Act 250."
 - Robert Kischko
- 6) "I find the Act 250 process, despite focused research + involvement in 3 orgs subject to Act 250, it has remained opaque + confusing. Inconsistent across state due to District Coordinators influence. Furthermore, I'm distressed, as a farmer that farm activities that can supplement unpredictable crop income can be subject to Act 250 while 500,000 tap "sugarbush" remains largely unregulated. Of course tubing over dozens of acres is going to have impacts on wildlife and water...Party status cannot be changed over time. One finicky voice can continue to find problems & change concerns years after their initial concern, which dictated "party status" have been resolved."
 - Chris Olsen
- 7) "Expansion for energy project s Yes. No other expansion [to include more types of permit applications."
 - Coatte Marton
- 8) "Incorporate climate change in the Act 250 environmental review process. See attached memo."
 - Judith Enck
- 9) (No Comment)
 - Pauline Moore



- 10) "Act 250 is only as good as fair enforcement of the process exists. All applicants need to be fairly treated and equally treated. The same goes for local challengers."
 - Linda McGinnis
- 11) "I am impressed and proud of the Act 250 laws, my regional office and my one experience with my local board. My huge concern is for a lack of enforcement or very weak and politically influenced enforcement. It needs to be addressed!"
 - Katherine Hall
- 12) "I am interested in finding out how Act 250 is involved in regulating the use of synthetic pesticide/herbicides/insecticides in the State of Vermont. The Department of Agriculture allows too many hazardous toxic chemicals to be used in agriculture, on public land, etc."
 - Carol Berry
- 13) "Please pass fewer laws and enforce the laws you have voted."
 - Steven Berry
- 14) "Need consistency of administering permits but retained at the local level fill all board vacancies."
 - Greg Meulemans
- 15) "The intent of Act 250 is good the problem is when people use the system to impose their personal opinion over what is good for the State of Vermont."
 - Al Sands
- 16) "1. Depends on how it's done. Current criteria can mitigate. 2. Yes if permit redundancy is reduced. 3. Greater weight for regional plans but offer statewide. 4. Engaged at present will continue."
 - Bill Botzow
- 17) (No Comment)
 - John DeBruin
- 18) "Eliminate exemption of state quarries."
 - Lou Magnani
- 19) (No Comment)
 - Joan Menson
- 20) Discussion led by professional planner "
 - D Green
- 21) "Q4: Represent my town to RPC now will likely be engaged in that capacity. Q3: All decisions should be made at the most local level at which competence to make them is present."
 - Timothy O'Dell



- 22) "The Act 250 process should be consistently applied throughout Vermont. Decisions made at the regional level should be informed for the state level but always responsive to local inputs."
 - David Brandau
- 23) "Efforts should be made to evaluate different scenarios for the next 50 years e.g. climate refugees, cheap and abundant electricity, other potential futures."
 - Mark Kelley
- 24) "As a professional I've been involved in dozens of Act 250 applications/projects over the last 25 years, I'm not anti-regulation. But I am pro-fair and consistent regulations. Q3: In order for Act 250 to be a statewide process there needs to be consistency and predictability. Q1: No, legislation should not be responsive to climate change, because everything we do has an impact on climate change."
 - "As a father, business over, professional I support responsible development. I support economic development. I also cherish Vermont as a fourth generation Vermonter. I've seen the good and the bad we cannot sacrifice one for the other. We need to create a process that supports economic growth while protecting what makes Vermont, Vermont."
 - Joe Greene
- 25) "Citizens much not have to go into debt in order to participate. The financial threshold to participate in any meaningful way is far too high. Q2: When it comes to permit application types, utilities as well as big energy development need to be included."
 - Camden Walters
- 26) "No mitigation for forest or agriculture operations. Flexible conditions on permits i.e. hours of operation, noise, traffic. Be flexible to needs of applicants. Needs to be consistent across all commissions predictability affordability principles."
 - Ed Larson
- 27) "Q1: Sure! I believe the question is how. We all acknowledge the problem the question remains as to how to address it/the solutions. To me, this means we need more wind and solar. Q2: YES to exemptions but it should be done smarter so not all development needs to go through the process (if well done). Q3: The regions need to be streamlined and consolidated, it is 2018! We can access the world with the phone in our pocket. We can have folks work more efficiently remotely. Q4: I think that the burden of understand of understanding and altering all this information should be not on the shoulders of those who are dealing with the threat in their neighborhood, but rather dealt with by government policy."
 - Shaina Kusper



- 28) "Act 250 has developed into an act that favors wealthy over the day to day worker by shutting them out with day time hearings and by relying upon state appeals, which dots I's and crosses t's but often misses the larger picture."
 - K Doering
- 29) {No Comment}
 - Lindy Biggs
- 30) {No Comment}
 - Christi Bollman
- 31) {No Comment}
 - David Moulton
- 32) "It sounds like the biggest problems are rigging details for relatively small business owners. Takes way too long and too much money to resolve problems. Need much more individualization. Not fair that I homeowners can hold up part of a permit when others in neighborhoods don't object as long as vote major departure. Could you do case studies of businesses that tried to start here, left because of cumbersome Act 250 process and where the eventually went and how well they faired? Need more info on national and European approaches."
 - Ann Vanneman
- 33) "We need to get back to the basics and make it easier for business to go through the obstacles. We need more common sense."
 - Roy Arthur
- 34) "Streamline process. Simplify criteria statewide."
 - Jerry Hansen
- 35) "Act 250 needs to be overhauled and should be at a local level only."
 - David Fuler
- 36) "Less restriction is needed not more regulations. Regarding question 4, if systems would work better it wouldn't need more input from citizens."
 - Bill Ackerman
- 37) "Large scale solar development should not be exempt from Act 250."
 - Kasia Karazim
- 38) "I think that power generation projects, such as wind towers, should come under Act 250."
- 39) "Act 250 accepts many mote cases against agricultural & forester's operations than consistent rural economic development." Bruce Shields
- 40) "As it stands today Act 250 is too expensive and



- too complicated." Susan Hanos
- 41) "Utilities should be subject primarily under Act 250 No exemptions for anything over 2500 feet" and "Aesthetics needs to be more clearly defined and not discussed as it sometimes is eliminated as a criterion." Claire Van Vilet
- 42) "Act 250 should consider impacts of climate change (rather than climate change reversal or mitigation). Electrical facility citing should be under Act 250. Large scale sugaring should be treated as forcibly and should be required in Act 250.
- 43) "Act 250 has failed the state of Vermont economically, environmentally, and has vastly contributed to the fiscal disaster that we are in." Tim Hayes
- 44) "Act 250 needs to be updates for the time. NEK will be out of business if this effects the trails system. We as a family have been here 21 years with our kids to hunt, fish, and snowmobile 4 wheelers." Ried Stratton
- 45) "Recreation trails most importantly snowmobile trails should be exempt from Act 250.

 The snowmobile community has been very good stewards of the system and should be able to continue." Susan Purdell
- 46) "Exclude trails or more clarifying language in regards to trails. What is a project define. Is a project the entire network or the individual trail on the individual private land owners land." Abby Long
- 47) "I want less and or simple regulations. The more complex you make it the harder for volunteers to build and maintain snow mobile and ATV trails. Our economy depends on snowmobile, ATV, and other outdoor recreation trails." Stacy Roess
- 48) "Less regulation, we do not need more regulation. Motorized recreation should be encouraged to help our business areas and or economy." Pete Pedersen
- 49) "Too much control over businesses and private property. People and businesses leaving the state less laws more oversight by real businesses. Reduced tax income."
 - Tonya Nuzza
- 50) No Comment
 - Ben Avery
- 51) "Please take trails and outdoor recreation into account with respect to jurisdiction. Trail for human power recreation (hiking, biking, backcountry skiing) are safer for the environment then other forms of recreation and great for VT economic development. Trails build community."
 - Rosy Metcalfe
- 52) "Look at exemptions need oversight."



- Doug Grandt
- 53) "ANR is abdicating its resoinsibility to review Federal Army Corps permits to fill. I believe that appeals should be heard by an environmental board not one jusde at E.C.T. ANR is not doing its job to protect Vermont's environment and representing the people of Vermont."
 - Catherine Goldsmith
- 54) "In all this discussion the cultural part was loudly lacking (historic, prehistoric)."
 - Sarah Van Ryckevorsel
- 55) No Comment
 - Bruce Post
- 56) "Looking to enact state aid for public school development support and information for Burlington High School."
 - Clare Wool
- 57) "As a recent neighbor investing over 100 hours, I have many comments."
 - AJ Ross
- 58) "Retain regional district environmental commissions with appeals to state.

 Regional planning is important, but we need to do more statewide planning as was anticipated in the 1970's."
 - Beth Humstone
- 59) "Criteria shold address climate change, such as windfarms and solar farms. Keep district commission process, use EB for appeals. Important for private citizens to materially engage in projects that affect their community."
 - Darlene Palola
- 60) "Enforcement discussions was missing. What is the statewide development plan? Is there a vision for Vermont? Act 250 does not seem to address state sustainable limits. Check betternotbiggervt.org for a sustainability report."
 - Wolfger Schneider
- 61) "I like the district office approach but we need to protect the entire state.

 Act 250 permit process is so much fairer than our local permitting process. I fully support and applaud Act 250's work."
 - Barbara Headrick
- 62) No Comment
 - John Killacky
- 63) No Comment



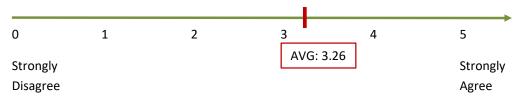
- Zachary Mayo
- 64) "Act 250 is draining the state of jobs, the young are leaving and the old are too. We need more business and jobs and population to be sustainable in the future."
 - Greg Tatro



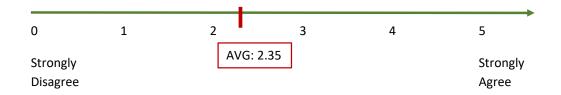
Appendix K: Public Forum Individual Preference Survey Responses (Averaged per forum)

Springfield:

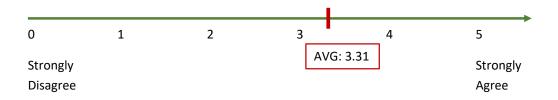
1. I want Act 250 to be updated and strengthened to be responsive to climate change data:



2. I want Act 250 to be expanded to include more types of permit applications:



3. I want Act 250 to be managed regionally, rather than be a statewide process:



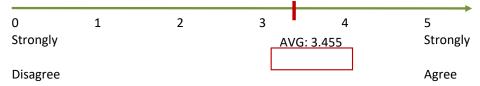
4. I want to understand and be able to engage more in Act 250 as a community member:





Manchester:

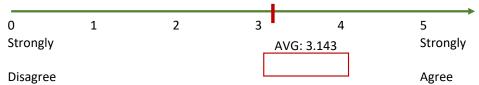




2. I want Act 250 to be expanded to include more types of permit applications:



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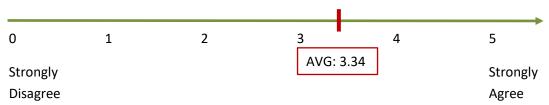
4. I want to understand and be able to engage more in Act 250 as a community member:





South Royalton:

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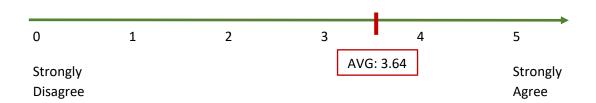


2. I want Act 250 to be expanded to include more types of permit applications:



3. I want Act 250 to be managed regionally, rather than be a statewide process:







Island Pond:

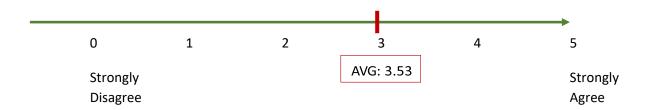
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Rutland:

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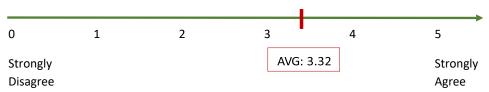




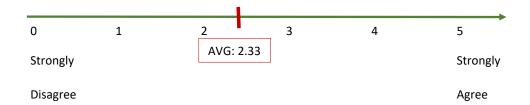


Burlington:

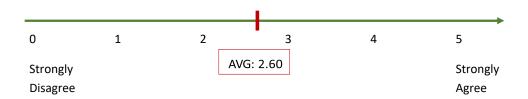
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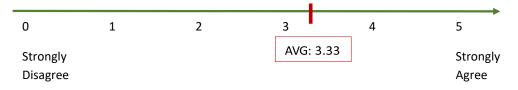


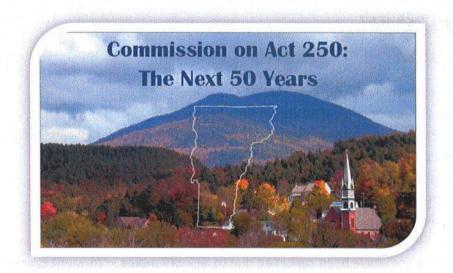
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Act 250 Rutland Public Forum Commission Debrief

Franklin Conference Center

September 5, 2018

6:00 PM - 8:00 PM

Rep. Amy Sheldon, Chair

Sen. Christopher A. Pearson, Vice Chair

Sen. Brian Campion

Rep. David L. Deen

Rep. Paul Lefebvre

Sen. Dick McCormack

FACILITATOR WORKSHEET

STATEWIDE PERSPECTIVE

- Settlement patterns make the community
- o Act 250 has views by people that are either pro-environment or pro-building
- o Ecosystem Protection is already addressed not another act to complicate Act 250
- o Not enough people to handle the Act 250 process
- Looking for support Act 250 doesn't always handle the situation
- Protecting property rights
- Permitting overlap local versus statewide growth plans
- o Limited to no jobs, growth in central and southern Vermont
- Ambulance services have been cancelled due to lack of funding Vermont cannot sustain economic development practices
- Act 250 Property What happens when the project impacts historic sites? Grandfathering for Act 250 properties?
- o Projects are being brought to Act 250, but there is no follow-up
- Currently not clear whether Act 2450 applies to a given recreation trail
- o Legislative jurisdiction can be problematic
- o Incentivize review of elderly housing; concentrate in one living area; related to settlement patterns
- Economic Development "The plans are in place; someone has to take the bull by the horn a get it done"
- o Use of prime agricultural soils for solar development no similar requirements to PUC
- Logging permit? Keep it local because Act 250 does not recognize it

STATEWIDE PERSPECTIVE + CLIMATE CHANGE

- Need a Comprehensive Plan to enforce the process (no one is in charge)
- o Economics of Vermont is based on vacationing not concerned about in-migration
- o Efficiency Vermont should take lead on projects that are designed for the climate
- There are less bike paths on new roads biking can decrease carbon emissions; however off-road biking can be dangerous
- o Vermont doesn't need to solve everyone else's problems
- o Continued concern about adding multiple layers of regulation
- Federal requirements VIZ bridges for snowmobile/bike trails since Irene: it appears as if other agencies may use Act 250 to block projects
- More places to plug in cars
- Tax incentives to shift farming from animals to produce farming
- o We are a small state and our impact on climate change is small

STATEWIDE PERSPECTIVE + INFRASTRUCTURE

- Animal habitats being disrupted by economic development
- o Need animal corridors across roads
- Trail re-routes for snowmobiling too much red tape?

- o Electric generation should be covered by Act 250
- Culverts on property (high-speed waterways) that were placed by the highway department, has led to gravel in their pastures – There needs to be training for water processes
- Roadways where towns are converted is a town issue, however Select Boards should be more aware of these changes and how they impact the community plan
- o Pittsford's annual budget 65% of the budget is for roadways and <1% of the budget is for planning
- o Problem with multiple layers of review local, Act 250, ANR
- Solar should be on existing rooftops, not filling up open land
- o Critical erosion of town (dirt) roads; training is needed
- o Electric grid Act 250 should have a say

IMPACT PERSPECTIVE

- o Exemptions for Public Utility Commission projects is bad
- o It's hard to know if you have ridge permits (Act 250 as well as others needed)
- o Act 250 should provide a lawyer or ombudsmen to help with the citizen process
- o Permitting and appeals should be timely
- o Where does the town plan start and end?
- We need to get rid of DENOVO
- o Exemptions of agriculture and forestry should stay exempt (Vermont Farm Bureau)
- Appeals Process Could not finish Act 250 at the District level until they received the Agency of Natural Resources Board and DEC permits
- Act 250 process should continue to move forward without the need for district permits (the Environmental Court is comprised of two people and has to look at all legislation)
- Solar development should move from Section 248 to Act 250
- Sometimes grant of party status is too easy
- Difficulty getting party status on projects not covered by Act 250; failure to provide temporary replacement for District Coordinator when she was out for 8 weeks (not enough staff)
- Go back to when citizens had a real voice; Environmental Court conducts de novo hearings
- Has Rutland County public policy request to change Act 250 been read?
- o More attention needs to be paid to everyone's individual application
- There needs to be consistency between coordinators across the state

GENERAL COMMENTS

- The concept of Act 250 is great, but there need to be follow through
- Act 250 needs to rely on town plans People who appeal are in it for the money
- Town government needs to designate Act 250 process
- Towns should be able to enforce some state laws Select people
- o Act 250 is a gift from Governor Deane Davis, but it has not done what it's supposed to
- We're "exporting our children"
- Act 250 should have continued to be a citizen-based process
- o Depending on the business "there is not equal treatment of the law"
- Too many people are involved, but no one is accountable (spoken from longtime Chicago residents)

- o Every town has their own bylaws
- o There should be a punishment for serial offenders
- De novo is challenged by timeliness Abutter did not appeal until the Environmental Court received the case/report
- o Act 250 needs to be responsive to the public There need to be a process at the lower levels
- o Why doesn't Act 250 have jurisdiction over the Select Boards?
- Quarries are not controlled exempted from Act 250, denying citizens a course of action
- Appeal process should be improved so that all presented to District Commission remains valid, is accessible to citizens going forward with an appeal as those are "de novo" and discourage citizen participation. Citizen funding should be available.
- There will always be a place for Act 250. The towns do not have the expertise, money, or the will to protect the environment.

NOTE CARDS

- 1) "Be fair and evenhanded to all applicants. Equal before the law is still a goal to be sought."
- 2) "How are all the stats for permitting broken down by district?"
- 3) "How will the state improve enforcement? What happens where there are admitted/proven violations of Act 250 Permit conditions? Repercussions?"
- 4) "What are the numbers on what Vermont did for the state versus what it cost?"

INDIVIDUAL PREFERENCES SHEETS

Written comments & those who would like to be contacted:

Written Comments:

- 1) "Root cause issues me with ANR inconsistencies/ Act 250 process fair and smooth. One person's party status with funding as opposition is Achilles heel."
- 2) "Remove all criteria for which an ANR permit is needed."
- 3) "Act 250 is still too subjective and labor intensive needs to be more consistent across the state."
- 4) "Act 148 mandates universal recycling and compost, but Act 250 need to restrict less compost facilities. Compost should be regulated by DEC only not Act 250."
- 5) "Less regulations."
- 6) "Think more of small towns not just shire towns."
- 7) "The question cards seemed to support more regulation; there should be less. The application should be simplified and less expensive, especially for small projects."
- 8) "Act 250 needs less oversight ANR/VTRANS/Municipal should be dispositive (criteria 1-5). I have been consulting on Act 250 since 1975, I'm a civil engineer."
- 9) "Electronic applications are a positive step, need to be more predictive as a process."
- 10) "Keep things local, look at power infrastructure."
- 11) "Regarding question 3, already is administered regionally."
- 12) "Efficiency VT and small windmill manufacturing in E. Dorset, ect. Are already doing this without government. However, Act 250 needs to be administered fairly and evenly for all."

- 13) "The process should have one stop shopping for the natural and cultural resource data, such as, a more comprehensive ANR Natural Resource Atlas. While one of projects create jobs for environmental professionals, it is complicated and inefficient to execute the assessments independent of each other."
- **14)** "Act 250 needs to be reduced. It is restrictive for Vermont's future in jobs. Regulations are choking our economic future."
- 15) "Application process should be more streamlined and timely. Permits should be cost reasonable."
- 16) "Regarding question 4, I believe citizens already have opportunities to engage."
- 17) "The process must be streamlined to work effectively."
- 18) "We need more evenly applied and streamlined systems."
- 19) "District commissions should have one publicly elected position exemption loopholes need to be closed particularly when it comes to forming and public utilizes."

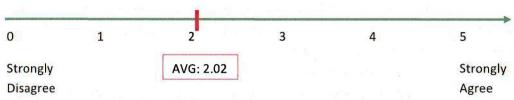
Those Who Would Like to Be Contacted:

- 1) "It sounds like the biggest problems are rigging details for relatively small business owners. Takes way too long and too much money to resolve problems. Need much more individualization. Not fair that I homeowners can hold up part of a permit when others in neighborhoods don't object as long as vote major departure. Could you do case studies of businesses that tried to start here, left because of cumbersome Act 250 process and where the eventually went and how well they faired? Need more info on national and European approaches."
 - Ann Vanneman
- 2) "We need to get back to the basics and make it easier for business to go through the obstacles. We need more common sense."
 - Roy Arthur
- 3) "Streamline process. Simplify criteria statewide."
 - Jerry Hansen
- 4) "Act 250 needs to be overhauled and should be at a local level only."
 - David Fuler
- 5) "Less restriction is needed not more regulations. Regarding question 4, if systems would work better it wouldn't need more input from citizens."
 - Bill Ackerman
- 6) "Large scale solar development should not be exempt from Act 250."
 - Kasia Karazim

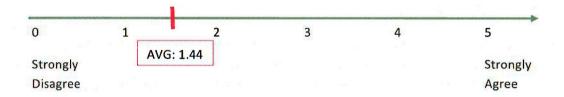
QUESTION RESPONSES

Average score for each category, as compiled from all individual preferences sheets.

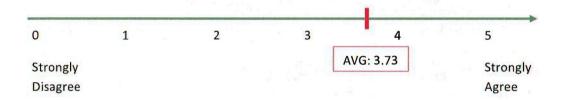
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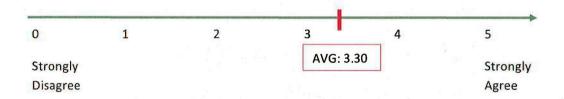


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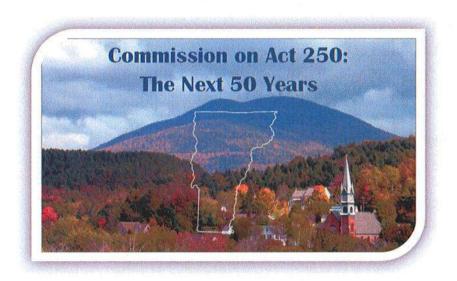
PROPOSED BIG DEAL™ CARDS

STATEWIDE:

- o Administration of the Program
- o The Process

IMPACT:

- o Enforcement
 - o Violation of conditions of Act 250 permit
 - o Who enforces?
 - o Penalties for violations
- Administration
 - o Political Influence



Act 250 Burlington Public Forum Commission Debrief

Burlington Elks Lodge

September 11, 2018

6:00 PM - 8:00 PM

Rep. Amy Sheldon, Chair

Sen. Christopher A. Pearson, Vice Chair

Sen. Brian Campion

Rep. David L. Deen

Rep. Paul Lefebvre

Sen. Dick McCormack

FACILITATOR WORKSHEET

STATEWIDE PERSPECTIVE

- The "original purpose" of Act 250 is Ecosystem Protection if this happens, all the others will follow
- The most important part of "Ecosystem Protection is "System"
- Compact development is key but can be restrictive to those who have farm animals
- o If we lose our natural beauty, we will lose a lot of other things. But dense populations can also be a problem.
- Scenic and natural beauty and settlement patterns go together as compact communities' help preserve the environment and the natural beauty, but the natural beauty is key to Vermont's aesthetic
- o All the language needs to be rewritten and updated
- Agriculture needs to be tailored to different parts of the state
- o NO SPRAWL
- Criteria should be stressed differently depending on the different type of projects.
 Ecosystems not as important in OT's and villages
- o Our ecosystem gives Vermont its value
- o There are redundancies at the local, regional, and state levels
- Ecosystem impact was not initially prioritized 50yrs ago, but it should be now

STATEWIDE PERSPECTIVE + CLIMATE CHANGE

- Will in-migration create more jobs? Climate change could bring more businesses to Vermont
- Concern that in-migration will change the social culture and the demographics too much by driving prices up – settlement patterns can help mitigate this; cities near Burlington will need to accept more density (surrounding communities) to help protect natural resources
- Climate change should be incorporated into all the criteria and perhaps added as a criterion
- More food production if more farmers move here
- Discussing climate change should not be an independent process
- Most town plans have settlement plans
- o Settlement patterns is the best way to respond and be resilient to climate change
- Ski industry challenge? Adapting to 4 season model. But also, need to diversify economy as a whole – so have more than just skiing
- Hurt ourselves by requiring things here that aren't being required elsewhere. Focus more on resilience.

Cope & Associates, Inc.

STATEWIDE PERSPECTIVE + INFRASTRUCTURE

- o If infrastructure is done poorly, it will negatively impact the economic development and ecosystem protection
- o Infrastructure will only be located in areas with existing settlement patterns
- o How does wind impact scenic and natural beauty and ecosystems?
- o Infrastructure is harming the scenic beauty (ex. developments in South Burlington)
- Aging infrastructure = huge crisis point
- o Hard constructed traditional infrastructure of water/sewer/roads is a large concern
- o Smart growth is the best way to take advantage of existing infrastructure
- Reduce fossil fuels to bring people to new places

IMPACT PERSPECTIVE

- Need more outreach and education to general public about the law
- o Keep access and voice as it currently stands
- Permitting and Appeals Because of effectiveness of enforcement. Courts are creating poor precedent. Should review decision, judge didn't understand science
- Should be fewer exemptions or departments that have jurisdiction. Should work with Act 250 criteria
- Needs to be rigorous process and court needs to have an expert in this field
- Continued jurisdiction on downtown areas and municipal centers is key to impartial judgement and development considerations
- One concern is that if we focus on one thing more than another, something will suffer.
 We should look at it from a systems perspective, as a whole.
- Concern about non-regulation of farmers re: runoff
- Amendments: Need to be very specific and only if the activity would require an Act 250 permit
 - Local could approve of out-rank Act 250 amendments
- Exemption for planning for a designated center
- Municipalities don't have capacity to participate
- Should have different tracts depending on the what and where
- o Exemptions should only be those that provide public benefit
- o There needs to be more transparency with exemptions from Act 250
- o In the past permitting was heard by a panel and now it is heard by a judge
- There are three districts to one coordinator Montpelier is concerned about it being too busy
- When Act 250 was started, there were not as many boards involved
- ANR technical expertise maybe should trump Act 250

- The legislators should focus on "access and voice, permitting and appeals, and jurisdiction," because exemptions already get a lot of attention in the legislation
- ANR and VTRANS permits should be following the same process as Act 250
- o Appellant in Albany, NY needs to appeal to the town not the applicant
 - Zoning law is at the local level, not the State, so appeals should only happen at the local level.
- Hannaford decision Number of different appeals and needing to change all other specific permits throughout the appeals. And two different jurisdictions regulating the same thing (ANR and municipality SW regulations) And Act 250 not entirely following the same ANR regulations
- Want more regulating of on-farm composting
- "If you limit the amount of participation to an Act 250 review then you're limiting those affected to accessing their voice." – Larry Forcier (Retired Ecologist)

GENERAL COMMENTS

- Act 250 needs to be empowered to do more it can help with an honest evaluation of projects, without political options attached
- Would like to see more conditions in permits holding appliers to their word
- o In the reimagining of Act 250 is there a way to include a <u>public good component?</u>

INDIVIDUAL PREFERENCES SHEETS

Written comments & those who would like to be contacted:

Written Comments:

- "Boundaries should not determine how Act 250 is managed the area of impact should determine how it is reviewed. Statewide Impact = statewide review. Local input more local review."
- 2) "Please protect our groundwater."
- 3) "Speed of the process is not a substitute for fairness. Streamline don't eliminate participation."
- 4) "Inheritably difficult balance. Humans are a part of the environment and inspired regulation of humans in harmony with their planet it's tough!"
- 5) "I strongly agree that the current exemptions need to be looked at and if the review plans on removing the exemptions than yes, there should be more types of permit applications."

- 6) "More predictability in process. Shorten review process. Difference should be given to local land use and ANR decisions."
- 7) "Act 250 process should be adjusted to reflect (not duplicate) other permitting and regulatory programs in order to ensure effectiveness and public support."
- 8) "A lot of this discussion depends upon who should make decisions who addressed these issues today. PVC, ANR, Local, etc."
- 9) "The potential for population surge due to climate change needs addressed. I heard need for state planning vs. regulatory approach as important point to discuss."
- 10) "Consistent state (act 248) review of all development. Should reflect good planning at all levels (local, regional, and state)."
- 11) "Jurisdiction should be based on location based and local capacity factors."
- 12) "need consistent state review at a board. Needs to connect more with permitting."
- 13) "There needs to be context for what is being considered. Will there be more restrictions, less restrictions, something else? Act 250 should be a true state process when multiple jurisdictions, agencies, or municipalities are involved. Municipalities with local staff and local planning/controls should be exempt."
- 14) "Settlement patterns need to stress consolidated development on cluster development separated by open land, conserved or agricultural."
- 15) "While I think that planning for climate change impacts and developing to avoid climate change impacts is extremely important, I'd rather have any applicable standards apply to all development, rather than just Act 250."
- 16) "Existing Act 250 projects that want to make moderate changes that are approved by local zoning process should not need Act 250 amendments."
- 17) "Update terminology, streamline process of appeals."
- 18) "I want statewide criteria followed equally by the important, district commissions."
- 19) "Give more jurisdiction to NRB board."
- 20) "You have one size fits all development each county, each town, are all unique and different. You need to change your one size fits all thought process."
- 21) "I would take regional plans but must be okayed by state? Like education, maybe locals should decide. The legislation should be responsive to the evolving environment or we'll ruin Vermont with immigration. We're getting more people we need to take them in and keep Vermont with settlement patterns as Act 250 envisions, clean environment, good beauty!"

Those Who Would Like to Be Contacted:

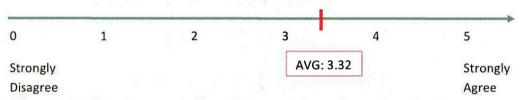
1)	"Too much control over businesses and private property. People and businesses leaving
	the state – less laws – more oversight by real businesses. Reduced tax income."
	Tonya Nuzza
2)	No Comment
	Ben Avery
3)	"Please take trails and outdoor recreation into account with respect to jurisdiction. Trail
	for human power recreation (hiking, biking, backcountry skiing) are safer for the
	environment then other forms of recreation and great for VT economic development.
	Trails build community."
	Rosy Metcalfe
4)	"Look at exemptions – need oversight."
	Doug Grandt
5)	"ANR is abdicating its resoinsibility to review Federal Army Corps permits to fill. I believe
	that appeals should be heard by an environmental board – not one jusde at E.C.T. ANR is
	not doing its job to protect Vermont's environment and representing the people of
	Vermont."
	Catherine Goldsmith
6)	"In all this discussion the cultural part was loudly lacking (historic, prehistoric)."
	Sarah Van Ryckevorsel
7)	No Comment
	Bruce Post (
8)	"Looking to enact state aid for public school development support and information for
	Burlington High School."
	Clare Wool
9)	"As a recent neighbor investing over 100 hours, I have many comments."
	AJ Ross
10) "Retain regional district environmental commissions with appeals to state. Regional
	planning is important, but we need to do more statewide planning as was anticipated in
	the 1970's."
	Beth Humstone
11) "Criteria shold address climate change, such as windfarms and solar farms. Keep district
	commission process, use EB for appeals. Important for private citizens to materially
	engage in projects that affect their community."
4.0	
12	there a vision for Vermont? Act 350 does not so and the statewide development plan? Is
	there a vision for Vermont? Act 250 does not seem to address state sustainable limits.
	Check betternotbiggervt.org for a sustainability report."
	Wolfger Schneider

- 13) "I like the district office approach but we need to protect the entire state. Act 250 permit process is so much fairer than our local permitting process. I fully support and applaud Act 250's work."
 - Barbara Headrick
- 14) No Comment
 - John Killacky
- 15) No Comment
 - Zachary Mayo
- 16) "Act 250 is draining the state of jobs, the young are leaving and the old are too. We need more business and jobs and population to be sustainable in the future."
 - Greg Tatro

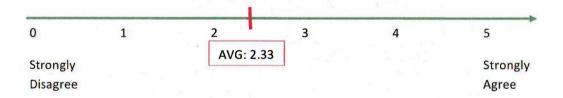
QUESTION RESPONSES

Average score for each category, as compiled from all individual preferences sheets.

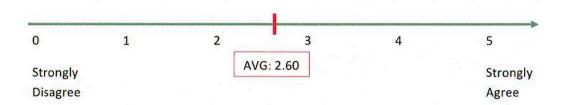
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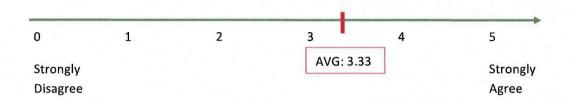


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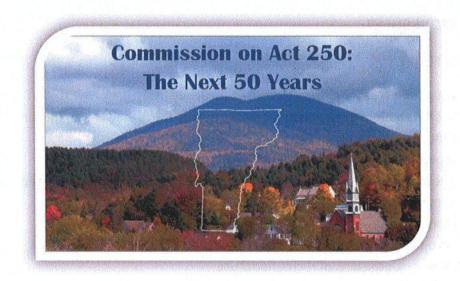
PROPOSED BIG DEAL™ CARDS

STATEWIDE:

- o Local Capacity as The Basis for Jurisdiction
- o Cultural and Historic Resources

IMPACT:

- o Oversight Committee
 - Individuals who are experts in the specific type of project
- o Act 250
 - What's important to reform?



Act 250 Island Pond Public Forum Commission Debrief

American Legion at Island Pond
August 22, 2018
6:00 PM – 8:00 PM

Rep. Amy Sheldon, Chair Sen. Christopher A. Pearson, Vice Chair Sen. Brian Campion

Rep. David L. Deen

Rep. Paul Lefebvre

Sen. Dick McCormack

FACILITATOR WORKSHEET

STATEWIDE PERSPECTIVE

- Protect ecosystems from harm due to recreation activities
- Recreation offers a place to enjoy the Vermont wildlife while stewarding the land; provides economic development
- Ecosystem protection needs strengthened enforcement
- o Economic development is meaningful and is a part of the livelihood for rural regions
- o "We live here we aren't going to ruin our own land."
- o Trails and forests exist with economic development
- Base this on a traditional Vermont working landscape
- See Act 250 through the lens of recreational use
- o GET RID OF ACT 250
- o Landscape artists don't know what beauty is, nature is number one
- o Cost of going through Act 250 is harmful to small business owners
- o State says the number one focus is on tourism i.e. Economic Development
- o Ecosystem protection is above all (a bedrock, but shouldn't restrict
- o Economic Development needs to be at the NEK scale, not large multinationals (out of state)
- Sugaring added to forestry & removed from agriculture
- Scenic & natural beauty is necessary for the progression of economic development
- o Economic development leads to the development of trails
- o Protecting the ecosystem can be related to Agriculture and settlement patterns
- Trails aren't everything
- "Without water quality, air, and wild life, we have nothing! Protect these things! This is from a many generation Vermonter."

STATEWIDE PERSPECTIVE + CLIMATE CHANGE

- o Ecosystem protection prevents urbanization
- Climate change will improve agricultural & forest productivity
 - EPA (federal) is supposed to manage climate change
- o Agricultural & forest productivity has very important implications (carbon storage, mitigation)
- o There is an increased demand for viable public transport, less sprawl
- o Engineers are having issues with renewable energy
- Energy/large-scale utility projects should go through 250!!
- o Multiple projects on same Act 250 land
- o Should consider whether if a permit is not granted and project is not allowed, climate could get worse
- Climate change will not impact the discussion
- Classification of the whole system, results in the effects of climate change

STATWIDE PERSPECTIVE + INFRASTRUCTURE

- o Discussion centered around ANR permits and regulations
- o As rural towns grow, how do they keep up their infrastructure (roads/parking)
- o Same number of residents, more tourists
- o Infrastructure is a subset of all Statewide Cards
- o If all criteria are dealt with property, beauty should be okay
 - Aesthetics shouldn't be in rankings
- o Small-scale infrastructure, NEK scale development of (NEK should not become BTV)
- o Infrastructure is a side effect and/or result of economic development
- o Highways are going to impact the settlement patterns
- New infrastructure projects and or upgrades should consider ecosystem functions i.e. water quality and wildlife habitat
 - Invasive species = disruptor

IMPACT PERSPECTIVE

- It is fine for the PUC to regulate electric generation/transmission, but the land use/ citing decision should be governed by Act 250, not Section 248
- o Sweet trees should not be exempt; the scale has changed
- Access is not equal across the state, there are different priorities here
- o The permitting and appeals process needs to be more efficient, less paperwork
- Don't have the time/money/lawyers to take on Act 250
- Electric generation should not be exempt
- Logging above 2500ft should not be permitted
- Very important that trials do not start inserting Act 250
 - No wind turbines
- Energy should move from 248 to 850 & add trails as an exemption
- o Some suggestion to raise 2500 feet to 3000 (because it would free up all of his acreage)
- Enforcement card follow up is needed and when something in Act 250 is triggered the state does not follow up
- o Expensive for the public to be involved in Act 250
- Intimidating process for applicants; have to hire experts
- Jurisdiction can be confusing, don't know who you need to go to
- o Town involvement, is it worth it?
- Consider distance of commuting to your local Act 250 district headquarters
- There should be some consistency between jurisdiction

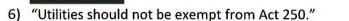
GENERAL COMMENTS

- ANRs wetland designation is a concern
- o Lack of enforcement also a concern
- o Scale of maple operation is too big to be exempt
- o Same priorities depend on stage of life i.e. retired versus early career

- o Trials are the #1 priority
- o Biggest concerns are how changes to Act 250 will harm the natural ecosystem
- Act 250 processing slow and costly
- o Utilities shouldn't be exempt
- o Beauty stands apart from others
- Protect ridgelines
- Move sugaring from agriculture to forestry
- Economic development should be created in the appropriate scale
- O Question on process cards as to whether jurisdiction & exemption should really be on the same card
- We need a process that is simple, timely, and less costly for the average citizen
- Love the idea of Act 250 and the general mission is great
- Need something for towns with no zoning options
- Ecosystem Protection Do not agree with the question should Vermont create an Ecosystem
 Protection Plan to complement Act 250?
- Land protection should consider negative economic impact of reduced tax revenue (exp. w/ non-profits). Perhaps develop PILOT method in non-profit/tax exempt organization. Distributes <u>burden</u> on local tax payer = not good
 - o Tax revenue is essential for supporting community development and local resources
- The Commission should read the 236-page report dated January 14, 2017 from the VT Bar Association, young lawyer division (Title) Act 250 THE GOOD, BAD, UGLY
- o Industrial sugaring should NOT be Act 250 exempt as an agricultural use
- "Economic Development" sounds to me like industrial wind development Bill Stenger & Arial Quiros
 EB5 scams promising jobs but extracting and exploiting the natural world and the residents of Vermont for their profits. It is always top down."
- "What is needed is <u>meaningful livelihood</u>. Meaningful work that connects us to the land and others in our communities. Not getting all of us on board to be exploiters. I don't want my kids to scrub toilets for Bill Stenger!"
- Natural world has greater importance in NEK
- Can't lose the tax base with Act 250 on trails

NOTE CARDS

- 1) "Is there going to be any specific outdoor recreation forums?"
- 2) "God help us!"
- 3) "We feel the citing of energy projects (wind, solar) needs to be governed by Act 250 as opposed to Section 248."
- 4) "Why not require towns to enact zoning (regulations/laws)?"
- 5) "Why isn't power generating projects NOT under Act 250? They should be!



7) "How is Act 250 going to change to eliminate the nasty neighbor veto over rural businesses?"

8) "Can the number of times that someone can have impact on the same project be limited?

INDIVIDUAL PREFERENCES SHEETS

Written comments & those who would like to be contacted:

- 1) "Development needs to be permitted when planned and executed in a manner responsible to the environment. Process needs to be clear & predictable & prompt."
- 2) Promote ridgelines; move energy siting from section 248 to Act 250; NRB is negating the ability of permits to appeal instead of resolving in ways that allows party to go to Environmental Court. Decisions made in district areas should be respected; Cases are being mismanaged by the NRB. NRB needs to be reeled back in.
- 3) "I think that power generation projects, such as wind towers, should come under Act 250." (Giselle Chevallay
- 4) "Act 250 accepts many mote cases against agricultural & forester's operations than consistent rural economic development." (Bruce Shields
- 5) "As it stands today Act 250 is too expensive and too complicated."
 (Susan Hanos
- "Utilities should be subject primarily under Act 250 No exemptions for anything over 2500 feet" and "Aesthetics needs to be more clearly defined and not discussed as it sometimes is eliminated as a criterion." (Claire Van Vilet |
- 7) "Act 250 should consider impacts of climate change (rather than climate change reversal or mitigation). Electrical facility citing should be under Act 250. Large scale sugaring should be treated as forcibly and should be required in Act 250.
- 8) "Act 250 has failed the state of Vermont economically, environmentally, and has vastly contributed to the fiscal disaster that we are in." (Tim Hayes
- 9) "Act 250 needs to be updates for the time. NEK will be out of business if this effects the trails system.

