

**Natural Resources Board  
Act 250 Necessary Updates  
Steering Committee Meeting**

**July 27<sup>th</sup> 2:00 PM – 5:00 PM  
Online Teams Meeting**

**Agenda and Notes**

2:00 Welcome/Summary of Last Meeting

Preference for future meetings (online vs in person)

Meeting Notes

Upcoming focus group meetings

Vision/Schedule next few months

2:10 Governance Wrap Up

2:30 Location Based Jurisdiction

Problem Statement: Does Act 250 overregulate some desirable development (eg. affordable housing in village centers) and underregulate sprawl and other problematic development?

- Critical areas designation
- Centers designation for more intensive development/Infrastructure
- Interstate highway exchanges
- Additional Criteria (climate change, ecosystem services, forest fragmentation)

4:50 Questions/Next steps

5:00 Adjourn

**Housekeeping**

- For convenience we will do a few more online meetings and then switch gears and have a few in person meetings later this summer as we try to pull everything together.
- Meeting notes intended for everyone being on the same page and to help find consensus.
  - Everyone has opportunity to say, “my brilliant idea wasn’t included” or “my thoughts are mischaracterized” or “please remove.”
  - Meeting notes are public records.
  - We have an outstanding PRA to NRB for anything to do with this project.
  - Open question about posting notes to website or if they get requested, they need to be released.

- Just because notes are being taken, shouldn't be an obstacle to open discussion; ability for people to say "I don't know if this is a good idea or not but..."
- Upcoming focus group meetings – invites went out early this week; unlikely first meeting will be next Thursday, might be another week or 2, shooting for 8/10/23.
  - Gives steering committee more time to have more info to report to focus group.
- Vision for moving forward – finish up governance, then move onto location based jurisdiction; follow that up again in 2 weeks, wrap up by end of august; by September begin piecing together.

### **Governance wrap-up**

- Potential shared goals articulated at top of document sent by EMC; what do we want to improve, retain, etc.; looking for critique, what's missing.

*Question* – is this the right list of goals.

- None of top goals mention consistency
  - Should this be a shared goal? Having consistency across all the districts
  - Kind of dovetails into second bullet point about "policy and procedure."
  - Caution that we be precise about what we mean when we say consistency and where in the system it's believed to have problems. Is there data and what does that show about consistency. Coordinator and Commission level across the state
  - Has NRB or anyone looked at this? There has been public testimony about this.
  - Seems like most information is anecdotal.
  - Book referenced by participant – Data Feminism – by Catherine D'Ignazio and Lauren Klein
  - Need to account for consistency on both sides, applicants and internal folks
  - Need to look forward, when new natural resource criteria are introduced, need to make sure that as changes are made.
- "legitimacy" – trying to articulate what district model commission wanted to maintain, by having connection to local and citizens who are serving within commissions it makes those decision feel more legitimate; reading of what EMC heard; can be edited/changed.
  - Accessibility and local-ness are valued.
  - Fair and impartial can only exist at commission level, not true.
  - No one questioning intent of commission;
  - Thinking about larger power structures/systems; it might be helpful to be specific about what we mean by legitimate, can mean different things in different contexts to different people.
    - We can find a more specific word; helpful feedback.
- 4<sup>th</sup> bullet – fees and fee exemptions? Yes, that is the intention of that bullet; maybe waiver is a better word.
  - Does exemption have to do with policy of exemptions around act 250 – this will be covered in jurisdiction convo; we did intend it to be fee waivers in this bullet.
- 3<sup>rd</sup> bullet – presumption of bottlenecks at permit and appeal level; it should include a qualifier (example - if any).
- Stay tuned for updated version of this document.

## Location Based Jurisdiction

Problem Statement: Does Act 250 overregulate some desirable development (e.g., affordable housing in village centers) and underregulate sprawl and other problematic development?

