



## ***ad hoc Commission on Act 250 Minutes***

**Date:** Tuesday, January 28, 2020

**Time:** 9:00am to 10:30am

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

**Attendees:** Tony Micklus; Jim Donovan; Justin Dextrateur (via phone); Charles Baker; Regina Mahony

- I. Meeting called to order at 9:05am. No changes to agenda or members' items.
- II. Review of Draft Comments on the Proposed Act 250 Bill:
  - a. The Committee discussed timing of the proposal and likelihood of the bill moving forward. Chris Roy indicated that he hasn't heard directly, but it is unclear if the House Natural Resources and Fish and Wildlife Committee will move forward with the VNRC/Administration bill or the bill they were working with last year. Chris Roy stated that the Enhanced Natural Resource Board part of the VNRC/Administration bill is facing more controversy than the proposed substantive changes to jurisdiction and criteria; and the latter might have a chance of being re-worked and passing if the former is removed or separated. The Committee decided to add this comment to the draft CCRPC comments.
  - b. The Committee discussed bringing these comments to the Executive Committee, Planning Advisory Committee and Board in February to provide Charlie Baker with comments that he can bring to the Legislature. Although Charlie may need to testify before a comments can be finalized.
  - c. The Committee discussed and edited the attached comment document.
- III. Next Steps: The ad hoc Committee will meet again on Tuesday, February 18<sup>th</sup> at 8am.
- IV. Adjourned at 10:25am

# CCRPC Comments on VNRC/Administration proposed Act 250 Bill

**DRAFT – 1/29/2020**

Note: The comments herein include references to the “Discussion Document, Last Modified 1/14/2020, Version 1.1”

Here are a few broad thoughts for consideration before getting into specific provisions.

1. The substantive proposals in this draft bill have the potential of getting to a workable place much more so than the Enhanced Natural Resources Board concept and associated process. Therefore, CCRPC recommends that this Section be split from the rest of this proposal and be considered separately.
2. CCRPC believes that the state permit process should encourage development in appropriately planned places and discourage development in vulnerable and valued resource 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. CCRPC appreciates the exemption for Designated Downtowns and Neighborhood Development Areas, but recommends further expansion of this exemption (see comment 7 below).
3. CCRPC supports the concept of relying on separate state permits to satisfy specific criteria as appropriate.
4. A general comment is to use existing definitions from other sections of statute wherever possible.

## **I. Act 250 Jurisdiction**

5. Section A, pg. 6 – This section proposes to include construction of improvements for commercial, industrial or residential use on ridgelines of at least 1,500’ elevation and within 200 feet below the ridgeline.  
*Comment:* CCRPC generally agrees with expanding protection of ridgelines, however the purpose of this jurisdictional expansion should be expressly stated (i.e. scenic viewshed or wildlife habitat). Further, if the land area for a proposed development project does not functionally serve the stated purpose, there should be a process for proving so and Act 250 review and a permit should not be needed (such as wetland re-classification from Class III to Class II). Otherwise, this is a blunt tool that will result in avoidance of Act 250 review and associated unintended consequences. Lastly, it would be best to include a specific map of the area regulated (<http://anrmaps.vermont.gov/websites/ridges/index.html>) and a process for how that map will be updated.
6. Section B, pg. 6 to 7 – This section proposes to include new road/driveway construction of 2,000 feet in length as development subject to Act 250.  
*Comment:* CCRPC is supportive of the goal of preventing forest fragmentation but believes that this is too blunt of a tool. Similar to the comment above, CCRPC recommends a connection between the 2,000’ road distance and the intended purpose of this jurisdictional trigger (habitat

protection? Forest fragmentation?) and allowing an applicant to indicate if the stated purpose is being achieved with the proposed development.

7. Section C, pg. 7 to 21 – This section proposes to exclude development in designated Downtowns and Neighborhood Development Areas from Act 250 jurisdiction. **The proposal also includes underlying changes to the mixed income housing definitions.**

*Comment:* CCRPC agrees with and appreciates this approach. However, development in both Growth Centers and New Town Center designations should also be excluded. These are also state approved growth areas and there is no need for additional Act 250 review. Further, if the conditions from previous Act 250 permits are going to be a responsibility of the municipalities, it is critically important that the municipalities have the authority to re-evaluate a previous condition already addressed by a municipal regulation and municipal standards (as stated on pg. 17 line 17 – 18). **Changes to the mixed income housing definitions including specification of unit types/bedrooms have been added which can be much more difficult to address and administer. It is unclear why these changes are being proposed.**

8. Section D, pg. 21 – This section allows for a reduction in the project area for certain transportation projects for previously disturbed area. The idea is that these projects could then fall under the 10-acre jurisdictional trigger.