 We as a family have been here 21 years with our kids to hunt, fish, and snowmobile 4 wheelers." (Ried Stratton
- 10) "Recreation trails most importantly snowmobile trails should be exempt from Act 250. The snowmobile community has been very good stewards of the system and should be able to continue." (Susan Purdell
- 11) "Exclude trails or more clarifying language in regards to trails. What is a project define. Is a project the entire network or the individual trail on the individual private land owners land." (Abby Long | abby@kingdomtrails.org)
- 12) "I want less and or simple regulations. The more complex you make it the harder for volunteers to build and maintain snow mobile and ATV trails. Our economy depends on snowmobile, ATV, and other outdoor recreation trails." (Stacy Roess
- 13) "Less regulation, we do not need more regulation. Motorized recreation should be encouraged to help our business areas and or economy." (Pete Pedersen

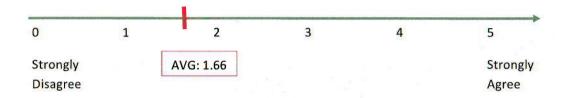
QUESTION RESPONSES

Average score for each category, as compiled from all individual preferences sheets.

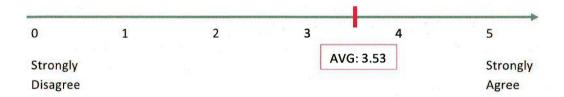
1. I want Act 250 to be updated and strengthened to be responsive to climate change data:

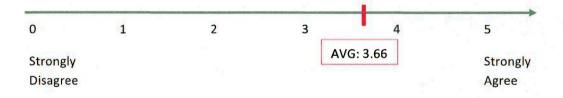


2. I want Act 250 to be expanded to include more types of permit applications:



3. I want Act 250 to be managed regionally, rather than be a statewide process:





PROPOSED BIG DEAL™ CARDS

STATEWIDE:

o Outdoor Recreation

IMPACT:

- o Enforcement
 - o Activities that should trigger process, but there is no follow up
 - o Need to follow through with all large scale and harmful projects

ADDITIONAL COMMENTS

- (1) Add "Protect our ridgelines" under the ten Act 250 criteria.
- (2) Move energy siting from section 240 to Act 250 (siting decisions being subject to Act 250 & restricting Section 248 to project development)
- (3) Protect agricultural lands: we are losing our agricultural land base
- (4) Forest fragmentation is an issue that deserves attention. Keep forest blocks intact:
- (5) Improve public participation: at Act 250 hearings & the PUC, everything begins as a contested case. In order to participate meaningfully, you need to have experts & at the PUC you need a lawyer. District coordinators could facilitate informal discussions prior to contested case litigation. Public participation is almost nonexistent. Approximately 90% of all applications are reviewed w/o public hearings. The majority of applications are being processed as "minors" without strict adherence to relevant statutory and rule provisions.
- (6) The process is user UNFRIENDLY: Many Vermonters who request party status before a district commission find a process which has become "user unfriendly". These parties come away feeling that they were not provided a fair hearing and that concerns were not given proper weight or mitigation. We should be using facilitated stakeholder processes at the district commission level
- (7) ACT 250 should work closely w/municipal & regional planning to serve a key role in shaping development in Vermont
- (8) Provide training and resources to District Commissioners Training of district commissions is without substance. The evaluation of applications requires experiential learning. Given the significant diminishment of commission hearings, commission members have lost the "institutional memory" that ensured quality reviews.
- (9) Cases are being mismanaged by the NRB. The NRB focus is not about the environment, rather its about economic development. District commissions are now told to put their draft decisions up on a drive so that the NRB can edit their decisions. This is previously unheard of interference by the NRB. Once district commission decisions are issued, the NRB is playing "let's make a deal" w/ developers who didn't get their way, & in some cases they are negating the ability of parties to appeal, instead resolving the issues in a way that preempts the ability to go to Env Crt. Recently NRB decided that rather than replace District 5 Coordinator they're going to close Barre office & merge the District 5 cases w/ Chittenden Counties.
- (10) Adopt improved appeals process; The NRB has misused its power as a statutory party to all appeals of Act 250 decisions. Instead of playing an effective role by ensuring strict adherence to precedents , the NRB often casts aside jurisdictional determinations by staff and substantive decisions of the commissions and instead acts as a "fixer" for developers via "settlements".
- (11)Enforcement of Act 250 is uneven at best. Actions are brought disproportionately against small scale developers.
- (12) The number of jurisdictional and district commission decisions that are appealed has dwindled since "permit reform" legislation of 2005. At the same time, the length of time to process appeals by the Environmental Court has increased substantially when compared with performance statistics for the former Environmental Board. The Court has transformed appeals into extremely expensive and hyper-legalistic proceedings.
- (13)Act 250 jurisdictional "triggers" have been eroded due to legislative amendments intended to encourage "smart growth" in the "right places". There has been no assessment of whether these well-intentioned provisions have had the desired effects. The outcome has been a significant decrease in the volume of development and subdivisions now reviewed under Act 250.

Act 250 Online Questions for the Commission:

Act250Comments@leg.state.vt.us 06.25.18 - 06.29.18

WOULD LIKE TO BE CONTACTED: Valerie A. Rooney MD

"Thank you for soliciting public input.

As one of the Planning Commissioners in Grafton, I have spent quite a bit of time researching and thinking about the issue of protecting our ridgelines. Also, as you probably know, Grafton had lengthy community discussions, followed by a vote, regarding proposed industrial wind installations on our ridgelines. You also probably know that the proposal was voted down overwhelmingly by both Grafton and Windham residents.

Based on the information I reviewed, I am writing to encourage you to protect Vermont ridgelines from similar projects. I am sure you have all read the research about the environmental impacts of these installations, so I will not include the long list of reasons why I am requesting that you recommend that NO MORE of these type of projects be permitted in Vermont."

Thank you.

Sincerely,

Valerie A Rooney MD

Grafton, Vermont

WOULD LIKE TO BE CONTACTED: George T. McNaughton

I am attaching comments that I delivered upon arrival at the meeting in Springfield. After listening to the discussion, I have the following comments:

- 1. While there is currently no specific "ecology criterion" the subject is thoroughly beat to death in the other Criterion given the fact that most of those are redundant with ANR permits it would be better to either eliminate those criterion, or have the conditions of the ANR permits which govern those criterion set by Act 250. But duplicate regulation is not necessary.
- Most of the issues for which Act 250 was created could be resolved by simply concentrating on Settlement Patterns and Scenic Beauty – if you concentrate on those two factors the agriculture/forestry production becomes a non-issue, the eco-system incursions become much less, and you don't really interfere with economic development as it is encouraged to be within the developed portions of the community.
- 3. I am concerned by the comments made at the closing by the Representative. Under no circumstances should we go back to having the appeals heard by a bureaucratic "citizen" board like was the case when the appeals went to Environmental Board. If anyone has any doubt about how badly that worked, they should look at the transcript of the McLean Quarry case in Cavendish.

- In addition, we should not under any circumstances go to a pre-filed testimony procedure like happens before the PSB – that would be drastically bad for real citizen participation and for small project applicants.
- 5. Finally, consistent with Vermont traditions, we need to move the majority of the Act 250 decision-making back to the local Town Planning Commissions, with the District Coordinators reporting to the local planning commissions when a Town has a Town Plan, Subdivision Control and Zoning Ordinances or at the very least those portions of the Towns which are served by municipal water and sewer." **

Sincerely,

GT McNaughton

Lamb and McNaughton, PC

**Additionally from George T. NcNaughton:

Law offices of Lamb and McNaughton, P.C.

George W. Lamb
George T. McNaughton*
Ethan B. McNaughton**
(*also admitted in Indiana)
(**also admitted in Massachusetts)

Wednesday, June 27, 2018

Legislative Committee
For Act 250
[Hand Delivered at Public Forum]

Suggested changes:

- 1.) Lands which triggered Act 250 because of lot size before the Town adopted a Town Plan or Zoning and Subdivision Regulations, which would not otherwise be subject to Act 250 Jurisdiction if created or developed today should be released from Act 250 Jurisdiction.
- 2.) There needs to be a new Criterion which requires some form of balancing test between the public good to be accomplished by restrictions, and the cost of compliance.
- Where CAP has been agreed to and imposed upon a property, its terms apply and Act 250
 jurisdiction cannot impose more restrictive restrictions.
- 4.) Act 250 Jurisdiction should not extend to areas within a Town which are served by municipal water and sewer, if the Town has adopted a Town Plan and Zoning and Subdivision regulations.

Sincerely

Gy T. M-N-V-

ACT 250 SPRINGFIELD FORUM - Comments for the Commission:

06.27.18

Note Cards:

- 1) Forest Productivity what guiding principles exist to guide development so that the forests regenerate and support biodiversity?
- 2) How do we get staff and commissioners to respond in a timely manner?
- 3) Why does Act 250 not address rural, scattered residential development? It should be strengthened to address forest fragmentation.

Individual Preferences Sheets:

Written Comments:

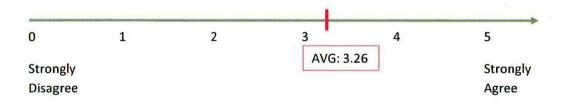
- 1) "More renewable energy generation is important to mitigate climate change"
- 2) "Get rid of de novo! You create a process that is based on discussion, input and hearings, and then in the end you throw all that away in an appeal? Doesn't make sense. Keep context?"
- 3) "Thank you. Act 250 is a necessity for its protection of our state. Future planning given impact of climate change is essential. Forward thinking!"
- 4) "I have practiced engineering 34 years in VT and about 50 Act 250 projects and firmly believe in Act 250 in and the mechanical process works well. Please keep FTP and email submittals as I am [not] computer savvy and fancy software is problematic and not warranted."
- 5) "Ideally [Act 250] should be regional & some consistency + predictability from region to region."
- 6) "Imperative that Act 250 covers electrical facilities and its impact on VT."
- 7) "I am concerned about losing almost 50 years of legal precedent depending upon what changes are made."
- 8) "There is serious lack of support for applicants in the Act 250 process in fact most Vermonters do <u>not</u> know what it is. The websites have broken links. Enforcement + regulations has greater emphasis than support to folks interested in protecting + building in Vermont."
- 9) "Less focus on aesthetics and more focus on environmental data. And jobs for young people are important. Thank you."
- 10) "I'm not sure you are asking the right questions. This process is too scripted and does not allow for new ideas."
- 11) "Strengthening Act 250 to better protect Vermont's natural resources is critical increase jurisdiction to address forest fragmentation."

Written Comments & Would Like To Be Contacted:

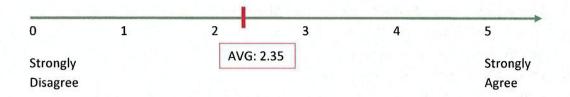
- 1) "I would like to see more participation from the general populace perhaps a VT PBS program or series of programs to explain why Act 250 has evolved, how it's been applies & how it can protect VT in the future."
 - Julia Lloyd Wright
- 2) "I have already discussed my views on the on-line questionnaire. No one followed up. I elaborated and was explicit."
 - Daniel Kornguth
- 3) (No Comment)
 - Hannah Dean
- 4) "ANR science is influenced by politics, such as wetland science in regard to renewable energy versus building ski area development"
 - Justin Lindholm
- 5) "Better coordination on solar (PV) and power generation between section 248 & Act 250."
 - Robert Kischko
- 6) "I find the Act 250 process, despite focused research + involvement in 3 orgs subject to Act 250, it has remained opaque + confusing. Inconsistent across state due to District Coordinators influence. Furthermore, I'm distressed, as a farmer that farm activities that can supplement unpredictable crop income can be subject to Act 250 while 500,000 tap "sugarbush" remains largely unregulated. Of course tubing over dozens of acres is going to have impacts on wildlife and water...Party status cannot be changed over time. One finicky voice can continue to find problems & change concerns years after their initial concern, which dictated "party status" have been resolved."
 - Chris Olsen
- 7) "Expansion for energy project s Yes. No other expansion [to include more types of permit applications."
 - Coatte Marton

Average score for each category, as compiled from all individual preferences sheets.

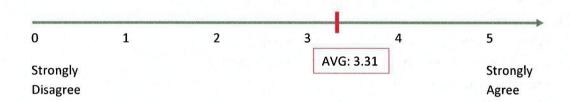
1. I want Act 250 to be updated and strengthened to be responsive to climate change data:



2. I want Act 250 to be expanded to include more types of permit applications:



3. I want Act 250 to be managed regionally, rather than be a statewide process:



4. I want to understand and be able to engage more in Act 250 as a community member:



Facilitator's Packets:

General Comments from Participants:

- 1) Renewable Energy Generation should become DISRUPTOR and Climate Change should become STATEWIDE (Purple Card)
 - a. "All are worried about climate change."
 - b. "Been dealing with climate change all along."
 - c. Solar on existing structure, not land (renewables)
- 2) "Overall, we saw food moving up in importance [with the addition of climate change], as well as ecosystem protection."
- 3) "Electric generation should NOT be on Act 250."
- 4) "Settlement patterns nice theoretical, but a challenge in rural areas."
 - a. Would like to see a more "holistic approach"
- 5) Maintain the existing infrastructure

- 6) "Not dealing with infrastructure as a state."
 - a. "Could not get permit for 91 today because 250."
- 7) "Economic Development needed for infrastructure development."
- 8) "Aesthetics" criteria seems very subjective for the public
- 9) Scenic & Natural Beauty "doesn't pay taxes or support population."
- 10) Appeals process is pointless de novo makes no sense
- 11) Profile testimony/appeals are too time & paper intensive whole process needs to be streamlined
- 12) Jurisdiction How to relieve land of Act 250 requirements once applied?
- 13) Act 250 makes people/developers to "not want to do big projects"
 - a. "Do not need more regulation"
- 14) "Stats not reality 30 days not realistic (even as coordinator)" Bill Jewell
- 15) "Good ideas get drowned by regulation. Perhaps need ombudsmen."
 - a. "Any development is bad development."
- 16) "Where can you get an audience with the governor?"
- 17) "Exempt" needs to be re-examined
- 18) "Role of District Coordinator" can be too powerful, is it truly a citizen board?"
- 19) "Mining we would have never had to go through Act 250."
- 20) "Most problems with ANR, not Act 250."
- 21) "A bit of propaganda for existing law is one concern."

ACT 250 Manchester Forum:

07.11.18

Questions in Red and Comments in Blue

Note Cards

- 1) "Please consider our ecosystem as the overriding concern it makes the rest of [the] others work"
- 2) "Why hasn't the per diem paid to the commissioners changes in 25 years?"
 (RESPONSE WILL BE POSTED IN THE WEBSITE FAQ)

Individual Preferences Sheets

Written Comments:

- 1) "This forum and process makes no sense. Awkward, missed the point subverts meaningful discussion."
- 2) "Act 250 missing words like logic, reasonable, balance, and fairness. People are leaving Vermont. Where is the opportunity? Cost of permitting and cost of doing business too costly!"
- 3) "Agriculture and forest industry need to meet the same standards of environmental protection as other industries."
- 4) "I worry criteria 9L (strip development) will disadvantage small communities by forcing commercial development away from them (and their grand list) toward larger communities."
- 5) "I don't believe projects should be stopped by anybody just because they don't like it."
- 6) "Use science to determine criteria and decisions."
- 7) "1 Updated easier process. 2 Think covered by other state agencies. 3 Would be nice because areas are so different but difficult to implement."
- **8)** "The district coordinator has too much control over the process. Additional, more localized coordinators would help!"
- 9) "Overall this process did not work for me. It assumes we know very little about Act 250 instead of asking what we feel is valuable."
- **10)** "As I was recently part of an Act 250 process that took 5 ½ years to resolve, it seems more staff are needed to facilitate project review rather than adding restrictions on appeals to their reports."
- 11) "I feel more resources need to be available to guide applicants through the process correctly then allowing them to proceed and find problem/issue after issue. Which slows the permitting process."

Written Comments & Would Like To Be Contacted:

- "Incorporate climate change in the Act 250 environmental review process. See attached memo." (MEMO ATTACHED TO EMAIL)
 - Judith Enck
- 2) (No Comment)
 - Pauline Moore
- 3) "Act 250 is only as good as fair enforcement of the process exists. All applicants need to be fairly treated and equally treated. The same goes for local challengers."
 - Linda McGinnis

- 4) "I am impressed and proud of the Act 250 laws, my regional office and my one experience with my local board. My huge concern is for a lack of enforcement or very weak and politically influenced enforcement. It needs to be addressed!"
 - Katherine Hall
- 5) "I am interested in finding out how Act 250 is involved in regulating the use of synthetic pesticide/herbicides/insecticides in the State of Vermont. The Department of Agriculture allows too many hazardous toxic chemicals to be used in agriculture, on public land, etc."
 - Carol Berry
- 6) "Please pass fewer laws and enforce the laws you have voted."
 - Steven Berry
- 7) "Need consistency of administering permits but retained at the local level fill all board vacancies."
 - Greg Meulemans
- 8) "The intent of Act 250 is good the problem is when people use the system to impose their personal opinion over what is good for the State of Vermont."
 - Al Sands
- 9) "1. Depends on how it's done. Current criteria can mitigate. 2. Yes if permit redundancy is reduced. 3. Greater weight for regional plans but offer statewide. 4. Engaged at present will continue."

 (REACTION TO INDIVIDUAL PREFERENCES SHEET QUESTIONS)
 - Bill Botzow
- 10) (No Comment)
 - John DeBruin
- 11) "Eliminate exemption of state quarries."
 - Lou Magnani
- 12) (No Comment)
 - Joan Menson
- 13) Discussion led by professional planner ___
 - D Green

Big Deal Cards

- 1) Suggestion: ADMINISTRATION Card
 - a. Bullet: Consistency in process
 - b. Bullet: Depoliticize appointment process
- 2) Suggestion: MEDIATION Card

Notes from Facilitator Packets

Overview of Participant Comments

- 1) Unequal enforcement farmers cause a lot of environmental impact, yet they get away versus ski areas that can not
 - a. Agricultural regulations impact the whole state
 - **b.** Farmers don't want to be regulated

- 2) Integrate fully into the review process criteria looks at the local view; climate change is a more of a global view
- 3) Act 250 takes too long
- 4) Why isn't our state agency looking at impacts?
 - a. Too much of a burden on the citizens
- 5) Permitting is pricey "cost of doing business in Vermont"
 - a. There is a cost associated with allowing voice and access with lawyers
 - b. Permits have become too hard, technical, and expensive to pursue without a consultant
- 6) Vermont is not economic development friendly
- 7) "Act 250 is unique and people come here because of our environment." Martha Heilemann
- 8) Have to develop the state, in order to create jobs and improve the opportunity for development
 - a. Developers want to know what their getting into
 - b. Easing [Act 250] process would help Economic Development, but criteria is still important
- 9) Ecosystem Protection is covered by other sources
- 10) "Resilient Communities" are necessary for Vermont's future
 - **a.** Ability to withstand disruptors (climate change/infrastructure) and stay flexible during changes within their community
- 11) Infrastructure challenges climate change (one card)
 - a. Hard infrastructure and natural infrastructure (river meandering)
- 12) Act 250 should be targeted for each district versus statewide
 - a. Need a statewide plan for synchronicity, but that's impractical
- 13) Focus on infrastructure that separates the land (major highways and man-made water sources)
- 14) Small business can make a large impact together, just as a large business
- 15) Act 250 costs are only a portion of the environmental permitting process
- **16)** District Coordinator grew too much power (one person)
- 17) Access and voice is what makes Vermont special
- 18) "Please don't scrap Act 250; it's more positive than negative."
- 19) "If you take care of agricultural & forest productivity and economic development, then they will take care of the rest [of the Statewide Cards]."
- 20) Problems with access include non-experts providing inaccurate information people trying to exploit Act 250

Online Responses – Manchester Forum

Act250Comments@leg.state.vt.us

1) Lou Magnani – Wells, VT

To all committee members:

I attended the July 11 meeting of the Act 250 commission and have negative comments I would like to make. I left the meeting just before 8 because I was physically uncomfortable so I don't even know what the results of the meeting were. Nevertheless, my comments follow:

Firstly, the format was, in my opinion, deeply flawed. If you wanted to know the answers to how people feel about aspects of Act 250 (e.g. too hard or too easy to get a permit), we could have simply filled in a survey. Leave a little space to write in a particular gripe and ask a bunch of questions. Get lots of data from lots of people and get a sense of how the public genuinely feels.

But the format of trying to get a table of 6 to reach consensus on issues that they didn't even bring to the table felt very contrived. One woman at our table, after hearing the facilitator talk about what he wanted us to do, said something like; "this sounds all really good but I'm not buying it". With that she expressed the distrust we all felt in a process that seemed to have a design inconsistent with why each of us came to the meeting. The only thing we reached a consensus on was that the process was wanting. Most of us expressed a distrust of the process.

I came to the meeting to express my complete dissatisfaction with the fact that Act 250 permits an entire industry, the slate quarrying business, to circumvent the Act 250 process. It is a legislative injustice to the people in the handful of towns effected by this exemption. It would be no less absurd to exempt marble, granite, gravel, or any other mining operation from the protection of Act 250. The people who have had to fight the industry over the years this law has been in effect, have had to do so without the use of Act 250. It is the only tool we have to prevent the use or abuse of land inconsistent with the well being of the citizens who live near them. Yet the slate quarry exemption was not even on the "exempt card" that we were supposed to reach consensus on.

I came to the meeting to ask everyone on the commission to view the hearing held by David Deen (Vimeo.com/126458374) and the bill he introduced shortly thereafter to revoke the slate quarry exemption (H.662). Instead of having that opportunity I was instructed to "reach consensus" on other issues.

If you really want input from the community, revise this method before you continue taking this show on the road. You could ask the same questions on a questionnaire and get enough data to derive what the C q th

onsensus is among vermonters on where Act 250 should be going for the next 50 years. Put the	
uestionnaire on the web and get all the input you want from Vermonters who would like to have a say in	
nis process but don't want to go to public meetings.	
Thanks for hearing me out, if you do.	

Lou Magnani, Wells, VT	

2) Marilyn Allen

Dear legislators:

I attended the forum in Manchester last week and would like to pass along my impressions and concerns.

My group was composed of 7 individuals all of whom were articulate and concerned residents who were participating in good faith. We discovered early on in the discussions that we were all wary of the way issues were presented and that the design of the cards was a bit too constricting. We wanted to be sure that any changes considered would clarify our priorities. The process of settling on a "list of priorities" was simply not the way we as a group wanted to be heard.

Some concerns that I expressed focused on ANR and the fact that some of the changes we have heard were being considered reflected an awareness that ANR is understaffed and underfunded. Rather than focus on curtailing the process of appeal I suggested that the important work of ANR, especially in Act 250 processes, should be funded to allow more "boots on the ground" assessments rather than concentrate on more abstract issues and data that cannot really see the environment that is being evaluated.

The rules of ANR also need to be updated to reflect concern for climate change. In a an Act 250 application in our town, Halifax, the rule for planning for floods is still set at 100 year flood levels. We had Irene with its 500 year flood damage and the loss of 4 bridges.

It is true that climate change was mentioned as a "disrupter" but there were other potential disrupters mentioned in our group. A sudden shift to fewer appeal options to speed the Act 250 process was also mentioned as a potential risk factor. Since 98% of applications are approved, that possibility seems problematic. It is also important to make sure that the 10 Criteria are allowed to function as they were intended to function; eg. if a project will not bring jobs or financial benefit to the town as a whole (i.e., only the developer wins), then that should be a real problem in the permit process.

It is reassuring that Vermont is taking the time to hear from as many Vermonters as possible. It is also important that the public continues to be informed of potential changes that are being discussed. I hope that this will continue!

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Sincerely,

Marilyn Allen

3) Janet Eldridge-Taylor - Brattleboro, VT

Act 250: The Next 50 Years public forum in Manchester, VT – July 11, 2018 Act250Comments@leg.state.vt.us

To Whom It May Concern:

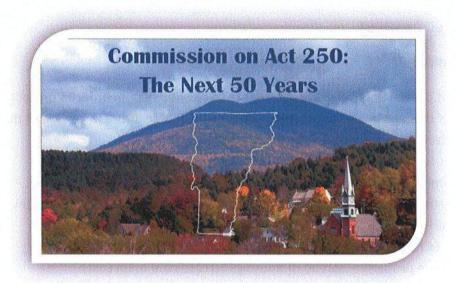
As a resident of the town of Halifax in southern Vermont, I am a member of the Halifax Conservation Group which formed in 2012 primarily to oppose a quarry development project in the designated Conservation District of the town. This district is densely forested and essentially undeveloped, comprises more than ¼ of the land in Halifax and is important wildlife habitat. The Halifax Conservation Group has 80 – 100 members who actively participated in Act 250 hearings as well as hearings for a Conditional Use Permit with the Halifax Zoning Board. The permit processes continued for 5 ½ years and resulted in both the Zoning Board and the Act 250 commission denying permits for the quarry. We were scheduled for Environmental Court this fall when the developer withdrew from this project.

The process was time consuming and costly for both sides but we were fortunate to have the opportunity to present our arguments to protect the natural resources in our town from the adverse effects of the proposed quarry. The appeal for Environmental Court would have been de novo review (a new review) and in the past 5 ½ years several significant changes have occurred that we planned to add in support of our opposition to the quarry. It now appears that Act 250 wants to end the de novo review process and not allow such appeals in the future. This would disrupt our right as residents adversely impacted by a project and tip the balance in favor of development which might not be compatible with the proposed project location or in the best interest of town residents.

The 2016 Legislative Session passed the most comprehensive forestry legislation in the past 20 years, Act 171, which focuses on maintaining healthy forest integrity. The proposed quarry site was in an area now designated as "highest priority interior forest". Keeping this forest block intact has also been given a high priority designation with the Connectivity Initiative. Information from Act 171 and the Connectivity Initiative were not available to us at the beginning of our Act 250 hearings and would have been essential for arguments in Environmental Court to help us stop the proposed quarry project in the Conservation District in Halifax.

Act 250 should have an appeals process that is accessible to the public and at the same time is efficient and affordable.

Respectfully submitted,		
Janet Eldridge-Taylor		



Act 250 South Royalton Public Forum Commission Debrief

Chase Community Center at Vermont Law School

July 25, 2018

6:00 PM – 8:00 PM

Rep. Amy Sheldon, Chair

Sen. Christopher A. Pearson, Vice Chair

Sen. Brian Campion

Rep. David L. Deen

Rep. Paul Lefebvre

Sen. Dick McCormack

FACILITATOR WORKSHEET

STATEWIDE PERSPECTIVE

- o Settlement plans determine where it's safe to develop first, in order to protect the ecosystems
- o In terms of the next generations how will they be able to afford/take care of the land?
- o Economy is helping people who are already here
- Vermont is losing jobs our tourism industry runs the economy
- We are a unique state and all factors impact one another
- o Balance between Ecosystem Protection, Settlement Patterns, and Economic Development is necessary
- o Settlement Patterns are most important because of the sprawl mandate
 - Need responsible growth
 - Private property spread of housing increases the town costs
 - Closing schools due to payroll
- o Clustered housing can still violate the ecosystem and other forms of development
- We need to address current problems that need to be fixed, not just the next 50 years
- o Ecosystem Protection umbrella topic since we need ecosystems to improve Scenic & Natural Beauty
- Scenic & Natural Beauty bring economic development to the state
- "Ecosystem Plan may come with bureaucracy and gum up decision making"
- Scenic is most slippery value making judgement
 - o District level better in making judgements
 - "Shared costs and compensation are deemed scenic"
- Forestry/working landscape projects get treated the same as parking lot projects

STATEWIDE PERSPECTIVE + CLIMATE CHANGE

- Economic development is difficult because green mountains and other aspects of the natural environment may be destroyed
- o Extended power outages huge problem compared to flooding and extreme weather frequency
 - Agricultural & Forest Productivity and Settlement Patterns are mainly affected
- o Influx of people to Vermont would encourage more of a focus on ecosystem protection
- o Carbon Emissions Walk around and shop in small areas, results in less emissions
- Focus on Exit 4 (Randolph & Gifford Medical Center)
 - "Act 250 has completely failed Randolph Center" "planner said it would cost \$550,000 to see a photo of the building(s) developments...unreasonable for anyone to pay"
- o Economic Development will radically change under climate change (think of new business)
- Act 250 seems anti-small business
- Climate change has a big impact on forests and settlement patterns
- "Intensive use of land not extensive use"
- o Climate change is too big for VT to handle. We can be leaders and make personal choices
- Act 250 gives state agencies the ability to place their influence on a business

STATWIDE PERSPECTIVE + INFRASTRUCTURE

- o Economic development creates challenges and opportunities
- Infrastructure not so much of a disruptor, but a necessary evil
- With bike paths growing development and people are driven to other counties outside of Chittenden County
- Settlement patterns better for electricity/roadways/water
 - Sprawl is harming ecosystem protection
- o Economic Development we don't have things for our youth to do
 - o Aging population
- "Fix what is wrong right now"
- Often infrastructure issues can help with community group litigation
- o We need more communication and consideration for infrastructure
- Infrastructure doesn't seem pressing at the Act 250 level
- Soils should be an infrastructure
- o FEMA refuses to do mitigation

IMPACT PERSPECTIVE

- o Exemptions have led to settlement pattern problems
- Pre-application process is needed to make more speedy permits
- Making people do [permitting and appeals] at once can be quite costly
- Need to include cost in impact perspectives
- o Need to make a comparison to other states
- Give developers and towns the tools to regulate their areas
- o Jurisdiction Act 250 has been telling areas what they can and can not build
- No ability to vote out Act 250 District Commissions hold the most power
- "Act 250 holds hearings in the daytime which limits participation"
- o Access filing fee for an appeal, plus legal fees and time value of money
 - Example: Lamoille Valley Rail Trail (LVRT) spent large amounts of money for Act 250 permits when in fact railway systems are exempt from Act 250 (understanding of legislation)
- o Exemption of agriculture is not logically sound
 - Agriculture is often in flood plains and archeological resources
- Electric facilities being automatically exempt is not good should go through another process
- If project impacts an entire community, you should be able to include people from the community not just abutters – it impacts a larger group
- o Act 250 seems to be a one size all bill
 - Should be tailored to different types of development
- Should limit the number of appeals
- o 1/10 acre No longer a good measurement on a town's ability to efficiently review development
- Act 250 should exempt downtown areas

GENERAL COMMENTS

- 1. Disagreement about the cards NOT the content
- 2. Look at Settlement Patterns Students are leaving Vermont
- 3. People are trying to get around Act 250
- 4. Act 250 is one of three of the greatest pieces of Vermont legislation
 - o However, it is not fulfilling its original intention
- 5. Act 250 does not involve the people few people have the means to vote against a project
- 6. Forests are not adequately addressed in Act 250
- 7. Ecosystem protection is not the right language
- 8. "feels like a game"
- 9. Scenic & natural beauty is kind of archaic people aren't coming to Vermont
- 10. Climate change is too vague unknown impacts
- 11. "Right now pushback is not around the law, it's around the complexity
- 12. Purely discussing the Act 250 process from the beginning would have been more helpful

NOTE CARDS

- 1) Act 250 should function more as a clearing house for ANR and other state permitting processes. Streamlining would help alleviate opposition for the Act 250 process.
- 2) Why are forest production and agriculture treated as separate factors from economic development?
- 3) The National Forest Service feel they have the ability to issue permits on NIFS lands and an Act 250 permit is not required. Owners or permit holders are forced to apply to both NFS and Act 250.
- 4) Please communicate better with the public. What is the next step? What happened to the event at VLS in spring? What happened to those comments?
- 5) Competence of soils should be always considered along with infrastructure.
- 6) Would like to see more efficiency and predictability in the process. Less duplication with ANR and other permits – use these to satisfy some of the (applicable) criteria. Have appeals be heard on the record vs. De novo.
- 7) Act 250 is important to Vermont. We need to maintain its relevance and effectiveness as the world changes. Public access must be maintained. We also need to make hard decisions and protect key resources like river corridors (development should be prohibited) and forests (we need to be very careful) and Act 250 should look at forests. Please also consider revising the legal-fiction of the process by revisiting something like the E-board. Also please consider removing exemptions for state quarries.
- 8) Act 250 needs to protect ecosystems as a top priority: -the environment is the basis for all economies. We need healthy people, sufficient food, clean air, less flooding and less stress on our social and economic systems. Healthy people = a stronger economy. –Compact settlement patterns are also dependent on a healthy ecosystem so as to balance population with nature for the health of all. Promoting, compact settlement is indeed a boom to our ecosystem and our environment.

- 9) It is possible to have Act 250 star projects and publish information/photos of the BEST Act 250 projects for each region, each year? This would inform and inspire comparable projects that promote Act 250 goals and desirable economic development and environmental stewardship.
- 10) My biggest question is how the Act 250 application can be different for different categories of development, aka small scale, large scale, agricultural, rural, etc.?
- 11) My one greatest concern with the future of the Act 250 process is that is be used for guide and enhance rural economic development not stop it!
- 12) How will you incorporate environmental justice principals into the criteria?
- 13) Group Question: Why does Act 250 continue to follow a piece of property it has sold?
- 14) Group Question: Could there be a *certification process so that if a project was approved locally it can be exempt or expedited for those aspects under Act 250? (*Certification of rigorous municipal zoning process and by laws)
- 15) Group Question: How can Act 250 require that a project both acknowledge and contribute to its impact on education and the health of a community?

INDIVIDUAL PREFERENCES SHEETS

Written Comments:

- 1) Would like Act 250 to be managed more locally or statewide, rather than regionally.
- 2) In regards to question one: "Impacts all but special consideration needed to preserve natural beauty and agricultural concerns." In regards to question 3: "Regional planning has a better idea on the health of the area involved whereas the municipals may be short sighted." In regards to question 4: "We need to protect the vanishing regions and not be so much in a hurry to chase the almighty dollar." Final Comments: "Close the loopholes. Developers are able to get around the rules too easily look at how the unpermitted developments solved their problem."
- 3) In regards to question two: "Permit applications shouldn't be one-size-fits-all, there needs to be different applications for different types."
- 4) "I would love to see the bill be a vehicle for economic development rather than an inhibitor in an already difficult environment for small businesses, individuals, and non-profits."
- 5) "This process needs much attention. The consensus at our table is that the specific cards, their explanations, and process issues are quite flawed."
- 6) "Clean water is too important to be reckless with."
- 7) "ATV, Snowmobiles, horses, there are so many uses/interests to encourage growth. Act 250 should be aware of "economics," large business farms should they be exempt?
- 8) "Act 250 should decrease duplication with other local and state permit process and should be more focused on incremental impacts of growth and strengthen the need of regional planning."
- 9) Regarding question 4: "Increase ability of neighbors to understand and engage in process."
- 10) "Uncertain as to what question 4 means, it is saying that more people should be voicing opinions on projects that they have no connection with?"
- 11) Regarding question 2: "Some projects need to be looked at, others no longer do."

- 12) Regarding questions 2: "Commercial scale renewable energy projects in particular when it comes to permit applications."
- 13) "I'd like to understand where "economic development" as used here tonight, factors into the Act 250 process, which is intended to "protect the environment" when large economic developments are proposed."
- 14) "What are the metrics for performance in processing Act 250 permits? Accountability!!"
- 15) "The legislature and agency employees who are responsible for evaluating Act 250 applications should be facilitating these forums. Addressing process in efficiencies and meetings outlined timelines needs to have higher accountability."
- 16) Regarding question 1: "Updates in Act 250 in response to climate change need to be intimately tied to public transportation, maintaining settlement patters, land use planning, etc."
- 17) Regarding questions 2: "More types of permit applications would need more staff if it goes that way."
- 18) Regarding questions 2: "Expand permit applications for solar arrays greater than 10 acres."
- 19) "Would like to know how Act 250 will be updated and strengthened in response to climate change data, how would this be addressed?"
- 20) Regarding question 1: "Legislature should look at other issues than Act 250 to address climate change."
- 21) Regarding question 2: "No, Act 250 shouldn't cover more types of development because it's too slow and drawn out process.
- 22) "Regarding question 3 I think it should be more regionally managed if the regional plans are strengthened."
- 23) "Act 250 is already managed regionally 9 district commissions but there needs to be more consistency between the district commissions processes."
- 24) "Permit costs and time is a concern to me. Projects that support the working landscape should be supported by Act 250 and the State in general. The commission should work to keep landowners involved in the process."
- 25) "My tendency was to rank the cards in a circle, then create web linkages between them. The Impact cards were technical in nature, and I felt less secure in rating them."
- 26) "Be consistent in district offices who process and approve Act 250 permitting."
- 27) "It would be great if the methodology of the choice of cards was explained/presented. Additionally, what will be the outcome of this aggregation?"
- 28) Regarding question 1: "there's existing language in the law that could be applied, but the law needs to add in new language to specifically address multiple aspects of climate change under several criteria."
- 29) Regarding question 2: "Some exemptions, like state quarries, were simply political and should be repealed. Development in large forest and agricultural traits should be ID'd and covered."
- 30) Regarding question 3: "They're all important and need to be integrated, along with planning better communication and coordination."
- 31) Regarding question 4: "Any way I can help regain its hero status until I die."
- 32) "When it comes to more types of permitting applications, get rid of exemptions and create tiers of review."

- 33) "#1: I'd like to see a limit to appeals (forcing stronger and focused applications). #2: Might we consider eliminating ALL EXEMPTIONS and cowering up with a simplified review system for smaller projects. #3: Need to come up with a more constructive term for economic development as we need income to live sustainably."
- 34) "The response to climate change data should include social, economic, environmental, and agro ecological, as well as access equity."
- 35) "I trust this is the first step in a very complicated process and rash decisions will be made (witnessed Act 46 backlash threatening communities)."
- 36) "I am approaching the end of my life so these questions are better considered by younger folks and I hope they are up to the task!"
- 37) "Act 250 is managed regionally at the district commission level. Eliminate Act 250 criteria that are already covered by ANR permits."
- 38) "I would like Act 250 to encompass a projects likely impact on and contribution to the education and the health of the community."
- 39) "When it comes to updating Act 250 in response to climate change data, it is an impossible question, no objective guidance. More types of permit applications for energy generation siting and size. This was an interesting but very frustrating process."
- 40) "Q2: To me, it's not as much about "types of permit applications" (which is reforming to uses). It's about ensuring it protects key locations and encourages development in smart growth locations. Q3: Isn't it administered regionally now? Awkward question."
- 41) "I would like Act 250 to rethink the categorization of criteria and how the criteria are interrelated. I also take issue with criteria 8 being rhetorically boiled down to aesthetics when research has shown the real socio-economic impacts that historic and archaeological resources has as well as their multivalent significance of cultural/working landscapes and ecological habitats."

Written Comments & Would Like To Be Contacted:

1)	"Q4: Represent my town to RPC now will likely be engaged in that capacity. Q3: All decisions should be
	made at the most local level at which competence to make them is present."

- Timothy O'Dell
 — Timothy
- 2) "The Act 250 process should be consistently applied throughout Vermont. Decisions made at the regional level should be informed for the state level but always responsive to local inputs."
- David Brandau
 "Efforts should be made to evaluate different scenarios for the next 50 years e.g. climate refugees,
 - cheap and abundant electricity, other potential futures."Mark Kelley
- 4) "As a professional I've been involved in dozens of Act 250 applications/projects over the last 25 years, I'm not anti-regulation. But I am pro-fair and consistent regulations. Q3: In order for Act 250 to be a statewide process there needs to be consistency and predictability. Q1: No, legislation should not be responsive to climate change, because everything we do has an impact on climate change."

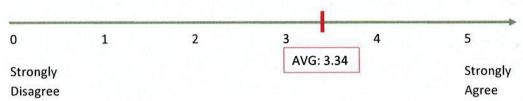
"As a father, business over, professional I support responsible development. I support economic development. I also cherish Vermont as a fourth generation Vermonter. I've seen the good and the bad we cannot sacrifice one for the other. We need to create a process that supports economic growth while protecting what makes Vermont, Vermont."

