Summary of Discussion by Planning and Municipal Focus Group, Act 250/NRB Study
August 31, 2023

Steering Committee Update: There is a growing consensus around the idea of identifying areas that could be exempt from Act 250. There are still questions and a need to provide the rationale/justification for exemptions and to identify exempt areas. Tier 1 would likely be an exempt area, as it includes areas already subject to municipal or other designations. For Tier 2, there is a consideration of a shift or reduction of Act 250 requirements. For Tier 3, there may be a conversation about whether Act 250 should be strengthened. The overall concept is that there may be areas where Act 250 has a greater influence and others areas where there is reduced jurisdiction.

Discussion on Tier 1:
The group considered how existing designations could be used to identify Tier 1 areas. There may be value in using a phased approach, during which existing designations can both immediately define some exempt municipalities, but also provide time and opportunity for other municipalities to conduct planning or mapping efforts and add new exempt areas. Municipalities could be provided with an "on-ramp" for this process. Analysis should consider mitigation hazard planning/fluvial erosion hazard zones. Some municipalities or regions are under-resourced for this effort, while others have done extensive mapping/analysis and could be ready for exempt status.

Suggestions for municipalities which may be more ready for Tier 1 designation were noted, including Brattleboro, Newport, St. Johnsbury, St. Albans City, Milton, Colchester, Essex Town, Essex Junction, Winooski, Burlington, South Burlington, Williston, Shelburne, Richmond, Hinesburg, Montpelier, Barre, Hartford, Middlebury, Manchester, Vergennes, Springfield, Bennington.

Legislation could allow for any community to become eligible for a locally-driven, regionally-approved Tier 1 site. There needs to be a clear process and criteria in place, such as having established water and sewer infrastructure, land-use regulations, capital budget improvement program, or growth area designations. It was noted that many municipalities have plans/zoning, but do not have the infrastructure established. Often there isn't the municipal capacity to plan, develop and implement the systems that would facilitate growth in concentrated, designated areas. It was also noted that some communities may choose to not seek growth or expansion.

In summary, there is a strong interest in establishing criteria for exemptions from Act 250, instead of delegating authority.

Discussion on Tier 2:
Tier 2 areas would consist of rural areas that are not identified as sensitive natural resource areas--large forest blocks, high quality waters, lands over 2,500'--along with villages and hamlets. While Tier 1 may represent 2-3% of state, Tier 2 areas would comprise the majority of

the state. The Next 50 Years Report noted that most commercial and residential development occurs outside of designated development areas. Growth is also being driven by pressure to expand tax base of rural communities.

It was noted that Act 250 has not prevented sprawl in rural communities. Many 9-lot subdivisions have been created as a way to not trigger Act 250. Could there be tweaks to the thresholds in Tier 2 so Act 250 has more jurisdiction in these areas? In some communities, the distinction between minor and major subdivision represents a threshold that could be used to add more state-level scrutiny to development. For instance, a 4-lot subdivision counts a "major subdivision" in Hinesburg.

Discussion focused on differentiating "units" from individual homes, as a way to really consider impacts on resources and rural areas. Could an Act 250 or development review be triggered by the type of unit that is being developed. There could be potential to differentiate categories of Tier 2, such as "Tier 2-a," which may include villages and hamlets, vs "Tier 2-b, "which would include rural open land or green space. These types of Tier 2 could then be subject to different review or thresholds.

While previous comments noted that all types of development (commercial, residential, industrial) should be treated the same (at least in Tier 1), it was suggested that in Tier 2 perhaps there could be more of a focus on regulating the siting of industrial development.

A map was shared identifying municipalities in the state that have sewer and/or water infrastructure. It was noted that, where towns may have a growth designation but lack sewer/water infrastructure, there may not be any more capacity for in-fill, due to septic limitations. Many villages are built out to current capacity. For this reason, we may need to better understand the potential for growth to happen in rural villages and hamlets based on their readiness for growth (zoning, plans, and infrastructure. In these cases, there may be limited opportunities for development in the rural villages and hamlets.

