

Natural Resources Board Act 250 Stakeholder Project

Capability and Development Plan

Act 182 of 2022 charged the Natural Resources Board with producing a study that includes recommendations on “How to use the Capability and Development Plan to meet the statewide planning goals.”¹

The Vermont’s Capability and Development Plan, enacted in 1973, still exists in principle and in statute, but not operationally. District Commissions and the Natural Resources Board do not refer to the Capability and Development Plan in their reviews of Act 250 applications.

It is helpful to all to summarize the original history of the Capability and Development Plan to establish a common understanding of what it was intended to be and what it is not today:

In addition to the development permitting process, Act 250 mandated a three-stage planning process. The first stage called for the publication of an interim land capability plan that would categorize lands based on their environmental suitability for development. The next stage ... called for a capability and development plan that would consider economic and social factors in addition Finally the third stage ... was to be a land use plan accompanied by a map designating which lands were best suited for agriculture, forestry, recreation and urban development.²

The interim capability plan, basically a data document, was approved by the Environmental Board in June of 1971, after amendments in response to public and regional planning commission responses. While Governors Davis and Salmon both approved a second stage capability and development plan as the administration changed hands, “the legislature voted against (its adoption) choosing instead to incorporate a number of its recommendations into a revised Act 250”³

In the third stage of the capability and development plan:

A draft of the land use plan, accompanied by a blurry, indistinct map, was mailed to all Vermont households in ... 1972. The map alarmed many landowners ... To make matters worse, the (former) State Planning Office ... and the Environmental Board disagreed over how detailed the land use plan should be. The State

¹ Act 182, p. 65. <https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT182/ACT182%20As%20Enacted.pdf>

² “History of Planning in Vermont.” 1999. VT Department of Housing and Community Affairs. Montpelier, VT: p. 7

³ Ibid. p. 7

Planning Office favored a plan that would place all land within the state's borders into a specific use category. The Environmental Board felt that plan should only indicate certain general areas, such a high elevation, floodplain, agricultural, and significant natural areas, where development would be restricted.⁴

The Capability and Development Plan was not a "blueprint plan," such as a future land use plan, which is the basis for zoning. But many Vermonters interpreted the Capability and Development Plan to be a future land use plan and that was one reason why the state land use plan element died in the Legislature. The Capability and Development Plan was meant to identify land suitability for development and constraints to development.

The Legislature passed the Capability and Development Plan in 1973. It consisted of 19 findings and maps identifying areas appropriate for development and areas with moderate to severe limitations (See Appendix One and Appendix Two). The Capability and Development Plan was meant to set the stage for a state land use plan. However, the economic recession and development slowdown of the mid-1970s reduced perceived pressures to control land use, and:

Lacking critical support from the public and legislature, drafts of the state land use plan presented to House committees in 1974, 1975, and 1976 never mustered support to pass. In 1984, the legislature finally removed the mandate for a state land use plan from Act 250. Without the state land use plan, Act 250 was a different law.⁵

The Capability and Development Plan soon was retired to the shelf. Yet, one thought is that if the Capability and Development Plan and maps could be updated--based on good science and GIS. The Capability and Development Plan as a land suitability and constraints plan would fit well with the current Act 250 process, because Act 250 is basically an environmental impact analysis and permit process.

The Next 50 Years report noted that "Act 250's ability to achieve the goals contained in the Findings and the [Capability and Development] Plan is necessarily limited because its jurisdiction is limited."⁶ The Legislature in 1973 declared that the findings that constitute the Capability and Development Plan "shall not be used as criteria in the consideration of applications."⁷ It is estimated that about 75 percent of development in Vermont is not subject to Act 250.⁸

⁴ Ibid. p. 8

⁵ Ibid. P. 8

⁶ 1110 V.S.A. §§ 6001, 6081.

⁷ 1973 Acts and Resolves No. 85, Secs. 7, 10.

⁸ R.M. Sanford and H.B. Stroud, "Evaluating the Effectiveness of Act 250 in Protecting Vermont Seams," *Journal of Environmental Planning and Management*. Vol. 43, No. 5 (2000).

