



ad hoc Commission on Act 250 Committee

Wednesday, March 13, 2019

5:30pm to 7:00pm

CCRPC Small Conference Room, 110 West Canal Street, Winooski

WIFI Info: Network = CCRPC-Guest; Password = ccrpc\$guest

Agenda

5:30 Welcome, Changes to the Agenda, Members' Items

5:35 Review Minutes from January 30, 2019*

5:40 Review of additions to CCRPC Position Statements*

6:20 Review of VNRC Jurisdictional Tiers Proposal*

7:00 Adjourn

* = Attachment

NEXT MEETING: TBD



ad hoc Commission on Act 250 Committee

Minutes

Date: Wednesday, January 30, 2019, 5:30pm to 7:00pm

Location: CCRPC Small Conference Room, 110 West Canal Street, Winooski

Attendees: Chris Roy, Tony Micklus, Justin Dextrateur, Curt Carter (GBIC), Charlie Baker and Regina Mahony

- I. Welcome, Changes to the Agenda, Members' Items.** Chris Roy welcomed everyone.
- II. Review Minutes from January 23, 2019.** Tony Micklus made a motion, seconded by Chris Roy, to approve the minutes of January 23, 2019 with amendments from Jim Donovan. No further discussion. MOTION PASSED.
- III. Review of Draft Overarching Statements**

Regina Mahony handed out the draft statements with Jim Donovan's edits. The Committee reviewed the statements and suggested additions and clarifications. These clarifications included: adding mention of the affordable housing shortage; identify challenges with the enhanced designation concept; overall proposed expansion of Act 250 will cause an increase in development costs; identify the technical permits issue as a separate comment; and acknowledge good local planning; etc.

Regina will make the edits and send it back to the Committee for review. They will also be sent on to the Executive Committee and the Planning Advisory Committee for their review.

- IV. Review of latest Proposed Bill(s).** Tabled. The latest bill is not much different from the original. It sounds like the House Natural Resources Committee is going to take their time coming up to speed and moving through this bill.
- V. Adjourned at 6:40pm.**

NEXT MEETING: Placeholder meetings will be set for February 27th and March 13th 5:30 to 7pm



Ad hoc Act 250 Committee – March 13, 2019

Additional Act 250 Position Statement

At present, we have one additional position we'd like to discuss. The large Act 250 Commission bill (Committee Bill 19-0040, Draft 5.2, 1/23/2019) includes a provision requiring that, in order to be used in Act 250, local and regional plans must be approved as consistent with the statutory planning goals. Vermont Planners Association (VPA) sums up the proposed provision as follows:

- This is a positive change. Most local plans do get approved by the regional planning commission to this same standard in order to ensure municipal eligibility for certain State grants. However, this change will provide further incentive for municipalities to seek plan review and approval.
- Since regional plans have no existing approval process, the bill needs to establish the right review/approval entity. The bill proposes that the new Environmental Board serve this function, but we recommend an alternative model. Just as importantly, the bill needs to address how regional plans will be factored into Act 250 review in the interim – i.e., prior to approval of all the regional plans.
- The bill also needs to flesh out an appeal process for these approvals. Existing statute (Title 24, Chapter 117, Section 4476) provides an appeal process for decisions by regional planning commissions (i.e., approval of local plans). Unfortunately, this section of statute needs to be updated because it references an appellate body (the “regional review panel”) that is defined in another section of statute (section 4305) that was repealed.

For your information, under [current statute](#), when Regional Plans are amended or re-written, RPC's are already required to provide 30 day notice of the public hearing to the Agency of Commerce and Community Development, Agency of Natural Resources, and the Agency of Agriculture.

Therefore, Staff suggests the following position, which is in line with VPA's position:

Modify the bill language so that regional plans are approved by a Development Cabinet that is expanded for this function to include representatives with planning expertise – e.g., directors of two adjacent regional planning commissions, a representative from the VT Planners Association, and a representative from the VT Association of Planning and Development Agencies.

VPA further provided this recommendation regarding appeals, which Staff is uncertain about:

“Clarify and add to existing statute (Title 24, Chapter 117, Section 4476) to make either the existing Natural Resources Board or the new Environmental Board the body to hear appeals for regional plan approvals and for regional approval and/or confirmation of local plans and the local planning process. Board decisions on plan appeals could be further appealed to the VT Supreme Court as already outlined in Section 4476.”

The ad hoc Act 250 Committee will review this on March 13th; and the Executive Committee at their March 20th meeting. The existing position paper with these additions is attached.

For questions, contact Charlie Baker, 846-4490 ext. *23 or cbaker@ccrpcvt.org

Recommendations for Improving Vermont's Act 250 Permitting System

Approved by CCRPC Board on **February 20, 2019**

Act 47 (in 2017) 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.” CCRPC has reviewed the work of this Commission and offers the following general positions intended to make Act 250 more effective and efficient.