- There are ways that applicants can game the system; creating a 9 lot subdivision in an environmentally sensitive area that could run into obstacles but it's below 10 lot/unit thresholds.
- On board with incentivizing smart growth, but considering back drop of recent flooding; a lot of village centers are in flood zones; do we really want to encourage development there? We need to think about building resiliency.
  - o Example of resilient building - Montpelier = Transit center/Taylor street apartments; built next to river, lobby is above 100year flood line, didn't flood in the most recent flood; there are ways to be resilient in new construction
- Another aspect, it's not just certain kinds of projects that are over/under regulated; are there places in the state where Act 250 does not provide added value? What is Act 250 role in promulgating states land use goal, development center surrounded by working land scape, do we need act 250 to apply to that center?
  - o Comment on transit center/Taylor street was great.
  - o People don't think of Act 250 when thinking about climate resiliency, think of other programs (flood plain program)
  - o Is Act 250 redundant with local planning program, and is it redundant with other state permits; both local zoning program and statewide programs that already exist?
- Charge we are responding to with this study comes from Act 182 – "(1) How to transition to a system in which Act 250 jurisdiction is based on location, which shall encourage development in designated areas, the maintenance of intact rural working lands, and the protection of natural resources of statewide significance, including biodiversity. Location-based jurisdiction would adjust the threshold for Act 250 jurisdiction based on the characteristics of the location. This section of the report shall consider whether to develop thresholds and tiers of jurisdiction as recommended in the Commission on Act 250: the Next 50 Years Report."
  - o Tiers option
  - o Next 50 years report raises questions that we are trying to touch on and have on table for discussion.
  - o VAPDA study, one of several studies in 2022 session; looking at local and regional planning role, will be a good complement to our study; speaks directly to key question.
  - o bring up examples of other states that might be instructional or idea generators for us.
- Refer to questions in jurisdictional homework document.
- Question 1.
  - o In act 59 – how are we defining conserved? Permanent conservation vs. easements.
    - Massive reservations about this concept
    - Private citizens who conserve their land
    - Established goals for the state, 30% permanent conservation
    - By 2050 – protect 50% of land through range of conservation measures, primacy given to permanent conservation; current-use, equip, crep, are tools that qualify and will be determined through planning process

- A lot of work in legislature on how to tier jurisdiction, in spirit of not re-inventing the wheel; ideas include using conservation design maps from ANR on critical resources as jurisdictional trigger, maps include intact forest areas, other sensitive natural resources; designating high quality waters; right now in VT 95% are class B or average, we know there are waters class A1 and class B1 that's an example of a sensitive ecological resource that could be used as Act 250 trigger; would it be helpful to provide documents that have looked at these ideas? - Yes
- Improving designation process for downtowns and other areas, addressing issues up front so wouldn't have to apply Act 250 in those areas; another study going on looking at this – are we relying on that groups analysis or are we both looking at this;
  - There is some overlap on studies; happening parallel to us.
  - If looking at just designated downtowns where we already have development what is the capacity to support new development
- goal of 30% permanent conservation doesn't belong in land use regulation and shouldn't be part of our charge.
- RPCs were required to do mapping on enhanced energy planning; known and possible constraints, these may be useful for thinking about Act 250 jurisdiction; maps being used through PUC in purposes of renewable energy generation that have legal weight are currently being used.
- Lots and units is the current way, could we look at lots and units plus location areas; or just go completely to location
  - Would like to move away from lots/units – didn't help control sprawl in the way it was intended; somewhat artificial metrics; within Chittenden County 80% urbanized and 20% rural; after Act 250 passed that turned into more rural development; seemed to have a lot of 9 lot subdivisions happen.
  - Housing needs, declining school, what's the goal to make housing affordable? We need more houses that will hopefully lower some of the cost; from number of units standpoint there isn't a real trigger that we should be focused on; should be focused on location, encourage in downtowns, growth centers – consistency between local and regional plan, don't always correlate.
  - Capability and development plan as part of this process; new ideas as jumping off point or bring back Capability and Development plan as determining jurisdiction, we should look into that; Homework mentions it used to exist but it kind of died after being discussed in legislature.
  - Understand role of thresholds and why they were important; some development is so big it would have regional impact larger than local impact.
    - Can't totally abandon the thresholds entirely.
  - Statewide needs to be pattern of usage of conservation of land that fits the needs; conservation design; awareness of water resources; but there's a really strong cautionary thread of thinking about not using that level of direction in an inappropriate way
  - A need to look closely at triggers as something that successfully guides development of appropriate needs and scales to wherever it belongs.