As the facilitation team has commented in the other homework for the Steering Committee, Act 250 operates today mainly as a project-by-project environmental impact management regulatory program. The statistics on land use conversion and lot creation outside existing and designated town, village and growth centers indicate that the overall statewide vision of compact settlements separated by working countryside has only been partially maintained. With Act 200, local and regional planning were somewhat strengthened in Vermont.⁹ But the statutory and procedural linkages between those plans and Act 250 regulation are limited, typically to Criterion 10 about the consistency of the proposed development project with the local and regional plans. Also, the potential benefit of a cumulative, landscape-scale guidance for smart growth and natural resource protection are limited as well.

What Can the Capability and Development Plan Contribute to Smart Growth and Landscape-Scale Protection?

Planning in the leading states since 1970 has featured a mix of flexibility, market-based processes and growth management, not simple control. This has led to innovations such as growth boundaries and service areas and new incentives (such as Tax-Increment Financing districts and the acquisition of conservation easements), coupled with the designation and protection of significant landscape areas. New science has also shown the need for ecosystem services protection at landscape scales, such as wildlife hub-and-spoke systems and watershed thinking for both water quality and protection from intensifying flood events.

Today, Vermont has both a vision for landscape scale patterns—conserving 30 percent of the state by 2030 and 50 percent by 2050—and the insights of current science, as embodied in the Vermont Conservation Design. Act 59 (2023) calls for action on the Vermont Conservation Design through updated inventory and analysis of conservation lands by July of 2024.¹⁰ These data should lay the foundation for the three-fold classification system of ecological reserve areas, biodiversity conservation areas, and natural resource management areas as proposed in Act 59.

Act 59 also calls for the analysis of existing measures for conservation in the state and: “How existing programs will be used to meet the conservation goals of this chapter and recommendations for new programs, if any, that will be needed to meet the goals.” In addition, Act 59 asserts that: “Strategic investment in conservation is consistent with construction of housing in Vermont’s villages and town centers” to meet affordable housing needs.¹¹

Act 171 of 2023 added new requirements to the state’s land use planning goals to “manage Vermont’s forestlands so as to maintain and improve forest blocks and habitat connectors.” Act 171 requires town and regional plans to: 1) Indicate those areas

⁹ “Status Report: Land Use Planning in Vermont 15 Years After Act 200.” 2004. Montpelier, VT: VT Department of Housing and Community Affairs.

¹⁰ <https://legislature.vermont.gov/Documents/2024/Docs/ACTS/ACT059/ACT059%20As%20Enacted.pdf>

¹¹ Ibid., p. 4.

that are important or require special consideration as forest blocks and habitat connectors; and 2) Plan for land development in those areas to minimize forest fragmentation and promote the health, viability, and ecological function of forests. Act 171 also clarifies that a municipal bylaw may not regulate forestry operations.

Act 47, the HOME Act, increased the number of units in certain designated development areas that could be built before triggering Act 250 review from 10 to 25 units. These designated development areas should be mapped to also identify suitable greenfield development sites as well as existing downtowns and neighborhoods.

The fundamental question for Act 250 is how the charge to make the Capability and Development Plan “useful” could or should interface with these new conservation and development policy initiatives? Some initial questions for the Steering Committee to consider include:

1. The Next Fifty Years report calls for the creation of an inventory and GIS database to update the Capability and Development Plan. **How should the inventory, database, and resulting maps of an updated Capability and Development Plan be coordinated with the on-going and more specific housing development and forest management and biodiversity efforts mandated by Act 47, Act 59 and Act 171?**

These Acts involve the VAPDA study in which the Regional Planning Commission community is developing a statewide data resource on land use framework maps at the local level, and the state level work on forest blocks and habitat connectors under Acts 59 and 171 respectively.

a. The Next 50 Years Report also advocated a requirement “that the county level Capability and Development Plan maps created in the 1970s be updated for reference in Act 250 review to include environmental constraints, existing settlements, critical resource areas, facilities and infrastructure, and areas targeted for conservation, public investment, and development.” For example, see the Agency of Natural Resources mapping program BioFinder and Conservation by Design. So, how might the Capability and Development Maps be updated? Are the VAPDA study mapping initiative and the Act 171 work involving mapping efforts such as the ANR mapping adequate or what more is needed?

2. Assuming an updated science-based and data-driven mapped inventory, how should that information be referenced and use to:

a. Determine Act 250 jurisdiction, such as for “major projects” and/or new definitions of critical or sensitive areas or areas of statewide significance under Act 250?

b. Coordinate with local and regional plans for the purposes of consistency and validity in Act 250 reviews, especially with regard to Criterion 10?

c. Serve as a basis, in part, for defining development areas for a Tier 1 and resource protection areas for a Tier 3 as we have discussed?

