

NRB Act 250
Environmental Interest-Based Focus Group
8/31/23

Jurisdiction

Tier 1/Growth areas

Exempting development from growth areas may cause unintended consequences such as downstream flooding (Montpelier development could result in flooding in Waterbury)

ANR Hazard River River Corridor Permit has narrow jurisdiction (only developments exempt from municipal bylaws) but has a similar review Criterion 1(D) Floodways so if that permit was expanded to more developments, it could meet the concern.

Other permits focus on specific and particular impacts, Act 250 takes holistic look at all impacts, not replaceable by other permits-no redundancy with other permits. Rather, Act 250 was created to be complementary and has remained so as new sub-criteria were added at the same time new ANR permits were created.

ANR generally grants permits and the process is not as accessible to the public as Act 250

Land designation programs (ie downtown designations) were made for tax purposes, not land use planning

Determining appropriate boundaries of growth area will not be easy

Need more data and better maps

Should not only focus on downtown areas which are often in flood zones

Perhaps keep designations for tax purposes but use different areas for land use planning

According to the Natural Resource Atlas, not many Act 250 permits issued recently in downtown areas

Housing problem is real but not result of just Act 250. If Act 250 were removed, this wouldn't relieve the shortage of lower and moderately priced housing. Many factors including second home ownership and short term (AirBnB) rentals (13,000 in VT). Could create additional housing by limiting short term rentals.

How do we frame the question? Does Act 250 slow down projects vs. does it give us better projects? Why don't we just have a statewide land use plan? The stakeholder questions provided this group before the meeting are framed with the assumption that we are going to grant exemptions. Rather, development across the board should minimize impacts.

Flood damage has 2 components 1) erosion damage, a stream may entirely jump its bank and erode a new section of river;- could recommend no structures in those areas and 2) inundation, the flood waters come up, cover the land, and fill the floodplain with water (filling people's houses and infrastructure that was built in the floodplain as well)- could armor banks, build infrastructure, then OK flood resilient development in those areas

In all cases there should not be structures in the floodplain or along our streams, but in areas that are already heavily developed – the question is do we allow more impacts by armoring banks to protect property and allow further development in those already developed areas.

State or Regional Planning Commissions must be involved and approve boundaries of growth areas, must think about downstream impacts

Need to use planning to address big picture

Act 250 should apply across the board- to all development projects

We should not be focusing on exemptions

All development projects impact the “commons” and the impacts need to be considered and the developments need to minimize impacts

Housing Bill required denser housing but 28 towns don't have zoning and still little housing is being built there. Act 250 is not the problem.

Should have 1 set of permits for state issues, would be more predictable for all
Rebuttable presumption for State permits works well

Complaints about amount of time it takes to get a permit is often due to the Environmental Court. We should simplify the appeals process. If city or town has capacity and competence to make determinations, than simplify process and rely on that determination

If developer “lawyers up” before the District Commission, that's their choice but it changes the informality of the process and reduces opportunity for negotiation

On the record review causes problems

Tier 2/Rural Vermont

Current jurisdictional triggers of lots and units not working

Now it's easy to build off grid, no need utility hook up, that makes it easy to develop in forest blocks

Montpelier has not grown in all the years of Act 250 but nearby towns have grown through sprawl into the countryside showing that Act 250 is not working here.

Large parcels can be chopped up into smaller and smaller lots over many years and remain outside of Act 250

Lots and units are not good jurisdictional triggers, not sure what else to use though
Decreasing the lot trigger could reduce forest fragmentation.

Tier 3/Natural Resource Areas

Reduce jurisdictional trigger in natural resource areas

Increase scrutiny/criteria in areas without water and sewer

Need to bring back the road rule

Road rule can be gamed-799 foot road didn't trigger jurisdiction; Road rule is inadequate.

Simplify and strengthen road rule based on length and units served

Mapping is the gold standard to protect natural resources but we can't wait years for the maps to be produced. ANR, VT Conservation By Design have maps but not created for jurisdictional purposes. Maps would need to be reviewed and have public input, will take time

Act 250 needs to get a marketing lift to get rid of the bashing. Show the positive, the benefits, of Act 250. A goal of Act 250 was to ensure that the community has a voice.

For now, several steps would be helpful

- 1) Road rule
- 2) Reduce jurisdictional trigger based on elevation, currently 2,500 feet is automatic jurisdiction for any development, reduce it to 2,000 feet
- 3) Some would like to see elevation trigger reduced to 1,500 feet-would include around 15 towns in VT-perhaps have an impact based jurisdictional trigger so small developments would not trigger Act 250 jurisdiction but have a lower trigger of lots and units than Tier 2.

Need to be mindful of private property rights-keep overreach in mind
state is roughly 75% forested

Can elevation trigger be based on ecological function, ie protect headwaters of rivers and streams

ANR is supposed to designate high quality waterways, there is a 1,000 gallon wastewater limit in those areas, ANR has not added to list of high quality waterways
Challenge is determining area to protect, if based on watershed, could be thousands of acres