- Joe Greene
- 5) "Citizens much not have to go into debt in order to participate. The financial threshold to participate in any meaningful way is far too high. Q2: When it comes to permit application types, utilities as well as big energy development need to be included."
 - Camden Walters
- 6) "No mitigation for forest or agriculture operations. Flexible conditions on permits i.e. hours of operation, noise, traffic. Be flexible to needs of applicants. Needs to be consistent across all commissions predictability affordability principles."
 - Ed Larson
- 7) "Q1: Sure! I believe the question is how. We all acknowledge the problem the question remains as to how to address it/the solutions. To me, this means we need more wind and solar. Q2: YES to exemptions but it should be done smarter so not all development needs to go through the process (if well done). Q3: The regions need to be streamlined and consolidated, it is 2018! We can access the world with the phone in our pocket. We can have folks work more efficiently remotely. Q4: I think that the burden of understand of understanding and altering all this information should be not on the shoulders of those who are dealing with the threat in their neighborhood, but rather dealt with by government policy."
 - Shaina Kusper
- 8) "Act 250 has developed into an act that favors wealthy over the day to day worker by shutting them out with day time hearings and by relying upon state appeals, which dots I's and crosses t's but often misses the larger picture."
 - K Doering
- 9) {No Comment}
 - Lindy Biggs
- 10) {No Comment}
 - Christi Bollman
- 11) {No Comment}
 - David Moulton

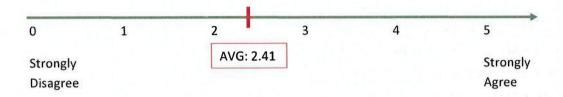
QUESTION RESPONSES

Average score for each category, as compiled from all individual preferences sheets.

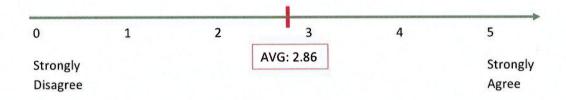
1. I want Act 250 to be updated and strengthened to be responsive to climate change data:



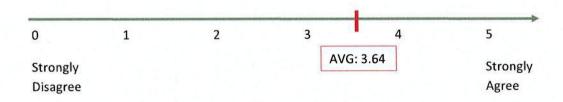
2. I want Act 250 to be expanded to include more types of permit applications:



3. I want Act 250 to be managed regionally, rather than be a statewide process:



4. I want to understand and be able to engage more in Act 250 as a community member:



PROPOSED BIG DEAL™ CARDS

DISRUPTOR:

- o Equity/Justice
 - o Transportation how do we get to work, etc.
 - o Includes environmental justice, access to housing, and food
 - o Safety, quality of life, and housing
 - o Affordability, access to natural beauty, and historic development

STATEWIDE:

- o Cost
- o Implementation
 - Consistency between districts
 - o Better training for Commissioners
 - o Clarity of language/intention
- o Consistency & Predictability
 - Once I'm in Act 250, what can I expect? Are there uniform practices across the districts, commissioners, and coordinators?

MEMORANDUM

To: Aaron Adler, Legislative Counsel

From: Ellen Czajkowski

Date: November 15, 2018

Subject: Exemptions to 10 V.S.A. Chapter 151 (Act 250)

The following is a list of all of the types of projects explicitly exempt from 10 V.S.A. Chapter 151 (Act 250) jurisdiction. The full text and citations of these exemptions follow the list as an attachment.

Short Name	Description	Citation
Certain Priority housing projects	Priority housing projects that: • Involve <75 units in a municipality of 6,000; • Involve <50 units in a municipality of 3,000; • Involve <25 units in a municipality of < 3,000; • Involve demolition of a building on the Historic Register or eligible to be on the Historic Register, if the Division of Historic Preservation has determined that the demolition will have no adverse effect • Are located in a town with a population > 10,000 people	10 V.S.A. § 6001 (3)(A)(I)(cc)-(ff) 10 V.S.A. § 6001 (3)(D)(viii)
Improvements not ancillary to broadcast towers	Future improvements to a broadcast/communication tower that are not ancillary to the support structure	10 V.S.A. § 6001 (3)(A)(ix)(I)(bb)
Farming	The construction of improvements for farming purposes below the elevation of 2,500 feet	10 V.S.A. § 6001 (3)(D)(i)
Logging	The construction of improvements for logging purposes below the elevation of 2,500 feet	10 V.S.A. § 6001 (3)(D)(i)
Forestry	The construction of improvements for forestry purposes below the elevation of 2,500 feet	10 V.S.A. § 6001 (3)(D)(i)

Electric generation and transmission	The construction of improvements for an electric generation or transmission facility that has a certificate of public good	10 V.S.A. § 6001 (3)(D)(ii)
Natural gas facility	The construction of improvements for a natural gas facility that requires a certificate of public good	10 V.S.A. § 6001 (3)(D)(ii)
Telecommunications facility	The construction of improvements for a telecommunications facility that has obtained a certificate of public good	10 V.S.A. § 6001 (3)(D)(ii)
Agricultural fairs	The construction of improvements for an agricultural fair that is registered with the Agency of Agriculture, Food, and Markets, and that are open to the public 60 or less days per year, provided that if the improvement is a building, the building was constructed prior to 1/1/11	10 V.S.A. § 6001(3)(D)(iv)
Equine fairs	The construction of improvements for an equine fair	10 V.S.A. § 6001(3)(D)(v)
Remedial actions authorized by the Agency of Natural Resources (ANR)	No permit or permit amendment needed the construction of improvements for a remedial action authorized by ANR, as well as any abatement, remedial, or corrective action taken for water pollution control, waste management, or development soils	10 V.S.A. § 6001 (3)(D)(vi)(I)(aa)-(ff) 10 V.S.A. §6081 (w) (aa)-(ff)
Composting	The construction of improvements for a composting operation below 2,500 feet	10 V.S.A. § 6001(3)(D)(vii)
Long Trail lots	Lots created to convey to the State/organization to the preserve the Long Trail	10 V.S.A. § 6001 (19)(B)(i)
Conservation rights and interest lots	Lots created to convey to the State/organization for "conservation rights and interest"	10 V.S.A. § 6001 (19)(B)(ii)
Preexisting subdivisions	Subdivisions that were exempt under Department of Health regulations that were in effect on 1/21/70 or that received a permit from the Board of Health prior to 6/1/71	10 V.S.A. §6081 (b)
Preexisting developments	Construction that began before 6/1/70 and was finished by 3/1/71	10 V.S.A. §6081 (b)

State highways	State highways that had a hearing held prior to 6/1/70	10 V.S.A. §6081 (b)
Telecommunications facilities prior to 7/1/97	Telecommunications facilities constructed prior to 7/1/97	10 V.S.A. §6081 (b)
Solid waste facility	Solid waste management facility that has a provisional certificate under 10 V.S.A. § 6605d	10 V.S.A. §6081 (c)
Wastewater treatment facility	Municipal, county, or State wastewater treatment facility enhancements that do not expand capacity by more than 10%	10 V.S.A. §6081 (d)(1)
Water supply	Municipal, county, or State water supply enhancements that do not expand capacity by more than 10%	10 V.S.A. §6081 (d)(2)
Public schools	Public school expansion that does not expand capacity by more than 10%	10 V.S.A. §6081 (d)(3)
Municipal, county, or State building renovations	Municipal, county, or State building renovations or reconstruction that does not expand capacity by more than 10%	10 V.S.A. §6081 (d)(4)
Water or sewer lines	Municipal, county, or State water or sewer line replacement that does not expand capacity by more than 10 %	10 V.S.A. §6081 (e)
Earth removal sites associated with landfill closing	Earth removal sites associated with landfill closing (must obtain municipal zoning permit instead)	10 V.S.A. §6081 (g)
Closure of a landfill that began prior to 7/1/92	Closure operations at an unlined landfill which began disposal operations prior to July 1, 1992 and which has been ordered closed under section 6610a or chapter 201 of Title 10	10 V.S.A. §6081 (h)
Railroad repairs	Repair of railroad facilities with no expansion	10 V.S.A. §6081 (i)
Slate quarry	Slate quarry in operation prior to 6/1/70 and registered by 1/1/97	10 V.S.A. §6081 (j) 10 V.S.A. §6081 (l)
Preexisting telecommunications facility	Replacement or routine maintenance of preexisting telecommunications facility in existence since 7/1/97	10 V.S.A. §6081 (m)

Replacement of a telecommunication facility	Replacement of a permitted telecommunication facility or routine repairs	10 V.S.A. §6081 (n)
Mixed use and mixed income housing within designated center	A change to a mixed use and mixed income housing project located entirely within a designated center pursuant to 24 V.S.A. § 2793, provided certain requirements are met	10 V.S.A. §6081 (p)(1)
Priority housing project	Priority housing project in a designated center other than a downtown development district, provided that certain requirements are met	10 V.S.A. §6081 (p)(2)
Farming on prime ag soils	Farming that will occur on primary agricultural soils or will not conflict with any permit condition pursuant to this chapter	10 V.S.A. §6081 (s)(1)
Agricultural fair	No permit amendment is required for a building constructed before 1/1/11 if construction was before 1/1/11 and was for an agricultural fair	10 V.S.A. §6081 (u)(1) & (u)(2)
Development in a designated center	Development or subdivision in a designated downtown development district for which the District Commission has issued positive findings and conclusions under 10 V.S.A. § 6086b	10 V.S.A. §6081 (v)
Shooting range	A sport shooting range if it was in operation prior to 1/1/06, it has a lead management plan approved by the DEC; the change is to: improve the safety of range employees, users of the range, or the public; or to abate noise; or reduce impacts to air or water quality from the range	10 V.S.A. §6081 (w)
De minimis improvements	Construction will have no potential for significant adverse impact as defined in the rule	Act 250 Rule 2(C)(3)(c)

ATTACHMENT TO MEMORANDUM

Full Citations

10 V.S.A. § 6001. Definitions

In this chapter:

* * *

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

* * *

- (iv) The construction of housing projects such as cooperatives, condominiums, or dwellings, or construction or maintenance of mobile homes or mobile home parks, with 10 or more units, constructed or maintained on a tract or tracts of land, owned or controlled by a person, within a radius of five miles of any point on any involved land, and within any continuous period of five years. However:
- (I) A priority housing project shall constitute a development under this subdivision (iv) only if the number of housing units in the project is:

* * *

- (cc) 75 or more, in a municipality with a population of 6,000 or more but less than 10,000.
- (dd) 50 or more, in a municipality with a population of 3,000 or more but less than 6,000.
 - (ee) 25 or more, in a municipality with a population of less than 3,000.
- (ff) Notwithstanding subdivisions (cc) through (ee) of this subdivision (3)(A)(iv)(I), 10 or more if the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the State or National Register of Historic Places. However, demolition shall not be considered to create jurisdiction under this subdivision if the Division for Historic Preservation has determined that the proposed demolition will have no adverse effect, will have no adverse effect if specified conditions are met, or will have an adverse effect that will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document.

* * *

(ix) Any support structure proposed for construction, which is primarily for communication or broadcast purposes and which will extend vertically 20 feet or more above the highest point of an attached existing structure or 50 feet or more above ground level in the case of a proposed new support

structure, in order to transmit or receive communication signals for commercial, industrial, municipal, county, or State purposes, independently of the acreage involved.

(I) Under this subdivision (ix):

* * *

(bb) the word "development" shall not include future improvements that are not ancillary to the support structure and do not involve an additional support structure, unless they would otherwise be considered a development under this subdivision (3).

* * *

- (D) The word "development" does not include:
- (i) The construction of improvements for farming, logging, or forestry purposes below the elevation of 2,500 feet.
- (ii) The construction of improvements for an electric generation or transmission facility that requires a certificate of public good under 30 V.S.A. § 248, a natural gas facility as defined in 30 V.S.A. § 248(a)(3), or a telecommunications facility issued a certificate of public good under 30 V.S.A. § 248a.

- (iv) The construction of improvements for agricultural fairs that are registered with the Agency of Agriculture, Food and Markets and that are open to the public for 60 days per year or fewer, provided that, if the improvement is a building, the building was constructed prior to January 1, 2011 and is used solely for the purposes of the agricultural fair.
- (v) The construction of improvements for the exhibition or showing of equines at events that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.
- (vi) The construction of improvements for any one of the actions or abatements authorized in subdivision (I) of this subdivision (vi):
- (I)(aa) a remedial or removal action for which the Secretary of Natural Resources has authorized disbursement under section 1283 of this title:
- (bb) abating a release or threatened release, as directed by the Secretary of Natural Resources under section 6615 of this title;
- (cc) a remedial or removal action directed by the Secretary of Natural Resources under section 6615 of this title;
- (dd) a corrective action authorized in a corrective action plan approved by the Secretary of Natural Resources under section 6615b of this title;

- (ee) a corrective action authorized in a corrective action plan approved by the Secretary of Natural Resources under chapter 159, subchapter 3 of this title;
- (ff) the management of "development soils," as that term is defined in 10 V.S.A. § 6602(39), under a plan approved by the Secretary of Natural Resources under section 6604c of this title.

- (vii) The construction of improvements below the elevation of 2,500 feet for the onsite storage, preparation, and sale of compost, provided that one of the following applies:
 - (I) The compost is produced from no more than 100 cubic yards of material per year.
 - (II) The compost is principally produced from inputs grown or produced on the farm.
 - (III) The compost is principally used on the farm where it was produced.
- (IV) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from:
 - (aa) manure produced on the farm; and
 - (bb) unlimited clean, dry, high-carbon bulking agents from any source;
- (V) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from:
 - (aa) manure produced on the farm;
- (bb) up to 2,000 cubic yards per year of organic inputs allowed under the Agency of Natural Resources' acceptable management practices, including food residuals or manure from off the farm, or both; and
 - (cc) unlimited clean, dry, high-carbon bulking agents from any source.
- (VI) The compost is produced on a farm primarily used for the cultivation or growing of food, fiber, horticultural, or orchard crops, that complies with the Agency of Natural Resources' solid waste management rules, only from up to 5,000 cubic yards per year of total organic inputs allowed under the Agency of Natural Resources' acceptable management practices, including up to 2,000 cubic yards per year of food residuals.
- (viii)(I) The construction of a priority housing project in a municipality with a population of 10,000 or more.
- (II) If the construction of a priority housing project in this subdivision (3)(D)(viii) involves demolition of one or more buildings that are listed or eligible to be listed on the State or National Register of Historic Places, this exemption shall not apply unless the Division for Historic Preservation has made the determination described in subdivision (A)(iv)(I)(ff) of this subdivision (3) and any imposed conditions are enforceable in the manner set forth in that subdivision.

(19)(A) "Subdivision" means each of the following:

* * *

- (B) The word "subdivision" shall not include each of the following:
- (i) a lot or lots created for the purpose of conveyance to the State or to a qualified organization, as defined under section 6301a of this title, if the land to be transferred includes and will preserve a segment of the Long Trail;
- (ii) a lot or lots created for the purpose of conveyance to the State or to a "qualified holder" of "conservation rights and interest," as defined in section 821 of this title.

* * *

10 V.S.A. § 6081. Permits required; exemptions

- (b) Subsection (a) of this section shall not apply to a subdivision exempt under the regulations of the Department of Health in effect on January 21, 1970 or any subdivision which has a permit issued prior to June 1, 1970 under the Board of Health regulations, or has pending a bona fide application for a permit under the regulations of the Board of Health on June 1, 1970, with respect to plats on file as of June 1, 1970 provided such permit is granted prior to August 1, 1970. Subsection (a) of this section shall not apply to development which is not also a subdivision, which has been commenced prior to June 1, 1970, if the construction will be completed by March 1, 1971. Subsection (a) of this section shall not apply to a State highway on which a hearing pursuant to 19 V.S.A. § 222 has been held prior to June 1, 1970. Subsection (a) of this section shall not apply to any telecommunications facility in existence prior to July 1, 1997, unless that facility is a "development" as defined in subdivision 6001(3) of this title. Subsection (a) of this section shall apply to any substantial change in such excepted subdivision or development.
- (c) No permit or permit amendment is required for activities at a solid waste management facility authorized by a provisional certification issued under section 6605d of this title; however, development at such a facility that is beyond the scope of that provisional certification is not exempt from the provisions of this chapter.
- (d) For purposes of this section, the following construction of improvements to preexisting municipal, county, or State projects shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section:
- (1) municipal, county, or State wastewater treatment facility enhancements that do not expand the capacity of the facility by more than 10 percent, excluding the extension of a wastewater collection system or an expansion of the service-area boundaries of a wastewater treatment facility.
- (2) municipal, county, or State water supply enhancements that do not expand the capacity of the facility by more than 10 percent.

- (3) public school reconstruction or expansion that does not expand the student capacity of the school by more than 10 percent.
- (4) municipal, county, or State building renovations or reconstruction that does not expand the floor space of the building by more than 10 percent.
- (e) For purposes of this section, the replacement of water and sewer lines, as part of a municipality's regular maintenance or replacement of existing facilities, shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement does not expand the capacity of the relevant facility by more than 10 percent.

- (g) The owners or operators of earth removal sites associated with a landfill closing, other than the landfill site itself, shall obtain a municipal zoning permit in lieu of a permit under this chapter, unless the municipality chooses to refer the matter to the District Environmental Commission having jurisdiction. At the District Commission level, the matter will be treated as a minor application. If municipal zoning bylaws do not exist, the excavation application shall be subject to the provisions of this chapter as a minor application.
- (h) No permit or permit amendment is required for closure operations at an unlined landfill which began disposal operations prior to July 1, 1992 and which has been ordered closed under section 6610a or chapter 201 of this title. Closure and post-closure operations covered by this provision are limited to the following on-site operations: final landfill cover system construction and related maintenance operations, water quality monitoring, landfill gas control systems installation and maintenance, erosion control measures, site remediation, and general maintenance. Prior to issuing a final order for closure for landfills qualifying for this exemption, a public informational meeting shall be noticed and held by the Secretary with public comment accepted on the draft order. The public comment period shall extend no less than seven days before the public meeting and 14 days after the meeting. Public comment related to the public health, water pollution, air pollution, traffic, noise, litter, erosion, and visual conditions shall be considered. Landfills with permits in effect under this chapter as of July 1, 1994, shall not qualify for an exemption as described under this section.
- (i) The repair or replacement of railroad facilities used for transportation purposes, as part of a railroad's maintenance, shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement or repair does not result in the physical expansion of the railroad's facilities.
- (j) With respect to the extraction of slate from a slate quarry that is included in final slate quarry registration documents, if it were removed from a site prior to June 1, 1970, the site from which slate was actually removed, if lying unused at any time after those operations commenced, shall be deemed to be held in reserve, and shall not be deemed to be abandoned.

* * *

(l)(1) By no later than January 1, 1997, any owner of land or mineral rights or any owner of slate quarry leasehold rights on a parcel of land on which a slate quarry was located as of June 1, 1970, may

register the existence of the slate quarry with the District Commission and with the clerk of the municipality in which the slate quarry is located, while also providing each with a map which indicates the boundaries of the parcel which contains the slate quarry.

- (2) Slate quarry registration shall state the name and address of the owner of the land, mineral rights, or leasehold rights; whether that person holds mineral rights, or leasehold rights or is the owner in fee simple; the physical location of the same; the physical location and size of ancillary buildings; and the book and page of the recorded deed or other instrument by which the owner holds title to the land or rights.
- (3) Slate quarry registration documents shall be submitted to the District Commission together with a request, under the provisions of subsection 6007(c) of this title, for a final determination regarding the applicability of this chapter.
- (4) The final determination regarding a slate quarry registration under subsection 6007(c) of this title shall be recorded in the municipal land records at the expense of the registrant along with an accurate site plan of the parcel depicting the site specific information contained in the registration documents.
- (5) With respect to a slate quarry located on a particular registered parcel of land, ancillary activities on the parcel related to the extraction and processing of slate into products that are primarily other than crushed stone products shall not be deemed to be substantial changes, as long as the activities do not involve the creation of one or more new slate quarry holes that are not related to an existing slate quarry hole.
- (m) No permit is required for the replacement of a preexisting telecommunications facility, in existence prior to July 1, 1997, provided the facility is not a development as defined in subdivision 6001(3) of this title, unless the replacement would constitute a substantial change to the telecommunications facility being replaced, or to improvements ancillary to the telecommunications facility, or both. No permit is required for repair or routine maintenance of a preexisting telecommunications facility or of those ancillary improvements associated with the telecommunications facility.
- (n) No permit amendment is required for the replacement of a permitted telecommunications facility unless the replacement would constitute a material or substantial change to the permitted telecommunications facility to be replaced, or to improvements ancillary to the telecommunications facility, or both. No permit is required for repair or routine maintenance of a permitted telecommunications facility or of those ancillary improvements associated with the telecommunications facility.

* * *

(p)(1) No permit or permit amendment is required for any change to a project that is located entirely within a downtown development district designated pursuant to 24 V.S.A. § 2793, if the change consists exclusively of any combination of mixed use and mixed income housing, and the cumulative changes within any continuous period of five years, commencing on or after the effective date of this subsection, remain below any applicable jurisdictional threshold specified in subdivision 6001(3)(A)(iv)(I) of this title.

(2) No permit or permit amendment is required for a priority housing project in a designated center other than a downtown development district if the project remains below any applicable jurisdictional threshold specified in subdivision 6001(3)(A)(iv)(I) of this title and will comply with all conditions of any existing permit or permit amendment issued under this chapter that applies to the tract or tracts on which the project will be located. If such a priority housing project will not comply with one or more of these conditions, an application may be filed pursuant to section 6084 of this title.

* * *

- (s)(1) No permit amendment is required for farming that:
- (A) will occur on primary agricultural soils preserved in accordance with section 6093 of this title; or
 - (B) will not conflict with any permit condition issued pursuant to this chapter.

* * *

- (u) A building constructed prior to January 1, 2011 in accordance with subdivision 6001(3)(D)(iv) of this title shall not be subject to an enforcement action under this chapter for:
 - (1) construction or any event or activity at the building that occurred prior to January 1, 2011; and
- (2) any event or activity at the building on or after January 1, 2011 if the building is used solely for the purpose of an agricultural fair.

- (v) A permit or permit amendment shall not be required for a development or subdivision in a designated downtown development district for which the District Commission has issued positive findings and conclusions under section 6086b of this title on all the criteria listed in that section. A person shall obtain new or amended findings and conclusions from the District Commission under section 6086b of this title prior to commencement of a material change, as defined in the rules of the Board, to a development or subdivision for which the District Commission has issued such findings and conclusions. A person may seek a jurisdictional opinion under section 6007 of this title concerning whether such a change is a material change.
- (w)(1) A permit or permit amendment shall not be required for a change to a sport shooting range, as defined in section 5227 of this title, if a jurisdictional opinion issued under subsection 6007(c) of this title determines that each of the following applies:
 - (A) The range was in operation before January 1, 2006 and has been operating since that date.
- (B) The range has a lead management plan approved by the Department of Environmental Conservation under chapters 47 and 159 of this title that requires implementation of best management practices to mitigate environmental impacts to soil and water.
 - (C) The change is for the purpose of one or more of the following:

- (i) To improve the safety of range employees, users of the range, or the public.
- (ii) To abate noise from activities at the range. A qualified noise abatement professional may certify that a change in a sport shooting range is for this purpose and this certification shall be conclusive evidence that a purpose of the change is to abate noise from activities at the range.
- (iii) To remediate, mitigate, or reduce impacts to air or water quality from the range or the deposit or disposal of waste generated by the range or its use.

- (x)(1) No permit or permit amendment is required for the construction of improvements for any one of the actions or abatements authorized in this subdivision:
- (A) a remedial or removal action for which the Secretary of Natural Resources has authorized disbursement under section 1283 of this title;
- (B) abating a release or threatened release, as directed by the Secretary of Natural Resources under section 6615 of this title;
- (C) a remedial or removal action directed by the Secretary of Natural Resources under section 6615 of this title;
- (D) a corrective action authorized in a corrective action plan approved by the Secretary of Natural Resources under section 6615b of this title;
- (E) a corrective action authorized in a corrective action plan approved by the Secretary of Natural Resources under chapter 159, subchapter 3 of this title; or
- (F) the management of "development soils," as that term is defined in subdivision 6602(39) of this title, under a plan approved by the Secretary of Natural Resources under section 6604c of this title.
- (2) Any development subsequent to the construction of improvements for any one of the actions or abatements authorized in subdivision (1) of this subsection shall not be exempt from the provisions of this chapter.

Act 250 Rule 2(C)(3)(c) Definitions

* * *

(3) "Construction of improvements" means any physical change to a project site except for:

* * *

(c) construction which the person seeking the exemption demonstrates (i) is de minimis and (ii) will have no potential for significant adverse impact under any of the criteria of 10 V.S.A. § 6086(a)(1) through (10) directly attributable to such construction or to any activity associated with such construction.



STATE OF VERMONT OFFICE OF LEGISLATIVE COUNCIL

MEMORANDUM

To: Commission on Act 250: the Next 50 Years

From: Aaron Adler, Legislative Counsel

Date: October 13, 2018

Subject: Act 250: Supervisory Authority; Presumptions

This memorandum concerns the supervisory authority of the program created under 10 V.S.A. chapter 151 (Act 250) and the related issue of presumptions in Act 250 created by other permits. In summary:

- The Act 250 program was created as a supervisory authority in environmental matters, is not bound by other permits and approvals, and conducts an independent review.
- Other permits and approvals may be used to created presumptions of compliance with various Act 250 criteria. Presumptions take the place of evidence and typically may be rebutted by evidence contrary to the presumed fact. Current Act 250 rules place a high bar on a party seeking to rebut another permit.
- The statute allows a permit to be given presumptive weight in Act 250 if the permit on its face satisfies the applicable criterion. There is no required consideration of whether the program issuing the permit reliably achieves its goals. In addition, the statute requires that certain municipal approvals use court-like procedures in order for those determinations to have presumptive weight, but it allows other permits to be given presumptive weight without the use of similar procedures. Court-like procedures are typically employed to help ensure that determinations are reliable and free from outside influence.
- "Conclusive" or "irrebuttable" presumptions are not true presumptions but rather rules of law that require a proposition to be considered true whether or not there is evidence to the contrary. Enacting a conclusive presumption on a criterion would mean that Act 250 does not have supervisory authority on the criterion or conduct an independent review.

I. SUPERVISORY AUTHORITY

In the case of <u>In re Hawk Mountain Corp.</u>, 149 Vt. 179 (1988), the Vermont Supreme Court, after reviewing the statutory scheme, determined that the Act 250 program:

- Has broad authority to review any factor related to the environmental impacts of a project before it.
- Has the powers of a supervisory body in environmental matters and is not bound by approvals issued by the Agency of Natural Resources (ANR) or any other agency.

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• Is not required to accept ANR's interpretation of the law and must conduct an independent review.

The Court stated:

[W]e note that the purposes of Act 250 are broad: "to protect and conserve the environment of the state." [Citation omitted.] To achieve this far-reaching goal the Environmental Board is given authority to conduct an independent review of the environmental impact of proposed projects, and in doing such *the Board is not limited to the considerations listed in Title 10.* See 10 V.S.A. § 6086(a)(1).

* * *

Act 250 sets up concurrent jurisdiction between the various state environmental agencies and the Environmental Board. See 10 V.S.A. § 6082. However, the legislative scheme indicates that the legislature intended to confer upon the Board powers of a supervisory body in environmental matters. For example, although 10 V.S.A. § 6082 provides that the permit required under Act 250 does not replace permit requirements from other state agencies, 10 V.S.A. § 6086(d) provides that the Environmental Board is not bound by the approval or permits granted by the other agencies. Permits and Certificates of Compliance from other agencies create a presumption that the project satisfies the relevant 10 V.S.A. § 6086(a)(1) criteria; however, the Board must conduct an independent review of the proposed development and may deny the Act 250 permit if it finds the Certificate of Compliance or other required permits were improvidently granted.

<u>Hawk Mountain</u>, 149 Vt. at 184–85 (1988) (emphasis added).

In <u>Hawk Mountain</u>, the Court affirmed the Board's conclusion that a leachfield approval issued by ANR was rebutted because the leachfield would discharge domestic wastes containing pathogenic organisms into a river in violation of ANR rules. <u>Hawk Mountain</u>, 149 Vt. at 182.

The Court also affirmed the Board's conclusion that a water discharge permit was required from ANR even though ANR itself asserted that such a permit was not required. <u>Hawk Mountain</u>, 149 Vt. at 184. It did not require the Board to defer to ANR's interpretation of its own authority, instead concluding that the Board must conduct an independent review. Id. at 184–85.

For two reasons, the <u>Hawk Mountain</u> holding should continue to apply to the District Commissions notwithstanding the transformation of the Environmental Board to the Natural Resources Board (NRB) and the transfer of the appeals function to the Environmental Division of the Superior Court. See 2004 Acts and Resolves No. 115, Secs. 48, 58, 74.

First, the statutes on which the Court relied in <u>Hawk Mountain</u> applied equally to the Environmental Board and District Commissions and continue to apply to the District Commissions. <u>See</u> 10 V.S.A. §§ 6082, 6086(d).

Second, in the case, the Board and District Commission had the same scope of authority over the application because the Board was standing in the shoes of a District Commission, conducting a *de novo* hearing on the issues under appeal. <u>Hawk Mountain</u>, 149 Vt. at 181. On the issues under appeal, the Board's jurisdiction on a *de novo* appeal was coterminous with that of the District Commission. <u>In re Taft Corners Assocs.</u>, Inc., 160 Vt. 583, 591 (1993).

The Court has cited and restated the principles of the <u>Hawk Mountain</u> decision in subsequent cases. One such case was <u>In re Agency of Transp.</u>, 157 Vt. 203 (1991), in which the Court affirmed Act 250's ability to impose more stringent conditions than may be required by the Agency of Transportation or by a Superior Court in a transportation-related necessity proceeding. The Court stated: "Act 250 itself explicitly proclaims its primacy over, without preemption of, ancillary permit and approval processes." <u>Agency of Transp.</u>, 157 Vt. at 208 (emphasis added), <u>citing Hawk Mountain</u>, 149 Vt. at 185.

Similarly, relying on <u>Hawk Mountain</u> for the proposition that Act 250 is an "independent regulatory body with supervisory authority in environmental matters," the Court held the Environmental Board may condition a permit for a radio tower on the installation of light shields. <u>In re Stokes Comm. Corp.</u>, 164 Vt. 30, 38 (1995), <u>citing Hawk Mountain</u>, 149 Vt. at 185.

The federal district court for Vermont also has recognized the primacy of Act 250 in Vermont's environmental regulation, stating: "The [Environmental] Board sits as the final decision maker in environmental matters in Vermont." <u>Southview Assocs., Ltd. v. Individual Members of Vermont Envtl. Bd.</u>, 782 F. Supp. 279, 283 (D. Vt. 1991), <u>citing Hawk Mountain</u>, 149 Vt. at 185, <u>aff'd sub nom. Southview Assocs., Ltd. v. Bongartz</u>, 980 F.2d 84 (2d Cir. 1992).

A recent case, however, suggests that the Court's case law may be evolving in a manner that undermines the supervisory authority that the General Assembly granted to the Act 250 program. Specifically, the Court held that the Environmental Division, acting on a *de novo* appeal from an Act 250 permit, was required to defer to ANR's determinations of what constitutes a "floodway" and "floodway fringe" because the Act specifically authorizes ANR to make these determinations, and the matter is a complex one within ANR's expertise. In re Korrow Real Estate, LLC Act 250 Permit Amendment Application, 2018 VT 39, ¶ 22; see 10 V.S.A. § 6001(6) and (7).

The <u>Korrow</u> decision does not discuss <u>Hawk Mountain</u> or whether the District Commission was required to give deference to ANR. In the case, the District Commission had agreed with ANR; it was the Environmental Division, on appeal, that did not. <u>Id.</u>, ¶¶ 14, 15. Nonetheless, the reasoning of the two cases can appear contradictory. If the supervisory authority of Act 250 remains the General Assembly's intent, it may wish to provide clarity through legislation.

II. PRESUMPTIONS IN ACT 250

A key statute cited by the Court in <u>Hawk Mountain</u> is 10 V.S.A. § 6086(d), which provides that the NRB "may by rule" allow permits or approvals of State agencies or municipal governments to be used to satisfy certain Act 250 criteria in lieu of evidence by the applicant. Below, this memo discusses presumptions generally and the statute under which presumptions are used in

Act 250, explains the current Act 250 rules on presumptions, and discusses the concept of "conclusive" presumptions. Key points from this discussion include:

- The statute allows for rules authorizing acceptance of another agency's permit or approval if it "satisfies the appropriate requirements of" the Act 250 criteria. Such acceptance creates a "presumption" of compliance.
- Current Act 250 rules properly implement this authority as a rebuttable presumption of compliance and impose a high bar for rebutting the presumption.
- If a party seeks to rebut an ANR permit, current law requires the District Commissions to give "substantial deference" to ANR's "technical determinations." However, this statute does not state a requirement to defer to ANR interpretations of law or rule.
- Proposals to convert these presumptions to "conclusive" or "irrebuttable" would negate the supervisory authority and independence of the Act 250 program because they would require the District Commission to accept other permits and approvals without question.

A. Presumptions Generally

The term "presumption" typically means "a legal inference or assumption that a fact exists because of the known or proven existence of some other fact or group of facts." Black's Law Dict. (10th ed. 2014). Presumptions can be created by statute or case law.

An example of a presumption comes from the statutes on residential rental agreements. 9 V.S.A. § 4451(1) states that a notice is presumed to have been received within three days of mailing if "the sender proves that the notice was sent by first class or certified U.S. mail." In other words, if the sender testifies or provides proof that he or she mailed the notice first class, the decision-maker assumes that the notice was received within three days.

Like most presumptions, this statute provides that the presumption on receipt of notice is rebuttable, meaning that it can be defeated by introduction of contrary evidence (e.g., testimony that the notice was not in fact received). "Most presumptions are rules of evidence calling for a certain result in a given case unless the adversely affected party overcomes it with other evidence. A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption." Black's Law Dict. (10th ed. 2014).

In the leading Vermont case on the issue, the Vermont Supreme Court adopted a similar view of presumptions, stating that a presumption takes the place of evidence, and when evidence contrary to the presumed fact is submitted, the presumption disappears, leaving a question of fact to be resolved.

A presumption, of itself alone, contributes no evidence and has no probative quality. It takes the place of evidence, temporarily, at least, but if and when enough rebutting evidence is admitted to make a question for the jury on the fact involved, the presumption disappears and goes for naught. In such a case, the presumption does not have to be overcome by evidence; once it is confronted by evidence of the character referred to, it immediately quits the arena. The rule we now adopt applies to all disputable presumptions, including the presumption of innocence.

Tyrrell v. Prudential Ins. Co. of Am., 109 Vt. 6, 23–24 (1937).

The Vermont Rules of Evidence continue to follow the approach set forth in <u>Tyrrell</u>. VRE 301(a) states that:

In civil actions and proceedings, except as otherwise provided by law, a presumption imposes on the party against whom it operates the burden of producing evidence sufficient to support a finding that the presumed fact does not exist, but a presumption does not shift to such party the burden of persuading the trier of fact that the presumed fact does not exist.

In explaining the rule, the Reporter's Notes cite <u>Tyrrell</u> and discuss at length its history and justification.

The Reporter's Notes to VRE 301(a) also describe the rule as embodying the "bursting bubble" theory of presumptions; that is, the presumption creates a "bubble" that "bursts" when contradictory facts are introduced. The Supreme Court has explained that: "By Vermont Rule of Evidence 301(a), we have now adopted the policy that all presumptions in civil cases are *Tyrrell* 'bursting bubble' presumptions 'except as otherwise provided by law." Chittenden v. Waterbury Ctr. Cmty. Church, Inc., 168 Vt. 478, 492 (1998).

B. The Statute Authorizing Presumptions in Act 250

10 V.S.A. § 6086(d) is the statute that authorizes presumptions for other permits in Act 250. It:

- Allows the NRB by rule to allow permits or approvals of State agencies and municipal government to be accepted instead of evidence under certain specified criteria.
- Requires that the permit or approval satisfy the requirements of the criterion for which it is used.
- Requires that the District Commission give substantial deference to the technical determinations of ANR.
- Requires that municipal determinations under a "local Act 250 review" provision of Title 24 be given presumptive weight, pro or con, as to the relevant criteria.

1. Statutory Language

The language of the statute is as follows:

The Natural Resources Board may by rule allow the acceptance of a permit or permits or approval of any State agency with respect to subdivisions (a)(1) through (5) of this section or a permit or permits of a specified municipal government with respect to subdivisions (a)(1) through (7) and (9) and (10) of this section, or a combination of such permits or approvals, in lieu of evidence by the applicant. A District Commission, in accordance with rules adopted by the Board, shall accept determinations issued by a development review board under the

provisions of 24 V.S.A. § 4420, with respect to local Act 250 review of municipal impacts. The acceptance of such approval, positive determinations, permit, or permits shall create a presumption that the application is not detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. In the case of approvals and permits issued by the Agency of Natural Resources, technical determinations of the Agency shall be accorded substantial deference by the Commissions. The acceptance of negative determinations issued by a development review board under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review of municipal impacts shall create a presumption that the application is detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. Any determinations, positive or negative, under the provisions of 24 V.S.A. § 4420 shall create presumptions only to the extent that the impacts under the criteria are limited to the municipality issuing the decision. Such a rule may be revoked or amended pursuant to the procedures set forth in 3 V.S.A., chapter 25, the Vermont Administrative Procedure Act. The rules adopted by the Board shall not approve the acceptance of a permit or approval of such an agency or a permit of a municipal government unless it satisfies the appropriate requirements of subsection (a) of this section.

2. Permits Rebuttable under the Statute; ANR Technical Determinations

Under this statute, presumptions in Act 250 are rebuttable because the statute uses the term "presumption" without specifying any departure from the usual rule of presumptions as expressed by the Supreme Court and set forth in VRE 301(a). The VRE apply in Act 250 proceedings through 10 V.S.A. § 6002 and 3 V.S.A. § 810.

The statute increases the difficulty of rebutting the presumption created by an ANR permit by directing that substantial deference be given to the "technical determinations" of that agency. In the context of an agency's exercise of technical expertise, the Supreme Court has stated that "substantial deference" requires a clear and convincing showing to the contrary: "We accord substantial deference to matters within the agency's area of expertise, and absent a clear and convincing showing to the contrary, a methodology chosen through that expertise is presumed correct, valid and reasonable." Travia's Inc. v. Dept. of Taxes, 2013 VT 62, ¶ 18.

Section 6086(d)'s substantial deference requirement applies to ANR's technical determinations and makes no mention of giving deference to ANR's interpretations of statute or rules. Under the principles of statutory construction, courts presume the legislature "chose its words deliberately." McGee v. Gonyo, 2016 VT 8, ¶ 20.

Moreover, while Act 250 does not define the term "technical determinations," the General Assembly has recently defined the term "technical review" for the purpose of ANR permitting as scientific, engineering, or other professional review of the facts rather than as interpretations of law. 10 V.S.A. § 7702(23) provides that "technical review" means "the application of scientific, engineering, or other professional expertise to the facts to determine whether activity for which a permit is requested meets the standards for issuing the permit under statute and rule."

3. Eligibility of Permits Used for Presumptions

The statute allows the use of a permit or approval as a presumption as long as the permit or approval "satisfies" the appropriate Act 250 criterion, regardless of whether the program issuing that permit or approval is reliably achieving its goals. Thus, for example, water quality permits issued by ANR can continue to receive presumptions of compliance without consideration of whether the permitting program is achieving water quality standards.

Further, in order to obtain presumptions, the statutory scheme requires that the "Act 250 review of municipal impacts" be conducted using court-like, contested case procedures but does not apply the same requirement to State permits and approvals.

In this regard, 10 V.S.A. § 6086(d) refers to 24 V.S.A. § 4420, which authorizes "local Act 250 review of municipal impacts" and requires a development review board conducting such review to use the procedures established in 24 V.S.A. chapter 36. 24 V.S.A. § 4420(b)(1).

24 V.S.A. chapter 36 is entitled "Municipal Administrative Procedure Act." It: (a) directs that all parties be given notice and an opportunity to respond and present evidence on all issues involved, (b) requires testimony under oath or affirmation and the use of the Vermont Rules of Evidence, (c) prohibits *ex parte* communications, and (d) requires that decisions be in writing with findings of fact based exclusively on the record and conclusions of law based on those findings. 24 V.S.A. §§ 1204, 1206, 1207, 1209.

These requirements attempt to ensure that decision-making is based on reliable information and that the process is fair, unbiased, and free from outside influence. They apply to some but not all permits that can create presumptions.

C. The Standard for Permit Rebuttal in Act 250

Under current rule and case law, the standard for rebutting a permit in Act 250 is a high bar, requiring a party to introduce evidence that the project is likely to violate the applicable criterion. The Act 250 rules adopted by the NRB state:

In the case of presumptions provided in Rule 19(E), if the District Commission concludes, following the completion of its own inquiry or the presentation of the challenging party's witnesses and exhibits, that undue water pollution, undue air pollution, inadequate water supply, unreasonable burden on an existing water supply, or violation of the rules of the agency of natural resources relating to significant wetlands is *likely to result*, then the District Commission shall rule that the presumption has been rebutted. Technical non-compliance with the applicable health, water resources and Agency of Natural Resources' rules shall be insufficient to rebut the presumption without a showing that the non-compliance will likely result in, or substantially increase the risk of, undue water pollution, undue air pollution, inadequate water supply, unreasonable burden on an existing water supply, or violation of the rules of the agency of natural resources relating to significant wetlands.

Act 250 Rule 19(F)(2) (emphasis added.)