3. Could revised Capability and Development Plan maps be used to identify tiers as discussed in the jurisdiction brief?

Tier 1 – development areas with existing or planned sewer service;

Capacity for growth exists in the designated development areas, though the size of the capacity is uncertain. Smart Growth America is working on a study of the designated development areas.

Tier 2 – village/hamlet/rural areas with on-site septic systems; This area has experienced a considerable amount of sprawl. It should be mapped after Tiers 1 and 3.

Tier 3 – sensitive environmental areas? Note that VAPDA is also working on a study of tiers. VAPDA supports a consistent framework for regional land use planning that:

“[Has] more consistently defined areas planned for growth through collaborative coordination of municipal and regional plans;

- Supports making delineations of designated planning areas from the state to the regional level to obtain the benefits in the variety of State designation programs;

- Strengthens the weight of regional plans in State capital investment decisions;

- Defines areas that should be exempt from Act 250 on the basis of established regional and municipal planning for compact development and provision of infrastructure.”¹²

VAPDA tentatively identified 8 land use designations:

- Rural: areas where low-intensity development may occur to support management of working landscapes (such as forestry or farming).

- Conservation: areas where development and human impacts on the land are generally avoided (such as forests or natural areas).

- Hamlet: small historic settlement areas that serve as focal points within rural areas (such as a crossroads with a general store and a few farmhouses). These may be represented as points since the geographies are typically very small.

- Village: somewhat larger and compactly settled historic centers denser than the surrounding countryside which provide a sense of place, community facilities, and some public infrastructure and could be used to support the current village designations.

- Urban: densely developed areas of regional significance that include a wide variety of residential, commercial, and civic spaces supported by public infrastructure. This area should incorporate the regional centers, state designations for growth, and existing settlement areas associated with them.

- Enterprise: areas of concentrated commercial and industrial activity or resource extraction (such as industrial parks and gravel pits).

¹² VAPDA Consistency in Vermont’s Regional Land Use Plans and Maps, July 13, 2023.

•Resort/Recreational Economic Development: areas focused on an outdoor recreation that may include supporting residential and commercial uses (primarily ski resorts).”¹³

4. The Next 50 Years report recommended: “Act 250 should explicitly reference the goals as stated in the Capability and Development Plan. In addition, Act 250 should reference the specific goals for municipal and regional planning contained in 24 V.S.A. § 4302(c).¹⁴ **Do you agree with this recommendation? And how would that recommendation strengthen Act 250? Has the purpose of the Capability and Development Plan goals been met by subsequent plans, legislation, or other actions over the years? Or has the need to refer back to these goals been superseded by the subsequent statewide planning goals for local governments, which may also need better connection to the Act 250 process?**

Appendix One: Summary of the 19 Findings of the Capability and Development Plan (1973)

- the capability of the land to support development;
- the use of natural resources, including agricultural and forest productivity, mineral resources, conservation of the recreational opportunities, and protection of the beauty of the landscape;
- public and private capital investment, including the demands placed on public services by development;
- planning for growth, including the issues of strip development and keeping village and town centers vital;
- seasonal home development;
- general policies for economic development;
- specific areas for resource development;
- planning for housing, including housing for residents of low or moderate income;
- resource use and conservation, including those resources protected under Act 250’s Criteria 1 (air and water pollution) and 9 (capability and development plan);
- preserving the value and availability of outdoor recreational opportunities;

¹³ Ibid.

¹⁴ [https://legislature.vermont.gov/statutes/section/24/117/04302#:~:text=\(C\)%20Flood%20emergency%20preparedness%20and%20response%20planning%20should%20be%20encouraged.](https://legislature.vermont.gov/statutes/section/24/117/04302#:~:text=(C)%20Flood%20emergency%20preparedness%20and%20response%20planning%20should%20be%20encouraged.)

- protecting special areas, such as sites of historic, cultural, or archaeological value;
- controlling adverse effects on scenic resources;
- encouraging energy conservation;
- taxation of land;
- planning government facilities and public utilities based on reasonable growth projections;
- public facilities or services adjoining agricultural or forestry lands;
- planning for transportation and utility corridors;
- planning for integrated transportation systems; and
- planning for waste disposal.

Appendix Two – Capability and Development Maps of Addison County, 1972.

From the files of Tom Daniels.