- Some projects need a higher level of scrutiny but there's been a lot of local/regional planning that's happened in the last 53 years.
- Act 250 structure which has only been changed around edges was one of the very first statewide programs in the country before a lot was learned about how they could be designed.
- It's not just about lots it's about getting needed development into the places where it really belongs and can prosper/meet needs.
- Location based jurisdiction – means different things to different people; number of units is a reasonable measurement of impact (traffic, impervious etc.) and clarity is good; pull up chart that says in community of x# threshold is this # (don't agree with 10 units across state as threshold)
  - Maybe more Chittenden County issue, but when we talk about jurisdictional thresholds in centers; there are very developed areas (S.BTV – not a growth center); not sure how to address this, but kind of puzzling that in some of more developed areas because they are outside of line NDA that the trigger is going to be 10 units, not a great fit in some more developed communities.
  - Clarity is good but need more tailored limits.
  - Commercial threshold is 10 acres; 10 housing units; should also discuss commercial thresholds.
- Types and contours of jurisdictional tiers/carve outs is tied to who gets to decide those; where they are, where boundaries are, and exceptions; how public a process is that or is it not.
- Logic of sliding scale- 10 acre for commercial and 10 units for housing is out of proportion.
- Concern of quality of bylaws in towns. Some towns have bylaws that are similar to Act 250 but not administered same way, don't provide same level of protection; town capacity varies greatly, and some smaller towns rely on Act 250 to take on the volume of work.
- Tiered jurisdictional approach – act 250 classic; using units and acreage and then having exemptions with a revised designation process.
- Without deliberate outreach to conversation of what we want, there can be people who fall through the cracks (people of color, refugees, non-English speakers) office is in support of culturally appropriate housing, extra units for multi-generational families; need to keep this in mind when thinking about “good housing developments.”
  - Concerned talking about affordable housing and having them in designated areas; it's hard not to talk about race and affordable housing, don't want to segregate people into certain areas of the state; concerned that all development projects will exclude people of color from small towns because you end up with dense housing units in designated areas.
  - Need to be aware of creating a new version of redlining and NIMBYism in communities.
- Frame of impact based/unit vs locational is oversimplification; Act 250 currently uses location; depending on where you are in VT different triggers; there is a whole series that exist currently in the law

- To what end are having this conversation; what are assuming Act 250 will do in these places?
  - Regulatory protections for areas in state; but if talking about single family home development across state then that's unsustainable.
  - Already have a bunch of state regulatory programs
  - What does it mean when you say let's apply Act 250 in these critical areas; is this the best way to accomplish what we are going to do?
  - It's not one or the other; depending on location level of impact also matters.
- Weave in tailored number of lots/units based on location as well as critical designated areas that we are trying to protect and find some happy medium.
- Be specific about location jurisdiction in critical areas; is there more we can do with Act 250 in critical areas that we can advance.
  - When we talk about these areas the issue is how do we define them?
    - Who makes the map, what's it for? Intended for regulator? Various scales of these areas; acres less than acre vs forest blocks 90,000+ acres; scale of resource can't be one size fits all.
    - Tools need to be adaptable to change in knowledge.
  - Both/and – forest fragmentation triggers are the establishment of the road rule; single family development fall under the trigger, distance of road into forest block is a trigger, but can also incentivize smart development
    - Other tools
- Proposals over the years have been mixed depending on the resource at issue.
  - Purely jurisdictional over 2500ft for a single family home
  - using conservation design to finding significant forest blocks and anything more than 3 lot subdivision would trigger (both);
  - road rule – politically it was debated; will depend on each area.
  - at 2500ft logging and farming are regulated;
  - high quality waters (class A1 waters- any development should go through Act 250; if going to be in close proximity to rare ecological waters) – need to get into level of details
- Must also think if Act 250 is the right rule for what we are trying to accomplish; not necessarily the thing to use; could use permitting program like wetlands to deal with wetlands and direct impact on those sources; flood plains, rivers, don't necessarily need full scope of Act 250, you stand up a permit program for that.

BREAK

**Back to it – location based jurisdiction....**

- VT would benefit from statewide land use plan; we do have data and state goals; Act 250 is a regulation on development but there is a conservation piece to it. Agree there is some redundancy with local review; capacity issues do exist across towns throughout the state.
- Toby shared his notes (maybe add those in here)
  - Big C conservation (permanent land conservation through easements) vs. little c conservation (resources and protection)