Under this rule and interpreting case law, a party in effect is required to produce affirmative testimony that the criterion is not met. A party cannot simply introduce or elicit through cross-examination problems or irregularities in the issuance of the permit. For example, the Supreme Court upheld a determination by the Environmental Division that a party had not rebutted a presumption created by an ANR discharge permit because it had not produced affirmative evidence showing that undue water pollution will result. The Court stated:

Here, rather than producing affirmative evidence to rebut the presumption, Timberlake merely elicited evidence that the expected performance impact of ANR's design standards had not been validated by local field tests. Evidence that the design standards have not been proven to yield the expected performance outcomes is not the same thing as evidence that the design standards do not in fact yield those outcomes, and Timberlake's cross-examination is not enough to burst the presumption and shift the burden of proof back to Costco.

<u>In re Costco Stormwater Discharge Permit</u>, 2016 VT 86, ¶ 45.

D. "Conclusive" Presumptions

Proposals exist to turn Act 250's rebuttable presumptions into "conclusive" presumptions. The term "conclusive" or "irrebuttable" presumption embodies contradictory logic because it requires accepting a fact as true even if there is evidence to demonstrate that the fact is not true. A conclusive presumption is not actually a presumption but a rule of law. As one commentator has stated:

The term presumption as used above always denotes a rebuttable presumption, i.e., the party against whom the presumption operates can always introduce proof in contradiction. In the case of what is commonly called a conclusive or irrebuttable presumption, when fact B is proven, fact A must be taken as true, and the adversary is not allowed to dispute this at all. For example, if it is proven that a child is under seven years of age, the courts have stated that it is conclusively presumed that she could not have committed a felony. In so doing, the courts are not stating a presumption at all, but simply expressing the rule of law that someone under seven years old cannot legally be convicted of a felony.

2 McCormick on Evid. § 342 (7th ed.) (emphasis added).

The Vermont Statutes Annotated currently do not contain provisions using the terms "conclusive" or "irrebuttable" presumption.

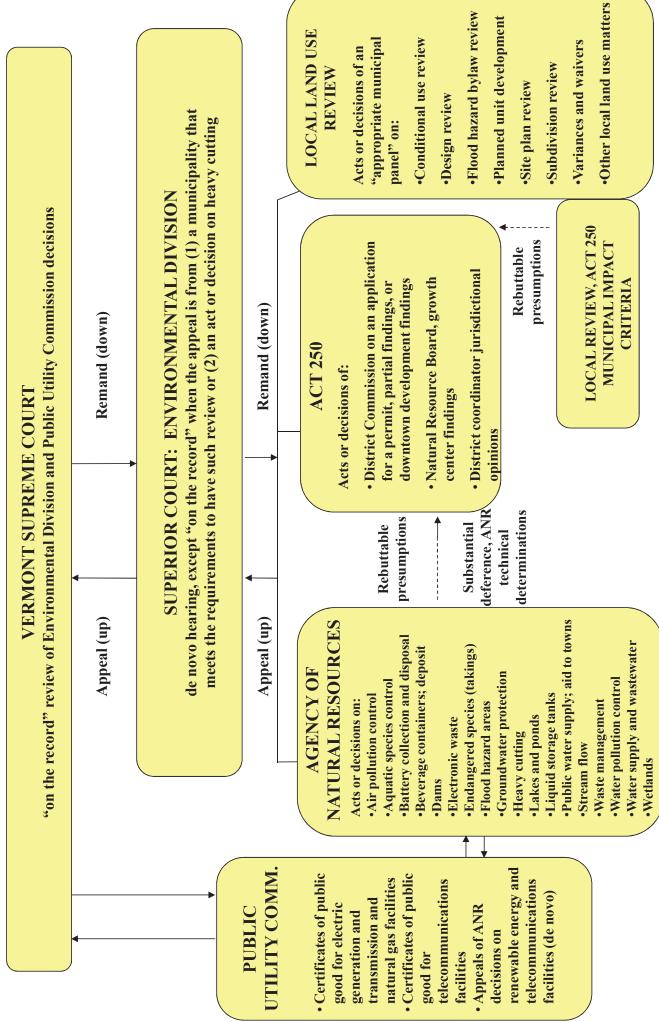
Enactment of conclusive presumptions on Act 250 criteria would remove the supervisory authority and independent review function allocated to the District Commissions. For example, if an ANR discharge permit creates a conclusive presumption that a discharge will not create undue water pollution, then neither the District Commission nor any party to the Act 250

application can dispute that fact, and the District Commission must issue an affirmative finding that the discharge will not create undue water pollution under 10 V.S.A. § 6086(a)(1). The District Commission would be unable as a matter of law to exercise independent judgment.

A conclusive presumption on an Act 250 criterion would maintain the appearance but not the reality of District Commission jurisdiction over the criterion. Substantively, the effect of enacting a conclusive presumption for a criterion would be no different from a provision that removes the jurisdiction of the District Commission to review and make findings on the criterion if another agency has issued a permit.



ENVIRONMENTAL, ENERGY, AND TELECOMMUNICATIONS PERMIT PROCESS AND APPEALS AS OF 10/24/17



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"ACT 250"

This term typically describes one or more of the following:

- (a) the State land use and development act codified at 10 V.S.A. chapter 151;
- (b) the process of obtaining a permit under that act; or
- Resources Board and nine District Environmental Commissions. (c) the program that administers the act, consisting of the Natural

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NATURAL RESOURCES BOARD (NRB)

This five-member board is separate from ANR and has the following functions:

- adopting rules of procedure for the District Commissions and itself;
- adopting substantive rules for the Act 250 program;
- overseeing the administration and enforcement of Act 250;
- initiating permit revocation proceedings before the Environmental Division;
- participating in proceedings before the Environmental Division in all matters relating to Act 250;
- hearing appeals from decisions on whether municipal and regional plans should be given an affirmative determination of energy compliance.

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DISTRICT COMMISSIONS & COORDINATORS

District Commission's primary function is to hear and decide applications for Act 250 permits in its district. A District Commission consists of a chair, two District Commission or District Environmental Commission - A tribunal created under Act 250 that is assigned to one of nine administrative districts. A members, and up to four alternates appointed by the governor.

administrative districts. The primary functions of a District Coordinator are to staff and advise the District Commission, issue jurisdictional opinions, and District Coordinator - An employee of the NRB assigned to one of nine assist with enforcement.

Appeals go to the Environmental Division of Superior Court.

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Anew or afresh. The term refers to the use of independent judgment in appellate "de novo hearing" means that the issues on appeal are heard anew as if no prior its own independent judgment; sometimes those phrases are held to mean that reappraises the record of the prior proceedings and makes a decision based on the appellate court has the discretion (but is not required) to hold a hearing to review, typically without deference to the inferior court or tribunal. The phrase proceedings occurred, and evidence is presented on appeal. In contrast, the phrase "review de novo" or "de novo review" means that the appellate court take more evidence.

REVIEW ON THE RECORD

review in which the appellate court does not hear or apply independent judgment appeal is from an administrative agency, the appellate court typically will defer to In the context of an appeal, this term typically refers to a deferential standard of that agency's interpretation of its enabling statute unless there is a compelling court will apply independent judgment to questions of law. However, when the determinations are upheld unless abuse of discretion is shown. The appellate determinations are upheld unless clear error is shown, and discretionary to the evidence and instead reviews the record below for error. Factual indication of error.

"DEVELOPMENT" SUBJECT TO ACT 250

- Construction of improvements for commercial, industrial, or residential use above 2,500
- Construction of improvements for any commercial or industrial purpose on more than 10 acres of land; or on more than one acre of land if the municipality does not have both permanent zoning and subdivision bylaws. رز ا
- Construction of 10 or more housing units, or of mobile homes or trailer parks with 10 or more units, within a radius of 5 miles. Thresholds are higher for "priority housing projects" in areas designated under Title 24, chapter 76A. က
- than 10 acres or is part of a larger project that will involve more than 10 acres of land. Construction of improvements for a governmental purpose if the project involves more 4.
- Any construction of improvements which will be a substantial change to a grandfathered (existing pre-1970) development that would require a permit if built today. <u>ي</u>

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"DEVELOPMENT" SUBJECT TO ACT 250 (CTD.)

- 6. Construction of a support structure that is primarily for communication or broadcast purposes and extends 50 feet, or more, in height above ground level or 20 feet, or more, above the highest point of an attached existing structure.
- Exploration for fissionable source materials beyond reconnaissance or the extraction or processing of such material.
- 8. Drilling of an oil or gas well.
- Any withdrawal of more than 340,000 gallons of groundwater per day from any well or spring on a single tract of land or at a place of business, independent of the acreage of the tract of land. . ග

"SUBDIVISION" SUBJECT TO ACT 250

- 1. Subdivision of land creating 10 or more lots of any size within a 5-mile radius or within the jurisdictional limits of a District Commission within a continuous period of 5 years.
- subdivision regulations, subdivision of land creating 6 or more lots of Within a town that does not have both permanent zoning and any size within a continuous period of five years.
- divided for the purpose of resale into five or more lots within a radius The sale, by public auction, of any interest in a tract or tracts of land, owned or controlled by a person, which have been partitioned or of five miles and within any period of ten years.

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EXEMPTIONS

- Construction of improvements for farming, logging or forestry purposes below 2,500 feet.
- Construction of improvements for an electric generation or transmission facility.
- Construction of improvements for agricultural fairs that are registered with the Agency of fewer, provided that, if the improvement is a building, the building was constructed prior Agriculture, Food and Markets and that are open to the public for 60 days per year, or to January 1, 2011 and is used solely for the purposes of the agricultural fair.
- Construction of improvements for the exhibition or showing of equines at events that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings. 4.
- Construction of improvements for certain composting operations located on farms, depending on the source, composition, and amount of the inputs to such compost. <u>ي</u>
- Construction of improvements for certain remedial actions ordered by ANR. ပ်
- "Priority housing projects" in areas designated under Title 24, chapter 76A if the municipality has a population of 10,000 or more.

Before granting a permit, the District Commission must find that the development or subdivision:

- (1) Will not result in undue water or air pollution. This criterion deals with water and air pollution generally and such specific matters relating to water pollution as:
- (A) headwaters; (B) waste disposal (including wastewater and stormwater); (C) water <u>conservation; (D) floodways; (E) streams; (F) shorelines; and (G) wetlands.</u>
- (2) Has sufficient water available for the needs of the subdivision or development.
- (3) Will not unreasonably burden any existing water supply.
- (4) Will not cause unreasonable soil erosion or affect the capacity of the land to hold water.
- (5) <u>Traffic.</u> (A) Will not cause unreasonably dangerous or congested conditions with respect to highways or other means of transportation.
- provide safe access and connections to adjacent lands and facilities and to existing and (B) As appropriate, will incorporate transportation demand management strategies and planned pedestrian, bicycle, and transit networks and services.

ACT 250 CRITERIA (CTD.)

- (6) Will not create an unreasonable burden on the educational facilities of the municipality.
- (7) Will not create an unreasonable burden on the municipality in providing governmental
- (8) Will not have an undue adverse effect on aesthetics, scenic beauty, historic sites or natural areas, and 8(A) will not imperil necessary wildlife habitat or endangered species in the immediate area.
- (9) Conforms with the Capability and Development Plan, including the following:
- development; (J) <u>public utility services;</u> (K) development affecting <u>public investments</u>; and agricultural soils; (C) productive forest soils; (D) earth resources; (E) extraction of earth resources; (F) energy conservation; (G) private utility services; (H) costs of scattered (A) the impact the project will have on the <u>growth of the town or region</u>: (B) <u>primary</u> (L) settlement patterns.
- (10) Is in conformance with the local or regional plan or capital facilities program.

REBUTTABLE PRESUMPTION

question will not create undue water pollution. A rebuttable presumption which a finding of a basic fact gives rise to the existence of a presumed A presumption is a rule of law created by statute or common law under is one that can be overturned by the submission of sufficient evidence presumption that the stormwater discharge from the development in fact. For example, in an Act 250 proceeding, a finding that ANR has issued the applicant a stormwater discharge permit gives rise to a that is contrary to the presumed fact.

SUBSTANTIAL DEFERENCE

A legal standard under which the Vermont Supreme Court applies great presumes such exercise is correct and valid, with the review limited to whether the agency acted arbitrarily, unreasonably, or contrary to law. deference to an agency in the exercise of its technical expertise and

Act 250 proceeding is required by statute to give substantial deference to a technical determination of ANR. In an appeal of a decision of a District In addition to its use by the Supreme Court, a District Commission in an Commission, the Environmental Division is required to do the same.

telecommunications facility siting review by the Public Utility Commission. The term also is found in statutes pertaining to energy and

DATES IN ACT 250 HISTORY

- central administrative and appeals body is the Environmental Board, with the District JUNE 1, 1970: 1970 Acts and Resolves No. 250 (Act 250) becomes effective. The Commissions conducting the original proceedings on applications.
- 1973: The General Assembly approves the Capability and Development Plan and adopts significant amendments to the Act, including the subcriteria of 1 (undue water pollution) and 9 (capability and development plan).
- 1976: The General Assembly rejects the Land Use Plan.
- 1988: The Vermont Supreme Court issues In re Hawk Mountain Corp., 149 Vt. 179,
- environmental impact of proposed projects, and in doing such the Board is not limited to the considerations listed in Title 10." - "The Environmental Board is given authority to conduct an independent review of the
- "[T]he legislative scheme indicates that the legislature intended to confer upon the Board powers of a supervisory body in environmental matters."

DATES IN ACT 250 HISTORY (CTD)

- revises local and regional land use planning and requires planning by state agencies 1988: The General Assembly passes 1988 Acts and Resolves No. 200, an act "to encourage local, regional and state agency planning." This act comprehensively that affect land use.
- be effective in Act 250 proceedings, local and regional plans must enunciate specific 1994: The Vermont Supreme Court issues In re Molgano, 163 Vt. 25, ruling that, to policies, and broad, nonregulatory language is not an appropriate basis for denial.
- to a new Natural Resources Board. Act 250 appeals go to the Environmental Division development. The Environmental Board is abolished. Its administrative functions go 2004: The General Assembly passes 2004 Acts and Resolves No. 115, an act relating to consolidated environmental appeals and revisions of land use of the Superior Court.

VERMONT PERMIT PROCESS GLOSSARY

Aaron Adler, Legislative Counsel Dec. 27, 2016

Act 250 – This term typically describes one or more of the following: (a) the state land use and development act codified at 10 V.S.A. chapter 151; (b) the process of obtaining a permit under that act; or (c) the program that administers the act, consisting of the *Natural Resources Board (NRB)* and nine *District Environmental Commissions*.

Administrative officer – A local official nominated by the local *planning commission* and appointed by the legislative body for the municipality. This officer issues development permits under the local land use bylaws. He or she is required to administer those bylaws literally and only has authority to permit land development that conforms to the bylaws. Among other duties, an administrative officer provides interested persons with the forms required to obtain a local land use approval, refers applications to the *appropriate municipal panel* having jurisdiction, and enforces violations of the local land use bylaws.

Administrative order – An order issued under Vermont's uniform environmental law enforcement act by ANR or the NRB with respect to a violation of an environmental law or permit that is enforceable through that act (e.g., state water quality laws, Act 250).

Agency of Natural Resources (ANR) – Vermont state environmental agency consisting of the Departments of Environmental Conservation, Fish and Wildlife, and Forest, Parks and Recreation; the Board of Forests, Parks And Recreation; the State Natural Resources Conservation Council; and the Division of Geology and Mineral Resources. The federal Environmental Protection Agency has delegated to ANR the administration and enforcement in Vermont of all or most of the programs under the following statutes: the federal Clean Air and Water, Resource Conservation and Recovery (solid and hazardous waste regulation), and Safe Drinking Water Acts. ANR is headed by a secretary. ANR does not include the *Act 250* program.

Appeal – Resort to a superior (i.e., appellate) court or administrative agency to review the decision of an inferior (i.e., trial) court or administrative agency. There are often two stages of appeal in many systems, e.g., appeal from an agency to an intermediate appellate court and then to the system's highest court. There may also be more than one level of appeal within an agency.

Appropriate municipal panel – A defined term in the municipal land use statutes that includes a municipal *planning commission* performing development review, a *board of adjustment*, a *development review board*, or a municipal legislative body performing development review.

Assurance of discontinuance – An alternative to administrative or judicial proceedings for enforcement of Vermont environmental laws, under which *ANR* or the *NRB* signs a settlement-like document with a respondent that contains a statement of the facts that give rise to an alleged violation and an agreement by the respondent to alleviate or prevent the environmental problems or restore the environment to its prior condition. The document may also contain schedules under which the environmental problems are addressed, monetary penalties, or contributions to other projects related to the violation. There are statutory requirements for public notice and comment on draft assurances of discontinuance. To become final, the document must be filed with the *Environmental Division* and approved by an environmental judge.

Board of adjustment – A municipal body that, under a town's land use bylaws, hears and decides requests for conditional use approvals, variances, and waivers, and appeals from decisions of the town's administrative officer. A board of adjustment does not propose, amend, or adopt town plans or bylaws. Many towns have replaced their boards of adjustment with *development review boards* (see below).

Conditional use – A land use that is not permitted as of right but only after review and approval to determine whether the proposed use conforms to standards stated in the applicable statute, regulation, or bylaw. This term is typically used in local zoning; it also may appear in other contexts.

Contested case – A proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing. A contested case is a court-like proceeding in which an agency hears sworn testimony from witnesses, applies the rules of evidence, and issues a written decision containing findings of fact and conclusions of law.

Deference – A plain meaning definition is the submission or yielding to the opinion or judgment of another. In a legal context, the term typically refers to the extent to which an appellate court will yield to the factual findings or legal interpretations of a lower court or to which a court will yield to the factual findings, expertise, or legal interpretations of an administrative agency.

<u>Deference to agency legal interpretations</u> – On appeal, the Vermont Supreme Court will defer to the interpretation of a statute by the administrative body responsible for its execution unless there is a compelling indication of error. The Court has described this test as less deferential than the *substantial deference* test described below, stating that it is subject to construing a statute consistently with its stated purposes.

"Chevron" deference – A standard applied under federal law to an agency interpretation of its enabling statute. It is based on the case of Chevron, Inc. v. NRDC, 467 U.S. 837 (1984). It consists of a two-step inquiry. In step one, a reviewing court determines if Congress has expressed an unambiguous intent on the precise question at issue. If it has, then the court must give effect to that intent, and the inquiry is over. In step two, if the relevant statute is silent or ambiguous, then the court determines whether the agency's interpretation is a permissible construction of the statute, deferring to the agency's resolution of conflicting policy issues. This standard is not consistently used in Vermont but has on occasion been raised in discussion of the state's permit process.

<u>Substantial deference</u> – A standard applied under Vermont law under which the Supreme Court applies great deference to an agency in the exercise of its technical expertise and presumes such exercise is correct and valid, with the review limited to whether the agency acted arbitrarily, unreasonably, or contrary to law. In addition to its use by the Supreme Court, a *District Commission* in an *Act 250* proceeding is required by statute to give substantial deference to a technical determination of *ANR*. In an appeal of a decision of a District Commission, the *Environmental Division* is required to do the same. The term also is found in statutes pertaining to energy and telecommunications facility siting review by the Public Utility Commission.

De minimis – Too small or trivial to be worth the law's attention.

De novo – Anew or afresh. The term refers to the use of independent judgment in appellate review, typically without deference to the inferior court or tribunal. The phrase "de novo hearing" means that the issues on appeal are heard anew as if no prior proceedings occurred, and evidence is presented on appeal. In contrast, the phrase "review de novo" or "de novo review" means that the appellate court reappraises the record of the prior proceedings and makes a decision based on its own independent judgment; sometimes those phrases are held to mean that the appellate court has the discretion (but is not required) to hold a hearing to take more evidence. See also *review on the record* below.

Department of Environmental Conservation (DEC) – One of three departments within *ANR*, DEC contains the majority of *ANR*'s regulatory programs. For example, DEC administers water resources permitting, air pollution control, solid and hazardous waste disposal regulation, regulation of public drinking water systems, and regulation of on-site wastewater and potable water supply systems. It also includes other functions such as enforcement, rivers management, pollution prevention, technical assistance, and design construction supervision services for *ANR* and all of its components. DEC is run by a commissioner who reports to the *ANR* secretary.

Development review board (DRB) – A municipal body that, under a town's land use bylaws, hears and decides all matters that would otherwise be assigned to a *board of adjustment* and exercises all development review functions that would otherwise be assigned to a *planning commission*. Adopting this type of board allows a town to consolidate all development review functions into one board, with the *planning commission* retaining its planning and bylaw development functions. A DRB does not propose, amend, or promulgate town plans or bylaws.

Discharge permit – Under state law, a permit authorizing and regulating the placement, deposit, or emission of any wastes, directly or indirectly, into an injection well, waters of the state, or publically owned treatment works. A direct discharge is typically understood to mean a discharge that is delivered by a conveyance (including over land) right to a surface water. An indirect discharge means any discharge to groundwater, whether subsurface, land-based, or otherwise. See also *general permit* and *NPDES permit*.

Dispositive – That which results in deciding a matter. Typically applied to motions, i.e., granting a dispositive motion means that a case is decided for one party or another.

District Commission or District Environmental Commission – A tribunal created under *Act 250* that is assigned to one of nine administrative districts. A District Commission's primary function is to hear and decide applications for *Act 250* permits in its district. A District Commission consists of a chair, two members, and up to four alternates appointed by the governor.

District Coordinator – An employee of the *NRB* assigned to one of nine administrative districts. The primary functions of a District Coordinator are to staff and advise the *District Commission*, issue *jurisdictional opinions*, and assist with enforcement.

Environmental Division, Superior Court – A division of Vermont's superior court with statewide jurisdiction the primary functions of which are to hear and decide:

- a. a request for hearing on an *administrative order* issued by *ANR* or the *NRB* under Vermont's uniform environmental law enforcement act;
- b. a request to revoke an *Act 250* or a municipal land use permit for an act or omission constituting grounds for revocation (e.g., noncompliance with the permit);
- c. a request to enforce a violation of a municipal land use bylaw or permit;
- d. an appeal of an act or decision of a District Commission (Act 250);
- e. an appeal of an Act 250 jurisdictional opinion by a District Coordinator;
- f. an appeal of an act or decision of ANR, including permits or denials; and
- g. an appeal of a decision of an appropriate municipal panel.

The division has two judges. By statute, the division conducts a *de novo* hearing on the appeals that come to it, with limited exceptions that are conducted *on the record*.

General permit – A permit that applies to a class or category of discharges, emissions, disposal, facilities, or other activities within a common geographic area. General permits are typically used for activities that present low risk to the environment and public health and would result in a high volume of applications if processed on an individual basis. Under state law, the activities to which a general permit applies must share the same or substantially similar qualities, and those qualities must be such that the rules applicable to the activities can be met and human health and the environment protected by the imposition of the same or substantially similar permit conditions on the class or category. Typically, a person proposing to engage in activity covered by a general permit must file a notice with required information seeking authority under the general permit from the administering agency, which then determines whether to grant authority to the activity under the general permit. Under state law, *ANR* has the right to require an individual permit for activity for which authority is sought under a general permit.

Growth center – A defined term in the downtown development statutes. A growth center is an area of land that is located in or adjoining a designated downtown, village center, or new town center. The growth center must have clearly defined boundaries that can accommodate a majority of anticipated growth over a 20-year period and must support Vermont's traditional land use pattern of compact centers separated by rural lands. In order to receive various benefits provided by statute, a municipality may request that the State Downtown Development Board designate an area as a growth center, which the Board must do if certain requirements are met. These requirements address such issues as incorporating a mix of uses, allowing dense development, and minimizing natural resource impacts outside of the growth center.

Interlocutory appeal – An appeal prior to final judgment of an interim, procedural, or provisional act or decision. Typically an interlocutory appeal is not as of right and a party seeking such an appeal must demonstrate that certain criteria are met. However, a preliminary, procedural, or intermediate agency ruling is immediately appealable if review of the final decision would not provide an adequate remedy, and the filing of an appeal itself does not stay enforcement of the agency's decision.

Jurisdictional opinion – A decision by a *District Coordinator* on the applicability of *Act* 250 to the division of land or to activity that might or might not require a permit under that act, or on the completeness of an application for an *Act* 250 permit.

Local Act 250 review – Review by a *DRB* of a project that requires an *Act 250* permit on whether the project meets the *Act 250* criteria relating to impact on the municipality's

ability to provide educational, municipal, or governmental services and to conformance with the local plan. This type of review is only authorized if the municipality meets certain statutory requirements, including adopting a *DRB* and the municipal administrative procedure act (24 V.S.A. chapter 36). A *DRB*'s determination under this process creates a *rebuttable presumption* before the *District Commission* in the actual *Act* 250 proceeding for the project.

National Pollutant Discharge Elimination System (NPDES) permit – This term refers to permits issued under the federal Clean Water Act, which set up the National Pollutant Discharge Elimination System. Under that act, without a NPDES permit, no person may discharge any pollutant from any point source into the waters of the United States.

Natural Resources Board (NRB) – This five-member board is separate from *ANR* and has the following functions:

- adopting rules of procedure for the *District Commissions* and itself;
- adopting substantive rules for the *Act 250* program;
- overseeing the administration and enforcement of Act 250;
- initiating permit revocation proceedings before the *Environmental Division*;
- participating in proceedings before the *Environmental Division* in all matters relating to *Act 250*;
- hearing appeals from decisions on whether municipal and regional plans should be given an affirmative determination of energy compliance.

Notice of alleged violation (NOAV) – A document sent by a land use or environmental enforcement authority to a respondent asserting that the respondent is in nonconformance with an applicable bylaw, statute, regulation, or permit.

On the record – see *review on the record*, below.

Partial findings – Findings issued by a *District Commission* on one criterion or a group of *Act 250* criteria but not all criteria. These findings remain in effect for a "reasonable and proper" period as determined by the *District Commission*. Prior to issuing a permit, the *District Commission* must proceed to determine the application's compliance with the remaining criteria. In the case of a designated *growth center*, the *NRB's* land use panel may make partial findings that are effective for a period of five years and are applicable to any subsequent *Act 250* applications for development within the *growth center*.

Planning commission (municipal) – A municipal body that among other things prepares the local plan, land use bylaws, and amendments for consideration by the legislative body and administers the local bylaws, except to the extent those administrative functions are performed by a *development review board*. In towns that do not have development

review boards, the *planning commission* typically performs site plan reviews. Planning commissioners are usually appointed, although a town may choose to elect them.

Planning commission (regional) – Planning commissions created by a group of contiguous municipalities to, among other tasks, promote mutual cooperation, provide advice and assistance to member municipalities, prepare the regional plan and amendments, prepare planning implementation guidelines for member municipalities, review the compatibility of local plans within the region, and appear before *District Commissions* in *Act 250* proceedings.

Quasi-judicial – A term applied to the action or decision of an administrative agency that is required to investigate or determine the existence of facts, hold hearings, and draw legal conclusions from those facts, or to exercise discretion concerning them, in a manner similar to courts. Typically, when engaged in a quasi-judicial function, the decision-maker may not have communications with the parties without notice to all parties and an opportunity to be heard, and must base its action or decision solely on evidence in a record developed through a court-like hearing process. An administrative agency that has quasi-judicial functions may also have other functions that are not quasi-judicial, such as promulgating substantive rules.

Rebuttable presumption – A presumption is a rule of law created by statute or common law under which a finding of a basic fact gives rise to the existence of a presumed fact. For example, in an *Act 250* proceeding, a finding that *ANR* has issued the applicant a stormwater *discharge permit* gives rise to a presumption that the stormwater discharge from the development in question will not create undue water pollution. A rebuttable presumption is one that can be overturned by the submission of sufficient evidence that is contrary to the presumed fact.

Remand – To send back. In the context of an appeal, this term refers to the sending back of a case by an appellate court or board to the same court or board from which the case came, for the purpose of having some further action taken on it there.

Respondent – A person who has committed or is alleged to have committed a violation.

Review on the record – In the context of an appeal, this term typically refers to a deferential standard of review in which the appellate court does not hear or apply independent judgment to the evidence and instead reviews the record below for error. Factual determinations are upheld unless clear error is shown, and discretionary determinations are upheld unless abuse of discretion is shown. The appellate court will apply independent judgment to questions of law. However, when the appeal is from an administrative agency, the appellate court typically will defer to that agency's

interpretation of its enabling statute unless there is a compelling indication of error. See also *deference* and *de novo* above.

Revocation – In the permitting context, this term means a type of enforcement action in which a previously issued permit or other license or certificate is taken away after notice and opportunity for hearing, typically on grounds of violation of permit conditions or making material misrepresentations in obtaining the original approval.

Site plan approval – A type of local land use review in which a site plan is reviewed concerning adequacy of parking, traffic access, and circulation for pedestrians and vehicles; landscaping and screening; protection of utilization of renewable energy resources; exterior lighting; size, location, and design of signs; and other matters specified in a local bylaw. The review is by a *DRB* in a town which has chosen to have such an entity; otherwise, it is by the local *planning commission*.

Stay – A "stopping"; the act of putting an order or decree on hold or of suspending a proceeding or some part of it, by order of a court.

Subdivision bylaw – A type of local land use bylaw that regulates the division of a lot or parcel of land into two or more lots or other division of land for sale, development, or lease. Subdivision bylaws must include procedures and requirements for design, submission, and review of plats, drawings, and plans; standards for design and layout of streets, sidewalks, utilities, landscaping, and other infrastructure; standards for the design and configuration of parcel boundaries and location of associated improvements; and standards for the protection of natural resources, cultural features, and open space. The bylaws may contain other requirements. Review under a subdivision bylaw is performed by a *DRB* in a town which has chosen to have such an entity; otherwise, it is typically performed by the local *planning commission*.

Substantial deference – See *deference* above.

Technical determination – This term is used in *Act 250* to describe decisions made by *ANR* personnel to which *District Commissions* are to give *substantial deference*. The term is not defined. One potential definition would be the application of a scientific or engineering discipline to a set of physical facts.

Variance – An authorization to depart from the literal requirements of a regulation. The term is used most often in connection with local land use, referring to a procedure under which a *Board of Adjustment* or a *DRB* grants a variance from the requirements of a zoning bylaw. This procedure is governed by a set of statutory criteria which must all be satisfied for a variance to be granted. Other environmental regulations sometimes provide for variances. For example, *ANR*'s regulations for on-site wastewater and

potable water supply systems authorize a variance from the technical requirements of the rule for replacement systems under circumstances set out in the regulations.

Waiver – A local bylaw may allow waivers to reduce dimensional requirements (e.g., setback, height) if it sets out a process for doing so and specific standards that conform with the local plan and the municipal and regional planning goals contained in statute.

Water quality standards – Detailed water quality criteria issued in rules by the Secretary of *ANR*, using appropriate numerical values, biological parameters, and narrative descriptions. These standards establish limits for Vermont waters applicable, for example, to fecal coliform, nitrates, phosphorus, and toxic substances. The standards are set based on a classification of the state's waters and are adopted to achieve the purposes of those classifications (e.g., suitable for drinking, high quality waters with significant ecological value, suitable for recreation, etc.).

Zoning bylaw – A local land use bylaw that governs the use and development of land, including placement, spacing, and size of structures and other factors. Zoning bylaws typically divide a geographic area into districts and specify the uses that are permitted as of right or conditionally in those districts. See *conditional use* above. They may also contain provisions that apply to all districts within the area.

COMMISSION ON ACT 250: THE NEXT 50 YEARS COMPARISON CHART OF OTHER STATES WITH STATEWIDE OR REGIONAL LAND USE CONTROLS

Aaron Adler, Legislative Counsel Aug. 31, 2018

STATE	AREA COVERED	REGULATED USES	USE OF PLAN	USE OF MAP	USE OF APPLICATION REVIEW	REGULATORY BODY	APPEALS	NOTES
CA	Coastal zone (except SF Bay)	Development within zone, defined broadly to include not only typical land development activities such as construction but also changes in intensity of use of land or water. Exemptions include repair and replacement in kind.	Yes, an overall 5-year strategic plan. County and municipal govts. also prepare a plan as part of their Local Coastal Programs (LCP) under the Coastal Act.	Yes, to establish coastal zone boundary. Also, most LCPs divide their coastal areas into geographic segments.	Yes.	California Coastal Commission (CCC, with 12 voting and 3 nonvoting members). Application review by CCC is quasi-judicial. County and municipal govts. with CCC-approved LCPs. These authorities issue coastal development permit instead of the CCC.	Appeal is to court from the CCC, and from local authorities with approved LCPs (for some development). In some cases, appeal from local authorities is to CCC, with a de novo hearing.	Permitting authority is now delegated to localities in most of the coastal zone. CCC retains review over development in tideland or public trust land.
CA	San Francisco Bay	Work in the Bay, within 100 feet of the shoreline, or within certain nearby salt ponds, waterways, and wetlands, including filling, dredging, and other work.	Yes. Overall plan and special area plans.	Yes. Maps apply policies in plan.	Yes. Application types include major, administrative, and regionwide permitting.	Bay Conservation and Development Commission (27 members). Application review by BCDC is quasi-judicial.	Review of permit denial or permit conditions available in court.	Regionwide permitting allows approval of some activities without Commission review.
CA/NV	Lake Tahoe region	Comprehensive jurisdiction based on interstate compact approved by Congress. Exemptions determined by agency (examples include fences and repairs and remodeling).	Yes. Agency adopts environmental threshold carrying capacities and adopts plan and programs to achieve and maintain them.	Yes. Maps depict approved land uses for areas within region.	Yes. Agency has developed an "express check" process for some activities (examples include driveway paving and residential additions).	Tahoe Regional Planning Agency under governing board (15 members). Agency has authority to adopt ordinances. Through agreements, some permit reviews delegated to local authorities. For some activities, TRPA staff can issue a permit.	The compact states that legal actions on matters such as permit decisions of the agency may be filed "in the appropriate courts of California and Nevada and of the United States."	To achieve its objectives, the agency conducts both a regulatory program and an environmental improvement program (e.g., restoration projects).

COMMISSION ON THE ACT 250: THE NEXT 50 YEARS COMPARISON CHART OF OTHER STATES WITH STATEWIDE OR REGIONAL LAND USE CONTROLS

Aaron Adler, Legislative Counsel Aug. 31, 2018

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STATE	AREA COVERED	REGULATED USES	USE OF PLAN	USE OF MAP	USE OF APPLICATION REVIEW	REGULATORY BODY	APPEALS	NOTES
HI	Entire state	Comprehensive. All land in state is classified into one of 4 districts: urban, rural, agricultural, and conservation. Statute designates the general types of uses permitted in the districts.	Yes. Overall state plan adopted by legislature. State plans specific to various functions (e.g., agriculture) adopted by state agencies. Counties also adopt plans that must be consistent with state plan.	Yes. May be changed through boundary amendment proceedings.	Yes. Uses may require review ("use review") or may be allowed without further action ("permitted uses").	State Land Use Commission (LUC; 9 members) establishes the district boundaries and acts on petitions for boundary changes and requests for special use permits in the agricultural and rural districts. Petition and permit review before LUC is quasi-judicial. State Office of Planning reviews districts every 5 years and recommends adjustments to LUC. Counties administer and enforce land uses in all districts except conservation, in which administration is by the State Board and Department of Land and Natural Resources.	Appeal from case decisions of LUC and county land use authorities is to state Circuit Court.	(1) Hawaiian civilization developed its own system of land use control and management prior to contact with Europeans and this system influences the current regulatory structure. (2) In HI, the Circuit Court is the equivalent of the Superior Court in VT.
ME	Unorganized and deorganized townships	Comprehensive zoning-style regulation, with exemptions such as utility facilities and normal maintenance and repair.	Yes.	Yes, zoning maps adopted for each township	Yes. Multiple forms for different types of activities (e.g., residential, boat launch, bridge construction).	Maine Land Use Planning Commission (9 members). Commission has authority to delegate decision-making to staff, subject to requests for Commission review of the staff action.	Right of review in Superior Court.	(1) Statute requires at least 3 districts: protection, management, and development.(2) Much of ME is unincorporated

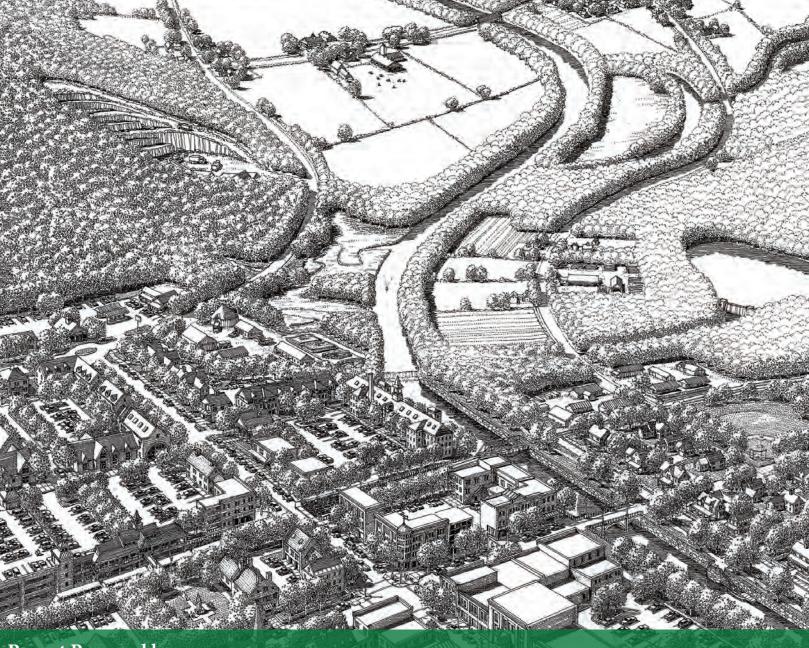
COMMISSION ON THE ACT 250: THE NEXT 50 YEARS COMPARISON CHART OF OTHER STATES WITH STATEWIDE OR REGIONAL LAND USE CONTROLS

Aaron Adler, Legislative Counsel Aug. 31, 2018

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STATE	AREA COVERED	REGULATED USES	USE OF PLAN	USE OF MAP	USE OF APPLICATION REVIEW	REGULATORY BODY	APPEALS	NOTES
ME	Shoreland areas as defined in statute	Uses within the shoreland area, with exceptions for repair, maintenance, and replacement of existing road culverts below certain sizes.	Yes, when adopted by municipality.	Yes.	Yes.	ME requires each municipality to have a shoreland zoning ordinance. The State Board of Environmental Protection adopts minimum guidelines for implementation and may adopt an ordinance for a town that fails to do so	Appeal to Superior Court; appeal to Supreme Judicial Court available if large project.	
NY	Adirondack Park	Comprehensive jurisdiction. All private lands in Park classified into 6 types of areas.	Yes.	Yes.	Yes. Need for application and level of review varies based on area and type of project.	Adirondack Park Agency with governing board (11 members). Many approvals are by staff. Agency has delegated permitting authority to some localities after approval of their programs.	Review of agency decisions available by application to Supreme Court.	In NY, the Supreme Court is the equivalent of the Superior Court in VT.
OR	Entire state	Comprehensive zoning-style regulation. State law requires counties and municipalities to plan and have implementing regulations.	Yes. State commission established 19 planning goals County and municipal plans must be consistent with those goals.	Yes. The plans must each have maps. Zoning maps are subordinate to plan maps.	Yes. Different kinds of applications and reviews, similar to usual local land use (e.g., conditional uses, subdivisions).	Multiple actors: State Land Conservation and Development Commission adopts planning goals and reviews county and municipal plans for consistency. Municipal and county authorities review applications and issue permitting decisions.	Municipal and county land use decisions are appealable to the Land Use Board of Appeals (quasi-judicial; 3 members). Decisions of that board may be appealed to the Oregon Court of Appeals.	Planning goal 14 requires that municipalities and counties adopt urban growth boundaries.

ACT 47 COMMISSION ON ACT 250 The Next 50 Years



Report Prepared by: The Executive Branch Working Group October 20, 2017





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INTRODUCTION

Pursuant to Act 47: Sec.1 (c) an Executive Branch Working Group has developed a set of recommendations for consideration by the Act 47 Commission. The Working Group recognizes the value that Act 250 has offered to the State of Vermont over its 50-year history.

As Governor Deane Davis said in 1970:

Ask the average Vermonter what kind of Vermont he wants in 1980 or 1990. I believe he will tell you that while he wants good economic opportunities for his children, good schools, good highways and an opportunity to live his own life he will then tell you that the things he cherishes more than anything else are those sights which we see almost daily here in our Green Mountains—the deer playing in the field, the beautiful countryside we see as we ride the interstate between Montpelier and Burlington, the beautiful ride down the West River from Jamaica to Brattleboro, the view of the Green Mountain skyline from Morrisville or Johnson or the view of Lake Memphremagog when the sun comes up in the morning and Lake Champlain when it sets again in the evening.

These are the things that bring Vermonters back home after they have seen other parts of the world.... The question is, my friends, can we preserve it? Do we have the will to go about preserving it? Can we have economic growth without destroying the other part of our dream—the pastoral scene?

To that end, the various agencies and departments within the Executive Branch that have the greatest nexus with Act 250 have met on a regular basis over the summer of 2017 to explore Act 250's relationship with local, state, and federal permits and identify opportunities to improve the development review process. The working group included the following member agencies and departments:¹

The Natural Resources Board (NRB) administers Act 250 through a staff of 10 District Coordinators. The District Coordinators assist approximately 60 local volunteers, who serve on the 9 District Environmental Commissions to issue permits. The NRB promulgates procedural and interpretive Rules to administer Act 250, and advocates in permit appeals in the Environmental Division of the Superior Court.

