

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

**September 7<sup>th</sup> 2:00 – 5:00pm  
Online Zoom Meeting**

- Continue jurisdiction discussion and get into capability and development plan (C&D). Will most likely weave C&D into the jurisdiction conversation.
- Continue meeting through September with steering committee (SC) and stakeholder (SH), 9/28 scheduled to be last SH meeting. SC will probably continue to meet a little bit after that. Hope is that we can have our final meeting in-person because that's where everything will come together. Sometime in the middle of October. Facilitation team may continue to consult with SC or may have clear instructions on where to go, then draft the report with iterative process of sharing and getting feedback. At the end of November, we have a formal draft that will be released to the public for public comment, 2 meetings end of November with public. December, incorporate the feedback and make modifications to the report.
- Meeting notes for SC and SH are up on NRB and EMC website.

**Housing, Economic Development, Environmental Justice SH update** – 100% support for exemptions (tier 1) in designated centers, concern about how designation centers are defined, support for commercial and industrial; what about small rural towns. Active housing group in Rutland said would support threshold of 25 maybe up to 50 but would support no cap; discussion of 10-5-5 rule and that discourages small builders; trails issue was brought up; ski areas might not fit designated center but established residential places and concern about tier 3 and forest block discussion would apply to them. Utilities and trail system conversation. Need more consistency and accountability for District Coordinators. Great frustration about ease of filing appeal in state of Vermont.

**Environmental SH update** – reticent for full exemptions in tier 1 around issues of development in river corridors and floodways. Everyone agrees these issues need to be addressed through ANR permitting or designation process. Agreement that housing is an issue, but discussion about how much Act 250 is the problem; general support for Tier system with caveat of flood issues for exemption, some consternation that Act 250 isn't really standing in the way of housing, may be making changes without evidence that Act 250 is really the problem. Tier 3, support for all the different jurisdictional approaches we've been talking about. Ultimately would be great to use the maps in some way for both jurisdiction and criteria, some support for road rule and elevational triggers. Generally, wants to see expansion of Act 250 and protection of areas in the state.

**Attorney SH update** – Tier 1 surprised there was lack of consensus on exemption. Broken down along applicant supporting attorneys and opponent attorneys. Housing stands alone in terms of development. Beyond that, a lot less consensus, there are projects that have broader regional impacts. Tier 2 – good discussion, maybe a consensus area triggers around units/lots there is some difference in that. Does a 10 unit apartment building have the same impact as 10 lot subdivision? Tier 3 – some concern about road rule and that led to lots of litigation, if we go down a route like that need to be clear and enforceable.

Need to be more data developed to help us understand the issues there and how we go about addressing them.

**Ag, Working Lands update** – didn't talk about Tier 1 too much. Spent a lot of time around Tier 2, to get more buy in on this, need to be clearer about this. IF it takes up "everything else" what does that mean. Elevation trigger and changes, mostly impact forestry operations, if drop elevation below 2500ft would need to exempt forestry operations; with current jurisdiction of 2500ft creates issues for large landowners if working above 2500ft need to notify potentially hundreds of abutters, which can lead to easy appeal since so many people are noticed. Want to eliminate redundancy. Triggers related to acreage are too small, these businesses work at a bigger scale, not paving and building structures, putting down gravel and storing logs there. Confusion over road rule, in principle there was consensus about being an interesting idea, but question about unforeseen consequence. AOFB conversation and relation to forestry, how are we defining onsite, primary versus secondary. There is a definition in Act 250 about agriculture/forestry but no definition of forestry. OK feelings around professional board, wanted to keep localism of district commissions. The preference would be to create a support network for board and staff. Ombudsperson to help people through the process was supported.

**Planning and Municipalities update** – Still consensus around tier 1 exemption for communities. This is where we want Vermont to grow and fill out vision of state. Some think everyone should have the opportunity to designate an area. A lot of support for RPC to oversee the designation process. Are we trying too hard to show that municipalities have functional equivalents to act 250, should we make sure we don't make it too hard to designate a tier 1 area, is the process more onerous than it needs to be to designate? Tier 2, what is this, seems to be most of Vermont. Could there be relaxation of Act 250 in these areas or changing the thresholds acreage vs. units. Tier 3 – general support there are areas that could use some expanded Act 250 coverage. Discussion about Act 174 and the process that looks for known state local constraints of energy development. Discussion about how many other state processes already exist to do more to protect high quality water and forest blocks, should act 250 have that role. In terms of NRB vs environmental court discussion, some consensus about continuing to be heard at environmental court.