1. CCRPC encourages the Legislature to ensure a **predictable and coordinated review process** that minimizes inconsistency and duplication at all levels of review and puts those reviews in the most appropriate hands so environmental protection is not compromised, and housing, transportation and economic development is not unnecessarily time-consuming and expensive.
2. In general, the state permit process should **encourage development in appropriately planned places** and discourage development outside of those areas. Therefore, CCRPC strongly supports the concept that Act 250 should not have jurisdiction in areas planned for growth to encourage affordable housing and economic investment in our smart growth areas: walkable, transit-friendly, water and sewer-serviced areas. However, the **enhanced designation concept** as proposed is unworkable for the following reasons:
 - a. It builds on an overly complex designation system that puts existing growth into a variety of unnecessary silos and does not adequately capture planned future growth areas. The existing designation system, of which there are five designations, should be overhauled into a comprehensive growth strategy rather than continue to build upon it with a sixth designation. Improving and possibly expanding existing designations is better than creating new designations.
 - b. It is not a true Act 250 release; it merely shifts the burden of all the Act 250 criteria to the municipal level. Instead, we should support existing local planning and Downtown Board efforts to designate these areas as places for housing and economic development, acknowledge the greater environmental benefit of clustering growth into areas with existing infrastructure, and *not* enforce Act 250 criteria that were originally intended to minimize and mitigate indirect and cumulative impacts of major development.
 - c. The current geographic boundaries of the designation programs are unnecessarily limited. As an example, the Village and Downtown designations are narrowly focused on commercial and civic uses and exclude redevelopment and infill in existing neighborhoods surrounding Villages and Downtowns. The Downtown Board should analyze each individual area on its merits as a smart growth area, and there should be incentives to improve existing sprawl areas.
 - d. The Growth Center and Neighborhood Development Area designations come with an affordable housing requirement, and this should not be lost under a new structure.
 - e. It adds an appeal process that the current designation programs don’t have. If an appeal process is a necessary component, add that to the current designations rather than creating a new one.
 - f. The proposed bill will be a significant expansion of Act 250 jurisdiction, including expansion into areas where development is appropriate, such as existing neighborhoods surrounding centers; and the enhanced designation concept will not solve that problem.

3. CCRPC supports the concept of **resource area protections** and the acknowledgement that Act 250 jurisdiction should be triggered by location in areas of statewide interest, regardless of project size (even single-family home developments); however, there needs to be more work done to identify and define these resources. There may also be resources that would be better regulated through a separate permit.
4. Act 250 permitting should rely more on **conceptual/sketch plans** and capacity analysis as opposed to engineer-sealed plans with more detail. Land Use Permits should include conditions of obtaining the other more detailed permits (stormwater, wastewater, etc.). This would ensure a more resident-friendly, efficient and less costly state permitting process, helping to reach affordable housing, transportation and economic development goals. In addition, CCRPC supports the master planning process for phased developments.
5. CCRPC believes that any mapping established to define jurisdiction, and particularly growth areas, in Act 250 should be based not only on state-level maps, but also on **mapping in local and regional plans** due to the extensive public participation involved in their development. There may also be resources that should be considered by Act 250 that are not identified on state-level maps.
6. CCRPC asks that the Legislature either work out **further details** before adopting new concepts or hold until further details are worked out (e.g. greenhouse gas mitigation fee). The development costs of some of these concepts could be substantial and would exacerbate existing inflated housing costs for Vermonters. New concepts should be more thoroughly considered before adoption. Further, all the fees should be comprehensively reviewed to understand the impact on development costs, particularly considering the goal of smart growth development.
7. CCRPC encourages the Legislature to consider a **phased approach** to implementing the new jurisdiction paradigm. If it moves forward, it will greatly expand the reach of Act 250, and could greatly disrupt the market. It would be best to first allow municipalities to apply for and obtain the enhanced designation before the greater rural development restrictions are implemented.
8. CCRPC supports an **appeals** process that allows coordination or consolidation of appeals of various municipal and state permits to one entity to ensure consistency in decision-making and prevent unaligned requirements between Environmental Court and the proposed re-invigorated Environmental Resource Board decisions.
9. Modify the bill language so that regional plans are approved by a Development Cabinet that is expanded for this function to include representatives with planning expertise – e.g., directors of two adjacent regional planning commissions, a representative from the VT Planners Association, and a representative from the VT Association of Planning and Development Agencies.
10. Clarify and add to existing statute (Title 24, Chapter 117, Section 4476) to make either the existing Natural Resources Board or the new Environmental Board the body to hear appeals for regional plan approvals and for regional approval and/or confirmation of local plans and the local planning process. Board decisions on plan appeals could be further appealed to the VT Supreme Court as already outlined in Section 4476.