The Agency of Natural Resources (ANR) is party to any Act 250 proceeding that involves impacts to air, water, wildlife habitat, or other impacts to the natural environment, which is most applications. ANR provides comments, recommendations, and proposed permit conditions under more than half of Act 250's criteria and sub-criteria and is the most active state agency participant in the Act 250 process. ANR consists of three departments – Environmental Conservation, Fish and Wildlife, and Forest, Parks and Recreation. Technical staff and scientists from all three

^{1.} A more complete description of the role each agency and department plays in Act 250 is included as Exhibit A to this report.

departments review Act 250 applications and work with ANR's Planning Office to compile agency comments and provide District Commissions evidence as to whether a project is in conformance with the criteria. Beyond ANR's role as a party, Act 250 District Commissions may also request technical assistance from Agency staff on specific natural resource issues, per NRB Rule 20.2 Prior to the formal submittal of an Act 250 application, ANR staff often provide technical assistance to potential Act 250 applicants by attending site visits, reviewing draft plans, and providing guidance on how projects may be configured to comply with Act 250's environmental criteria. ANR is also at times an applicant to Act 250 for development on state land, including as co-applicant for ski area development located on land leased by the state.

The Agency of Commerce and Community Development (ACCD) is focused on creating vibrant economies and communities throughout Vermont. ACCD's Department of Economic Development often works with businesses that need Act 250 permits. The Community Planning and Revitalization Division administers the state's designation programs for downtowns, village centers, and other areas that are eligible for certain Act 250 exemptions because they have robust local land use planning. They also administer the annual grant and work program for Vermont's 11 Regional Planning Commissions, which help communities plan for economic development, housing needs, infrastructure, and environmental health. The Division for Historic Preservation participates as a party to Act 250 proceedings that may effects historic sites, providing comments, recommendations, and proposing permit conditions to mitigate adverse impacts when necessary. The Division for Historic Preservation does not have a separate permitting process, making Act 250 important to historic preservation efforts.

The Agency of Agriculture Food and Markets (AAFM) facilitates, and encourages the growth and viability of agriculture and agricultural businesses in support of the rural economy, in addition to keeping farmland accessible by being a party to many Act 250 proceedings. Through its participation it provides analyses, comments, and proposes permit conditions for the protection of "primary agricultural soils" as required by Criterion 9(B). The District Commission considers the input from AAFM and may incorporate conditions into the land use permit. Act 250 is the only permitting program in state government that protects farmland from development.

The Agency of Transportation (VTrans or AOT) plans, develops, and manages Vermont's statewide transportation network, including highways, bridges, railroads, airports, park-and-rides, bicycle and pedestrian facilities, and public transportation facilities and services. VTrans also administers significant state and federal grant programs for municipal transportation facilities that may be subject to Act 250 review. In proceedings in which VTrans is not an applicant, VTrans offers District Commissions expert testimony regarding Criterion 5, transportation. VTrans also alerts District Commissions as to the impacts proposed projects may have on Vermont's transportation system and offers suggestions regarding mitigation of those impacts. Further, VTrans works with the District Commissions on issues relating to transportation-impact fees and works with the District Commissions to ensure that Act 250 permits are consistent with right-of-way access permits that VTrans may issue for a project. VTrans is an applicant in Act 250 proceedings relating to its own transportation projects and may also act as a co-applicant for certain municipal transportation projects. When VTrans is an Act 250 applicant or co-applicant, VTrans offers evidence and argument on the full range of Act 250 criteria that the project may implicate.

^{2. 10} V.S.A. §6024

2 ADMINISTRATIVE ACTIONS

Jobs are scarce and the population is declining across all rural America, including in Vermont. These demographic challenges are the reason the Scott administration has several initiatives underway that aim to grow the economy and make Vermont more affordable. Included in that effort is a multi-faceted approach to improving the permitting system to make it easier to start or expand a business. Permit process improvement is a complex process, requiring patience, innovation and ongoing commitment from a broad range of partners. The administration is not waiting and has begun the process to break this challenge into manageable pieces.

Through the Governor's Program to Improve Vermont Outcomes Together (PIVOT), systems of continuous improvement are increasing efficiency, effectiveness, and accountability throughout state government. Specific examples of interest to the Act 47 Commission include the development of a unified environmental permitting entry point for applicants of ANR permits, public transparency for clean water pollution control projects, and coordinated State response to applicants on primary agriculture soils and other environmental permits.

One question posed by Act 47 is whether the Act 250 criteria adequately address climate change. Governor Scott's Executive Order 12-17 (7/20/17) created the Vermont Climate Action Commission (VCAC). The VCAC may be able to advise the Act 47 Commission on how Act 250 can contribute to addressing these issues.

Governor Scott's Executive Order 11-17 (6/20/17) established the Vermont Outdoor Recreation Economic Collaborative (VOREC), which encourages the construction of first-class biking and hiking trails statewide through public-private partnerships. VOREC may offer proposals for how those facilities are treated in the Act 250 process.

The NRB has focused significant energy on process improvement, starting with a week-long "Lean" event held in December of 2015. During this event, the application process was diagrammed and some problematic areas were identified, along with opportunities for improvement. The NRB is implementing the strategic plan developed at that time to continue the improvements. New management strategies, including sharing District Coordinator resources across districts, have improved consistency, predictability, and efficiency for permitting statewide.

The NRB is working on enhancing outreach and education. For example, the NRB has recently re-designed the Board's website, nrb.vermont.gov, and published a new Act 250 information brochure.³

An ongoing priority for the NRB is to configure its data to the needs of applicants and administrative accountability. With support from Governor Scott and top IT leadership, the NRB is moving toward an online application process with automated permit tracking capacity by December 2018.

^{3.} http://nrb.vermont.gov/sites/nrb/files/documents/Act%20250%20Brochure-FINAL.pdf

Other notable steps include a recent listening tour by the ANR – with NRB Chair Diane Snelling, ANR Secretary Julie Moore, and ANR Deputy Secretary Peter Walke. Leadership heard the need for greater interagency coordination, consistency of decisions, upfront engagement, predictability in decision making, and less redundancy in the permitting process overall.

Additional measures that the Executive Branch intends to take to improve Act 250, and which do not require any legislative action to be implemented, include the following:

- » Continue to improve coordination between Act 250 and other state permitting processes, through the PIVOT effort and other means.
- » Enhance communication between the NRB and District Coordinators prior to the issuing of Jurisdictional Opinions (decisions on whether a proposed project needs an Act 250 permit) to ensure that decisions are consistent both across districts as well as with existing precedent or administrative priorities.
- » Explore opportunities to expand permit specialist assistance to guide and support applicants with the permitting process overall.
- » Clarify sequencing of permits to avoid, to the extent possible, conflicting mitigation requirements among agencies.
- » Explore ways to improve consistency in decision-making across the various Act 250 Districts, in terms of process, jurisdictional opinions, application of criteria, and decisions.
- » Improve the quality and completeness of application materials through a revamped application guide and questions, as well as additional pre-application engagement and coordination with applicants, NRB staff, and state agency staff.
- » Conduct education and outreach (in multiple formats and to multiple audiences) about how to navigate the Act 250 process: jurisdictional triggers, participation, expedited permitting (in designated areas), application requirements, expectations and timeframes, and compliance with existing Act 250 permit conditions, etc.



RECOMMENDATIONS A. Jurisdiction B. Criteria C. Appeals

In addition to the work the Executive Branch is already engaged in to improve Act 250, the Working Group has a series of recommended potential changes to Act 250 that would require legislative changes and would, in our view, ensure that over the next 50 years Act 250 supports Vermont's economic, environmental, and land use planning goals. Our recommendations are gathered into three categories: jurisdiction, criteria, and appeals.

A. Jurisdiction

An Act 250 permit is not required for every development within the state – only for those that meet certain jurisdictional thresholds based on size, use, and location. The purpose of Act 250's jurisdictional threshold is to focus Act 250 review on projects that have the greatest potential for significant impact due to their size or scope, or where other forms of adequate regulatory review do not exist (such as towns with no zoning). Over the years, Act 250's jurisdictional thresholds have been modified to respond to changing circumstances and concerns, while continually adhering to the state's land use goal of compact villages and urban centers separated by rural countryside.

State Designated Centers

Municipalities may obtain state designated status for downtowns, villages, growth centers, and several other discrete areas where future growth is planned for and anticipated. Except for village centers, the designation process reviews municipal bylaws and the capacity of a town to regulate the growth and development anticipated in these areas. Because most designated centers are already developed areas, the potential for adverse impacts on natural resources is generally less than in other parts of the state.

Therefore, we recommend that the Commission consider whether Act 250 jurisdiction should be applied in state designated centers where sufficient local planning, bylaws, and capacity exist to protect important natural resources. In determining the appropriate level of Act 250 jurisdiction within designated centers, we recommend the Commission consider:

- » Exempting projects from Act 250 jurisdiction in state designated centers.
- » Modifying the current standards for designation to ensure that the municipalities have the tools and resources to administer effective, local land use and environmental regulatory protections.
- » Reviewing the appropriateness of levying agricultural soil mitigation fees for projects in areas the state has designated for growth.

In conjunction with these proposed changes, we recommend that the state develop best practices in local zoning bylaws that would meet the requirements to obtain designated center status. These bylaws will not only incentivize the protection of state interests at the local level and promote consistency of regulations, but also create opportunities for consolidated permitting opportunities down the road.

Landscapes with Unique Resource Values

At the other end of the land use spectrum from state designated centers are areas of unique natural resource value where the potential for adverse natural resource impacts are high. These areas include contiguous blocks of primary agricultural soils, high-value forest blocks and high-value connectivity habitat. Beyond their ecological significance, these unique areas are critical to Vermont's farm and forest products economies, due to the scale and contiguity of these unique areas.

Recently, Act 171 amended the state's planning laws to allow towns and regional planning commissions to encourage stewardship of important forest blocks and habitat connectors. The new laws recognize the important role these resources play in the forest products economy, as the foundation for Vermont's recreation economy, and for wildlife survival and adaptation in the face of climate change. Although towns and Regional Planning Commissions may now plan for forest blocks and habitat connectors, the lack of other regulatory protections makes these areas a priority for Act 250 review. As with state designated centers, the Commission should consider whether these areas can be clearly defined, prioritized for their relative importance, and jurisdiction adjusted accordingly.

Working Lands

As discussed above, thoughtful consideration of impacts to Vermont's working landscape is important for a viable rural economy. So too is the growth of enterprises necessary to add value to our local commodity base. The processing of farm and forest products has evolved over the past 47 years and changes have accelerated in the last 7 to 10 years as farm and forest product processors face economic challenges. More of these businesses and the associated entrepreneurial activities taking place have the potential to trigger review under Act 250. Any modernization of Act 250 should recognize that the processing of farm and forest commodities into higher value consumer goods is critical for rural economic growth and maintenance of an economically viable working landscape.

By necessity, these enterprises tend to be located outside state designated centers. They are often forced to operate differently than other businesses that are less dependent on weather or local commodity procurement. Specifically, conditions related to hours of operation, traffic, and noise can be particularly difficult for these enterprises to navigate. We recommend that the Commission explore strategies to assist these businesses in navigating Act 250's permitting framework, such as options for expedited permitting, or conditional waiver of certain jurisdictional triggers or criteria, development of standards and procedures that reflect the inherent contribution of this sector to continuation of Vermont's working and unfragmented landscape, such as waivers of agricultural soil mitigation requirements, or other approaches that support the sector in navigating the permitting process.

Business Enterprise Areas

Not all commercial ventures can be located in our compact downtowns. If areas that are planned and well-suited for economic development projects, including larger-scale commercial operations or manufacturing facilities, can be identified through Act 250, we can facilitate economic development and improve economic opportunities for all Vermonters, while protecting our environment.

Transportation Projects

We recommend that the Commission consider minimizing Act 250 review of federal-aid transportation projects, which are already subject to extensive state and federal permitting and

review. Given the robust level of regulatory review performed at the state and federal levels for these projects, the Commission should consider the extent to which Act 250 offers these projects additional resource protection and whether Act 250 jurisdiction should be adjusted accordingly.

Recreation Trails

Recreation trails that are part of the Vermont Trail System provide incredible recreational opportunities for Vermonters of all ages and draw thousands of visitors to the state each year. As the interest in recreational trails grows, so does interest in expanding trail networks. Although new trail development, including the development of parking, access areas and associated amenities such as bathroom facilities, should receive some level regulatory review, it is unclear whether Act 250's current jurisdictional structure is a good fit for trail projects. These projects often have a relatively small footprint but cross many individual parcels of privately owned land. In conjunction with administration efforts and the VOREC initiative, we recommend the Commission consider the most appropriate means to encourage and facilitate new trail development and provide sufficient and appropriate state regulatory oversight.

B. Criteria

The "10 Criteria" of Act 250 frame our land use and development decisions. However, through various amendments, the NRB now administers approximately 32 criteria and sub-criteria.

During the time since Act 250 was enacted, various other land use and environmental protections have been created by federal and state laws. Some of those programs issue permits that may involve reviews similar to those conducted under Act 250's various criteria. In order to modernize and maximize Act 250's ability to provide additive value to the state's regulatory landscape, we offer the following recommendations:

Alignment with Other State Regulations

We recommend that the Commission examine areas where Act 250 criteria overlap with or deviate from other state regulatory programs to better align the criteria with state rules, definitions, and permit programs. By doing so, the overall regulatory process could be more effective and Act 250 review could focus primarily on the areas that add value. Additional information regarding overlap in the permitting process will be provided to this Commission in advance of the November meeting. Criteria that are also regulated by existing ANR permits – most notably within the Department of Environmental Conservation (DEC) – may be redundant, and opportunities may exist to consolidate some criteria under one regulatory structure.

Notwithstanding any changes to existing criteria, Act 250 plays a critical "gate keeping" role in helping to organize, coordinate and sequence the review of all state permits that may be necessary for a given project. Act 250 also provides an opportunity for District Commissions to consider the project as whole, versus the narrower review afforded under other individual permits such as wetlands or stormwater. Therefore, we recommend the Commission, in conjunction with administrative agency efforts, consider how to retain these coordination and cumulative review functions, and further clarify the sequencing of permits to avoid conflicting mitigation requirements among agencies.

Modernize Criteria

The original criteria of Act 250 were developed to ensure economic development in concert with the purpose of the act. We recommend that the Commission evaluate all current criteria and any potential criteria relative to the outcomes Vermont aims to achieve through the Act 250 permitting process. As mentioned above, this should include consideration of climate change in Vermont and whether impacts to landscape-scale features such as forest blocks and connecting habitat are sufficiently addressed.

One of the key goals of Act 250 is to preserve Vermont's traditional settlement patterns. The criterion most specifically involved in this aspect of Act 250 is Criterion 9(L). This criterion was modified most recently in 2014. We recommend the Commission consider whether the current iteration of Criterion 9(L) is serving its intended purpose, or whether additional modifications to other criteria (such as 9(A) – impact of growth or 9(H) – cost of scattered development) in conjunction with 9(L) would better serve this goal.

C. Appeals

The system of appeals, and the time for cases to be heard by the Environmental Division of Superior Court, can be unduly burdensome to everyone involved. The NRB has collected data regarding the processing time of applications by district, the number of appeals of permit decisions, the average time to resolve these appeals, and the number of appeals of jurisdictional opinions and the average time to resolve these appeals. This information will be provided to this Commission in a separate document.

We recommend that the Commission explore the balance between the rights of intervenors and their capacity to delay projects for tactical rather than substantive reasons. Act 250 was developed with a premise of local decisions, and the opportunity for the individuals impacted to participate. We recognize the tension between public input and local control on the one hand, and the desire for consistency and efficiency on the other. Further, we acknowledge that gaps in existing rules and statute allow for the continuation of tactical appeals that are inconsistent with the spirit, intent, and often the requirements of Act 250.

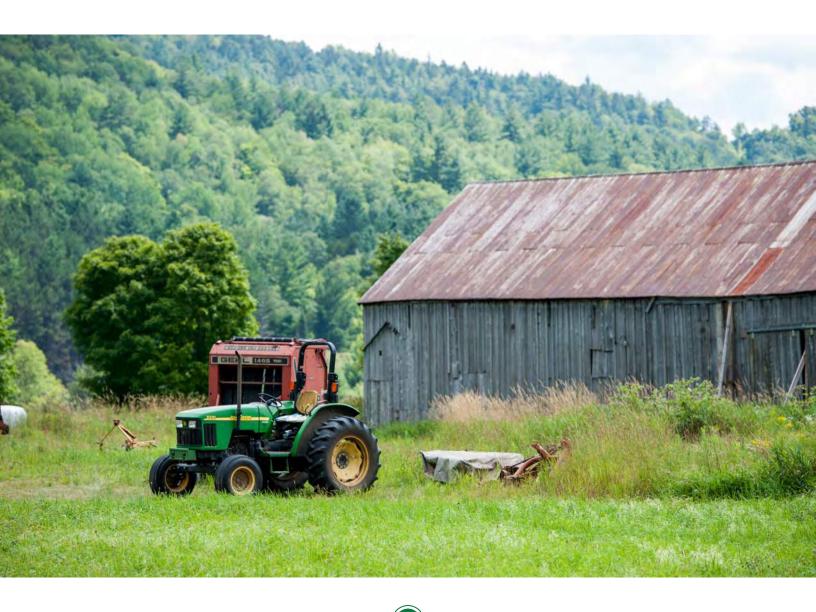
For these reasons, we recommend the Commission explore the following areas within the appeals process:

- » Evaluate party status requirements and eligibility to obtain party status under enumerated criteria for those who could be considered "market competitors."
- » Evaluate whether the number of judges in the Environmental Division of the Superior Court is appropriate and/or identify other appeal processes to alleviate Environmental Court case load.
- » Evaluate the NRB Jurisdictional Opinion reconsideration process.
- » Explore the potential for "on the record review" for appeals to the Environmental Division of the Superior Court, as an alternative to the existing *De Novo* review.

4

CONCLUSION

This report is a starting point for the Act 47 Commission and the administration of Governor Phil Scott to discuss how Act 250 can be strengthened and modified to uphold our Vermont values in a changing world. For almost fifty years, Act 250 has protected Vermont's quality of life, environmental resources, and economic opportunities. Together, the Legislature, the Administration, and Vermonters must plan for a sustainable future through wise stewardship and smart growth. As members of the Advisory Group to the Commission, the agencies and the NRB look forward to providing additional facts and data that support the Commission's work.



5 EXECUTIVE BRANCH WORKING GROUP

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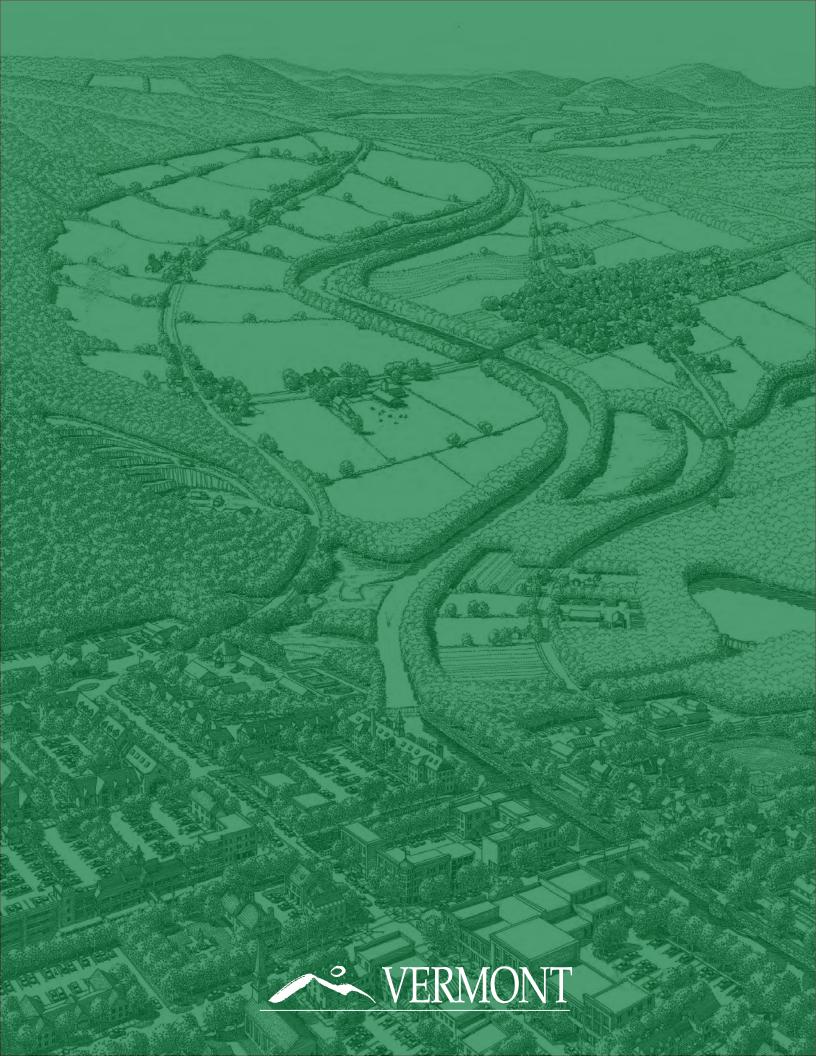
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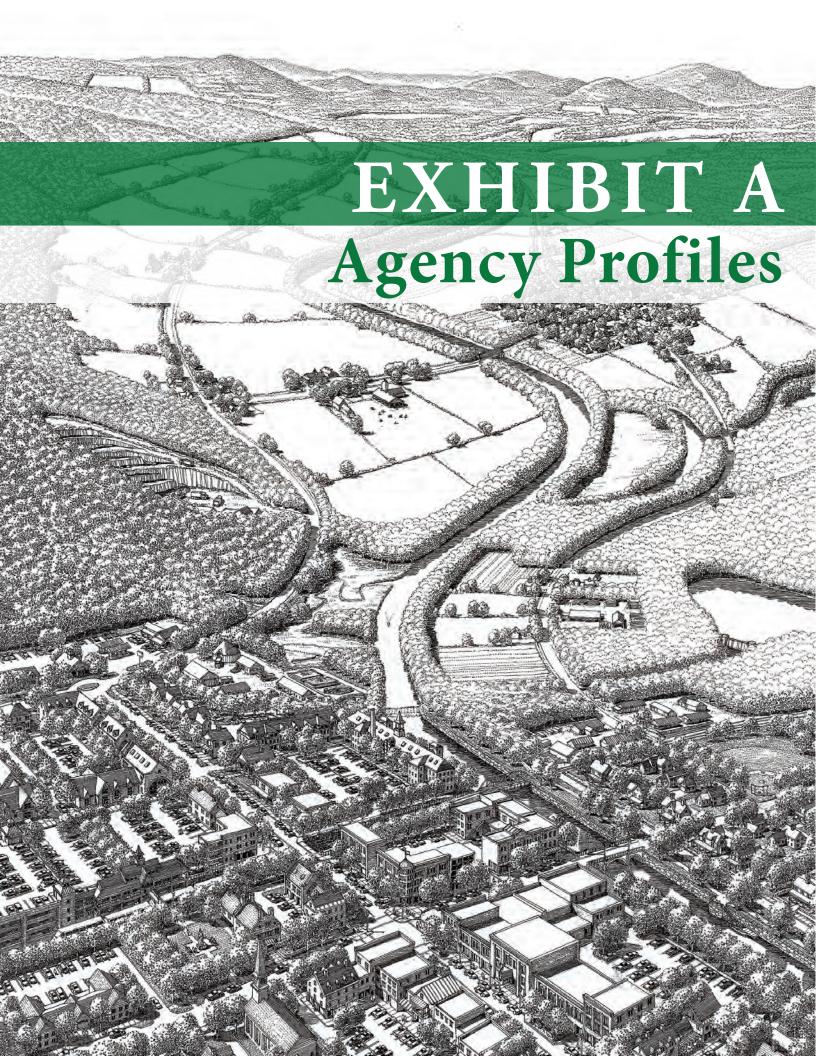
Executive Director

Greg Boulbol

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^{*} Advisor to the Commission





A1 NATURAL RESOURCES BOARD

Act 250 was created in 1970 to guide development and protect the environment as a statewide land use regulatory system when Vermont's population was steadily increasing during migration patterns away from urban centers to more rural centers. Permits are issued after review according to a set of criteria that consider adverse impacts to the environment, the landscape, traditional settlement patterns, and the people.

The Natural Resources Board (NRB) has a valuable perspective on development that is informed across many projects by seeing the cumulative benefits and impacts to Vermont. This big picture perspective, integrated with partner agencies' input, ensures careful growth that not only considers complex scientific, engineering, and infrastructure issues, but, also honors local characteristics and the deep emotional connections of residents to their communities.

As a regulatory system, Act 250 works best in collaboration with planning. With over 29,000 permits issued over 47 years, the NRB has not only protected Vermont's environment, but also touched every community in the state. The system has helped towns preserve their unique characteristics and collectively foster distinctive communities with a strong sense of place.

The NRB administers Act 250 through a staff of 10 District Coordinators assisting approximately 60 local volunteers, who serve on the 9 District Environmental Commissions to issue permits. The NRB promulgates procedural and interpretive Rules, and advocates in the Environmental Division of the Superior Court.

The NRB sees our role as a critical component in balancing the needs of local economies for continued development and ensuring that development occurs in a sustainable manner. The NRB acknowledges the need for reviewing Act 250's 10 criteria, and looks for expert advice and robust discussion by the Commission on this topic. We have the ability to engage in productive conversation at a local level for how best to integrate the latest knowledge from our partners, where to preserve important natural resource features to protect communities, and support growth in our economy, which will create more opportunities for Vermonters.

A2 AGENCY OF NATURAL RESOURCES

The Agency of Natural Resources (ANR), is party to any Act 250 proceeding that involves impacts to air, water, wildlife habitat, land use and the natural environment, which is typically any application filed with a District Commission. ANR provides comments, recommendations and proposed permit conditions under more than half of Act 250's criteria and sub-criteria, and is the most active state agency participant in the Act 250 process.

ANR consists of three departments – Environmental Conservation, Fish and Wildlife, and Forest, Parks and Recreation; technical staff and scientists from all three departments review Act 250 applications and work with the Planning Office to compile comments and provide District Commissions evidence as to whether a project is in conformance with the criteria. Beyond ANR's role as a party, Act 250 District Commissions may also request technical assistance from ANR staff on specific natural resource issues, per NRB Rule 20.4

Prior to the formal submittal of an Act 250 application, ANR staff often provide technical assistance to potential Act 250 applicants by attending site visits, reviewing draft plans and providing guidance on how projects may be configured to comply with Act 250's environmental criteria. On larger projects, staff may work for over a year with an applicant to assess and resolve natural resource issues prior to the actual submission of an Act 250 permit application. This work consumes significant staff resources, but ANR sees support for Act 250 as mission critical, and prioritizes involvement notwithstanding the associated workload.

Projects that require an Act 250 permit, often must also obtain a number of environmental permits from ANR such as state wetlands, stormwater, and air permits. Some of these permits provide a rebuttable presumption of compliance for certain Act 250 criteria, per NRB Rule 19(E); however, as ANR programs have expanded and evolved over the past 50 years, their relationship to the Act 250 criteria has shifted in some instances. As detailed in the body of this report, ANR's top priority for the Act 47 process is to better align Act 250 with existing permit programs and to reduce redundant review where appropriate.

In addition to reviewing Act 250 applications, ANR is also at times an applicant or co-applicant. ANR manages many state parks, forests and wildlife management areas across the state and regularly obtains Act 250 permits for projects at those locations. Several of the state's largest ski areas also lease state forest or park land, so ANR is a co-applicant for major development projects at those locations.

An important role played by ANR is to coordinate with NRB staff throughout the application process. ANR's Planning Office serves as a liaison with the NRB and meets regularly with NRB staff and leadership to discuss evolving policy, project and appeal-related issues.

Finally, given the overlap between many Act 250 criteria and ANR permits, ANR is often involved in appeals of Act 250 permits because those appeals are often on environmental grounds and thus implicate permits issued by ANR.

A3 AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT

The Agency of Commerce and Community Development (ACCD) is focused on growing our economy, facilitating job creation, and supporting vibrant and resilient communities.

ACCD hears from its economic development partners that Act 250 could be modernized in a variety of ways, including but not limited to:

- » Making the process easier to navigate.
- » Ensuring that both process and outcomes are more predictable.
- » Creating incentives for projects in areas designated for development while enhancing and focusing efforts to protect critical landscapes.
- » Better aligning criteria with state rules, definitions, and permit programs and eliminating redundancy with other state permitting processes.
- » Reviewing and improving the appeals process.

ACCD's Department of Economic Development works with project proponents to facilitate navigating Act 250 and other state permitting processes. ACCD is working with other state agencies to improve and standardize how the state handles the initial contact with permit applicants, regardless of where or how the permit applicant enters the permitting system (through the NRB, ANR, other state agency, or municipal permitting process). This initiative is being coordinated as part of the Governor's Program to Improve Vermont Outcomes Together (PIVOT).

ACCD manages the state designation programs – Downtowns, Village Centers, New Town Centers, Growth Centers and Neighborhood Development Areas. These programs work together to provide incentives, align policies and give communities the technical assistance needed to encourage new development and redevelopment in our compact, designated areas. The program's incentives include exemption from Act 250 for certain mixed income housing projects and a simplified Act 250 process for any development in a designated downtown. Developments in certain designated areas are also eligible for reduced Act 250 permitting fees. These exemptions and alternative procedures are justified by robust local land use planning and permitting that is required to obtain the designation.

ACCD's Division for Historic Preservation participates in the Act 250 process by providing comments to the District Commissions and working with Act 250 applicants to ensure that development will not have an undue adverse effect on historic resources. The Division for Historic Preservation is also asked to participate in Act 250 enforcement proceedings when the Act 250 enforcement office is concerned that an applicant has not complied with Criterion 8 (historic sites). Unlike most other state agencies that provide comments on Act 250 proceedings, the Division for Historic Preservation does not have a separate permitting process, making the Act 250 process important to historic preservation efforts.

A4 AGENCY OF AGRICULTURE FOOD AND MARKETS

The Agency of Agriculture Food and Markets' (AAFM) mission is to facilitate, support and encourage the growth and viability of agriculture while protecting the working landscape, human health, animal health, plant health, consumers and the environment. AAFM maintains an Agricultural Development Division dedicated to providing agricultural business support with funding, marketing and production assistance, business planning and market research. Supporting the agricultural industry includes keeping farmland accessible by being a party to many Act 250 proceedings. AAFM provides analyses, comments, and proposed permit conditions for the protection of soils that qualify as "primary agricultural soils" as outlined in the law and considered under Criterion 9(B). The District Commission considers the input from AAFM and may incorporate into the issued land use permit. Act 250 is the only permitting program in state government that protects farmland from development.

When primary agricultural soils are present on the site of development, district coordinators encourage applicants to contact AAFM directly for a review prior to submission of a complete application to the District Environmental Commission. AAFM review primarily consists of commenting on whether the site of development contains soils that meet the definition of "primary agricultural soils," and, if yes, analysis of the direct and indirect impacts to the soils and required mitigation for the impacts. Analysis and comments are shared with the District Commission, which ultimately makes the decision. Although many applicants do contact AAFM before submitting an Act 250 application for development on primary agricultural soils, not all do. In these instances, to ensure that impacts to soils are considered, AAFM may file a notice of appearance and a request for a hearing to adequately address the 9(B) Criterion.

AAFM communicates with District Coordinators during the Act 250 project review process, participates in discussions about evolving issues or policies affecting primary agricultural soil, and collects and shares information about the protection/conservation of primary agricultural soils achieved through the Act 250 permitting process. AAFM also works with the NRB to resolve violations resulting from failure to obtain permits or meet permit conditions relative to primary agricultural soils.

Farming, which requires a large land base and is currently exempt from Act 250 review, makes up a portion of the state's rural economy. It is important to note that offsite mitigation, which can be a condition of development, is part of the portfolio of funding that conserves Vermont's working landscape, and supports access to farmland by existing and new/beginning farm operators. Vermont's rural landscape, including those lands occupied by the agricultural industry, also supports other economic sectors, and lends to the quality of life that makes Vermont a great place to live and work.

A5 AGENCY OF TRANSPORTATION

The Agency of Transportation (VTrans or AOT) plans, develops, and manages Vermont's statewide transportation network, including highways, bridges, railroads, airports, park-and-rides, bicycle and pedestrian facilities, and public transportation facilities and services. VTrans also administers significant state and federal grant programs for municipal transportation facilities that may be subject to Act 250 review.

VTrans offers District Commissions expert testimony regarding Criterion 5, transportation. VTrans also alerts District Commissions as to what type of impacts, if any, a proposed project may have with respect to Vermont's transportation system. If any such impacts are noted, VTrans will offer the District Commission advice on the appropriate level of mitigation.

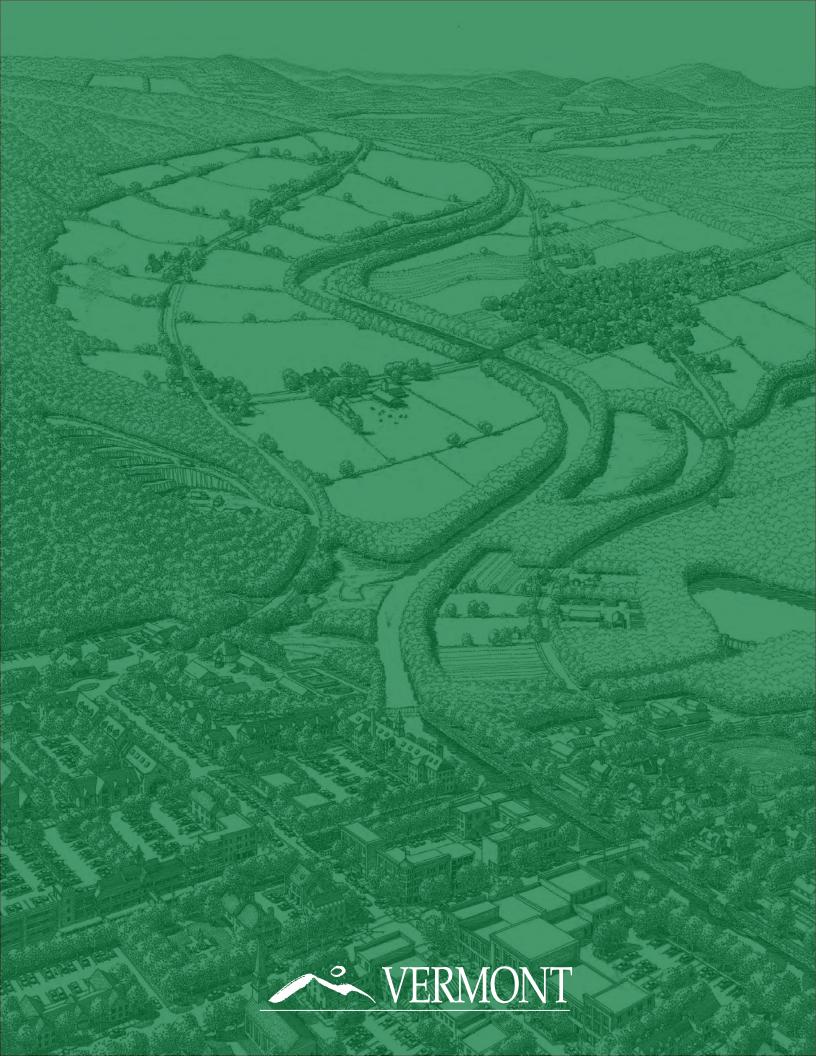
VTrans assists the District Commissions on issues relating to transportation-impact fees. In addition, VTrans works with the District Commissions to ensure that Act 250 permits are consistent with right-of-way access permits that VTrans may issue for a project.

VTrans is also an applicant in Act 250 proceedings. In this role, VTrans supplies project proposals to the District Commissions for their review. VTrans and the NRB have an MOU, which is currently being updated, to coordinate various issues between the agencies.

The transportation projects for which VTrans is responsible are typically constructed with federal aid, which is administered by the Federal Highway Administration (FHWA), the Federal Aviation Administration (FAA), or other federal agencies. Federal aid subjects these projects to a breadth of federal environmental regulations. Municipal projects that VTrans supports with federal funds are also subject to federal regulatory controls.

Numerous state laws may apply to federal-aid projects, including laws governing wetlands, operational and construction stormwater discharges, stream alterations, hazardous material disposal, historic preservation, and endangered species. Federal-aid transportation projects are subject to extensive planning requirements, which include the opportunity for public input. The many state and federal regulatory programs that now robustly protect the environment from transportation projects did not exist or existed only in nascent form when Act 250 was originally enacted in 1970.

VTrans questions whether Act 250 significantly protects the environment from transportation and other projects that are already comprehensively governed by state and federal regulations. The Commission may therefore wish to consider whether Vermont's federal-aid transportation systems, and possibly other federal-aid facilities, require Act 250 review. To the extent Act 250 adds significant environmental protection to federal-aid projects that other state and federal programs do not or could not cover themselves, VTrans could be subject to limited Act 250 jurisdiction or address these matters through programmatic agreements with other state agencies. The transportation network is analogous to designated areas under Act 250 that are subject to limited or no Act 250 controls.



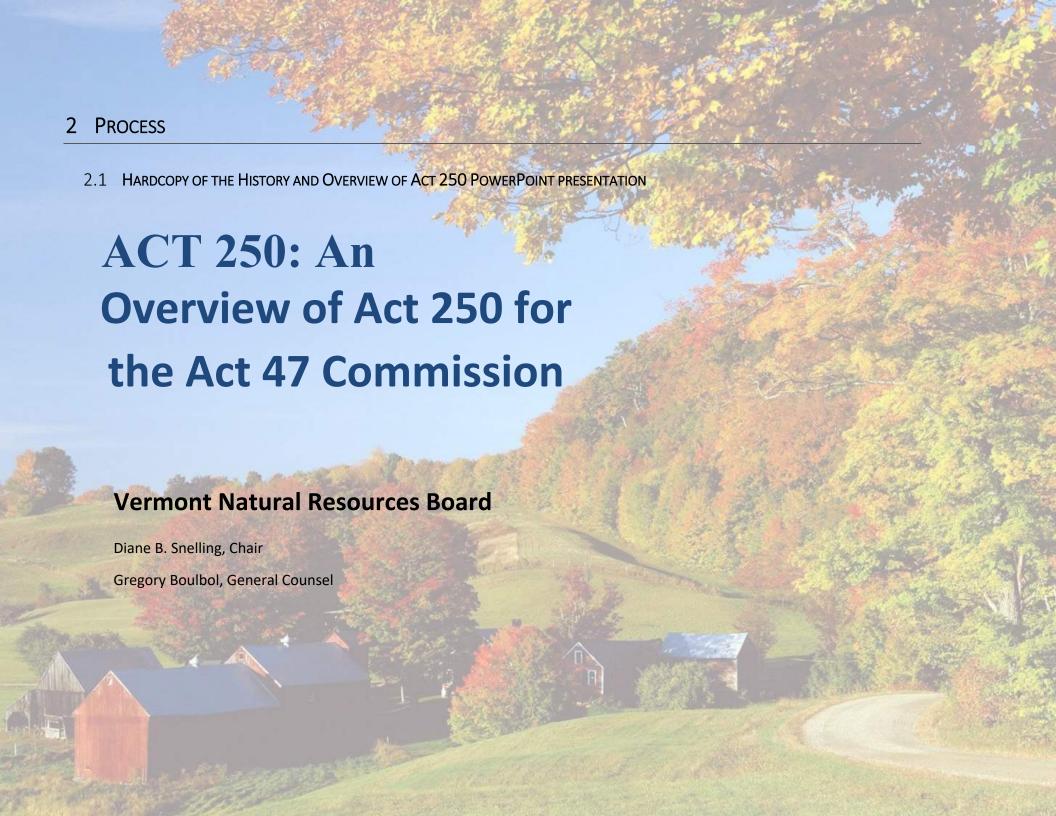




Materials from the Natural Resources Board/Act 250

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AGENDA

- 1. Brief Introductions
- 2. Act 250 History and Purpose
- 3. Mechanics of the Natural Resources Board
- 4. Act 250 Jurisdiction and the Act 250 Application Review Process
- 5. Party Status
- 6. The Ten Criteria
- 7. Quasi Judicial Role/Ethics
- 8. Hearing Review Process
- 9. Questions? Answers??

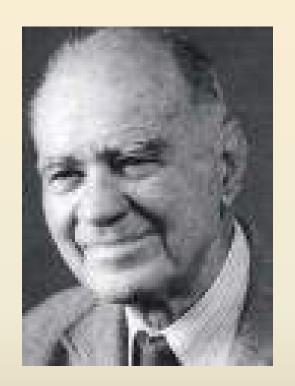
BRIEF HISTORY OF ACT 250

In 1969 Gov. Deane Davis and others became concerned about impacts of new development in Vermont.