**Consultants update** – Concerns with Tier 1 and applicability to communities in NEK, how would that be implemented in those municipalities. Making sure that they are tailored to comm of all sizes. Flood prone areas, new development should be provided for outside of valley area which are flood hazard zones, should be provided to have development occur outside of those areas. Forested area discussion focused on protecting unique areas versus blankets. Need to update current mapping. Thresholds or criteria that would be applicable. Not a lot of support for the road rule, confusion around implementing that rule. Lower elevation casted too wide of a net and should be more focused. Fees should be contributed from the general fund since the public derives benefit for act 250 and fees shouldn't be borne solely by applicants. Want consistency between coordinators determining application completeness.

Tiers are conceptual framework and organizing tool. There are several studies and groups, as well as legislators, that show a general interest in tiers as a way to look at it, but now we want to pin down the details. What are the characteristics.

### Tier 1 discussion

- One level is communities that are ready to take over in place of Act 250.
- The second level is municipalities that could be transitioned to tier 1 status.
- 101 places in Vermont that have municipal sewers and water that would have some capacity for growth, this includes a variety of different sized towns; versus some that have one or the other or neither.

### VAPDA update

- **CHANGE IS HARD**
- Have 3 major studies going on that are interrelated; Act 250, VAPDA future land use maps and mapping for the future, Designation Program study; conversations across are starting to align a little bit around how to get to a tier 1. A newly formed designation program that is the same as Tier 1. RPCs need to support those efforts with mapping and consistent criteria, both for designation and for tier 1 we are thinking about. Want it all to fit together at the end.
- Mapping process and where we are – grounded in planning statute 24 V.S.A. Chapter 76A Sec.2793e
  - o Compact settlements separated by rural countryside – trying to achieve this.
  - o Tier 1 – getting future growth into compact settlement areas, how do we define them, all regional plans have a definition, where we want to encourage growth = Regional Centers (largest urban centers in each region, think Montpelier, Rutland, Brattleboro, St. J, St. Albans), Town Centers (next layer down, villages within a town that have some level of infrastructure) ability to be prepared for growth and capabilities, transition areas/Evolving sprawl? (think Shelburne road in Chittenden County) This is all still being negotiated and talked about in the VAPDA study conversations, so take this as a draft.
    - Would town centers be treated differently than growth centers? – maybe?
  - o Designation study, there are 5 current designations – want to simplify and consolidate, maybe the designation is just the same as where do we want to have growth with those historic tax credit areas, maybe there's a central core. Building momentum to simplify and make designated areas larger.
    - should be a ladder, could have a two that just wants tax credits and redevelopment activity in village centers, but other who want to move up and have more significant growth.
  - o when is VAPDA due? Designation due? – pretty sure all the studies are due at the same time December 31st.
  - o how do neighborhood development areas fit in with potential classification buildings from all the RPC?
    - NDA are still smaller than they need to be to be a part of growth areas, vision they get supplanted by larger designated areas (could be larger in some towns than current NDA allow)
    - Boundaries of growth areas are going to expand, might not be perfect circles, because want to go to areas that are safer.
    - Geographies and purpose of designation are up in the air.