*Comment:* CCRPC agrees with and supports this adjustment.

9. Section E, pg. 23 to 24 – This section proposes to expand Act 250 jurisdiction to commercial and industrial developments within 2,000 feet of interstate interchanges.

*Comment:* CCRPC feels that this is not necessary. Further, it is unclear if the Regional Planning Commission role in the exemption is a one-time exemption for the whole area or needs to be done on a case-by-case basis. If this is to be put in place, the process for exemption should be one-time for the whole area. We would also suggest that interchanges in a Census-defined urbanized area (Interstate 89 Exits 12 to 16) be excluded from jurisdiction since these areas are already developed and will only be infilling over time.

## **II. Changes to Act 250 Criteria**

10. Section A & B, pg. 26 to 29 – These two sections propose changes to standardize regulation of river corridors in Act 250.

*Comment:* CCRPC does not agree with this approach. The proposed language does not adequately address new and infill development in historic village areas that overlap with river corridor areas. CCRPC recommends that this issue be studied rather than changed this year, and/or ANR regulate these areas through a state permit program with appropriate infill in our already developed downtowns and villages (with the presumption provided in IV. Act 250 Permit Conditions and Permit Process, Section C, pg. 40 of this proposed bill).

11. Section E, pg. 30 to 32 – This section proposes to expand the Act 250 wildlife criteria to consider impacts to forest blocks and connecting habitat.

*Comment:* CCRPC agrees with protection of these resources, however, there needs to be clarity on how these resources will be defined. The recommendation from CCRPC is to refer to the local and regional plan maps for how these resources are defined, rather than the current broad definitions in the proposed bill.

12. Section G, pg. 33 to 34 – This section proposes modification to better address climate change.  
*Comment:* CCRPC feels that there should be one consistent energy code applied throughout the state, not a higher standard in Act 250 (the stretch energy code is proposed). Further, the proposed climate adaptation amendment is broad and unspecific. It will require guidance on how to meet this standard.
13. Section H, pg. 34 – This section proposes that a municipal plan must be approved by the Regional Planning Commission for consideration under Act 250 criteria.  
*Comment:* CCRPC agrees with this approach.

#### **IV. Act 250 Permit Conditions and Permit Process [should be III]**

14. Section A, pg. 36 – This section proposes a 30-day pre-application notice requirement to the public and affected agencies for larger Act 250 cases. The proposed bill contemplates rulemaking to determine when a pre-application process would be needed.  
*Comment:* CCRPC agrees with this approach; however, there are some process heavy components that may not be appropriate in Act 250, such as formal scheduling (pg. 37, lines 3 to 5). Also, CCRPC recommends that projects should be vested at time of submittal of the pre-application materials.
15. Section C, pg. 40 – This section proposes to make all ANR permits, and municipal permits, have a presumption automatically.  
*Comment:* CCRPC agrees with and appreciates this approach, especially the addition of municipal permits being considered.

#### **IV. Enhanced Natural Resources Board**

16. Section A. Creation of an Enhanced Natural Resources Board, starts on pg. 44 - This proposal recommends a professional three-person board to review major Act 250 applications instead of the current District Commissions. The three-person board would be joined by two regional commissioners who would hear applications and help decide on findings of fact, but would not participate in drafting conclusions of law, and not vote or help decide the case. Appeals of the Act 250 permits would go directly to the Supreme Court, rather than the Environmental Board.  
*Comments:* CCRPC appreciates what this proposal is trying to do regarding consistency throughout the state. However, there are a number of challenges with this proposal, and overall CCRPC recommends that this section of the proposal be studied further and considered in a separate bill.

#### **V. Reports and Miscellaneous Changes**

17. Section A. Municipal and Regional Planning Review, pg. 71, line 15 to 17 – Overall this section requires ACCD to develop a report and recommendations with respect to the capabilities and development plan requirements under Act 250. *Comment:* CCRPC agrees that this issue should be further studied. However, this report will also include recommendations for “how regional plans are reviewed and approved...”  
*Comment:* CCRPC agrees with this general concept and asks that this bill require consultation with VAPDA and VLCT on development of the recommendations and report.
18. Section A. Municipal and Regional Planning Review, pg. 71, line 18 to 19 - This report will also include “whether designations of growth centers and new town centers should be appealable.”

*Comment:* CCRPC feels that this is out of place, and not necessary for consideration of capability and development plan requirements. CCRPC recommends that this be removed from the proposed bill or if it remains that VAPDA and VLCT be consulted in the preparation of the report.

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