History of Act 250

After hearings by the Gibb Commission and statewide debate the Vermont legislature passed a law to regulate *certain kinds* of development at the state level, *in addition* to any existing local review.



The Honorable Deane C. Davis Governor of Vermont Montpelier, Vermont 05602

Dear Governor Davis:

In accordance with the provisions of Executive Order No. 7, creating the Governor's Commission on Environmental Control, I transmit herewith the commission report covering the period from June 24, 1969 through January 6, 1970.

This report includes our recommendations for legislation to be enacted during the coming session.

The commission has had fifteen meetings since its establishment, and numerous meetings for the committees to deal with specific subjects. It will continue meeting regularly during the winter.

I wish at this time to express my appreciation to Mr. Forrest E. Orr, Vice Chairman; the members of the commission; and the Advisory Committee for their dedicated efforts during this period. Many of the officers of State Government have also contributed to the work of the commission. Deputy Attorney General John Hansen has been invaluable in his assistance with legal matters.

A final report will be submitted at the conclusion of the commission's work.

Respectfully submitted,

The Legislature created the former Environmental Board to administer Act 250:

"...in order to protect and conserve the lands and the environment of the state and to insure that these lands and environment are devoted to uses which are not detrimental to the public welfare and interests."

An Act to Create an Environmental Board and District Environmental Commissions, Pub.Act. No. 250, § 1, 1969, Vt.Laws (Adj.Sess.) 237 (eff. Apr. 4, 1970).

Purpose of Act 250

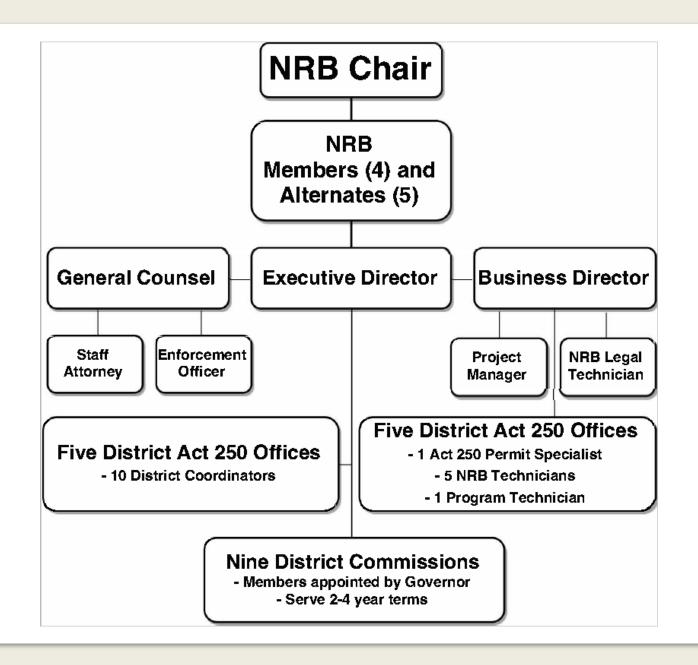
Act 250 is Vermont's land use statute. It was enacted to protect the state's environmental resources and to preserve its public lands. . . . When implementing Act 250, the state attempts to coordinate maximum economic development with minimal environmental impact.

Green Mountain RR Corp. v. State of Vermont, 2003 WL 24051562, at *4 (D. Vt. Dec. 15, 2003), aff'd sub nom. Green Mountain R.R. Corp. v. Vermont, 404 F.3d 638 (2d Cir. 2005).

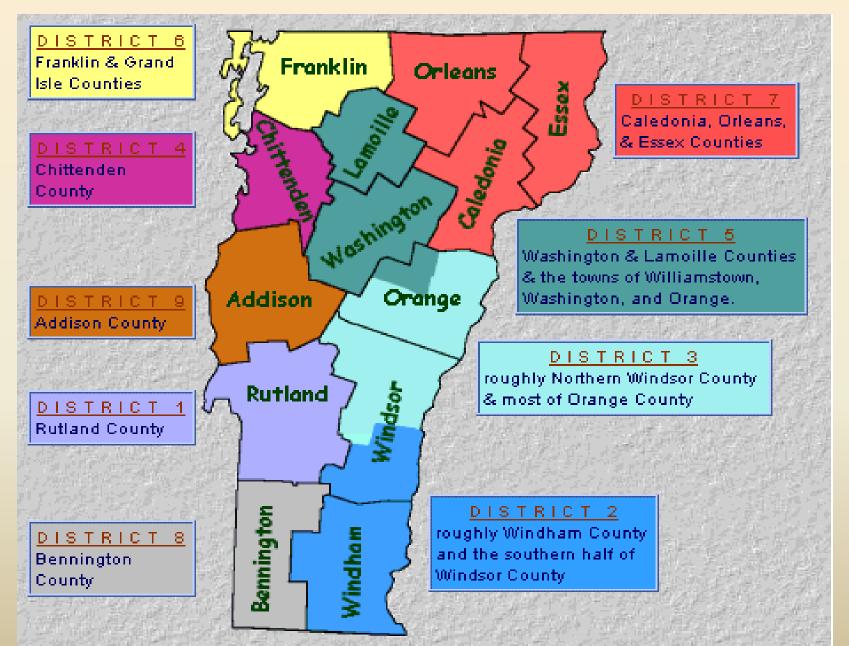
Vermont . . . has managed to keep intact more of the natural beauty and open space that people love about it. A lot of the credit for that goes to a . . . state land-use law, known as Act 250.

Under Act 250, nine regional commissions review any large-scale development falling within their jurisdictions. Before a development can proceed, it must win a permit from its regional commission. The commissions, supporters say, have done their best to balance economic growth with environmental and aesthetic sensitivity and planning practicality.

Jonathan Walters, Land-use Laws Are A Battleground, Chicago Tribune, Nov. 15, 1992.



9 Environmental Districts



ACT 250 JURISDICTION

Subdivisions of 10 lots or more, or 6 lots in towns without permanent zoning and subdivision regulations. 114.01 +/-

115.02 +/-



Other Act 250 Jurisdictional Triggers

- State and municipal projects > 10acres disturbance
- Housing projects with 10 or more units (higher thresholds for Priority Housing Projects in designated centers)
- Communication towers >50 feet in height
- Commercial, residential, or industrial development above 2,500 feet
- Material change to an Act 250 permitted project
- Substantial changes to pre-existing (pre-1970) projects

ACT 250 EXEMPTIONS TO JURISDICTION

Farming below 2,500 feet





Other Statutory Exemptions to Act 250 Jurisdiction

- ➤ Electric generation and transmission facilities regulated by PSB
- ➤ Agricultural fairs and horse shows; no buildings; open to public for < 61 days per year
- > Small scale and on-farm composting
- > And others

Exemptions by Rule

Act 250 Rule 2(C)(3) & related definitions:

- ➤ Home occupation defined in Rule 2(C)(17)

 Use, by a resident, of a minor portion of the residence + ancillary buildings, for occupation/business customary in residential areas that has no potential for significant impact
- > De minimis no potential for significant adverse impact
- > Test wells, preparation & plans

Jurisdictional Opinions

(is there Act 250 Jurisdiction over a particular project?)

- > Issued by District Coordinator (Letter form or Project Review Sheet)
- ➤ Reconsideration by Coordinator within 30 days
- > Appeal to Environmental Division, Superior Court, within 30 days.

PARTY STATUS

10 VSA § 6085 and Act 250 Rule 14

Party status

- > Standard = an aggrieved person need only show a "reasonable possibility that a decision on the proposed project may affect a person's particularized interest..."
- The purpose is to determine whether a person has a sufficient stake in the matter to allow the person to present evidence on a criterion.
- Determining party status and making a determination under a criterion are separate inquiries.

PARTY STATUS ELEMENTS

- 1. ANY PERSON
- 2. PARTICULARIZED INTEREST
- 3. THAT MAY BE AFFECTED BY THE PROJECT (AN ACT OR DECISION OF THE DISTRICT COMMISSION)

ANY PERSON

- > Individual
- > Association
- > Corporation
- ➤ Neighborhood association (whether or not incorporated)
- > Partnership
- > Non-profits with affected members

PARTICULARIZED INTEREST

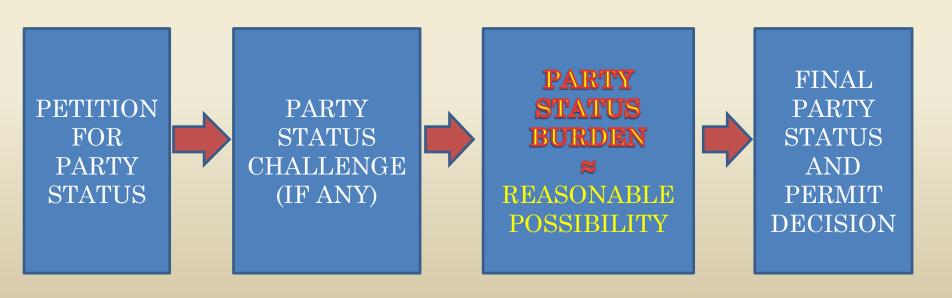
- Something particular to that person rather than the general public
 - The interest must be real not speculative
 - Examples:
 - Can see it
 - Can hear it
 - Can smell it
 - Affects an activity:
 - I swim there and would like to continue swimming, but run off from the parking lot may affect my enjoyment this activity.
 - I enjoy the view when biking or driving, and the project may affect it.

AFFECTED BY THE PROJECT

- The person's concern or interest must be one that is protected by a criterion:
 - Aesthetics
 - Noise
 - Odors
 - Runoff/water pollution
 - Etc.
- ➤ Persons concerned about business competition or other issues beyond act 250 are not parties.

Burden for Showing Party Status

- reasonable possibility that a person's particularized interest may be affected
- allows one to present their concern under the criteria (merits).



Final Party Status

- Party status should be confirmed unless proof shows that there was no reasonable possibility of a particular interest being affected. For example, the proof on the merits shows that a party lives 100 miles away rather than the 100 yards stated in the party status petition.
- Lack of participation affects appeal rights not party status

WHY?

> IT IS THE LAW

- Act 250 is based on citizen participation before a citizen board.
- Act 250's party status standard parallels federal standing law —In Re: Bennington Wal-Mart (4/24/12) footnote 5.

> PROPER PARTY STATUS

- Assures that commissions receive information
- Avoids delays, appeals, and remands.

THE ACT 250 CRITERIA



The 10 Criteria

- 1. Air and Water Pollution
- 2. Water Supply
- 3. Impact on Existing Water Supplies
- 4. Soil Erosion
- 5. Transportation Safety and Congestion
- 6. Impact on Schools
- 7. Impact on Municipal Services
- 8. Wildlife Habitat, Historic Sites, and Aesthetics
- 9. Impact of Growth
- 10. Conformance with Local and Regional Plans

10 V.S.A. § 6086(a)(1) – (10).

Criterion 1: Air

No undue air pollution.

Undue defined: The nature and amount of the pollution, as well as noncompliance with standards, causes adverse health affects.

Examples of undue air pollution include: paint fumes, saw dust, vehicle exhaust, odors, and noise or radio frequencies that present health hazards.

If the project has an Air Pollution permit, this creates a rebuttable presumption of compliance, shifting the burden of proving noncompliance to opponent.

Does the project include mitigating measures?

Criterion 1: Water

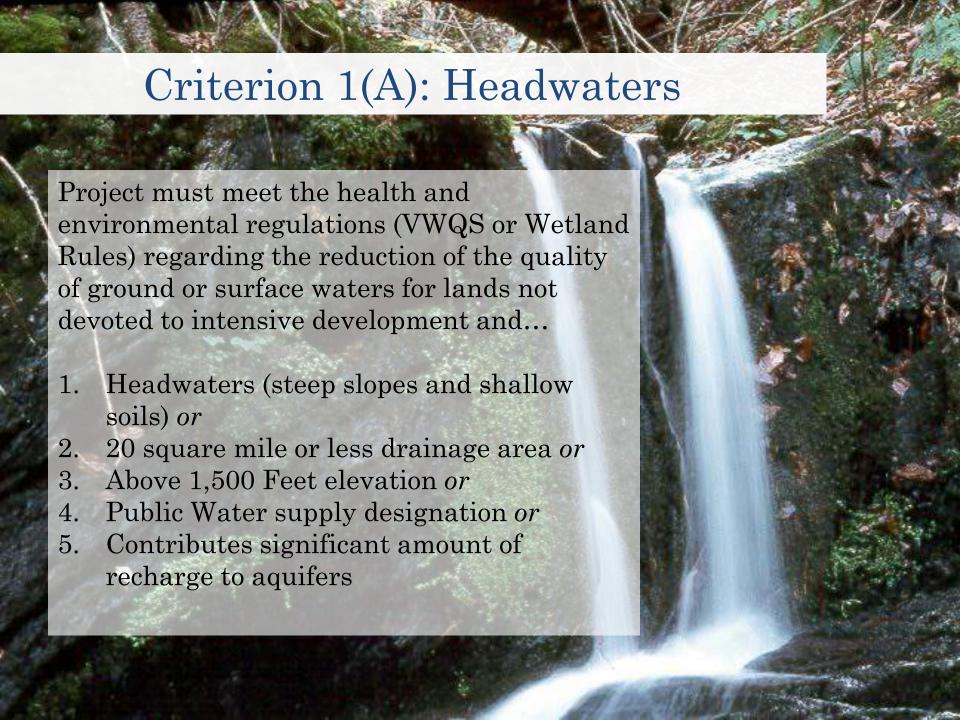
No undue water pollution.

Undue defined: the nature and amount of the pollution, noncompliance with standards, and the character of the area, causes adverse health affects.

Whether pollution is "undue" is considered in addition to any of the Criterion 1 sub-criteria.

Permits create rebuttable presumption of no pollution, shifting the burden of proving noncompliance to opponent.

Water pollution can be generated by a sewage treatment plant, construction project, dredging operations near wetlands, and golf course management plans.



Criterion 1(B): Waste Disposal

The project must:

- Meet the health and environmental regulations (VWQS, Potable Water Supply Rules, GW Protection Rules, etc.) and
- 2. Not inject waste into groundwater or wells.

Any listed permit* creates a rebuttable presumption of compliance; this shifts the burden of proving noncompliance to the opponent, who can meet this burden with clear and convincing evidence.

*Examples of listed permits include potable water supply and wastewater system permits, discharge permits, sewer line extension permit, certificate of compliance, injection permit, solid or hazardous waste permit, UST permit.

Criterion 1(C): Water Conservation

Project design must:

- 1. Consider water conservation and recycling where technologically and economically practical,
- 2. Use Best Available Technology, and
- 3. Continue efficient operation of these systems.

Project cannot place responsibility for compliance on a lot's buyer by - for example requiring more efficient flush toilets, shower heads, faucets.





- Protects the health, safety and welfare of the public and riparian owners if the project is in a floodway or floodway fringe.
- Projects in floodway cannot restrict or divert flow of flood waters.
- Projects in floodway fringe cannot significantly increase peak discharge of the river.
- ANR makes floodway/floodway fringe determination.

Criterion 1(E): Streams

Project must, whenever feasible, maintain the natural condition of the stream, and cannot endanger the health, safety or welfare of the public or adjoining landowners.



Criterion 1(F): Shorelines

If the project must necessarily be located on a shoreline, then it must:

- 1. Retain the shoreline's natural condition
- 2. Allow continued access to the water
- 3. Screen development
- 4. Stabilize the bank from erosion









Criterion 2: Sufficiency of Water Supply

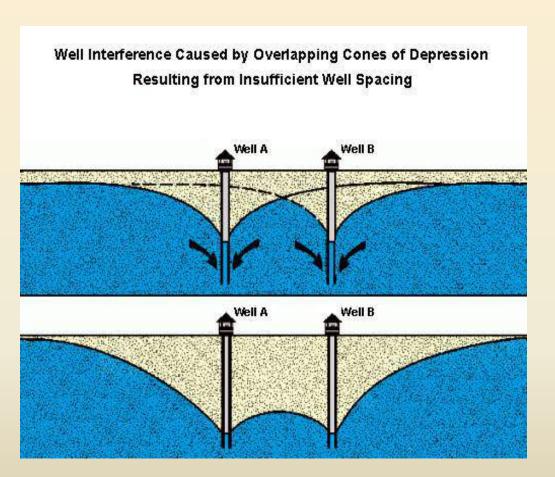
The project must have sufficient water available for its reasonably foreseeable needs.

Applicant has the burden of proving compliance with the

Criterion.

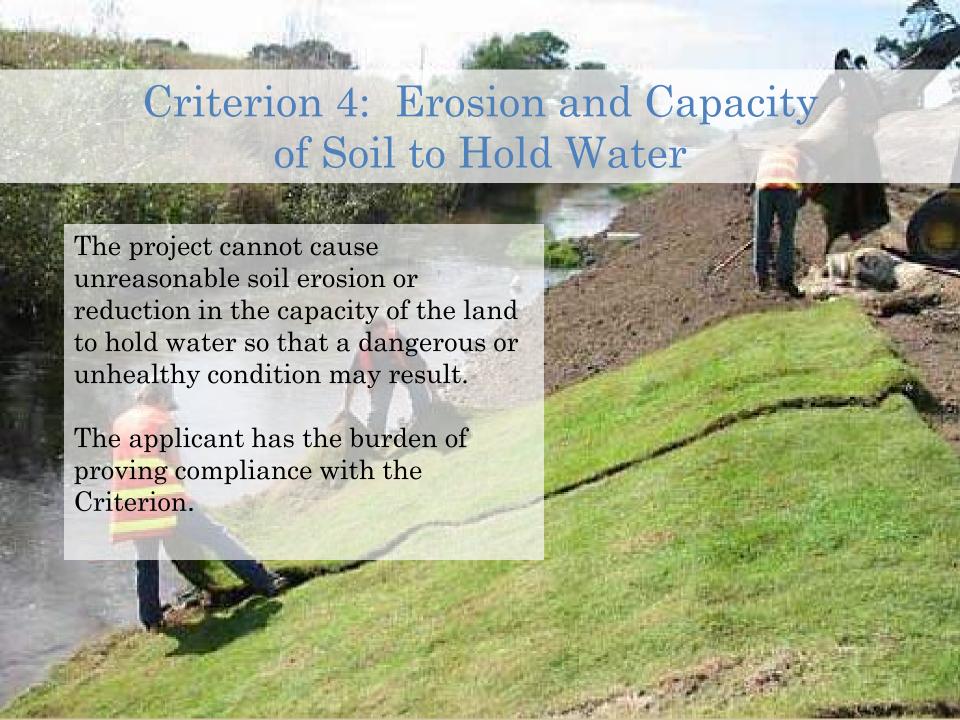


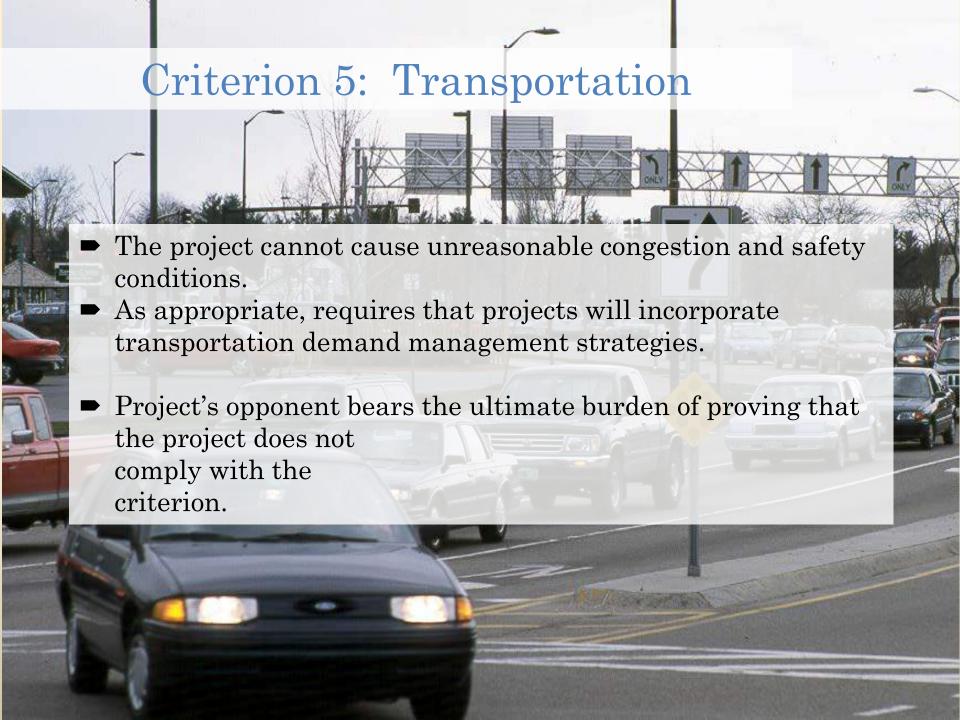
Criterion 3: Impact on Existing Water Supply

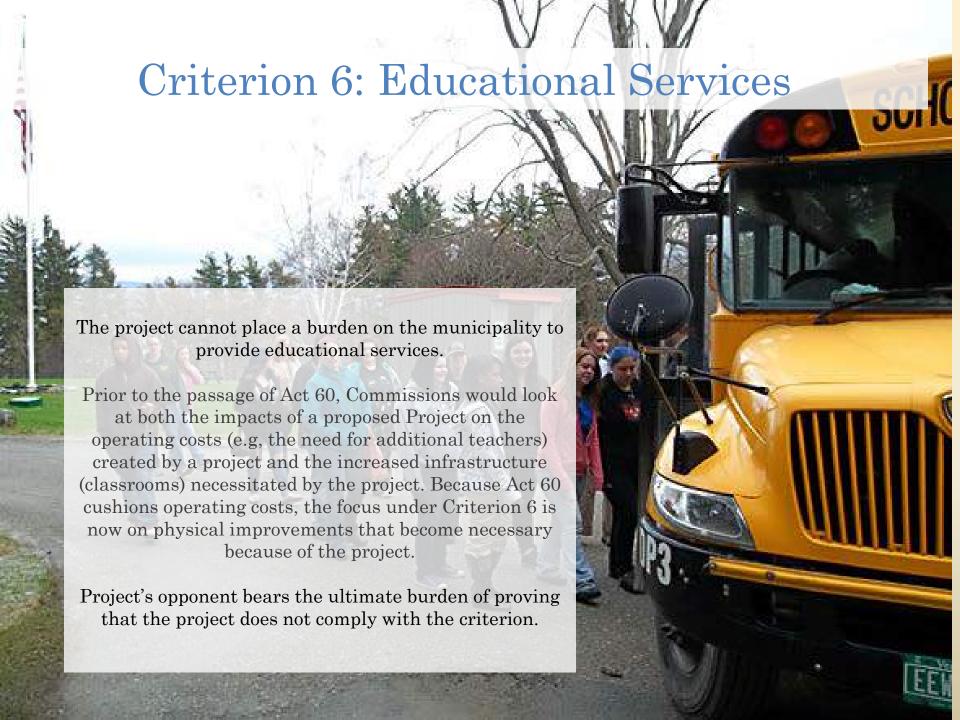


If the project will utilize an existing water supply, then it cannot place an unreasonable burden on that water supply.

Applicant has the burden of proving compliance with the Criterion.







Criterion 7: Municipal Services

The project cannot place an unreasonable burden on a municipality's ability to provide municipal services.

Municipal services include fire protection, police, sewage treatment, and road maintenance.

Project's opponent bears the ultimate burden of proving that the project does not comply with the criterion.







Criterion 8

A project cannot have an UNDUE ADVERSE effect on:

- 1. Scenic Natural Beauty
- 2. Aesthetics
- 3. Historic Sites
- 4. Rare or irreplaceable natural areas
- 5. Archaeology

Criterion 8(A) protects necessary wildlife habitat and endangered species.

Project's opponent bears the ultimate burden of proving that the project does not comply with the criterion.

Criterion 8: Aesthetics, Scenic and Natural Beauty

The Quechee test:

1. Does the project have an adverse effect on the aesthetics of the area?

Ask: Does the project fit within the context of its surroundings?

- 2. Is the adverse effect undue?
- a. Does the project violate a clear, written community standard?
- b. Does the project's impact offend the sensibilities of the average person?
- c. Has the applicant failed to take reasonable steps to mitigate the adverse impact?

Criterion 8: Historic Sites



The three-step test:

- 1. Is the project affecting an historic site?
- 2. If the project IS affecting an historic site, is the effect adverse?
- 3. If the effect IS adverse, is it undue?

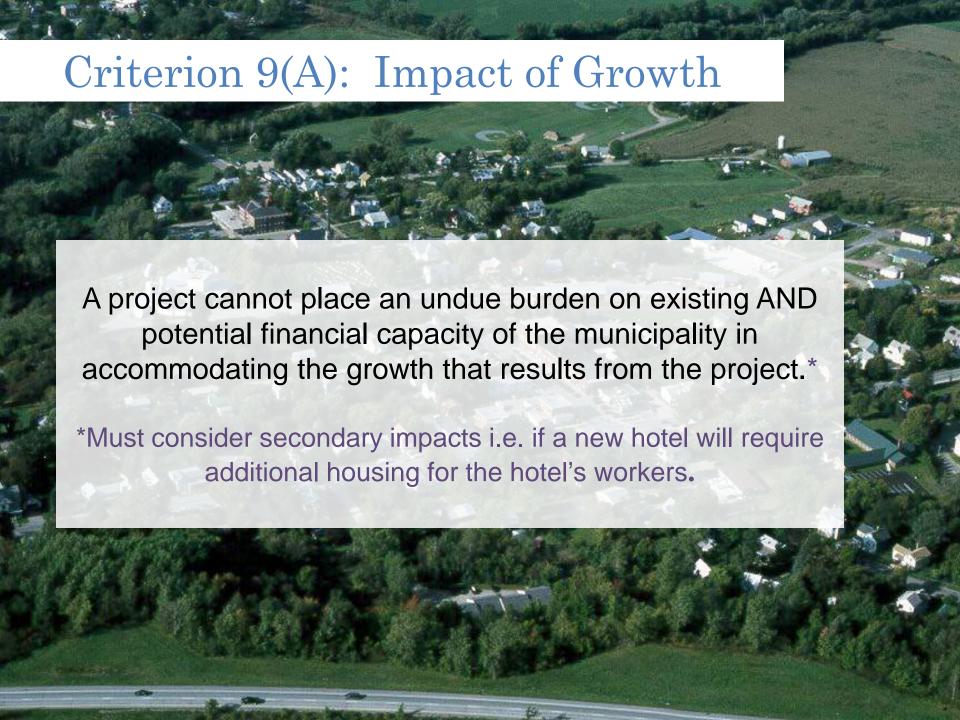
Criterion 8: Rare and Irreplaceable Natural Areas

- 1. Will the project affect a natural area?
 - a. Is it an identifiable ecological community; and
 - b. Does it predominate over human influences
- 2. Is the natural area rare and irreplaceable?
 - a) Infrequent occurrence
 - b) Rare plants
 - c) Valuable
- 2. Is the effect adverse?
- 2. If the effect IS adverse, is it undue?
 - a. Failure to mitigate









Criterion 9(B): Primary Agricultural Soils

A project that results in any reduction in the agricultural potential of primary agricultural soils must meet 4 sub-criteria:

- 1. The project cannot significantly interfere with adjoining lands' agricultural potential; AND
- 2. Applicant does not own suitable non-PAS land*; AND
- 3. The project is designed to minimize the reduction of agricultural land*; AND
- 3. Suitable mitigation is provided.
- * Note: 2 & 3 do not apply in Growth Centers.

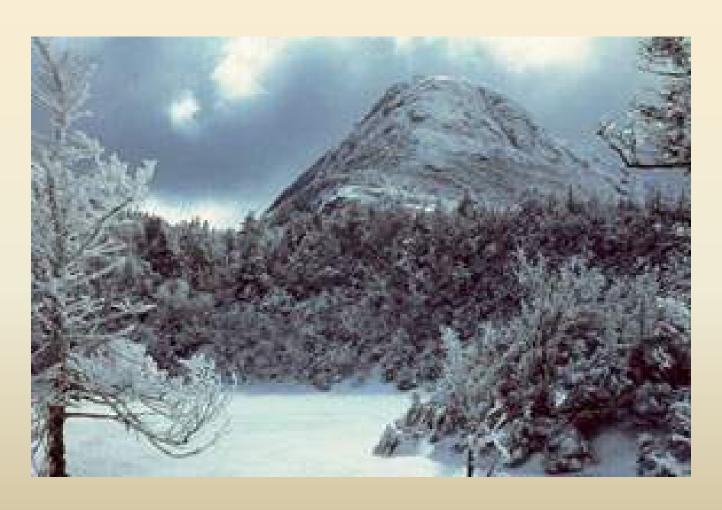
Criterion 9(C): Productive Forest Soils

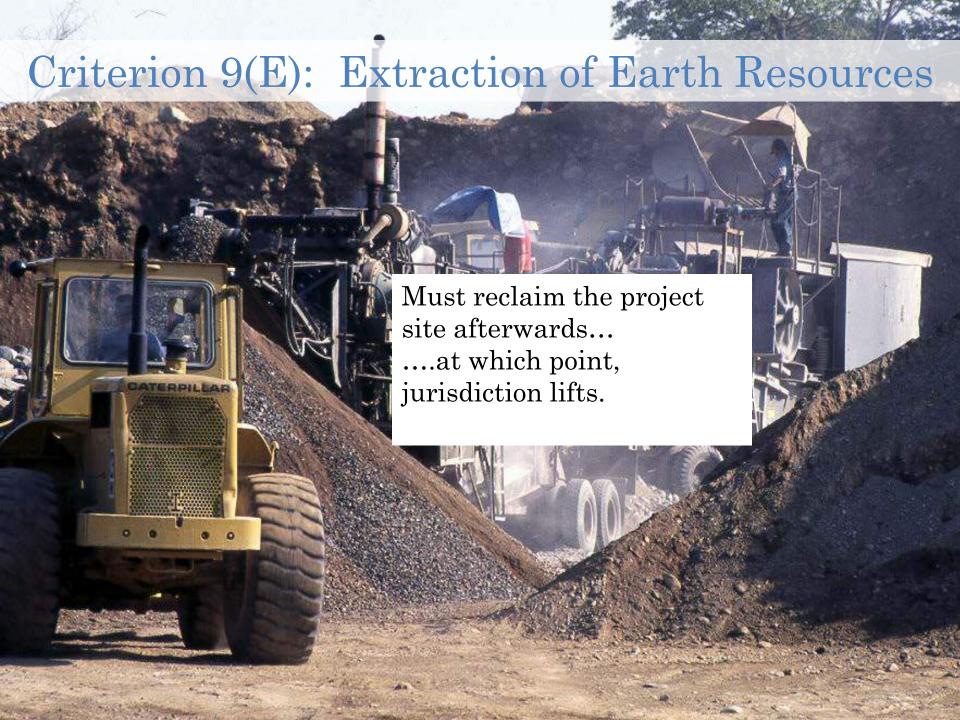
A project that causes a reduction in the productive potential of forest soils must meet sub-criteria:

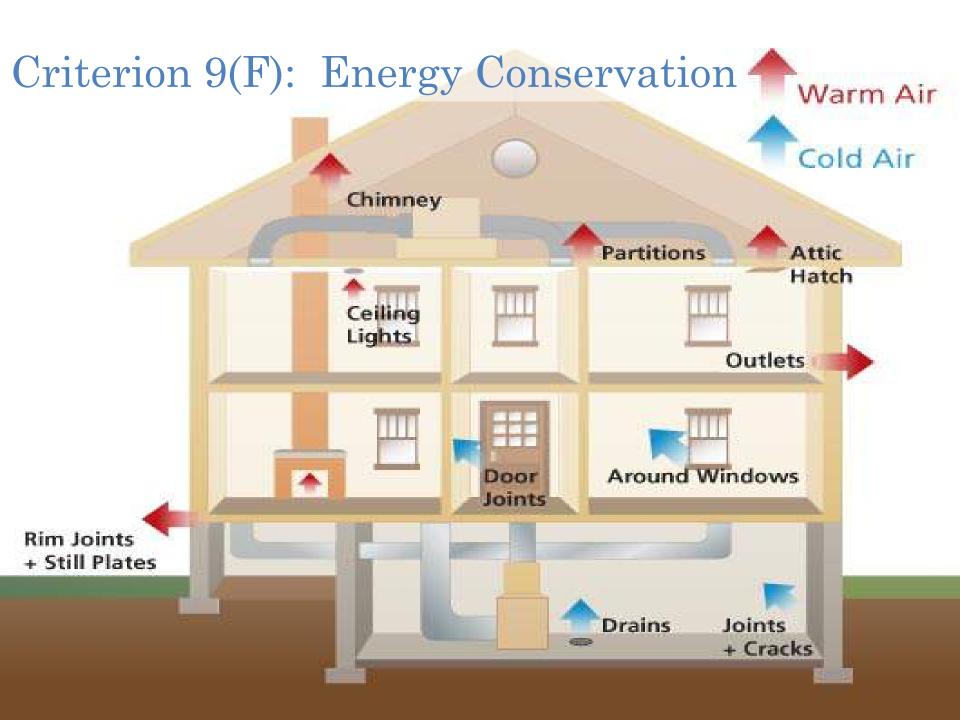
- 1. A project cannot interfere with forestry on adjoining lands; AND
- 2. There can be no other available land owned by the applicant; AND
- 3. There must be a plan to minimize the reduction on the potential of the soil

Criterion 9(D): Earth Resources

A project may not prevent or significantly interfere with lands that have a high potential for the extraction of mineral or earth resources.

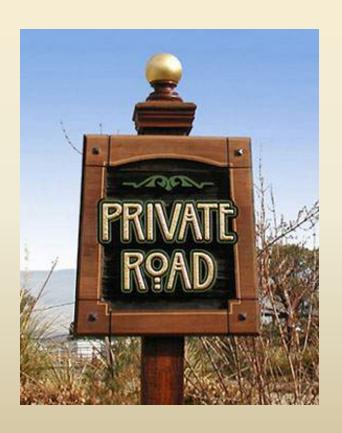






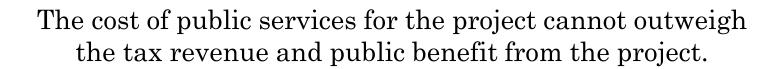
Criterion 9(G): Private Utility Services

Projects relying on private utility services must conform with municipal plan or capital plan, or provide adequate surety to the municipality in case the municipality must assume responsibility for utility services.



PRIVATE SEW	ER WORKS
COMMENCEMENT	letysign seg s al
COMPLETION	1017sign .sg s al
CONTRACTOR	iclysign sg sa

Criterion 9(H): Cost of Scattered Development







Sufficient public utility facilities and services must be available; projects cannot impose excessive demand on such services, and facilities must be planned based on reasonable growth projections.

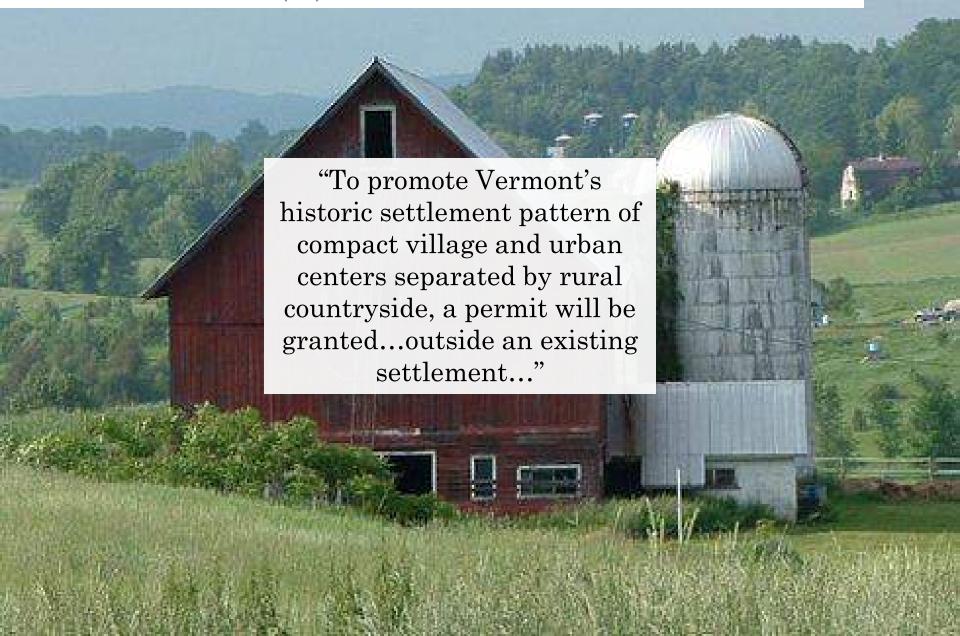
Criterion 9(K): Public Investments



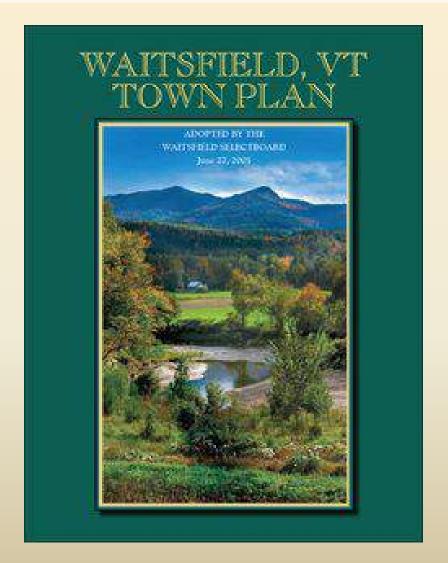
This criterion is often considered in conjunction with Criterion 5: Transportation.



Criterion 9(L): Settlement Patterns



Criterion 10: Conformance with Local or Regional Plan



Project cannot conflict with the municipal plan.

Act 250 only enforces clear, mandatory language in plans. Not zoning (but look to zoning to interpret any ambiguity).

Compliance must be with a regional plan if the project has regional significance.

Burden of Proof

- Applicant must produce enough evidence for findings on all criteria.
- Applicant has burden of proof on Criteria 1 4, 9* and 10. 10 V.S.A. § 6088(a).
- Opponent has burden of proof on Criteria 5 8. 10 V.S.A. § 6088(a).
- * If town does not have duly adopted capital improvement program, opponent has burden of proof on Criterion 9A. 10 V.S.A. § 6086(a)(9)(A).

QUASIJUDICIAL ROLE/ETHICS

The Quasi-Judicial Role

- The District Commission is a quasi judicial body
- Commission sits as a mini -administrative court
- As an administrative tribunal, the Commission's sole focus is to render decisions on Act 250 applications
- As the judges hearing these applications you must base your decision on the information submitted by the applicant.
- The ultimate decision on the application, including any conditions, <u>must be supported by the information/evidence</u> submitted by the applicant

The Quasi-Judicial Role Confidentiality

- General rule: do not communicate about a case.
 - Exceptions:
 - Okay to discuss case privately with other District Commissioners on the case, your district coordinator or NRB staff.
 - Okay to refer questions to the district coordinator and NRB attorneys.
- Ex Parte Communications
 - Cannot communicate with parties outside the context of a hearing
 - Decision must be based on the record.
 - All parties have the right to address all the evidence.
- Attorney-client communications/attorney work product (from an NRB attorney).

The Quasi-Judicial Role Due Process

- Protects the rights of all involved applicants, opponents and other interested parties.
- Allows opportunity for a fair hearing, where the decision will be based on the record.
- Ensures that everyone has an opportunity to put in and respond to all the evidence.
- Fosters respect for the process.

The Quasi-Judicial Role Ethics

- Executive Code of Ethics EO 09-11
 - Applies to all appointees, including District Commission and NRB members and alternates.
 - Prohibits:
 - Conflict of Interest
 - Appearance of Conflict of Interest
 - "Affecting adversely the confidence of the public in the integrity of state government."
 - Disclosure of confidential information.
 - Using public office to advance personal interest, etc.

The Quasi-Judicial Role Ethics--Conflicts

• You must recuse yourself if you have a conflict of interest. Executive Code, Section III A.

• "Conflict of interest" = "a significant interest, of an Appointee, of a member of his or her immediate family or household or of a business associate, in the outcome" of any pending matter.

The Quasi-Judicial Role Ethics--Types of Conflict of Interest

- Financial
- Strong opinion/prejudice/bias
- Associational/Relationship-Based
 - Familial relationship with party, witness, or person who might benefit
 - Business relationship
 - Other close relationship

The Quasi-Judicial Role Ethics-- *Appearance* of Conflict

- Executive Code also requires recusal for apparent conflicts.
- "the impression that a reasonable person might have, after full disclosure of the facts, that an Appointee's judgment might be significantly influenced by outside interests, even though there is no conflict of interest."

Executive Code, Section I B.

The Quasi-Judicial Role Ethics-- The Bottom Line:

• Public Confidence

The Executive Code effectively prohibits appointees from "[a]ffecting adversely the confidence of the public in the integrity of state government."