- Exemption and local delegation – are they the same or different; exemption you are exempt, delegation the municipality would take on the role of the commission, delegated by authority – through local/zoning process.
  - Haven't had much discussion on delegation in this group.
  - Legislature discussed proposal to allow municipalities delegate zoning as substitute of act 250; objected because it wasn't implementing Act 250, it was an exemption not delegation.
  - To have multiple entities administering Act 250 would make it worse; rather agree on exemptions in places versus handing out authority.
- While enabling development where needed vs. permitting development where needed; there is testimony from people who believe they are locally impacted by development even if local/regional plan says that's the development we want; claimed impacts from that which need to be addressed in some fashion.
- Lack of agreement on if there is a redundancy; how much overlap is there really.
- Address notion of lots/units vs. critical designated area
  - Lots/units still serve purpose, but thresholds should be proportionate to size of community and resource impact (isn't that already how it works in the law?)
    - Open to looking at that.
    - Many small lot subdivisions that end up on books because they fall under lot count – can we see the report and data;
  - 5-5-10 rule – that is a jurisdictional threshold.
  - HOME Act
    - Changes 5-5-10 for the next 3 years; not permanent
- HOME Act – 3 year life
  - Benefit from PHP exemption so probably won't have a big impact; anecdote - two developers decided they were going to do 9 units to keep under being triggered, because of 5-5-10 rule; 3 years isn't a long time when it comes to developing things.
  - PHP is a bigger carrot; in general, details matter. Sounds good in concept, how are they implemented.
  - Question - Would favor making home bill provisions permanent?
    - Not 100% certain
  - Was the expedient thing to do but wasn't based on good policy discussion; this body is supposed to come up with better solution.
- Prime Ag Convo
  - Requirement for ag land mitigation 2acre exemption in designated growth areas- should it be increased, maintained, or eliminated?
  - Minimum amount of acreage that the agency of ag would wait until you reach the threshold before mitigation would be required.
  - Disturbance of ag soils – if a sawmill needs to expand log storage and end up pushing out more on another acre or 2 acres, the understanding is, it triggers disturbance; if there's a temporary use (i.e., store for a year) Act 250 still runs with those 2 acres, it doesn't disappear.

- Does ag rule take into effect what's there right now; redeveloping a manufacturing site, might be mapped as ag, but wouldn't recommend any one farm and eat food from it; would the ag rule be triggered by disturbance of any area regardless of what is on the land currently?
  - 1-to-1 in designated area; paying anywhere from 2k to 5k per acre in area that's been designated for growth; do we want growth there or ag uses
  - Prime ag is where NRB could have provided some guidance to applicants and district commission rather than Ag agency developing policy, who is an advisor to process; they are making policy, who's to say they should be making policy instead of legislature and NRB. Ag came up with 2 acres and they decide what's impact, what's not; developing rules under 9B – should be legislature or NRB.
    - There is no rule; came through case precedent; Act 250 reacting in real time not denying a permit but based on evidence in record on having a way forward.
  - Property in Winooski on ag map, paved it into parking lot instead of building housing because of Act 250 – does that make sense?
  - When were maps created? Soils there 100 years ago, maps made 40 years ago.
  - Designation programs set up as tax incentives vs land use review; create other incentives like prime ag.
  - Making policy through rule or case precedent; maybe there is a middle ground; there's 50 years of policy through precedent (prime ag, wildlife, there's a whole list); give NRB authority to create rules, it's not all or nothing; if we create new criteria, we should have rule
  - A lot of refugees/immigrants have a lot of farming experience and want to start farming; but don't have access to the land to do so; is there a way to have affordable farming development as a goal or outcome that we should be thinking about; small vs. large town size triggers comes up, wouldn't want to see subsistence farms being prohibited from moving to rural areas because of regulatory.
    - VT Land trust has done some of this work helping new residents find farmland.
    - Reason to preserve farming in urban area.
  - Legislature is in charge of local land use planning; if there's one thing we want to preserve then that should be added to Chapter 117 at the time that Act250 is exempted.
- Interstate Interchanges – identified in next 50 years report.
  - Should there be a radius around interstate highway exchanges within which act 250 review applies; state and federal regulations that apply for wetlands in interchanges already?
  - Case study – Oregon (refer to EMC Homework sheet)
  - Sprawl issues, interstate driven society, impetus to build gas stations and fast food, other accommodations; came from smaller towns with little or no zoning and they weren't able to review; because there was a state interest in these, tourism, etc. how do we want them to be introduced to the state; can provide some of the background context/research (VNRC)
  - Will be their own drivers of private development because of access they provide for visitors, personal vehicles, freight; and need to get off interstate use services and get back on; ironically a lot of exchanges are not near population areas because a lot of



people didn't want them nearby, or land was easier to get; could argue for act 250 coverage; there's regional impact to what happens around interchange, if development gets out of hand and reduces level of service down to F, someone might say I wish there had been more oversight.