- Existing designations cover 0.3% of the area; how much will it change? **Correction:** At the designation study meeting a more relevant statistic was presented – 5.7% of the developable land area in VT is within current designated centers.
    - should also talk about the percentage of the population in the designated centers.
- Hearing don't pay attention to current 5 designations, they will be replaced/changed. If that's the case then question is, since we don't have ability and others have more expertise in defining those roles, we could identify a process (towns consult with RPC and propose boundaries), would that then go to state entity? This idea seems to have some interest, but probably others out there.
  - Would be helpful if this group had ideas about criteria for tier 1 areas.
  - Entire state ought to be able to participate in tier 1 if that's really where we are trying to encourage housing growth in those areas, bar should not be too high, every community should be able to participate.
  - Criteria of NDA are quite good.
  - Don't agree that every town should be able to participate in tier 1 area, they need to have good zoning and subdivision regulations and staff; that's not every community in Vermont; it's a different type of growth that you want to have in those very rural communities.
    - Should be framed more as an opportunity not prescriptive, if they have the will and want to join, they should; it's not about excluding.
  - Q – there are objective criteria (infrastructure), then you talk about “good zoning”; town might have zoning but might not be good
    - State decides on a regular basis what is “good zoning”; it's an exercise engaged in before. The NDA designation forces a community to enact rules it may never have considered before.
    - Statement that every community should be able to participate and rise to participate if they want to
      - Phase 1 – state and/or RPC include on map that town or part of town as seen as appropriate place for growth.
      - Phase 2 – list of things town needs to do to achieve it.
  - We have a lot of communities that went through a lot of work to get these designations but whatever the shift is, making them go through everything again is a lot to ask, especially for rural communities
- What would be the most essential criteria for these communities?
  - NDA criteria are a good place to start.
  - Historic district
  - Town plan that meets certain standards
  - Flood hazard areas, river corridors, wetlands, natural resources
  - Do all 10 act 250 need to apply?
  - Municipal water and sewer infrastructure – difference between having something on a plan and actual installation.
    - The presence of this infrastructure doesn't necessarily qualify an area for growth; neither does the absence.

- What are some ideas on the process to be used, who should be involved?
  - o It's a planning process so, origination starts with municipalities and RPCS to do their jobs correctly and then have some kind of process to see if politics got in the way
  - o Don't think NRB or VHCB should do this; takes certain expertise; ACCD staff doing initial review and then downtown board make ultimate decision is a good model, that staff adds value.
  - o Decision needs to be made conferring exemption rights, if downtown board does not follow the criteria, you can't challenge that. There's a new town center that exists right now that any planner in the state would agree it doesn't meet the criteria, but it was passed by downtown board and there's no way to get rid of it.
  - o NRB can have a role in the decision process, but their expertise doesn't align with designation process.
  - o Until we come up with a better option whatever entity hears appeals of district commission decisions would hear appeals of tier 1 designations (whether NRB or Environmental Court)
- Seems consensus that we want to professionalize the board for rulemaking etc., also consensus some statewide entity to approve growth area designation; no consensus on who that state entity should be.

## **BREAK**

### **Tier 3 Discussion**

- Seems to be increasing protection on natural resources (NR) where it wouldn't be duplicative; mapping would be the gold standard; how do we get there before it exists.
- How do you define it? Large forest blocks with connectivity for ecological and biodiversity and perhaps also high quality waters.
- Issues that have come up as to how to provide protection, road rule, elevation should that be lowered? If it were lowered, would we also exempt forestry/working land impacted the most, maps, what maps should we use (maps by VAPDA, RPC maps, ANR Maps - Conservation by Design – these mostly just for info purposes)
- Thoughts on specifics on what should be included in Tier 3 for greater protection.
  - o Road rule was proposal to reduce forest fragmentation, anything we do on any other NR might require mapping that we don't currently have.
  - o Q – are there other concrete steps to be taken?
    - A lot of it comes down to politics. Looking at an elevation approach, tiers and triggers requires policy.
    - As we work on mapping related to forest blocks, as the state becomes more comfortable using them can throw into the mix.
  - o High quality waters are somewhat map dependent; it's really the watershed around these high quality waters, not sure how that boundary would be drawn and what it would be.
- What would the process and criteria be?
- If we can't look at the best science out there, then what are we going to look too?

