**Natural Resources Board Act 250 Stakeholder Project**

**Act 250 Jurisdictional, Location-Based Triggers 2.0**

Act 182 charged the Natural Resources Board with determining "how to transition to a system in which Act 250 jurisdiction is based on location, which shall encourage development in designated areas, the maintenance of intact rural working lands, and the protection of natural resources of statewide significance," and "whether to develop thresholds and tiers of jurisdiction as recommended in the Commission on Act 250: the Next 50 Years Report."

The Act 250 Project Steering Committee met on this charge on July 27 and the District Environmental Coordinators met on August 2. Both groups reviewed the first round of the Jurisdiction Homework Brief and considered this overall problem statement:

> **The vision of Act 250 has long been compact development surrounded by working landscapes. However, Act 250 location based jurisdiction and triggers have tended to work against desirable development (e.g., affordable housing and economic development), and not done enough to control the sprawl in rural landscapes that we don't want.**

There was some concurrence on the following principles:

I. **More effectively encourage needed development in appropriate locations,** such as the designated development areas and possible additional buildable land areas that allow for economically successful and affordable growth.
II. **The need to provide greater protection for sensitive natural resources areas**. These areas include extensive forests, riparian areas, river corridors, and high quality waters.
III. **Examine whether the use of lots and acreages are the most effective triggers for Act 250 jurisdiction and consider not only changes to those thresholds but possible added and complementary triggers that add effectiveness**. This includes the other existing spatial locational triggers of elevation above 2500 feet and possible additions to address critical locations.
IV. **Any changes or additions to Act 250 must add value to meeting the vision of compact settlements surrounded by working lands, and not add redundancies. Also, eliminate redundancies in Act 250 that have arisen since its inception 53 years ago**. This includes state and federal permits that overlap with Act 250, more effective local zoning and subdivision bylaws in some communities, and looking at the role of the existing Act 250 criteria and any new criteria.

There is still a range of options and concerns about the specific mechanisms that might be employed or possibly not yet pursued to address the four principles above. In short, there are details that need to be worked out.

**The rest of this brief covers what has been discussed about specific options**, including background material the facilitation team prepared, some not fully discussed by the Steering Committee or District Coordinators at their meetings. That includes discussion of tiers, criteria, and community serviced growth areas. Questions about options from the discussions are listed in each of the four areas.

## I. ENCOURAGE DEVELOPMENT IN CENTERS/APPROPRIATE LOCATIONS:

**a.** Should development be better encouraged by Act 250 in the four types of designated development areas? (The areas were created for economic development and tax purposes (Tax Increment Financing districts), not as land use policy). **If so:**

i. Should projects in the designated development areas be exempt from Act 250 or have different thresholds for review, such as the temporary 3-year HOME Act 25-unit threshold? What should the change(s) be?

ii. Should the agricultural soils mitigation requirement be eliminated for projects in designated development areas?[1] The Vermont Agency of Agriculture, Food, and Markets (AAFM) advocates for an Act 250 applicant to mitigate agricultural soils if more than two acres are involved with the Act 250 project within a designated development area. Mitigation can occur either on-site, with a payment for off-site mitigation, or a combination of the two. The mitigation requirement adds to the cost of building projects in areas where projects are desired. This is contrary to encouraging compact development, one of the key principles of Act 250. The agricultural soils mitigation requirement is managed by the AAFM. There appeared to be some agreement among the Steering Committee that the agricultural soils mitigation makes little sense inside designated growth areas.

iii. Should Act 250 fees be reduced or eliminated in designated development areas? Act 250 fees are based on the cost of

[1] 10 VSA6001(15) defines primary agricultural soils. Soils that are mapped as prime agricultural soils by NRCS but have lost their agricultural potential are not considered primary agricultural soils by statute and do not require mitigation.

construction, with some exemptions and fee waivers, with a cap of $165,000. Again, fees on development in designated development areas add to the cost of projects where they are desired and run counter to the Act 250 principle of promoting compact development.

iv. Should the designated development areas have different 10-5-5 thresholds, fewer Act 250 criteria applied or other changes to jurisdictional triggers based on community size, existence of permanent planning and zoning consistent with the state planning goals or other conditions?

v. In particular, should the acreage trigger for commercial and governmental projects be changed for designated development areas, possibly loosened but also possibly tightened where projects may have regional landscape impacts?