The Quasi-Judicial Role Ethics—Recusal, 10 V.S.A. § 6031

- Statutory process for recusal:
- (b) As soon as practicable after grounds become known, a party may move to disqualify a Board member or District Commissioner from a particular matter before the Board or District Commission.
 - (1) The motion shall contain a clear statement of the specific grounds for disqualification and when such grounds were first known.
 - (2) On receipt of the motion, a District Commissioner who is the subject of the motion shall disqualify himself or herself or shall refer the motion to the Chair of the Board.
 - (A) The Chair of the Board may disqualify the District Commissioner from the matter before the District Commission if, on review of the motion, the Chair determines that such disqualification is necessary to ensure compliance with subsection (a)(ethical standards) of this section.
 - (B) On disqualification of a District Commissioner under this subsection, the Chair of the Board shall assign another District Commissioner to take the place of the disqualified Commissioner. The Chair shall consider making such an assignment from among the members of the same District Commission before assigning a member of another District Commission.

Who the attorneys represent

- The Natural Resources Board:
 - Provide guidance and advice on general matters including policy initiatives, rule making, guidance documents and legislative initiatives.
 - Represent the NRB at the Superior Court, Environmental Division in appealed matters (permits and JOs).
 - Enforcement matters (advise board, negotiate and prosecute).
- District Commissions and District Coordinators:
 - Provide guidance and advice on general matters including issues concerning certain criteria, procedural matters and evidentiary matters.
 - Provide advice concerning jurisdictional questions (coordinators).

THE ACT 250 PROCESS (AFTER JURISDICTION)

Application Review Process

7 Days
Completeness Review
by District Coordinator



Application to Commission for Major/Minor Determination



Major

Board Rule 51: ... "if the district commission determines that there is demonstrable likelihood that the project will not present significant adverse impact under any of the 10 criteria . . ."



Application Process

Minor

Notice and Proposed Permit Mailed and Published

Within 10 days of filing of complete application

Comment Period for Hearing Request

7 - 20 days





If No Hearing
Request:
Commission Issues
Decision after Last
Permit or Other
Evidence Received

10 Days

If Hearing is Requested:
Application is Processed
as Major; Hearing is Scheduled

Within 20 days of end of public comment period

Application Review Process

Major

Notice Mailed and Published in Newspaper

Within 10 days of filing of complete application

Hearing or Prehearing; Site Visit

Within 40 days of filing of complete application;

not less than 10 days from publication of notice

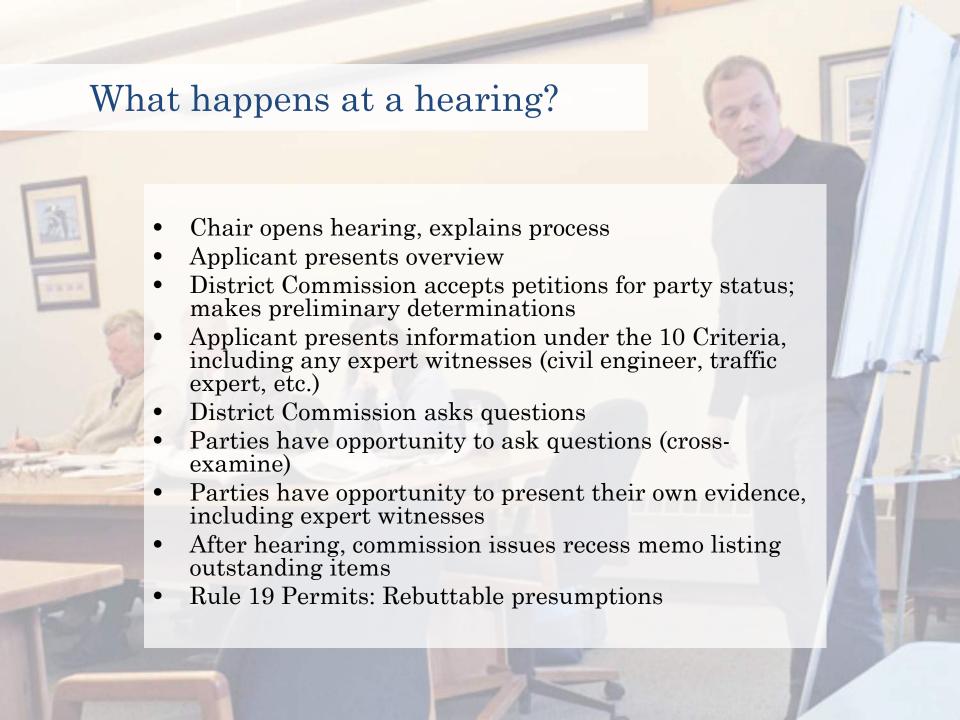
Hearing Recess Order

Within 14 days of hearing

Last Recess Item Received by Commission

Deliberations and Issuance of Decision

Within 20 Days of receipt of last item, last permit or completion of deliberations







Citizen-Based Review Process





Decisions and Permits

- ➤ <u>Decisions</u> applications are either approved, approved with conditions, or denied. Findings of Fact and Conclusions of Law are drafted and issued.
- ➤ <u>Permits Granted and Conditions Attached</u> when permits are granted they are subject to a wide range of conditions transportation, erosion control measures; energy efficiency; etc.
- ➤ <u>Permits Denied</u> if a commission finds that the project will be detrimental to the public health, safety or general welfare it will be denied. Permits may not be denied under Criteria 5, 6 and 7 but conditions can be applied under these criteria.
- ➤ <u>Nature of Permits</u> LUPs run with the land; they are transferrable; project completion; expiration dates; non-use (abandonment).

Findings of Facts and Conclusions of Law

- What are findings of fact and conclusions of law?
 - *Findings of fact* are statements of fact that a district commission believes are true and wants to use as a basis for granting, denying or conditioning of a permit.
 - *Conclusions of law* are the application of law to the findings of fact (i.e. whether the statutory criteria of Act 250 have been met or whether Act 250 jurisdiction applies).
- ➤ What is the function of findings of fact and conclusions of law?
 - "The purpose of findings of fact and conclusions of law . . . is to make a clear statement to the litigants, and to [a reviewing court] if an appeal is taken, of what was decided and how the decision was reached." Louis Anthony Corp. v. Dept. of Liquor Control, 139 Vt. 570, 573 (1981).
 - Findings of fact and conclusions of law which are supported by the evidence and well-written (1) encourage confidence in the system on the part of the litigants, making it more likely that the result will be accepted; and (2) help the reviewing court to understand better the issues and to render a just decision.
- ➤ How do findings of fact and conclusions of law relate to one another?
 - Findings of fact are based on the evidentiary record. The conclusions of law are based on the findings of fact.



RESOURCES

- District Coordinator and Support Staff
- Natural Resources Board Administrative and Legal Staff ((802) 828-3309)
- Training Manual (Also on web site: http://nrb.vermont.gov/regulations/commission-manual
- Web site: <u>www.nrb.Vermont.gov</u>
 - Staff addresses, phone #, email
 - Statute and Act 250 Rules
 - Environmental Board Decisions (1980 2008)
 - District Commission Cases (ANR Database)
 - E-Note Index

QUESTIONS??

Land Use Planning in Vermont

An Overview

Commission on Act 250 October 25, 2017

Presented in Collaboration with:

VT Association of Planning & Development Agencies

VT Dept. of Housing & Community Development

VT League of Cities & Towns

VT Natural Resources Council

VT Planners Association



Three Part Presentation:

- Historical Perspective
- Planning Today
- Planning and Act 250



UVM Landscape Change Program

Part I

HISTORICAL PERSPECTIVE

The Setting: Climate and Geology



Credit: Walking Distance: Extraordinary Hikes for Ordinary People.

Robert and Martha Manning (http://extraordinaryhikes.com/)

The Law

- Common Law, Public Trust—access to resources
- Federal, State Constitutions—protected rights
 - Freedoms of speech, religion, public gathering
 - Property rights (takings)
 - Equal treatment, due process
- Federal, State Statutes
 - Protected classes, uses, restrictions
- Delegated Authority (Dillon State)
 - Municipal charters
- ➤ Police power = ability to plan, regulate
- > Public interest, good (plan) = basis for regulation



The Layout

Bolton, Vermont

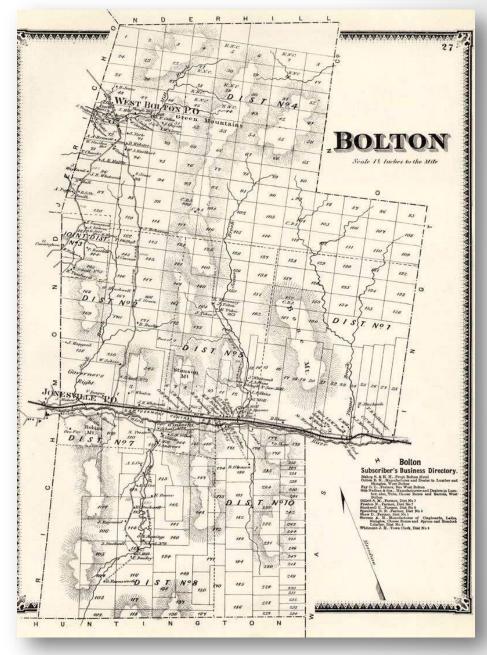
Chartered: 1763

- 6 miles square
- 72 equal shares
- Glebe, school, governor lots
- 1-Acre "town lots" in center
- Allowance for highways
- Cultivate 5 acres w/in 5 years
- Annual meeting— 2nd Tuesday in March

Population 1860: 645

Population 1960: 237

F. W. Beers Map, 1869



The Land: 19th Century Landscape



Photographer: Homer Locke, Jonesville, Vermont, c. 1910

Source: Town of Bolton

1850: Pop. 314,120

1930: Pop. 359,611



Fig. 3. This step stone the experiment distributes of six III.135 emple also lies. Very next in IIII. Comparison with Fig. 3 (New Yor Standing of population in least distribute and the experimental to the other and larger with part.



Fig. 3. This may show the approximate distribution of the \$10.451 people who fived in Varyment of \$100. Through roads population has deverance assumethy actor \$110, the population of the state as a whole has constant on the \$10.000.

Village Improvement

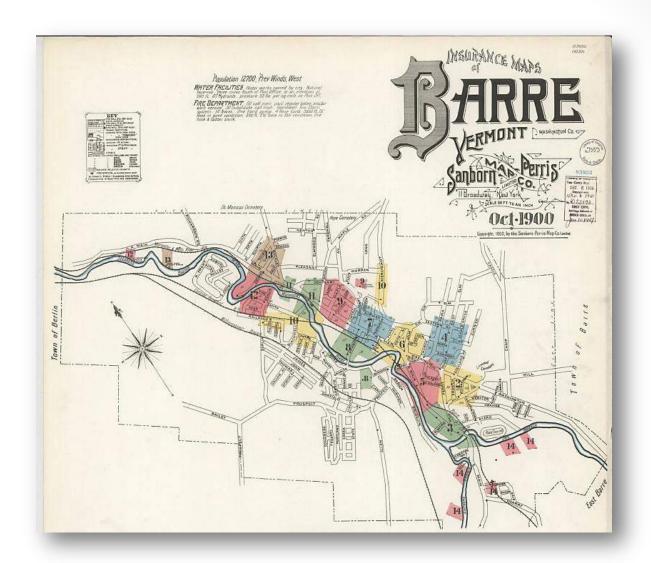
- Village Incorporations –
 water, sewer, lighting
- Village Improvement Societies beautification, restoration



- Call for more "orderly development"

 Town Planning: A Program for Civic Preparedness for Vermont
 Communities—K.R.B. Flint (1919)
- Vermont Planning Act (1921)

 To prepare or acquire a plan for the future development of the city, town or incorporated village which shall be based primarily upon convenience, utility and public welfare.



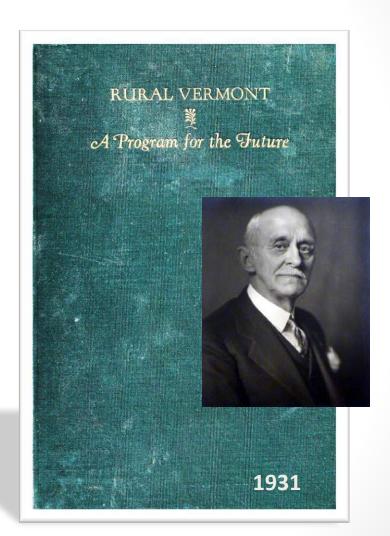
Sanborn Fire Insurance Map

Source: Library of Congress

VT Country Life Commission (1928)

The immediate purpose of the Commission is that of scientific planning for action leading towards higher goals...

> State Planning Board (1935-45)



Land Conservation

- Camels Hump State Park (1911)
- Long Trail (1912)
- Mount Mansfield State Forest (1914)
- Town Forest Act (1915)
- Green Mountain National Forest (1932)

Green Mountain Parkway (1933-36)



Credit: VT Historical Society

Mid-Century Modern...

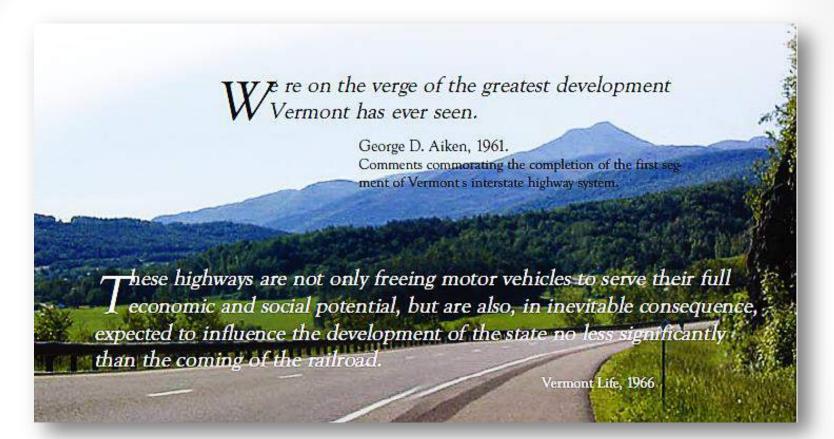








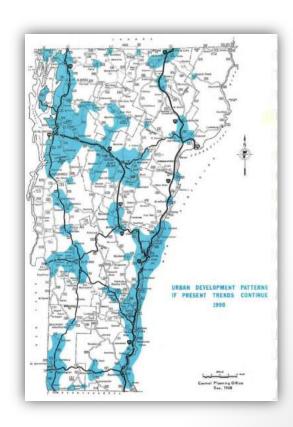
Photos: UVM Landscape Change Program, Vermont Historical Society



Source: *Vermont Interstate Interchange Planning and Development Guidelines,* VT DHCA (2004)

Golden Era

- HUD 701 Grant Program—Federal \$ for county, city planning
- Central Planning Office (1965)
 - Coordinate state, regional, local growth management
 - Technical assistance, reports, legislation
- Vision and Choice (1968)
 - State planning goals
 - Development patterns, guidelines
- Gibb Commission Report (1970)
 - State Development Plan
 - Statewide development, environmental regulations
- State Planning Office (1970)
 - Act 250 plans



Planning & Development Act (1968)

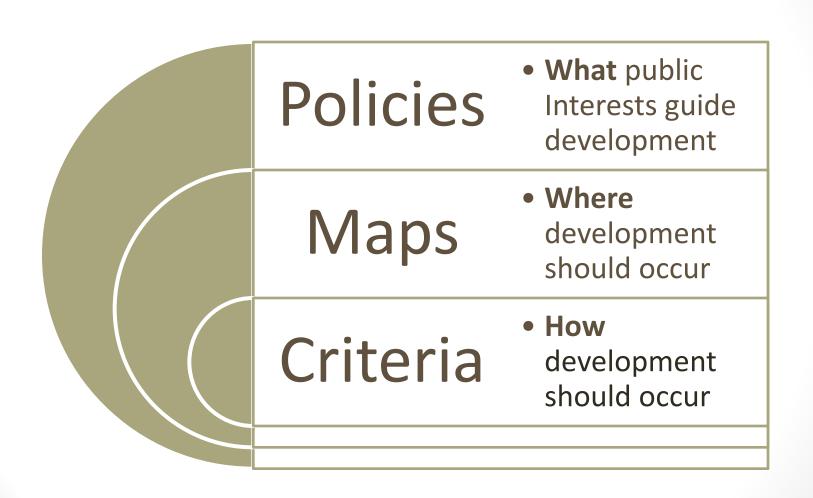
24 V.S.A. Chapter 117 or "Chapter 117"

- Purpose "appropriate development" of all lands
- Regional planning commissions
- Regional plans required
- Municipal planning commissions optional
- Municipal plans optional, required for bylaws
- Municipal bylaws zoning, subdivision, etc.
- Bylaw administration and enforcement
- Appeals to Superior Court
- Viewed as broadly enabling, with limitations

Act 250: State Land Use Act (1970)

- Interim Land Capability Plan classify land based on physical suitability for development (1971)
- Capability and Development Plan also consider economic, social factors—planning policies (1973)
- State Land Use Plan, Map designating lands best suited for agriculture, forestry, recreation, urban development (drafted, not adopted—repealed 1984)
- 10 criteria including project conformance with local, regional and state plans (criteria 9, 10)

State Land Use Act (Act 250)



Capability & Development Plan (1973)

Statement of Legislative Intent and Findings (1973, No. 85 § 7):

In order to provide **general and uniform policies on land use and development** to municipal, regional and state governmental agencies... and to provide the basis for the Vermont land use plan ... the general assembly hereby finds and declares as follows...

19 policy statements:

- Planning for Land Use and Economic Development (8)
- Resource Use and Conservation (6)
- Government Facilities and Public Utilities (5)
- Legislative findings shall not be used in consideration of applications (under criterion 9)

"No" to State Land Use Plan



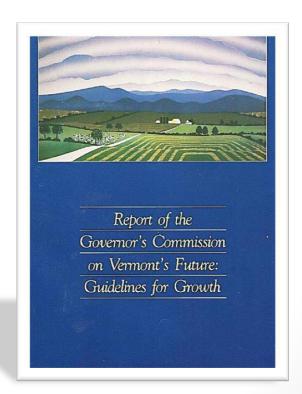
Abandoned 1976, Repealed 1984

Guidelines for Growth (1988)

A Process to Guide Vermont into the Future...

Key Finding:

A coordinated, comprehensive planning process and policy framework must be established to guide decisions by local governments, regional planning commissions and state agencies.



Growth Management Act (Act 200)

Framework for coordinated planning:

- State planning goals (32)
- State agency "Act 200" plans (17)
- Regional review/approval of municipal plans (local option)
- Regional confirmation of municipal planning
- Council of Regional Commissions—state, regional plans
- Municipal and Regional Planning Fund
- State, regional, approved municipal plans must be "consistent" with state planning goals, and "compatible" with other plans.

State Planning Goals (24 V.S.A. § 4302)

- 32 Goals, Policy Statements ("reduced" to 12, 2 added)
- (1) To plan development so as to maintain the **historic** settlement pattern of compact village and urban centers separated by rural countryside.

...

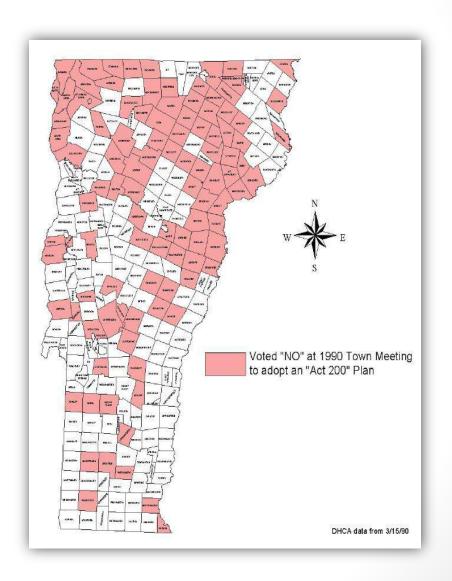
- (6) To maintain and improve the quality of air, water, wildlife, forests, and other land resources.
 - (A) Vermont's air, water, wildlife, mineral and land resources should be planned for use and development <u>according to the</u> <u>principles set forth in 10 V.S.A. § 6086(a).</u>

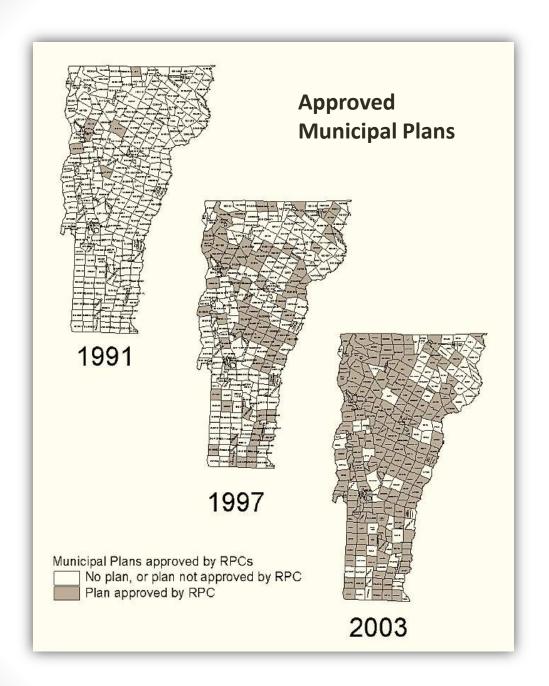
Required Plan Elements

- Policies for growth, development, environmental protection
- Land Use Plan, Map (Designations 2013; Forests, Wildlife 2015)
- Transportation Plan, Map
- Utility and Facility Plan, Map
- Educational Facilities Plan, Map (municipal plans)
- Policies to preserve historic, natural, scenic resources
- Energy Plan (optional "Enhanced" Energy Plan, Map 2016)
- Housing Plan
- Economic Development Plan (2011)
- Flood Resilience Plan (2013)
- Regional Coordination, Relationships
- Implementation Program

"No" to Act 200 Plans...

Towns voting "no" to Act 200 planning in 1990...



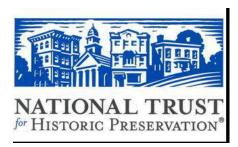


Status Report: Land Use Planning in Vermont 15 Years after Act 200, VT DHCA (2004)

Endangered Vermont (1993)

Threats:

- Commercial strip development
- Leapfrog housing development
- Big box development

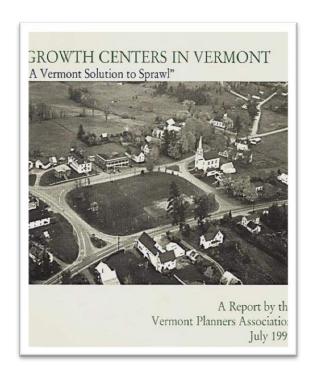




Smart Growth Vermont

Revitalization of our communities and downtowns and dealing effectively with sprawl are among the most urgent and difficult issues facing Vermonters.

-- Gov. Howard Dean, MD





Downtowns, Village Centers

Core Designations



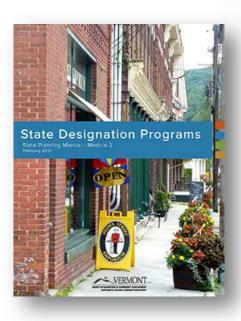
Village Centers (2003)



Downtowns (1998)



New Town Centers (2003)



Add-On Designations (must have a core designation to qualify):



Neighborhood Development Areas (2013)



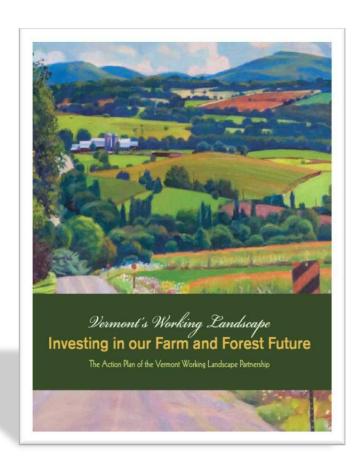
Growth Centers (2006)

Source: VT DHCD

Working Landscape

There is a tremendous opportunity for Vermont to build a farm and forest Renaissance as a foundation for the future of the land, culture, and economy of the state...

VT Working Landscape Partnership (2011)



Permit Reform (2003)

Chapter 117 Update: Plan Implementation

- Regulatory tools
- Nonregulatory tools

Codify "Consistency Doctrine" in statute:

All regulatory and nonregulatory tools adopted to implement a plan "shall be in conformance with the plan..." [§ 4401]

> As "conformance with the plan" is defined in statute...



Chittenden County RPC

Part II

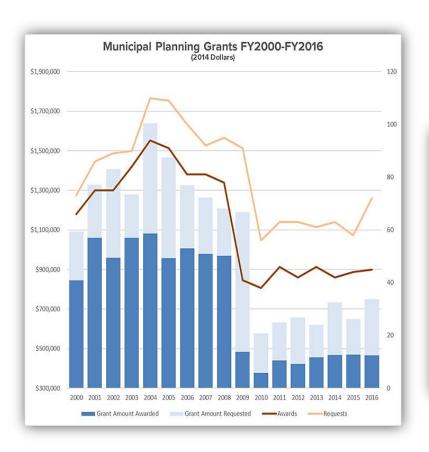
PLANNING TODAY

VT Planning Community

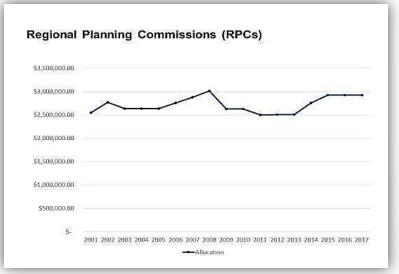
Groups	Members
Volunteers (Local Commissions, Boards)	2,300
Vermont Planners Association	190
American Planning Association	87
Northern New England Chapter (VT, NH, ME)	98
American Institute of Certified Planners (AICP-VT)	67

- VT Dept. of Housing and Community Development
- VT Association of Planning and Development Agencies Regional Planning Commissions
- VT League of Cities and Towns
- VT Natural Resources Council –Sustainable Communities
- University of Vermont, Center for Rural Studies
- Education and Training Collaborative (ad hoc)- VT Planning Information Center

Municipal & Regional Planning Fund



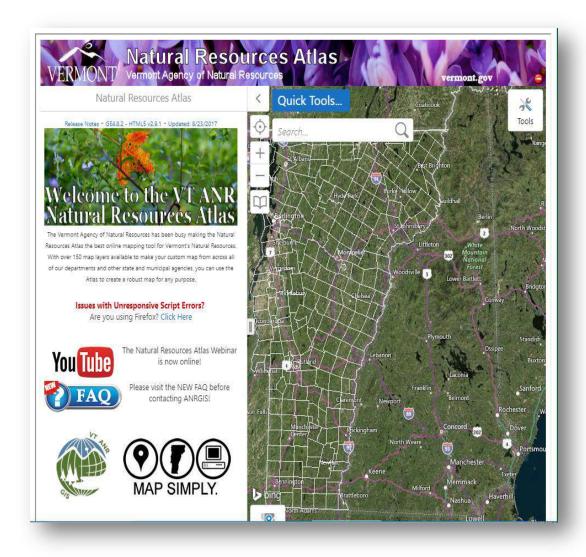
Notwithstanding...



Planning Info, Data Sources

- State Data Center, Data Collaborative UVM Center for Rural Studies
- Vermont Center for Geographic Information—ACCD
- Planning manual, guides, program information—DHCD
- Population data, vital statistics—VDH
- School Data Education
- Housing Data—VHFA
- Tax, income data—Tax Department
- Natural Resource Atlas, Biofinder, databases, guides—ANR
- Transportation system information, maps, data—VTrans
- Economic data, profiles—VDL, Ag Agency, VT Food Atlas
- VT Planning Information Center (website)
- Vermont Insights—Building Bright Futures
- Community Energy Dashboard—Energy Action Network, VSJF
- ➤ No central warehouse; no consistent/adopted population, housing, employment projections for use in local, regional state planning

VT Geographic Information System



State Planning

- State Planning Office—still on the books, does not exist (3 V.S.A. § 2104)
- State Agency Planning (3 V.S.A. Ch. 67) plans must be consistent with state planning goals, compatible with regional, approved municipal plans (still on the books, no longer in effect?)
- ➤ Agency, Department Plans as required under federal programs, state statutes, or by current administration

State Plans

- HUD Consolidated Plan | Housing Needs Assessment
- Historic Preservation Plan
- Comprehensive Economic Development Strategy
- Farm to Plate Strategic Plan
- Long Range Transportation Plan | Sector Plans
- Comprehensive Energy Plan
- Electric Plan
- Telecommunications Plan
- Healthy Vermonters 2020 | State Health Improvement Plan
- State Hazard Mitigation Plan
- Statewide Comprehensive Outdoor Recreation Plan (SCORP)
- Air Quality Implementation Plans
- Lake Champlain TMDL Implementation Plan
- Tactical Basin Plans
- Wildlife Action Plan
- Forest Action Plan

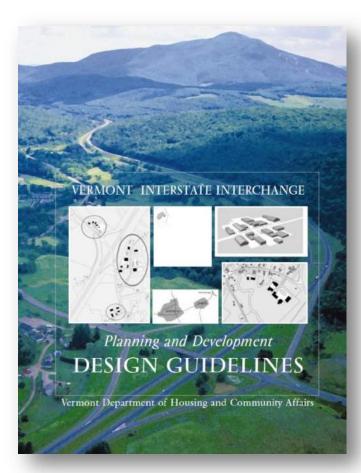
SCORP: I-89 = Scenic Corridor



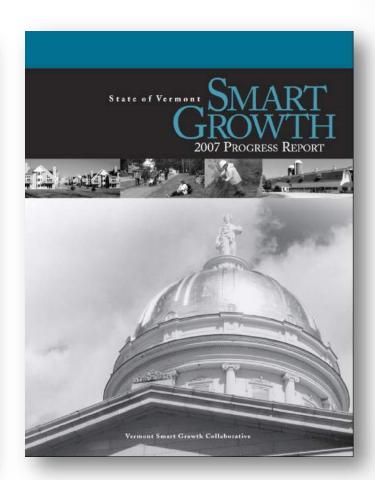
ptvermont.org

Basis for initial Act 250 denial of a proposed motel at Exit 4, under Criterion 8 (late 1970s)

State Policies, Programs

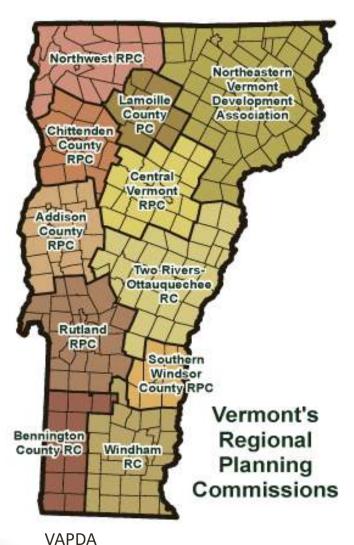


VT DHCA (2004)



VT Smart Growth Collaborative (2007)

Regional Planning



- 11 Commissions
- Governed by member municipalities
- No taxing, regulatory authority
- MRPF, Contracts, Grants, Local \$
- 8-Year regional plans
- Plan implementation:
 - Municipal technical assistance
 - Regional programs, projects
 - Collaborations
 - ➤ Participation in Act 250, 248

Regional Programs

- Municipal Planning, Plan Implementation
- Regional Planning
- Brownfields
- Economic and Community Development
- Transportation Planning
- Emergency Preparedness and Disaster Recovery
- Geographic Information Services
- Energy Planning, Conservation and Development
- Watershed Planning and Project Development
- Special Projects

VAPDA Annual Reports

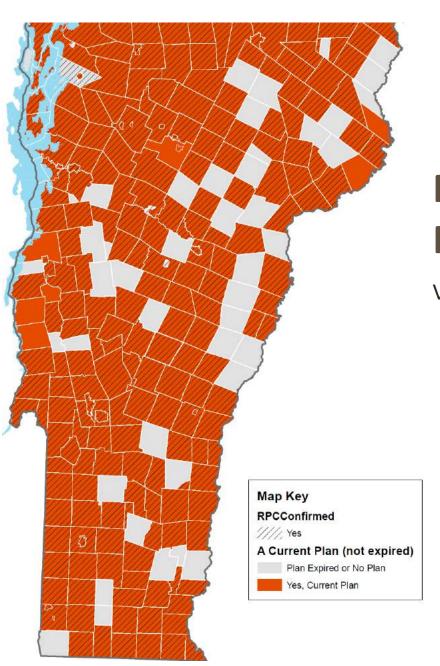
Municipal Planning

Optional – communities are not required to plan

- Planning commission—appointed or elected volunteers
- Commission prepares plans, bylaws, improvement programs
- Plan—updated/readopted every 8 years

Must have a plan in effect to:

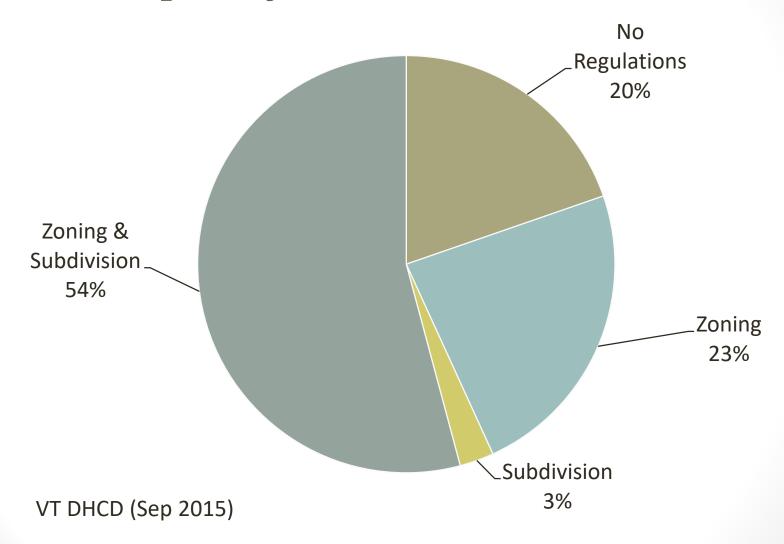
- Adopt/update zoning, subdivision regulations
- Apply for state designations, planning grants
- Be considered in Act 250 (Criterion 10), Section 248
- Conduct "Local Act 250" reviews
- Local planning capacity, staff, resources vary greatly



Municipal Plans

VT DHCD (Oct 2017)

Municipal Bylaws



State Designations: 159



Village Centers: 123



Downtowns: 23



New Town Centers: 2

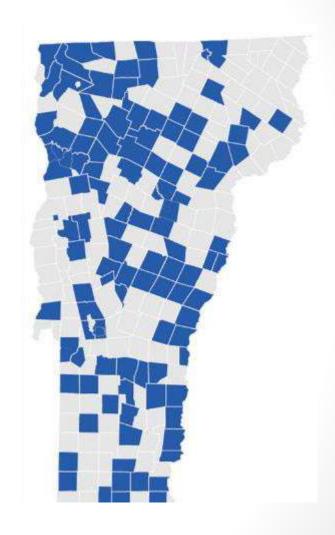


Neighborhoods: 6



Growth Centers: 6

VT DHCD (June 2017)



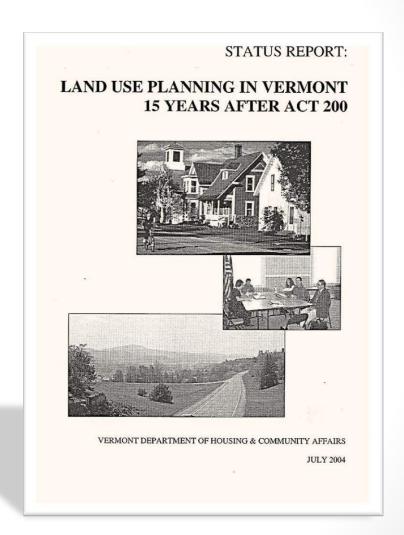
Act 200 Assessment (2004)

Good:

- Goals framework
- State planning \$
- GIS mapping
- Improved municipal, regional plans

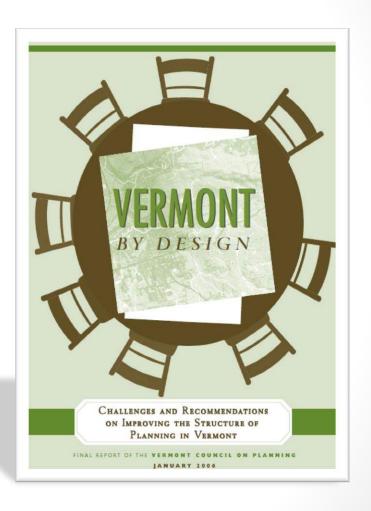
Not so good:

- No coordination
- CORC (repealed 2009)
- State agency plans (consistency w/goals)

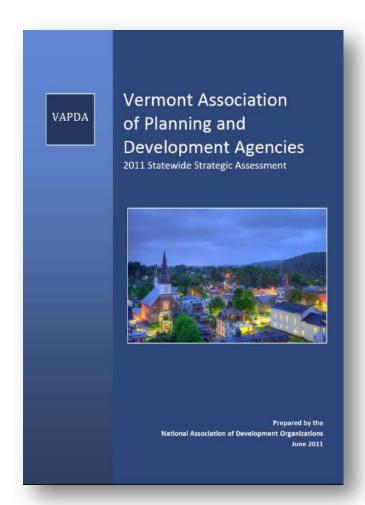


Vermont by Design (2006)

- Promise of Act 200 unfulfilled
- No state commitment to longterm planning
- Poor vertical, horizontal communication
- No coordinated state planning
- RPC plans inconsistent
- Process unwieldy, inefficient
- Plans vague, hard to interpret
- Reinstate Office of Planning Coordination
- > Update planning statutes



Regional Planning Assessments





REGIONAL SERVICES REPORT

January 15, 2011

Prepared by the
Vermont Association of Planning & Development Agencies
c/o Two Rivers-Ottauquechee Regional Commission
3117 Rose Hill
Woodstock, VT 05091
802-457-3188

Municipal Planning Surveys



In Sum

Planning today is more...

- Comprehensive
- Technical and sophisticated
- Complicated and messy
- Legally driven

Challenges include...

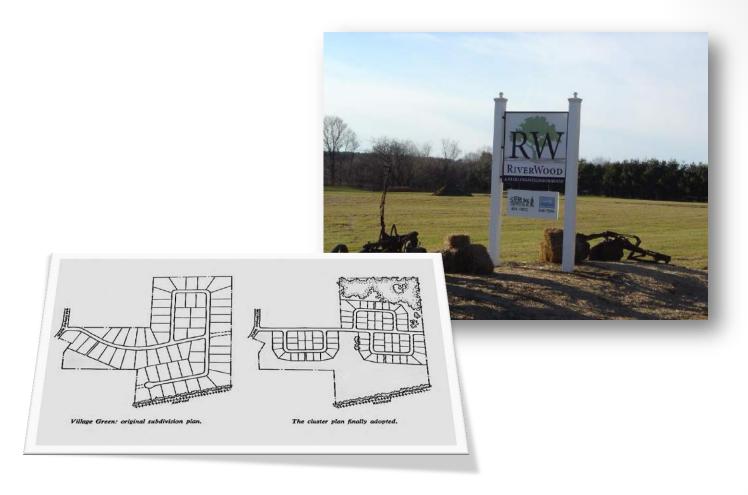
No state coordination

Median Population, VT Towns: 1,222



VT DHCD

- Planning capacity—volunteers, staff, resources, training
- Lack of good info, commonly accepted forecasts
- Technology, social media
- Community engagement



Part III

PLANNING AND ACT 250

117 Act 250: Party Status

"Parties by Right" under Act 250 include:

- Municipality (legislative body)
- Municipal planning commission
- Regional planning commission
- Affected state agencies
- ➤ Each may address or appeal any or all of the ten Act 250 criteria

117 Act 250: RPC Duties

§ 4345a. Duties of regional planning commissions

A regional planning commission... *shall*:

- (13) Appear before District Environmental Commissions to aid them in making a determination as to the conformance of developments...with the criteria of 10 V.S.A. § 6086.
- (17) As part of its regional plan, define a substantial regional impact, This definition shall be given due consideration, where relevant, in State regulatory proceedings.

117 Act 250: Jurisdiction

Act 250 jurisdiction varies for:

- "10-Acre Towns"—zoning and subdivision (or unified) regulations
 - Commercial, industrial on > 10 acres
 - Subdivisions creating 10+ lots of any size
- "1-Acre Towns" only zoning or subdivision, or no regulations
 - Commercial, industrial on > than 1 acre
 - Subdivisions creating 6+ lots of any size
- State Designated Centers
 - Ex: priority housing projects

117 Act 250: Criteria

 Party status under all 10 criteria – plan policies, maps may inform each

Criterion 10:

- Conform to local, regional plans, improvement program
- If municipal plan is ambiguous, shall consider bylaws that implement, are consistent with plan

Other criteria often considered in relation to plans:

- 5 Traffic
- 6 Educational services
- 7 Municipal, governmental services
- 8 Aesthetics (Quechee Test), Wildlife
- 9A (Growth impacts), 9B (ag soils), 9H (scattered development), 9K (public investments), 9L (settlement patterns)

117 Act 250: Local/State Review

Conditional Use Review (24 V.S.A. § 4414)

One or more review criteria under **10 V.S.A. § 6086** may be adopted as standards for use in conditional use review

Local Act 250 Review (24 V.S.A. § 4420)

- On the record review of municipal impacts caused by "development" or "subdivision" as defined under Act
 250 under criteria 6, 7, 10
- Local determinations serve as presumptions under Act 250

117 Act 250: Regional v. Municipal

In Act 250 proceedings, when the provisions of a regional or municipal plan are relevant to the determination of any issue:

- (1) the provisions of the regional plan shall be given effect to the extent that they are not in conflict with the provisions of a duly adopted municipal plan;
- (2) to the extent that such a conflict exists, the regional plan shall be given effect if it is demonstrated that the project under consideration...would have a substantial regional impact.