- The conundrum we are facing is that Vermont conservation design (VCD) as planning tool with explicit intent not for regulatory processes, authors of that work feel beholden to stakeholders worked with over years to honor that commitment.
- NRB would do rulemaking to chart out boundaries that would be considering under forest fragmentation criteria informed by VCD, a resource used to develop boundaries, but it wouldn't be a direct cut and paste.
- Information in the map can be the foundation moving forward but needs to be another statewide body that potential refines it.
- Equity in these processes is a great plan. If in tier 1 we are going through some regional input and then statewide board to look at and there's opportunity for public input, then doing the same for tier 3 would be the way to go.
  - Agree with that; some symmetry in the approach makes sense. Sequencing is important; folks worried that something was being approved for further regulation without really knowing what was being regulated because rulemaking...hard to hear...might deal with some of that concern and uncertainty by clearly designating.
- If we are potentially saying NRB playing a role to approve whatever the NR boundaries, would that make more comfortable for them working on tier 1 growth areas?
  - NO
  - For forest mapping they'd be relying on ANR
- VCD and forest block map contemplated to be used in application of new criteria to new forest blocks and connectivity; never was it agreed to be used as jurisdictional tool. The idea that 70% of state by nature of trees being present trigger act 250 jurisdiction is not a concept that should be on the table; (it's not); when talking about maps want to be clear about that.
- Criteria 8a necessary wildlife habitat – nothing in statute that defines this, through rules we protect deer wintering, bear habit, etc.; question that was raised was what is a necessary forest block? Put those definition into the law that was shared, then said let's do rule making, when is ANR going to comment that you have a project that they think may have adverse effect on forest block and that effect needs to be mitigated or that project needs to be reworked.
- Many things undefined in Act 250; not going to add a new criterion without trying to define it first, believe that makes sense; whatever jurisdiction changes
- Need to define and that's what rule was going to do.
- Have tier 1 area where committee is looking for full exemption from act 250, was understanding there would be a mapped tier 3 area with higher protections.
  - No there will not be a mapped area.
  - If we are going to use VCD for tier 3 triggers in addition to whatever issues ANR staff have with data the underly the maps there would need to be some public process, RPCs, towns would want to review which would take time. We don't want to wait for that uncertain result and that's where road rule combo with forest criteria could be fair; not perfect and not using maps for automatic triggers.
  - How do you differentiate between tier 2 and tier 3
- Likely to have some tier 1 growth areas and maybe then there's just the rest of the state for now; but we are talking about using mapping in the future (VCD, other maps and data, towns others will have input) and we could potential recommend what the criteria and resources are. As an interim measure would like to see a road rule and forest fragmentation criteria

- Creating new large areas of the state that auto trigger act 250 jurisdiction has not garnered consensus.
- Not necessarily an assumption that development in tier 3 would be auto trigger, it could have a different trigger than tier 2 has. There is interest in those sensitive locations.
- Need to be clear in whatever we recommend between criteria and jurisdiction; have muddied waters...Hard to hear...want to provide clarity on where, when, and how applies is critical.
- Appreciating that we have a housing crisis we need to move fast in tier 1 to deal with it, not just act 250, create housing in a smart way. We still need time to figure tier 3 out but don't want to hold up tier 1. It would be helpful if we could focus, if we won't have mapping, let's figure out details later, what are we talking about when talking about road rule and forest frag and discuss concerns there and work through that.
- Would be worth people reading the criteria and road rule and additional contextual materials. Tune in for the Road Rule Podcast. Additional podcast, Where are the maps?

## **Tier 2 Discussion**

- How do we address this? There's a lot of different issues to think about; impact of lots vs units, size of municipality, ability for growth.
- Where we locate housing is an essential solution to climate crisis. We know we don't want rural sprawl, but we also know that there are areas outside what will become designated centers where it is likely appropriate to incentivize/encourage housing. 10 unit threshold for many towns is outdated, however there are some small towns where it is appropriate, distinction between 10 lots versus 10 units.
- Possible approach – population based (this is current paradigm for PHP)
  - o Layer on top topic of "good zoning" perhaps a higher threshold for areas served by water and sewer.
- Possible approach – bring forward PHP framework to Tier 2 – affordable housing = 20% of total units, workforce housing = 80%
  - o Infrastructure exists and encourages a mixture of housing at different affordable levels across communities
- Possible approach – threshold around compact dense development – 10 lots can involve multiple acres, but 10 units can be on an acre or less (example 23 units on less than .5 acre because it was built up)
- Is there a way to integrate the infrastructure component into it?
- Is it better to say a) we should do this based on size of municipality b) based on infrastructure or c) combination of the 2.
  - o Encouraging compact development; S.100 is 5units/acre.
- A major subdivision is 4 or more lots; so, the proposal was put on the table of why not use that as the standard in rural areas outside of villages in tier 2. This helps to address one of the biggest land use issues in Vermont. One proposal trigger could be 4-5-8 to help slow down pace of the sprawl
- Q – wouldn't some of these existing settlements likely be included in one of the new designations?
  - o Conversation will change once we understand area covered