b. COMMUNITY SERVICES GROWTH AND EXPANSION AREAS: Would a Vermont-appropriate type of community service area with existing or planned sewer and central water facilities adjacent to designated development centers help to encourage development in centers rather than sprawling development in the countryside? A few VT regional plans and cooperating local plans already point this direction. (PLEASE SEE THE DISCUSSION OF COMMUNITY SERVICE AREAS BELOW IN SECTION IV" FOR FURTHER BACKGROUND)

c. TIERS: Would a system of development location tiers be useful either combined with the current types of designated development areas, or as a new policy? SEE THE DISCUSSION OF TIERS BELOW IN SECTION V)

i. A system of three tiers was discussed: a) A development tier; b) a village/hamlet/rural tier; and c) a sensitive natural resources tier. Act 250 criteria and jurisdiction could vary according to each tier.

II. **LIMIT DEVELOPMENT IN RURAL AREAS WHERE THERE ARE SENSITIVE NATURAL RESOURCES**. Sensitive natural resources either have major limitations for development or provide important environmental services. These resources include: mountainous areas, contiguous forests that provide wood products, ecological connections, and watershed protection, river corridors and riparian areas, high quality waters, and undeveloped interstate interchanges.

Act 250 already applies to any proposed development above 2,500 feet in elevation. These lands typically have major limitations to development, such as steep slopes and thin soils, which are highly vulnerable to erosion. Should the 2,500 feet elevation trigger for Act 250 jurisdiction be lowered? If so, to what elevation? The legislature's Next 50 Years report wrestled with this issue, noting that Vermont has 223 mountains over 2,000 feet. Reducing the elevation jurisdiction trigger for Act 250 would also likely overlap with many sensitive natural resource areas, such as contiguous forests.

Forests cover 74 percent of Vermont and offer a wide array of environmental services, such as water filtration and re-charge, wildlife habitat, wood products, carbon storage and sequestration. The fragmentation of forests through subdivision and development reduces the robustness of these services. River corridors and riparian areas are often difficult for local governments to regulate for development and protection. The recent flooding in Vermont is one such indication. High quality waters are surprisingly rare in Vermont and merit special protection. Finally, undeveloped interstate interchanges in Vermont underscore the state's environmental image. Managing development within a certain radius of interstate exchanges is also important for traffic safety in addition to visual quality.

Sensitive natural resources could be designated much like designated development areas. Or they could be a criterion of Act 250. For example, a forest fragmentation criterion could be used to replace the forest soils criterion 9 (C). But once a sensitive natural resource area is designated, what should the trigger be for Act 250 criteria to apply? Should it be lots and units? If so, how many lots and units? Or should any development in a sensitive natural resource area trigger jurisdiction like the elevation trigger?

The District Coordinators felt that there was adequate mapping to identify sensitive natural resources.

III. **RE-EXAMINE LOTS AND ACREAGES AS JURISDICTIONAL TRIGGERS, AS WELL AS EXISTING LOCATIONAL TRIGGERS: ELEVATION:** What is the appropriate trigger for lots, dwelling units, and commercial development a) within designated downtowns and villages; b) in towns with permanent zoning and subdivision regulations; and c) in towns without permanent zoning and subdivision regulations?

Act 47 of 2023 (the HOME bill) removed Act 250 jurisdiction for three years in the case of housing projects of up to 25 dwelling units within five miles and five years. Are the unit levels high enough or too high? Should the 25-unit level be made permanent after its 3-year authorization, and, if so, in what areas? Is the 25-unit threshold enough to spur needed development?

As of 2017, the state's designation programs have designated 23 downtowns, 124 village centers, two new town centers, six growth centers, and five neighborhood development areas. The overall development capacity within these designated development areas is uncertain and will likely be addressed by the Designated Area Report underway by Smart Growth America for the Agency of Commerce and Community Development.

Priority Housing Projects (PHPs) are important for increasing much-needed housing opportunities in Vermont. According to the recent HOME Act, PHPs in a designated Downtown District, Neighborhood Development Area, Growth Center do not come under Act 250 jurisdiction until 7/1/2026. [6001 3(D)(viii)(III)]. Without a legislative extension, there are still some exemptions that applied pre-HOME Act.

For PHPs in a New Town Center and less than 75 units in a municipality with a population of 6,000- 9,999 and less than 50 units in municipality of less than 6,000, there is no Act 250 jurisdiction [6001(3)(A)(iv)].