Discussion of Tier 3:

Tier 3 area would include the State's most sensitive natural resource areas. Many of these areas were mapped for Act 174 on the Planning Atlas, and identified as "Known State and Local Constraints." These mapped sites include 18% of the state. The map, endorsed by RPCs, include resources such as confirmed vernal pools, river corridors, FEMA floodways, State-Significant Natural Communities, Rare – Threatened Species, and other resource categories. The Act 174 map noted secondary areas of "Possible Constraints." These areas include working agricultural lands, forest blocks and comprise roughly an additional 70% of the state.

A suggestion was made that these sensitive resource areas of Tier 3 could potentially be addressed with regulatory protection, rather than Act 250 review. The group moved into a discussion of jurisdictional triggers that could be applied to Tier 3 areas, once there is agreement to how they are defined and mapped. Where there is an intersection of State and

municipal permitting, could the state let community or landowner know that they are creating a lot in a sensitive area that is subject to Act 250?

It was noted that Act 174 covers virtually the whole state, and in some cases the maps of sensitive areas overlap with designated village centers or growth areas. It was emphasized that there is a difference between "hands off" areas defined for Act 174, and all other areas where entities such as VNRC and the legislature want to see more protection against fragmentation or parcelization for reasons such as climate resilience. There is a question as to how we protect forest blocks and working ag lands. While there was no question about protection needed for floodplain or river corridors, there was a question of where/how/if Act 250 would be triggered in those situations where development would impact a forest block? Should there be a way to focus on impact or land area, rather than on lots or units? There is still a lack of clarity as to how Tier 2 and Tier 3 should be defined.

Most of our population lives in rural areas. Vermont's interest to do more to prevent climate change and forest fragmentation is sincere. As a parallel example of how new regulations were established for resource protection, the state determined 10 years ago that shoreline is an important resource that had been unregulated, so a new permitting system developed. This provided a regulatory process with clear guidelines. Could something similar be done for forest blocks, for example?

Having a more clear and non-discretionary process would be a valuable. A move towards objective mapping and criteria will simplify the Act 250 or permitting process, make it less contentious, and clarify where jurisdiction applies.

Overall, the group expressed general agreement regarding an exemption from Act 250 for Tier 1 areas, where there is good planning, capacity, resources. For Tier 2, there are two types of areas and it would be valuable to treat villages / hamlets differently from surrounding countryside. For Tier 3, Act 174 is robust in terms of mapping that identified sensitive areas. There could be new criteria, for instance, by replacing the forest soils criterion with a forest fragmentation criterion. Also, this could address forest connectivity and water quality goals.

The group was asked if there should be a change with elevational jurisdiction, shifting threshold from 2,500-2,000 feet. This would add another 8% of state into Act 250 jurisdiction. It was noted that this shift doesn't seem resource based—and again seems arbitrary. Additionally, headwaters are often located at 1,500 feet and above, so they may not be included. A definition of "Significant Forest Clearing" that is used by PUCs working on net metering rules could be relevant consideration for evaluating impacts on forest blocks.

Any revamping of Act 250 should not make it more complicated. Having an improved process that offers predictability, transparency, a path to getting a permit is vital to securing public support for the policies.

Discussion of Governance:

Is there support for robust NRB for oversight and rulemaking authority?

There should be clear standards—like local zoning. It is about quality of rules, and ability of rules to anticipate issues, rather than rely on precedent. Want clear objective standards for Act 250 applicants with the 10 criteria. Currently, in the absence of rule making, outcomes are based on court decisions. Having clear guidance in advance of applications makes more sense than relying on after the fact application of court decisions.

Should NRB be a professional board with Chair?

Lack of consistency among district commissions is an issue, and using NRB Board to keep consistency in process among commissions would be helpful.

The Environmental stakeholder group raised issue of having public advocate to help people through Act 250 process. What do others think?

- In Maryland, there was a permit advocate position that helped the public, keep track of permit status. Acted as advocate for the process functioning, as if as a neutral/ombudsman.
- Prefer this idea as opposed to creating a new body. Would be a very skilled position, perhaps with a previous district coordinator. Would need a number of these positions to support the pipeline applicants.
- There could be a “permit portal”, an on-line system to see where your permit is in the process
- Predictability in the permit process is important

Regarding the appeals process, the steering committee reported that there is not much agreement on this issue.

- VLCT voiced support for the Environmental Court to hear appeals of Act 250 decisions.
- Discussion so far if should there be a process to identify cases likely to go to appeal, to separate those out and speed up process. On record or De Novo appeals? On this issue, there is no clear consensus yet.