- There's a way to pursue this without worrying about where designation program study will end up, although there should be coordination
- The numbers seem arbitrary but must cut off somewhere; compact nature is the way to go, focus on how the housing is developed, not so much the water and sewer area, because there are other state/local permitting processes on development. Unless the developer can say I need the permit before the infrastructure is built. Permit is done and then can construct infrastructure.
- Bumping up jurisdictional threshold and we already have a rural sprawl problem, support compact development patterns but can see it not achieving the goals we are looking for of preventing rural sprawl. How much of state are we talking about, if you weren't in tier 1 and want to incentive compact development.
  - o Might have a town that doesn't want to be tier 1; standard should be designed to what we want to look like, kind of like 9L conversation.
- We want to see growth in areas with robust zoning. We don't want to follow the patterns of the past where small towns are made to sit at the kids table. I want to make sure that we're not setting things up that just because of population you can do X or Y. There are areas outside of settlements that have growth potential but one big concern here is under the Tier 2 conversation around agricultural soils and growth in a compact way.
- All good comments. Sprawl issue which deeply I care about. Act 250 may not be the tool to get at sprawl because the regulatory threshold is not at the single-lot or single-unit level. I didn't put this one in the concept paper, but I strongly believe we should get rid of the 10-5-5 rule because it led to sprawl and disincentivizes small developers.
  - o I agree and this was discussed in my stakeholder group. Would like a definition of rural sprawl. Important to define rural sprawl vs. compact village center.
- These thresholds are a matter of density and are generally determined on a units per acre. Rural areas are generally 2 or more units per acre. Compact development is about 5 units per acre. Village density is closer to 7-8 units per acre, it is more dense and able to support transit.
- In some other places there is a concept of short vs. long subdivision, short being up to 3 lots and long 4 or more lots. There are different review levels for long vs. short subdivisions. Property with 10-5-5 allows a lot of land subdivision without regulation. 10-5-5 hasn't produced results but whether there should be nothing is a question to consider. Different between project with 10 units per acre vs 10 lots per acre.
- Can I clarify on lots vs. units. How are we differentiating these?
  - o I was not careful in my proposal on the terminology of units vs. lots. 25 units in a building would be multifamily. I could see areas where you could have compact settlement. We need to open our minds to duplex and quadplex structures as a housing type.
  - o Is a triplex three units? Yes.
- It may be helpful to form a few sub committees. What are other ways to get at these questions and bring back ideas to the steering committee. Looking at creating a committee for Tier 2 housing and another for the road rule and forest fragmentation. I'm getting nervous for areas of agreement that we can write up. Anyone interested in a Tier 2 subcommittee [show of hands].
- Is it ok if someone else from my organization participated on my behalf? Are people ok with that?