PHPs in a municipality with a population of 10,000 or more are not considered to be "development" according to statute [6001 3(C)(viii)(I)], and thus not under Act 250 jurisdiction.

Has the PHP policy spurred needed housing? Should the incentive be changed? For example, applications must be made before 7-1-2026 and projects completed by 2029. Is this an inadequate incentive for development?

What standards and certification could be used to ensure that a municipality has the adequate zoning and subdivision bylaws and capacity to manage development projects that have previously come under Act 250 jurisdiction? For instance, a regional planning commission could determine whether the zoning and subdivision bylaws are adequate and whether the municipality has the capacity to manage large development projects.

## IV. COMMUNITY SERVICE AREAS AND GROWTH BOUNDARIES

A community service area would set a boundary on central sewer and water service and other growth-inducing infrastructure.

Would a VT-appropriate community service area with a Growth Boundary be useful for creating compact settlements?

A growth boundary sets a limit line within which central sewer and water are available or planned and there is sufficient buildable land (based on population projections and land use needs) to support development over the next 20 years. Boundaries should leave room for future growth on greenfield

sites as well as encourage infill development and redevelopment. Growth boundaries are meant to encourage growth in designated areas and separate built-up areas from the countryside. The goal is to accommodate the majority of new population and economic development within growth boundaries.

There are more than 150 growth boundaries across the United States. They have been used since 1958. They have worked well in Oregon, Washington, California, Baltimore County, Maryland, and Lancaster County, Pennsylvania, among other places, both to accommodate the majority of growth and to limit sprawl in the countryside.

What would growth boundaries look like in VT? Agreed boundaries would be created among towns and villages. This has worked in Lancaster County, for example. The boundaries are then adopted as part of local and regional plans and guide infrastructure investments.

Would the village or city propose them for approval by a regional or state entity? In Oregon and Washington, there have been state mandates for cities and counties to jointly create growth boundaries, which are then approved by the state planning office. California has created growth boundaries through the vote of individual cities. Baltimore County adopted an ordinance creating its growth boundary. Lancaster County helped to negotiate growth boundary agreements between the villages and towns.

Would the growth boundary be similar to the development tier with fewer Act 250 criteria applied? Growth boundaries could delineate the location and extent of the development tier. Also, note that growth boundaries can expand over time. In Vermont, many village centers are subject to flooding and may require either flood resistant buildings or designating areas for growth outside of flood zones.

## V. TIERS

Some states, notably Maryland, have used tiers or levels of development to identify areas for growth and areas with limited development capacity and important natural resources. Maryland uses four tiers to focus growth in Tier 1 areas where central sewer and water service exists and in Tier 2 areas where central sewer and water are planned. Some development that relies on village style development, yet depends on on-site septic systems, defines Tier 3 areas. Tier 4 areas are rural with the number of on-site septic systems limited to between three and seven per land parcel.

What would a tiers approach look like in VT? For example, there could be 3 tiers, a development tier (growth areas with central sewer and water), a village/hamlet/rural tier served by on-site septic, and a sensitive natural areas tier.

How should the Act 250 criteria be applied in each tier?

In the development tier/growth area, should more development be exempt from Act 250, similar to the HOME Act?

Should we exempt criteria where there are other state and local permits issued such as water, air, wastewater, wetlands, education, municipal services, conformance with the town plan, traffic? For example, if it's a growth area, should 8(a) wildlife habitat apply?

In the village/hamlet/rural tier, should there be any changes to the Act 250 criteria? Or changes to the 10 or more lots or units within a five-mile radius within five years trigger in municipalities with permanent planning and zoning? Or the 6 or more lots or units within a five-mile radius within five years trigger in municipalities without permanent planning and zoning? A concern is that a large amount of rural residential sprawl is happening in Vermont. This was mentioned in the legislature's report on The Next Fifty Years.

In the sensitive natural resources tier, should we apply additional Act 250 criteria, such as a forest fragmentation criterion in 9(C)? A high-quality water criterion? A river corridor criterion?

Are there other or different tiers to consider? For example, the VAPDA study is considering the following tiers:

Forestland and Conservation/Floodplain

High Density Residential

Industrial

Regional Center with Mixed Residential and Commercial

Rural and Agriculture

Village with Mixed Residential and Commercial Development

Water

Would a tiers approach promote compact village centers surrounded by working lands or should we consider community growth boundaries? Note

that a development tier could include a community service area and growth boundary.