- Has it been looked at to see how many are completely undeveloped? Data
- Not all the same, i.e., exit 14 vs. exit 4.
- Included this question because it was in the next 50 years report.

- What critical designated areas are the priority?

- we already have some location-based (prime ag, 2500ft+)
- river corridors?
- Other state agencies, are they going to be looped in?
- Focusing on which critical areas would adding Act 250 regulation could be a significant benefit over what already exists there. There are some robust permitting programs that already exist (wetlands, flood plains, etc.) that could be enhanced, not through Act 250.
- If/how the state might really take over jurisdiction of floodplain and river corridor regulation to protect people who are near those rivers; how do we keep people developing next to it safe, and how do we keep river functioning, might be more apt for state regulation vs. municipal.
- Expand in a phased way state flood hazard and river corridor rule based permit program to regulate on statewide bases in priority areas; if concerned on inundation, we have existing permitting that can be modified and expanded; unclear how act 250 would help this.
  - Critical areas can be different things to different people; most existing state permit focus on discrete resources (wetlands, floodplains). landscape scale features, (soils, forest blocks) don't currently have permitting programs for those.
- Forest block example, include habitat features that are captured within them, DEC does most of the permitting, F&W and FPR don't have permitting programs, having Act 250 looking to protect those resources.
  - Forest blocks and high quality waters could be a critical area for Act 250 to review.
- Looking at location based jurisdiction and find things that add value and not redundancy.
- Forest blocks are a big gap, climate resiliency is a feature of forest blocks; revisiting of criteria and what are we actually looking at within the critical resource areas.
- River corridors if we went to statewide permitting process, have to go back to local connections for local knowledge of land base; river corridor zoning got the town of Montgomery more rebuild money after Halloween storm; a lot of mapping done remotely via lidar, went back to local community and ground truth.
- Habitat connectivity, riparian habitat connectivity doesn't always align with forest block, worth exploring.
- No statewide riparian area program; there's a shoreland protection act from lakes and ponds; river corridors, there are model bylaws and ANR supports towns that want to adopt those bylaws, some towns have done it, it's voluntary; no statewide program; shows value of Act 250 – river corridors are protected through Act 250

- Vt doesn't require municipal bylaws or subdivision rules; state can't compel municipalities to do much; have statewide floodplain hazard developed after Irene; locals should be authorized and empowered to regulate development in those areas in their communities; there's a rule and existing regulatory program there that could be expanded.
- Tiered approach wasn't talked about much, can we get a sense of if this is something we want to get into next meeting.
  - Types of places based on what we are trying to encourage.
  - Municipal capability – towns with no zoning, some zoning but not a lot of capacity, and then full capacity towns
  - Act 250 needs to play bigger role in no zoning towns vs. full capacity towns.
- 3 things that are basic tenets of successful land use schemes.
  - Good zoning
  - Conservation easements
  - Growth boundaries
    - Jack talked about Lancaster County where he lives (details are in the HW)
- RPC made growth boundary map and 87% of recent development has happened in there, municipals leading the charge.
- Town plans don't always hold up; don't have specific mandatory language that holds up throughout regulatory process.

### Next Steps

- We will take notes and shape into areas of agreement, options, goals, etc.
- Turn this discussion into action items for moving forward.
- Unlikely that stakeholder groups will meet next week, try to get them going as soon as we can; lots of info for steering committee to bring to those groups.
- Will have another zoom meeting in two weeks 8/10 – will get agenda, notes, and briefing a few days before that.
- Next meeting will be exclusively jurisdiction.
- Following one will be capability and development plan.

### Links from chat

<https://legislature.vermont.gov/bill/status/2024/H.29>

<https://legislature.vermont.gov/Documents/2024/Docs/ACTS/ACT059/ACT059%20As%20Enacted.pdf>

<https://legislature.vermont.gov/Documents/2018.1/WorkGroups/Act250/Final%20Report/W~Ellen%20Czajkowski~Commission%20on%20Act%20250%20Final%20Report~1-11-2019.pdf>

<https://dec.vermont.gov/watershed/lakes-ponds/permit/shoreland>

<https://legislature.vermont.gov/statutes/section/24/117/04302>

<https://experience.arcgis.com/experience/ca4f8c20106940c286c2b69b8929804c/page/Home%3A-Diversity%2C-Equity-and-Inclusion/>

<https://vtrans.vermont.gov/equity>