- I don't think that would be an issue and that applies to anyone else if they need a colleague to step in. If there's an objection let me know. Folks are welcome to be in either group. Anyone interested in a forest block subcommittee [show of hands]. We would provide a facilitator to keep that process moving. Any other subgroup needed to address other outstanding issues? Hopefully these groups can meet next week. Should we keep talking about Tier 2 or do we want to go back to Tier 3?
- This is a super small point but a lot of this is going to be looked at politically. Within Tier 3 forest operations above 2,500 feet elevation are reviewed by Act 250 but all those areas are in the National Forest or on lands enrolled in Current Use and operations are reviewed. My pitch would be to make forestry operations exempt regardless of elevation.
- On the elevations map areas above 2,500ft equal ~2-3% of the state, areas above 2,000ft equal another ~8% of the state and areas above 1,500ft equal another ~25% of the state. One thought would be to have different triggers at different elevations. Does the 2,500ft elevation trigger put a burden on forest operations?
  - Yes, most parcels are large but the projects are typically small. There's a burden of the Act 250 process and on notification of adjoining and appeals. [inaudible] Review is also completed by the Green Mountain National Forest or Current Use. The pitch is to make it exempt.
  - With respect to adjoining notifications there is a provision for a waiver of noticing requirements already in rule. The applicant can make a case to limit the noticing area because the adjoining wouldn't be impacted by the activity. Can you tell us what do you mean by forestry operations?
    - Yes. Just silvicultural operations or logging itself, not processing.
  - Could you provide a definition on how you define those operations? Over the years there have been different approaches and different definitions.
    - I think they are defining it as everything exempt below 2,500ft.
    - From my understanding this is such a limited area but we can talk about it more.
    - Possibly a small amount of projects like this every year. They happen but infrequently.
- What would you think of the impacts for reducing the trigger to 2,000ft where there would be a different jurisdictional trigger than other areas. Possibly an exemption for forest operations.
  - My group would support that and if there was a lower jurisdictional trigger at 2,000ft – 2,500ft that doesn't need to pull in timber harvesting.
- Someone raised the point that it should be based on activity plus impact. We have yet to define what that impact is for development.
  - We don't process a lot of timber harvesting applications above 2,500ft but that could change in the future.
- Could you circulate to this group the waiver procedures that you spoke about earlier?
  - Sure.
- I don't want to see Act 250 to be taken up as a bludgeon to stop timber harvesting. There are groups out there that see this as a tool to stop this all together. I would want to have Act 250 deal with appeal after appeal because there are some out there who's plan is to obstruct. It wouldn't be good for Act 250 to be in the middle of that.

- We discussed the downsides, and I would like to talk about the potential upside. Would there be any environmental benefit to added protections in the 2,000ft-2,500ft area?
  - o That's my question, what benefit are we trying to achieve. We're already focused on the road rule as a jurisdictional trigger to deal with small scale development that has encroachment in undeveloped area. What are we trying to do?
  - o Could be that a 4 lot subdivision in the general countryside. Could be a lower number between 2,000ft-2,500ft area. Could be ways to get around it if the project is clustered together.
  - o Do we have any data around residential sprawl at these elevations? This is a massive change to Act 250. This could disrupt a lot of the work here by adding an elevation trigger.
  - o Conceptually this was envisioned to help ensure protection of forest blocks, habitat connectivity, high elevation watersheds and sensitive areas. There is still interest in seeing mapping. We should note that some high value connectivity could be at low elevations. How to get at the most critically important areas. I'm not sure if the elevation threshold is the best way.
- Some information on sprawl is included in the 50 years on Act 250 report that have increased 80% of residential development and of 60% commercial development is happening outside of designated areas. I don't know of any data that has that breakdown by elevation.
  - o Some parcellization information shows residential sprawl in forest block areas that are at higher elevation areas mostly about 1,500ft. I can provide the data. FPR reviewed some of that data and agreed it was a problem which is why we're talking about a suite of tools to address this including Act 250. Not to say that elevation is the answer jurisdictionally, but there is evidence of rural residential sprawl fragmenting forest blocks.
  - o Circular conversation. The road rule could take us a long way there. Elevations is a political subject.
- I look forward to getting more information on forest fragmentation. Could have a 5 lot subdivision where the homes are along town roads and simply the subdivision of that property is fragmentation as defined under H.926. So you could have clustering of homes to the transportation network that still result in fragmentation.
  - o Under the current rules that wouldn't trigger anyway because it's under 6 lots in a town without zoning or subdivision bylaws. The road rule encourages clustering to avoid encroachments so you can avoid Act 250. The roads can really impair the ecological function of the area.
- Subgroups could talk about forest fragmentation can also talk about elevation. A common theme is about better mapping resources. I'm reminded of a quote that you go to war with the army you have not the army you want. So, we need to move forward with the maps and data that we have and be as concrete as possible with the information we have. I will send out emails to the subgroups to schedule meetings next week. Thank you all for you time. Sometime soon we will start to converge on ideas. Meetings will continue.