

# NRB Act 250

## Attorney Focus Group 8/31

### Location Based Jurisdictional Discussion

**Designated Growth Area:** See questions re: if to defer to other studies, create new areas, etc.

#### Concepts for discussion:

##### *Tier 1/Growth Areas*

Should we recommend exempting designated growth areas from Act 250 jurisdiction?

- Benefits: Sufficient review on the local level, therefore, Act 250 isn't needed. Very complicated to become a growth area and then be regulated within it—should be exempt.

What entity identifies the designated areas? Regional planning commissions, towns approve boundaries, or does the state?

Responses:

- If towns, what are criteria?
- Follow water, sewer muni services as starting point.
- Statewide oversight is important so no little "fiefdoms."
- Need to address issue of villages having 5-acre zoning like Charlotte.
- Issue of lack of water and sewer
- Existing designations-process is onerous-multi-year process and very difficult for villages-work with the current system but make process easier and making water and sewer a part of getting areas designated.

Retain Act 250 in flood plains and certain vulnerable areas to address climate change as overlay to designation.

Responses:

- State Entity should have to approve boundaries with input from RPCs
- with no recourse/appeal from state entity's decision
- Act 200 Approach- State Entity makes decision.
- Oregon model based on data; quality of RCPs varies. VT's lack of data makes this process questionable. What data is needed? Can VT move forward without the data? Could there be steps to be considered?

If we recommend exemptions from Act 250 jurisdiction in growth areas, should it apply to all types of development?

#### Discussion/Responses:

- Where all other law is applicable, what does Act 250 add where there is already other review?
- Complete waiver, otherwise, avenue for appeals and increased costs for development.
- How about exempting large areas like in the NEK, not be so urban centric-how do these exemptions become meaningful and equitable for parts of VT that would never have urban centers.
- Resourced based economy, left alone by Montpelier. What is the quality of review that comes out of the District Commission? What do they add?

Concept: Should growth zones include rural areas that want to grow based on resources like forests, ag?

Yes: Zoning is being used as an exclusionary measure.

Local zoning doesn't suffice, especially with large or border projects.

Must note developments have regional impact often due to size, location, and scope.

Housing stands alone as type of development to exempt as it is a special need.

Change criterion 5—it should allow a denial—

Which criterion should be changed?

#### *Tier 2/Rural Vermont*

Is Act 250 addressing sprawl in rural Vermont? Should lots and units be used as a jurisdictional trigger?

- Lot and units are do not have the same impact
- 5 miles rule should be eliminated
- 10 units is arbitrary—doesn't reflect impact of a particular development.
- Get rid of interpretation of units applying to hotel and nursing homes.
- Other agencies use Act 250 to further their agendas.

Raising number of units and tinkering with lots—sounds like consensus.

Should the number of lots and units that trigger jurisdiction be based on the population of the municipality or town? No position

“Involved land”—what does that mean in the housing context?

#### *Tier 3/Natural Resource Area*

- How to approach designated natural resources?
- Which natural resources? High quality waters? Forest, river corridors and riparian areas?
- Revamp the road rule?
- What if the resource is being protected by another program? What does Act 250 add?
- If more needed, should it be an existing ANR program—i.e., floodways?

Forest blocks—start with a road rule? ANR maps?

ANR maps need to be updated and have available data.

Better mapping and data are necessary to protect natural resources

Prior road rule led to lots of litigation, need to be mindful to make any rule clear and enforceable

Consensus that in general more and better data is needed.

Do District Commissions still thoroughly apply all criteria even when project will have de minimis or no impact to resource that the criterion is intended to protect?

- Need rule or legislation, not whim of DC.
- Shouldn't be as subjective as DC's.
- Tailor criteria to protect the natural resource.
- Define an area of disturbance like buffers.
- Need to identify the resource in the first place.
- Waiving any criteria? How about if there is an approved forest management plan and want to do development in that area, why not use those for the rebuttable presumption and allow the development?