Quechee Highlands: Exit 1



Source: VT Agency of Natural Resources

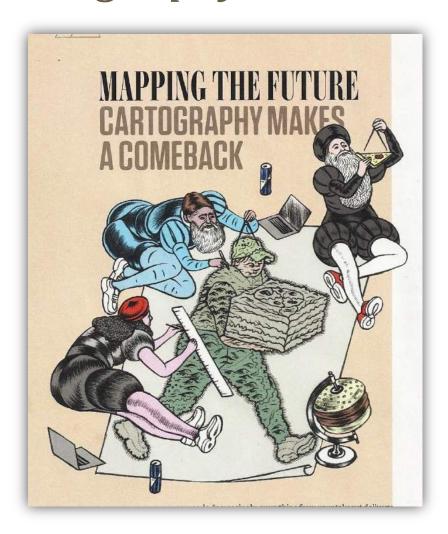
The Exit 1 interchange is not an 'existing or planned settlement center' under the regional plan, and therefore, it is not an appropriate location for major development.

VT Supreme Court, In re B&M Realty (2016)

117 Act 250: Plan Language

- 1979 ...Plans are not written like zoning bylaws...but this does not mean that they are legally meaningless
- 1996... a "specific" plan policy:
 - Pertains to the area
 - Guides or proscribes conduct or land use within the area
 - Is sufficiently clear to guide the conduct of an average person, using common sense and understanding
- 2005... Despite fact that plans are abstract and advisory,
 Commissioners are obliged to give them regulatory effect.
 Two questions are asked:
 - Are the plan's provisions specific or ambiguous?
 - Is the language in the plan "mandatory" or merely "guidance"? [Ex: "should" vs. "shall"]

Cartography is the New Code...



Where development occurs is as important as how it occurs – maps matter...

Wired (Nov 2017)

Is Fundamental Change Afoot...?

What we face...

- Climate change
- Effects of the past
- Diminishing, finite resources
- Aging infrastructure
- Demographic, economic, social shifts
- Rapid technological advances
- Increasing complexity
- Decreasing affordability
- Changing values?



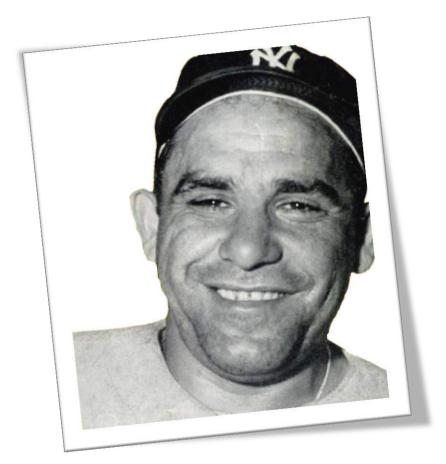


PKSB Architects



Vermont 2075?

- ➤ How do we address changing definitions of "community" and "place"?
- How do we manage the increasing complexities and cost of governance?
- ➤ How do we adapt our 19th century landscape to meet 21st century realities and needs?



If you don't know where you are going, you'll end up someplace else.

— <u>Yogi Berra</u>

Report to the Act 47 Commission regarding Act 250 and Recreational Trail Regulation in Vermont

In response to Act 194 of 2018

October 1, 2018

Developed by:

Act 194 Recreational Trails Working Group

Submitted by:

Diane B. Snelling, Chair

Vermont Natural Resources Board

Michael C. Snyder, Commissioner

Vermont Department of Forests, Parks and Recreation

1. INTRODUCTION

In 2018 the Vermont General Assembly enacted Act 194 (S.276)¹, an act relating to rural economic development. Section 3 of Act 194 focused on Act 250 jurisdiction and recreational trails, and directed the Act 47 Commission on Act 250: the Next 50 Years ("Commission") to "evaluate the strengths and challenges associated with regulation of recreational trails under 10 V.S.A. Chapter 151 (Act 250) and alternative structures for the planning, review, and construction of future trail networks and the extension of existing trial networks".

Act 194 further instructed the Commissioner of Forests, Parks and Recreation ("FPR") or designee and the Chair of the Natural Resources Board ("NRB") or designee to form a recreational trails working group ("Working Group") that "shall offer an opportunity for submission of information and recommendations from affected parties, including recreational trail and environmental organizations". Act 194 requires that Working Group to submit a report to the Commission on or before October 1, 2018.

This report is intended to meet the submission requirement of Act 194; however, it is not the end of the Working Group's efforts nor the final piece of testimony the Working Group intends to provide the Commission on this issue. The Working Group will meet on November 1, 2018 with a broad range of stakeholders to continue the Act 250 and trails conversation and will provide the Commission with updated information and additional recommendations at that time.

Working Group and Process

The FPR Commissioner and NRB Chair constituted the Working Group to include officers and staff from FPR, NRB and the Agency of Natural Resources ("ANR"). Specifically, from FPR:

- Michael Snyder, Commissioner
- Rebecca Washburn, Director of Lands Administration and Recreation
- Craig Whipple, Director of State Parks
- Jessica Savage, Recreation Program Manager

From NRB:

- Diane Snelling, Chair
- Donna Barlow Casey, Executive Director
- Greg Boulbol, General Counsel

From ANR:

Billy Coster, Director of Planning

To ensure the Working Group was aware of and considered a broad range of information and perspectives, the Working Group invited a representative network of statewide and regional trail groups, environmental advocacy organizations, planners, and land conservation organizations that specialize in trail corridor protection to engage in a formal dialogue around Act 250 and recreational trail regulation.

¹ https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT194/ACT194%20As%20Enacted.pdf

Invited stakeholder representatives included:

- Catamount Trail Association
- Cross Vermont Trail Association
- Green Mountain Club
- Green Mountain Horse Association
- Kingdom Trail Association
- New England Chapter of Backcountry Hunters and Anglers
- Stowe Land Trust
- The Nature Conservancy
- Trust for Public Land
- Upper Valley Trails Alliance
- Vermont Association of Snow Travelers
- Vermont Horse Council
- Vermont Hut Association
- Vermont Land Trust
- Vermont Mountain Bike Association
- Vermont Natural Resources Council in partnership with Audubon Vermont
- Windham Regional Commission
- Windham Hill Pinnacle Association

The Working Group also welcomed input from the Vermont Agency of Transportation, given their role as owners of significant rail-trail projects in Vermont, and the Vermont Trails and Greenways Council provided direct input to the FPR Commissioner and ANR staff. Because the Vermont Trails and Greenways Council is a statutorily constructed entity² designed to advise ANR, the Working Group concluded the Council should not participate directly in the process as an invited stakeholder, but rather advise and inform ANR's participation; that said, many of the member organization that make up the Council were invited to participate as stand-alone entities.

Once constituted, the Working Group asked the invited stakeholders to complete a written survey. The survey was intended to gather baseline information about Act 250 jurisdiction, recreational trails regulation, alternative regulatory models, and experiences with the Act 250 process, in order to provide foundational information and recommendations from affected parties to the Commission. All eighteen organizations listed above responded to the survey. Of the respondents, sixty-one percent (11) represented they were members of the Vermont Trail System; the remaining respondents represented planners, environmental advocates, and land trusts – some of which manage trails of their own.

This report largely includes and relies on the results of that survey. As indicated above, the Working Group will meet later this fall, in person with the invited representative stakeholders, to discuss in more detail the survey results and broader issues related to Act 250 and recreational trails regulation, with the goal of providing additional information and recommendations to the Commission at that time.

² https://legislature.vermont.gov/statutes/section/10/020/00445

2. SURVEY RESULTS

Before discussing the survey results, it is important to note that the Working Group believes an adequate regulatory framework for recreational trail projects in Vermont is important and warranted. While individual members of the Working Group may be open to revisions to the existing Act 250 structure or alternative regulatory structures, the Working Group is unified in the belief that trail projects of a certain scale and impact require some level of state review.

Survey respondents largely agreed with this position. The survey indicated universal support for preventing serious environmental damage that could result from trail projects; however, there were a range of ideas how to achieve that goal ranging from the current Act 250 review process, to: a truncated Act 250 review with fewer criteria; an alternative regulatory model housed potentially at ANR; requiring compliance with trail building and use best practices and, 'self-policing' by trail groups. A summary of survey results is included as **Appendix A** of this report and a copy of the survey itself as **Appendix B**.

Survey respondents overwhelmingly value a regulatory process that is clear, consistent and that protects sensitive environmental areas. Respondents also consistently identified three categories of concern or need that appear to be key for significantly improving the regulatory process and facilitating new high, quality trail projects and connections within the state:

- 1. The need for increased clarity, more frequent communication, and training of all involved parties as to the needs and concerns of each other were clearly identified across most responses, as were suggestions for increased and ongoing conversation between trail organizations and the NRB. With more communication, the comments suggest, comes a deeper and fuller understanding of respective constraints and a better environment in which to anticipate each other's needs and constructively problem solve.
- 2. Respondents are generally not calling for elimination of permitting or a regulatory process for trail projects; instead there are suggestions for modifying the process so that it better reflects the unique attributes of trail projects and needs of the respective parties.
- 3. Time concerns represent a third focus area, specifically the length of time between submission of application and issuance of decisions; the duration of the Act 250 process that may result in postponement of trail building due to seasonality; the amount of time and effort required by volunteer organizations in navigating the regulatory process; and concerns about whether the current regulatory process adequately addresses the cumulative impact of trail build-out over the mid and long term.

In addition to the above, the following represent comments consistently offered by respondents:

- Recreational trails should not degrade the environment.
- Some form of regulatory oversight is appropriate once trails hit a certain scale.
- Act 250 has had a positive impact in Vermont and is a good and important program; however, some respondents believe it is not a good fit for recreational trail regulation.
- Recreational trail projects are often much different than other forms of development regulated by Act 250, as they often cross multiple parcels; have a narrow, linear footprint; often lack permanent infrastructure and associated impacts; and often lack the potential revenue base of commercial or residential development typically regulated by Act 250, making it difficult for

primarily non-profit or volunteer organizations to support the costs associated with the current regulatory process.

- Not all trail projects are the same; they vary in type, use and potential impact.
- Vermont would benefit from a clearing house of trail building/maintenance and regulatory information, as well as a better platform for peer-to-peer information sharing, such as an annual meeting or series of workshops.
- There is a perceived need for better clarity and consistency around the definition and application of certain key Act 250 terms such as "project" and "material change".
- There is a perceived need for better consistency across Act 250 districts related to jurisdictional decisions and Act 250 regulation of trail projects.
- Not all of Act 250's criteria appear relevant for most trail projects.
- Many trail organizations are seeking clarity as to whether the disturbance threshold used to determine jurisdiction 're-starts' at property boundaries.
- The incremental build-out of trail networks may not afford the opportunity for cumulative review of networks, and it is unclear if the current review process addresses cumulative impact adequately.

The survey results offered no major surprises and all the comments generally fell within familiar themes expressed to the Working Group during the 2018 legislative session, albeit with some additional focus and specificity. The survey did identify a range of positions; however, it also confirmed there is a significant agreement around certain values and that an opportunity may exist for the Working Group and representative stakeholders to envision a regulatory process that better addresses the unique nature of recreation trail projects in Vermont without compromising environmental protection or the interests of abutters, municipalities and other engaged citizens.

3. NEXT STEPS

As indicated above, this report is in no way the end of the Working Group's engagement around this issue. The Working Group plans to meet with the representative stakeholders on November 1 and will work over the next month to prepare for that meeting, analyze the survey results further, and develop questions and concepts through which to more constructively engage stakeholders. The Working Group would welcome the opportunity to supplement this report to the Commission after the November 1 meeting, and testify before the Commission in person if invited. Per a separate Commission request, the NRB is also gathering data on the number of Act 250 trail projects to share with the Commission.

4. CONCLUSION

The Working Group values the opportunity share this report with the Commission and appreciates the Commission's attention to this timely and important regulatory issue. As Vermont seeks to expand trail-based outdoor recreational opportunities as a strategy to improve economic, health and quality of life population-scale indicators, it is critical that the state maintain a regulatory framework that is protective, transparent, and addresses the legitimate concerns of both the regulated community and engaged citizens. The Working Group looks forward to supplementing this report in the future and continuing to support the Commission's work on Act 250 and recreational trail regulation.

Trails Survey Results (September 2018)

The following information is intended to offer a quick review of survey responses and arrive at a general comparison of opinions offered. This is not a verbatim representation of what is presented in each survey that has been submitted. To understand the complexity of responses and their nuances, it is best to read each of the submittals.

- o 18 submittals
 - 11 are members of the Vermont Trails System; 7 are not members
 - 61% of all submittals were members; 38.8% were not
- Act 250 experience. Question: Have you experienced any challenges in obtaining Act 250
 permits for trails (please explain)? Please limit your response to personal experiences that you or
 your organization have experienced.
 - Because of the different choices by respondents (as noted below) it is not possible to correlate answers with direct experiences.
 - In some situations, respondents answered "NO" to experiencing challenges, and then stated that they hadn't had to apply. In other instances, a "No" answer meant they had applied and not found it to be a challenge.
 - Some applicants skipped answering this question, and then offered input into how Act 250 should change, or improve, leaving the reader to wonder how they had knowledge to inform the opinion(s) they articulated in answering other questions.
- o Have you experienced any challenges in obtaining 250 permits for trails?
 - 8 surveys, or less than half of the respondents answered "Yes"; Of the remaining 10 respondents, 5 responded "No"; 5 responded N/A.

Responses are characterized below.

- LVRT and Phen Basin (two surveys reflect same negative impact)
- It's too much work, a cumbersome experience.
- GMC had a vision for Long Trail to cross Winooski River Valley. Ultimately the plan we could implement did not reach the 250 thresholds of 10 acres of disturbance. What if 250 considered the Plan for a trail from MA to Canada that included building a bridge across the Winooski. That consideration would significantly impact 250 's jurisdiction and the administrative process for the permittee.
- The Vermont Horse Council has had limited experience with building trails but some of our members have had issues with the Act 250 process when working on maintaining trails.
- Property had once been considered for development and was then conserved.
 250 still had jurisdiction. Forced to reroute the trail away from Beaver pond despite old logging trail (unofficial trail) was long since established. Other times

- we've done initial legwork only to be told that 250 won't be triggered. Inconsistencies are challenging for small organizations.
- Applied for 3 permits. Application very time-consuming. Some criteria difficult to interpret in relation to trails. Significant differences in interpretation of regulations from different 250 offices. In one we were required to file an amendment to reroute small section around a rare plant; in another with similar issue we were told it was a non-significant change no amendment required.
- Setback to biggest trail project in history of the UVTA an ADA trail for VINS.
 Due to delays in 250 approval process, it will not be built this fall.
- o If you or your organization has been through Act 250 process with respect to trails, please recommend any changes including, but not limited to:
 - A. How to make the process more efficient? B. How to make the process a better fit for the unique development aspects of trails. C. If Act 250 jurisdictional Triggers are not clear, identify how the jurisdictional triggers should be clarified.
 - A. How to make the process more efficient? There were 3 identical responses, synopsized as follows:
 - Terms need be clearly defined. District Coordinators and judicial officers need a common understanding of definitions to avoid inconsistency in applying them.
 - Need clear and shared understanding of when disturbance threshold clock starts.
 - District Coordinators should have benefit of legal counsel prior to any judicial proceeding so they fully understand process, with outcome of less time in the entire process and less need for expensive judicial process.
 - Important for third party enforced environmental standards
 - Oversight that ensures trails don't disrupt important wildlife habitat, wetlands, water quality, neighboring property owners.
 - Define project, commercial and material change more clearly so that they apply to trails
 - Synchronize understanding and application of definitions across the districts
 - Clarify handling of trail projects that cross property boundaries
 - Allow simple definition for a trail project that does not include a existing or abutting trails in a given network
 - Recognize difference between public trail network and commercial outdoor recreation business – streamline process of the former while maintaining protections for the latter
 - Design a special application for trails
 - Trails should have a checklist that triggers Act 250 and assesses whether there are notable impacts
 - Create clarity around key terms/thresholds
 - What types of trail development constitute a "project"? Apply consistently in each district

- What is considered a material change with regards to trails? Apply consistently in each district
- Clarify whether or not crossing property boundaries "re-starts" the disturbance threshold.
- Use the VT State Trails System designation and environmental/trail standards mandated as part of that system as a way to differentiate trail development by groups part of VSTS
- Greater Efficiency would involve the following:
 - Define what constitutes a project; ensure Coordinators understand the application
 - Synchronize Coordinators and their interpretation of the Act
 - Create reporting process that covers approved criteria that Coordinators send to trail orgs
 - Clarify whether or not property boundaries "re-start" disturbance threshold
 - FPR should facilitate annual meeting between trail organizations and District Coordinators

The following separate and distinct responses were provided by the other 15 respondents answering item A.

- Exclude the need for landowners to be co-applicants as long as trail org's have secured landowner permission for access
- Eliminate the requirement to address criteria that trails do not impact, such as impacts on water supply or utility services.
- 1. Define a "project" "commercial" and "material change" more clearly so that they apply to trails; 2. synchronize understanding and application of definitions across the districts right now there is inconsistency in how they are applied; 3. Clarify how you will handle trail projects that cross property boundaries; 4. Allow a simple definition for a trail project that does not include existing or abutting trails in a given network. 5. Recognize that there is a difference between a public trail network and a commercial outdoor recreation business Streamline the process for the former while maintaining protections for the latter.

B. How to make the process a better fit for the unique development aspects of trails:

- Eliminate the requirement to address criteria that trails do not impact: water supply, utility services
- Trails need their own definition since they are not traditional development
- The process should change based on the type of trail (e.g. dirt vs. paved, 8ft vs. 12 ft wide, motorized winter vs. non-motorized winter., etc.)
- Consider: the density and location of trails when considering a permit for a new trail; encroachment into 'remote' areas; a maximum number of trails in a certain density

- Those charged with applying 250 standards need be better education about VT State Trail System and how it functions so that they are able to differentiate between the "project" of a commercial development the system of low-impact recreational trails. Environmental stewardship is already deeply engrained in the culture of trails management. Many small towns rely on trail system for economic survival. Inconsistent interpretation creates and places unnecessary burdens on private landowners. If trail regulation becomes unnecessarily burdensome, landowners will withdraw permission for public access.
- Suggestion to mirror the EPA process in evaluating the cumulative impact(s) of projects.
- Clarity on what constitutes a project and what constitutes a plan for determining jurisdiction. Consistent application of Act 250 criteria across jurisdictions. Cumulative impact and what constitute a project for determining jurisdiction as it relates to trail systems is an issue. Does Act 250 encumber a trail system forever or is it applied on a project by project basis?

C. If Act 250 jurisdictional Triggers are not clear, how should the jurisdictional triggers be clarified

- Improvements to existing trail/road corridors should not be considered a material change
- Beyond more consistent application of the triggers, it would be helpful to clarify what constitutes a "commercial" trail. Is any trail that is open to the public considered commercial?
- The different Act 250 districts have their own way of dealing with trails. Trails on minimally disturbed soils existing forest roads, ancient roads, railroad beds, etc. should not have to go through the Act 250 process. New trails added to a previous Act 250 trail project that are limited to minimally disturbed soils, existing forest roads, ancient roads, railroad beds, etc. should not have to go through the Act 250 process.
- Trails need their own definition since they are not traditional development
- It's unclear where trails fall in the ACT 250 DOES REGULATE AND CONTROL list. If trails fall under number 2: "The construction of improvements for any commercial or industrial purpose..." further defining the terms "improvements," "commercial," and "industrial" would be helpful to the reader.
- They are not clear. They are not well defined, nor are they commonly and consistently understood and applied. Wherever possible, our trail system makes use of existing trails (e.g. old logging roads.) We don't feel that rehabilitating these trails for low-impact recreational use should be considered a "material change," for purposes of triggering Act 250, especially when, rather than degrading the environment, trails management actually enhances the environment by preventing run-off into rivers and streams created by flooded and deteriorated old logging roads and other abandoned road beds.

What are the strengths of Act 250's regulation of trails?

- Strength is that trail development can trigger 250 review. Removing it will allow for willy-nilly trail building, with rapid degradation of soils, waters, and natural areas.
- Act 250 regulates development of commercial trail projects. Act 250 regulates trail development at a scale and intensity that could have significant social and environmental impacts.
- The strength of Act 250 is it considers and minimizes environmental impacts, allows for input from affected landowners, and addresses impacts tot rail related uses, such as parking areas.
- (3 identical responses) Act seems popular with public who might otherwise not have a voice in the regulation of projects. Adjoining neighbors who fear increased noise or traffic. Should be a limit on how much one person or party can appeal a decision so that it cannot be used as a means of stalling a project. Example: VAST & LVRT.

How is 250 beneficial to environmental quality of the state with respect to regulation of trails?

- Act 250 is only beneficial to the environmental quality of the state if trails are reviewed.
- Through its established criteria and process, Act 250 helps ensure that trail development is done in a way that does not result in significant degradation of Vermont's environmental quality in all its forms.
- Make the process better fit for the unique development aspect of trails.
- Eliminate the requirement to address criteria that trails do not impact: water supply, utility services.
- This is unclear to me. Trails make it difficult to develop land, they serve as a restraint to land development. Trails should be encouraged as a another tool to maintain large forest blocks and undeveloped land...
- (4 respondents provided duplicative responses with minor wording changes to what follows:) Existing permitting (stormwater, wetlands, etc.) for trails is what ensures environmental protection, along with the ongoing and culturally engrained commitment to environmental quality in the organizations that maintain the trail system. For trails, therefore, Act 250 is a redundant layer of compliance.
- What are the <u>most relevant</u> criteria with respect to trails The number of respondents choosing a specific criterion as being the most relevant is indicated in parenthesis.
 - Criterion 1 (3) 1e & 1f only (1)
 L impact to stream and wetlands
 - Criterion 2 (2)
 - Criterion 3 (1)

- Criterion 4 (4)
 I erosion caused by trail development/use
- Criterion 5 (4)
- Criterion 6
- Criterion 7
- Criterion 8 (6)
 - 8A (1)
- Criterion 1c
- Criterion 9 (1) Some parts of 9 B & C particularly;
 - (1) 9A-C
 - (1) 9C
- Criterion 10 (4)
- N/A & No Answer (3)
- For trails, 250 seems to be redundant layer of compliance. (6)
- Other answers:
 - Act 250 originally written w/out clear intent around regulation of trail development.
 - All criteria have relevance; some are more important (those have been counted in above)
 - Relevant criteria include looking at the big picture of trail development/remote character of location/stream & soil requirements (knowing that trails WILL cause erosion).

Least relevant criteria with respect to trails

•	Criterion 1		1C	(1)
•	Criterion 2	(3)		
•	Criterion 3	(3)		
•	Criterion 5	(1)		
•	Criterion 6	(4)		
•	Criterion 7	(3)		
•	Criterion 8			
•	Criterion 1c	(1)		
•	Criterion 9	(1)		

sub-criteria other than 9 B & C (1)

All sub-criteria (1)

- Criterion 10 Difficult to classify trail projects as either developments or subdivisions; leads to subjectivity and inconsistent application of the rule as it was intended.
- Do not believe trail system constitutes "greatest potential for impact" (6)
- No, but should be clear/logical threshold for trigger and clear understanding of when Act should not be triggered
- All criteria are important

- Current footprint requirements less relevant; know trail has impacts 100m on each side, despite relatively small size; Parcel size triggers not particularly relevant since large impacts can occur on small or large parcels.
- N/A & No Answer (5)

Should all trail projects be exempt from 250 review?

- YES (1)
- NO (9)
- N/A & No answer (1)
- Unclear/Depends/don't have enough info (1)
- Not all, but most (1)
- No, but there should clear and logical threshold for trigger & clear understanding of when Act should not be triggered.
- Do not see why there should be 250 trigger every time section of new trail connects to existing sections
- W/out clear definitions for development/subdivision impossible to answer question
- Do not believe trails should be exempt unless there is an adequate alternate structure in place to review and minimize potential adverse impacts of trails

Should some trail projects be exempt from 250 review? Yes? What types? Why?

- No answer. (3)
- Probably.
- Yes. Pre-qualify members pf the VT Trails System. Develop a best management practices guideline could be developed. Suspend trails group if they fail to follow trail construction guidelines. Under certain conditions. For development and maintenance by VT Trails System members, apply exemption if project proponent can meet certain criteria: comply with development/maintenance standards; consistent with town/regional planning; landowner consent to use land for this purpose; meets state and Federal regulatory requirements. (3)
- No. Trails should not be exempt. Even small projects have potential to be part of a larger collective network. This needs wise oversight.
- Don't see why 250 is triggered every time section of new trail connects two existing trails. Interconnectedness is seen as desirable rather than inspiring suspicion. (4)
- Exempt municipal or other publicly owned property. These entities have their own processes that are sufficient. Private landowners and conservation organizations who want to make their land available for public trails should also be exempt.
- Encourage landsharing. The trigger for jurisdiction should be related to construction and facilities – buildings, parking lots, etc.
- Possibly. Another approach: expedited review for projects likely to have minimal impacts such as short, linear trail open only for foot traffic, sited in

- non-sensitive areas, no accessory facilities such as trailhead parking or restrooms.
- Interconnectedness holds tremendous economic opportunities for VT. Can be done in manner that conserves forests, protects open space, creates more access for people.
- Trails should be exempt unless there is an adequate alternate structure in place to review and minimize the potential adverse impacts of trails.
- Development and sub-division must be clearly defined, understood by all parties.
- We believe most trails can be monitored in other ways and are very concerned that connecting longer trails could get heightened scrutiny. We would like trail and community connection to be encouraged rather that discouraged by increased scrutiny.

Should trails be subject to a general permit?

 This question seemed to generate some confusion, and for this reason, interested persons should read the responses directly in order to ascertain the nuances of respondents.

Other Comments:

 The VFP would benefit from seeing the scientific studies conducted on New England forests to be utilized more frequently in stakeholder engagements.

List of Respondents to the Act 250 and Trails Questions for Comment

- 1. Catamount Trails Association, Matt Williams mwilliams@catamounttrail.org
- 2. Cross Vermont Trail Association, Greg Western greg@crossvermont.org
- Forest and Wildlife Program Director, Jamey Fidel ifidel@vnrc.org
- 4. The Green Mountain Club
- 5. Green Mountain Horse Association, Tracy Ostler Tracy@gmhainc.org
- 6. Kingdom Trail Association, Abby Long <u>abby@kingdomtrails.org</u>
- 7. The Green Mountain Club, Michael DeBonis mdebonis@greenmountainclub.org
- 8. The Nature Conservancy, Phil Huffman phuffman@tnc.org
- 9. New England Chapter Backcountry Hunters and Anglers, Matthew Breton
- 10. Stowe Land Trust, Kristen Sharpless kristen@stowelandtrust.org
- 11. The Trust for Public Land, Shelby Semmes Shelby.semmes@tpl.org
- 12. Upper Valley Trails Alliance, Randy Richardson randy.richardson@uvtrails.org
- 13. Vermont Association of Snow Travelers, Cindy Locke cindy@vtvast.org
- 14. Vermont Horse Council, Jean Audet <u>jean.audet4@gmail.com</u>
- 15. Vermont Huts Association, R.J. Thompson rj@vermonthuts.org
- 16. The Vermont Land Trust, Elise Annes <u>elise@vlt.org</u>
- 17. Vermont Mountain Bike Association, Tom Stuessy tom@vmba.org
- 18. Windmill Hill Pinnacle Association, Andrew Toepfer a.l.toepfer@gmail.com

James Silos Roberts <u>jrsilos22@gmail.com</u>

ACT 250 and TRAILS QUESTIONS FOR COMMENT

Thank you for taking the time to complete this survey. Please only fill out **one survey** for your organization.

Act 250, Vermont's land Use and development law, was passed in 1970 to mitigate the effects of certain developments and subdivisions through a permitting process that addresses the environmental and community impacts of projects that exceed a certain threshold. Currently, recreational trails may be subject to Act 250 and a variety of permits issued by the Department of Environmental Conservation.

With respect to Act 250 only, the threshold for jurisdiction (meaning that a project will need an Act 250 permit) depends on certain factors:

- 1) If the proposed trail is part of the Vermont Trail System, the key question is how much ground disturbance will occur as part of the project (10 acres of disturbance or more is the threshold)
- 2) If the proposed trail is not part of the Vermont Trails System, jurisdiction is triggered only if the trail is commercial, and depending on the size of the tract (or tracts) where the trail will be located
- 3) Jurisdiction over trails may also be triggered if the proposed trail is considered to be a "material change" to an already existing Act 250 permitted project.

The Vermont Natural Resources Board and the Vermont Department of Forests, Parks and Recreation are seeking input concerning state regulation of trails, and we hope you will take the time to complete this brief survey. Your answers will be collated into a report to <a href="https://doi.org/10.1007/jhears-state-natur

PLEASE RETURN THIS SURVEY NO LATER THAN 5 PM ON SEPTEMBER 17TH, 2018

- 1. Please indicate your name, name of organization, and contact information (including email address).
- 2. Is your entity a member of the Vermont Trails System?
- 3. Have you experienced any challenges in obtaining Act 250 permits for trails (please explain)? Please limit your response to personal experiences that you or your organization have experienced.
- 4. If you or your organization has been through the Act 250 process with respect to trails, please recommend any changes including, but not limited to the following topics:
 - a. How to make the process more efficient
 - b. How to make the process a better fit for the unique development aspects of trails
- 5. Are Act 250 jurisdictional triggers with respect to trails clear?
 - a. If not, how should the jurisdictional triggers be clarified?
- 6. What are the strengths of Act 250's regulation of trails?

- 7. How is Act 250 beneficial to the environmental quality of the state with respect to the regulation of trails?
- 8. Which Act 250 criteria are most relevant with respect to the regulation of trails (please explain)?
- 9. Which Act 250 criteria are least relevant with respect to the regulation of trail projects (please explain)?
- 10. Should all trail projects be exempt from Act 250 review? If so, what makes development of recreational trail projects different from other development that is subject to Act 250?
- 11. Should some trail projects be exempt from Act 250 review?
 - a. If yes, please explain which types of trail projects should be exempt, and why.
- 12. Do you have any recommendations for an alternative regulatory scheme for trail projects in the State of Vermont? Please share your thoughts.
 - a. Should trails be subject to some sort of "general permit"?
 - b. If so, what criteria should the general permit cover and how should terms of the general permit be enforced?
 - c. Do you have any ideas about a possible trail development oversite program managed under the Agency of Natural Resources? Please explain.

Introduction

The purpose of this report is to highlight trends in the five divisions of the Superior Court and in the Supreme Court with respect to the filing and disposition of cases. In addition to providing data on the number of cases added and disposed, this report also measures performance with respect to timeliness using the three performance measurements that are part of the National Center for State Courts' CourTools. The three measures are:

Clearance Rate

The clearance rate measures the number of disposed cases as a percentage of the number of incoming cases. The purpose is to measure whether the court is keeping up with its incoming caseload. If the Clearance rate is 100%, the court is basically staying even. A clearance rate above 100% indicates that the Court is disposing more cases than it is adding and should reflect a decrease in backlogged cases. A clearance rate below 100% indicates that the Court has added more cases than it has disposed which means that the backlog of cases is increasing.

Age of Active Pending Caseload

This is a point in time measurement usually done on the last day of the fiscal year. The age of the active pending cases is measured against the time standard or disposition goal for that case type set by the Supreme Court to determine how many of the active unresolved cases are within the goal and how many have exceeded the goal.

Time to Disposition

This measure looks at all of cases disposed during the fiscal year and measures the percentage that were resolved within the disposition time standard or goal for that case type and the percentage that exceeded the goal. It is important to note that it would be very rare indeed for every case to be decided within the disposition goal. (If that were the case, the goal is probably too high and should be lowered.) Typically, if the percentage decided within the disposition time standard is around 80% to 85%, it probably means that the court is doing well provided that the cases that exceeded the goal did so within a reasonable margin.

Disposition Time Standards

The Vermont Supreme Court has adopted by Administrative Directive disposition time standards or goals for many, but not all, case types in the Superior Court. Where time standards have not yet been adopted, it is obviously difficult to use either the second or third NCSC measurement described above. We have noted in this report case types which do not yet have time standards. Where the Court has adopted time standards, it has recognized that in every case type, there are standard cases and then there are complex cases and the complex cases need longer time frames. The Court has therefore adopted a differentiated case management system which sets a time frame as a goal for standard cases and a somewhat longer goal for complex cases. Unfortunately, we lack the capacity in our current case management system to easily identify the complex cases. Therefore, for the most part, our measurement with respect to timely

disposition are based on an assumption that all cases are standard, an assumption that we recognize is not accurate.

Workload and Case Weights

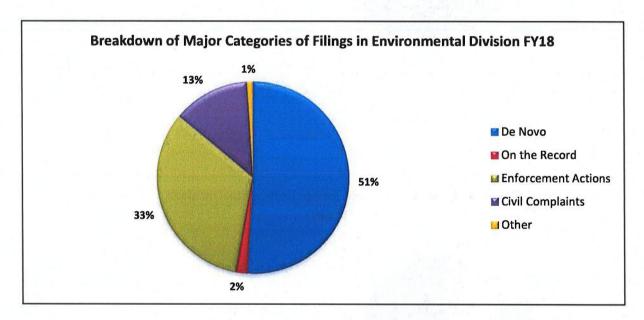
An initial case weight represents the average amount of time judicial officers and court staff currently spend to process a case of a particular type, from filing through all post-disposition activity, including time spent during normal working hours and time spent outside of the normal working day or week. The use of separate case weights for different case categories accounts for the fact that cases of varying levels of complexity require different amounts of time to resolve. To calculate the case weight for each case type category, all time associated with each case type during the time study is summed and weighted to the equivalent of one full year's worth of time, then divided by the corresponding annual filings.

Case Type	Final Case Weights: Judicial Officers	Final Case Weights: Court Staff	
Small Claims	13	136	
Stalking/Sexual Assault	24	106	
Other Civil	84	337	
Misdemeanor	28 .	177	
Felony	130	352	
TX Court: Adult	273	2,576	
Criminal Civil Suspension	6	30	
Search Warrants Inquests, NTO	14	24	
Other Miscellaneous Criminal	24	176	
Domestic (without child support)	126	566	
Child support	46	196	
Relief from Abuse	31	170	
CHINS	332	1,027	
Juvenile Delinquency	59	288	
Juvenile Truancy	103	212	
Juvenile TPR	309	375	
TX Court: Juvenile ¹²	273	2,576	
Mental Health	64	179	
Estates	101	337	
Trusts	49	59	
Adult Guardianship	429	880	
Minor Guardianship	203	386	
Adoptions: All	130	187	
Other Probate	39	127	
Environmental Div. De Novo	1,038	990	
Environmental Div. On the Record	278	990	
Environmental Div. Enforcement Actions	246	155	
All Judicial Bureau Cases	NA	16	
Judicial Bureau Contested	6	NA	
Judicial Bureau Uncontested	1	NA	

Environmental Division

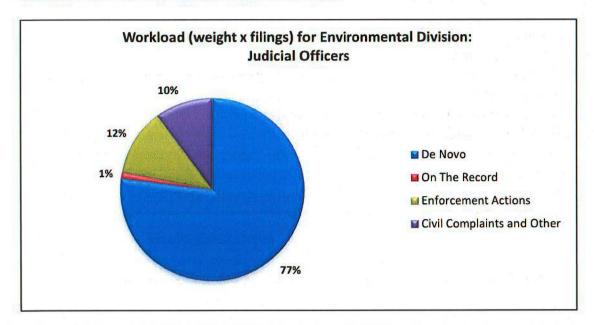
The environmental division of the superior court is a statewide court responsible for hearing and deciding cases that fall into five general categories:

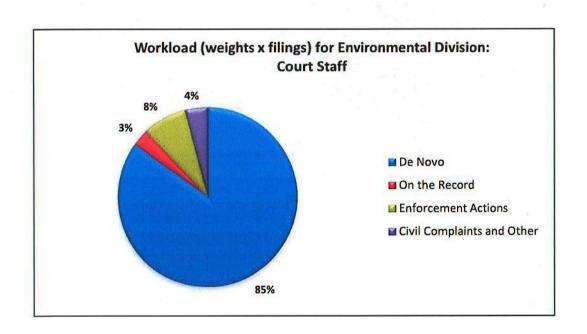
- Requests to enforce administrative orders issued by various state land use and environmental enforcement agencies;
- 2) Environmental enforcement proceedings from various municipalities;
- 3) Appeals from municipal zoning boards, development review boards and planning commissions;
- 4) Appeals from land use determinations made by the various Act 250 district commissions and jurisdictional determinations by the Act 250 district coordinators;
- 5) Tickets for environmental violations such as unlawful burning, dumping in a stream or lake, or failing to abide by a permit condition or AMP (acceptable management practice).



De Novo includes municipal appeals, Act 250 and ANR appeals. Enforcement Actions includes environmental and municipal enforcement. "Other" includes agricultural appeals.

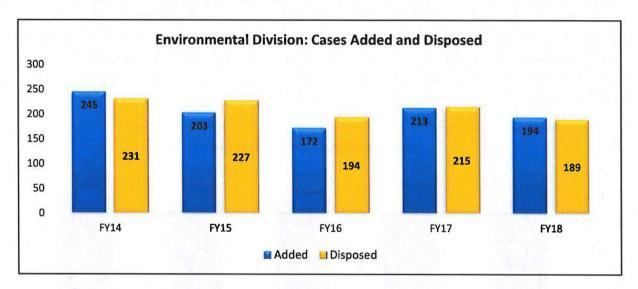
WEIGHTED CASELOAD WORKLOAD WITH FY18 FILINGS





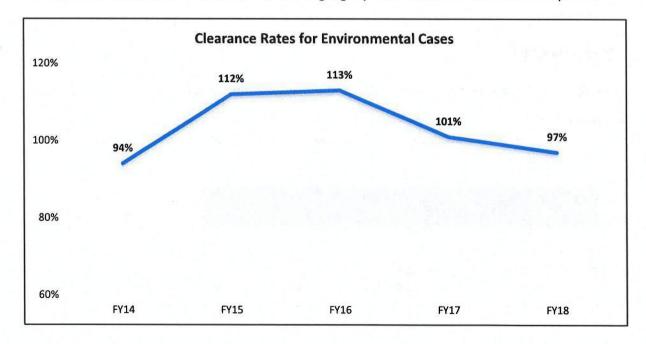
Trends

As indicated by the chart below, filings in the environmental division decreased 9% from the previous year, primarily in the areas of environmental enforcement actions and municipal de novo appeals. The number of dispositions also decreased (12%.)



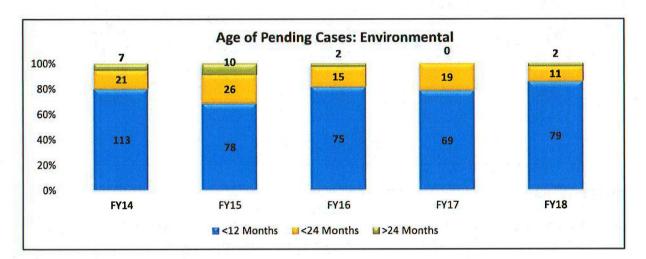
Clearance Rate

The chart below measures the clearance rate for all environmental division cases from 2014 through 2018. The clearance rate fell below 100% in FY18, meaning slightly more cases were added than disposed.



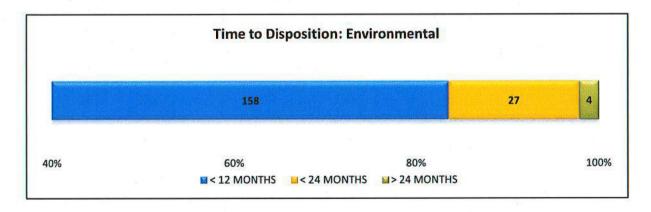
Age of Pending Cases

It is difficult to measure performance based on the age of environmental cases because there is so much variation in the average time to disposition from one case type to the next. For Act 250 appeals, the disposition goal set by the Supreme Court is 11 months for standard cases and 13 months for complex cases. At the shorter end, the goal for ANR/NRB enforcement cases is three months. It is only when data on the age of pending cases and time to disposition is broken down by individual case type that accurate conclusions can be drawn with respect to court performance. For all but the most complex of cases, the Environmental Division establishes disposition guideline schedules that anticipate a disposition in 12 months or less.



Time to Disposition

In FY18, 84% of environmental cases were disposed within 12 months of filing.



Method of Disposition

Approximately 53% of the cases disposed in the environmental division are resolved by agreement of the parties. Final decisions were issued by the court in 29% of the cases. 18% were dismissed or withdrawn by parties.