Jurisdiction Recommendations for Enhanced Designation and Other Areas

Act 250 should be applied differently based on whether a project is located in one of four tiers. The different jurisdictional thresholds reflect the fact that locations are impacted differently depending on the characteristics of those locations, and that some locations are more vulnerable to the impacts of development than others.

An important part of this approach is complementary criterion changes, as well as the use or establishment of DEC permitting programs to address resource areas of critical importance, in addition to related recommendations regarding agriculture and forestry.

Critical Resource Areas

The committee bill identified “several critical resource areas” and proposed that development in these areas would trigger automatic jurisdiction. In the committee bill, critical resources areas mean a river corridor, a significant wetland, land at or above 2,000 feet, and land characterized by slopes greater than 15% and shallow depth to bedrock.

Critical resource areas need to be further defined, particularly to determine the most appropriate elevations and slopes that would trigger automatic jurisdiction. With regard to wetlands and river corridors, these areas could either be included as critical resources, or be made subject to standalone DEC programs and permitting to address development impacts. To this end:

- Wetlands: Development in wetlands could be reviewed through existing permitting by the wetlands program as long as that review remains robust.
- River corridors: DEC could expand the Rivers Program to review new development and redevelopment that includes site improvements or the increase in existing building footprints in river corridors.

Existing exemptions for agriculture and forestry should remain in place, and logging and forestry above 2,500 feet should continue to be subject to Act 250 review. There may be a benefit to managing farm and forestry operations in sensitive critical resource areas, but such oversight can be provided through existing mechanisms (RAPs, AMPs, Current Use, etc.) rather than reviewing under the broader criteria of Act 250. However, the ANR should review farming within river corridors and floodplains to ensure that farm practices do not have an adverse impact on water quality or increase the risk of flooding. This approach would allow ANR to focus on the farming impacts that are of concern in these areas.

As a related policy change, oversight of the impacts of farming on water quality should be conducted by ANR. Currently, the AAFM regulates water quality impacts of farms. ANR, as the experts on water quality, and the Vermont agency that implements the federal Clean Water Act and Vermont's water pollution control laws, is the appropriate entity to regulate water pollution from farms.

Enhanced Designation Areas

- *Policy goal being advanced:* Promote smart growth development in areas that are already developed and that include the necessary infrastructure to support development.
- *Delineation process:* Designation process through Downtown Development Board that assures development readiness, river corridor protection, and protection of any natural resources within the designation.
- *Jurisdictional threshold:* Act 250 jurisdiction does not apply to new projects. Conditions of existing permits modifiable after a structured review that includes due process.

Areas Currently Defined as Rural and Working Lands

Lands that are neither critical resource areas nor enhanced designation areas should be subject to the following levels of review. This proposal privileges development in certain areas that have been defined by regional planning commissions, and ensures better review of development in working/resource lands.

Regionally Designated Areas

- *Policy goal being advanced:* Promote appropriate Act 250 review in areas that are not enhanced designations but may be appropriate for certain kinds of development that do not promote sprawl and that do avoid identified key natural resources.
- *Delineation process:* Community Designated Areas are delineated on regional plan maps after a planning process with member municipalities. Criteria for areas eligible for designation would need to be established. These criteria should include requiring certain development densities, transportation connections other than personal vehicles, an established sewer service area if the community has sewer, local policies and regulations that minimize sprawl, and subdivision standards that do not promote rural sprawl. In addition, Community Designated Areas must exclude priority forest blocks, connectivity areas, and priority agricultural soils.
- *Jurisdictional threshold:* In towns with permanent zoning and subdivision bylaws, 10 acres of commercial development, or the division of land into 20 or more lots, would trigger Act 250. In towns without permanent zoning or subdivision bylaws, the thresholds would be 10 lots and one acre.

Resource Areas

- *Policy goal being advanced:* Incremental loss of resource areas, including farm, forest land, and natural areas.

- *Delineation process*: Land that is neither within an enhanced designation nor within a community designated area is in this category.
- *Jurisdictional threshold*: Subdivisions of three lots or more, commercial or industrial development on one acre or more, and/or roads and driveways segments that total more than 1,200 feet are subject to Act 250.

Complementary Criterion Changes

- The above recommendations are contingent on support for new criteria to address fragmentation in forest blocks and connectivity areas based on H.233 or ANR's proposal with to add forest blocks and connectivity areas to Criterion 8(A) with guidance, or some combination.
- The designation of Community Designated Areas is contingent on improvements to the regional planning process set forth in the final report of the Commission on the Future of Act 250.