

# NATURAL RESOURCES BOARD NECESSARY UPDATES TO ACT 250



REPORT PREPARED BY  
ENVIRONMENTAL MEDIATION CENTER  
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## Executive Summary

### Introduction:

[Act 182](#) of 2022 and [Act 47](#) of 2023 direct the Natural Resources Board (NRB) to report on “Necessary Updates to the Act 250 Program,” to the House Committees on Environment and Energy and Ways and Means and the Senate Committees on Finance and Natural Resources and Energy on or before December 31, 2023.

In June 2023, led by an independent facilitation team, the NRB convened a Steering Committee to help design and implement a robust process for stakeholder input and build consensus among stakeholders with divergent perspectives to identify and refine recommendations for updating Vermont’s land-use law.

Members of the Steering Committee recognize that swift and meaningful action to update Act 250 will be an important component to encouraging growth where we want it and creating opportunity for future generations of Vermonters.

The Steering Committee recognizes that Vermont is facing a housing crisis in addition to the global climate crisis. The Steering Committee believes that facilitating the development of new housing while ensuring that we are maintaining our rural working lands and ecologically important natural resources are not mutually exclusive goals. In fact, exempting designated areas from Act 250 jurisdiction to increase the state’s housing stock, advance equity and diversity through affordable and workforce housing, and thus expand economic development opportunities while protecting rural lands and natural resources are the basis for these recommendations.

### Overarching Considerations of Steering Committee:

Update Act 250 to support and promote growth in compact settlement patterns; facilitate appropriate rural economic development; focus on critical and increased protections for key natural resources; establish a clear, consistent, and navigable permit process; and minimize redundancies with other local, state, and federal regulations.

### Acknowledgments:

We recognize and thank the Steering Committee members for their time, dedication, and expertise in creating this report:

Andy Rowe	Engineer and Consultant, Snyder Homes
Jon Groveman	Vermont Natural Resources Council
Peter Gregory	Two Rivers-Ottawaquechee Regional Commission
Tom Little	District 4 Environmental Commission Chair
Geoff Hand	Attorney
Judge Thomas Zonay	Vermont Judiciary
Brent Rakowski, P.E.	Engineer, Otter Creek Engineering
Chip Sawyer	Director of Planning and Development, City of St. Albans
Megan Sullivan	Vice President, Vermont Chamber of Commerce
Kathy Beyer	Senior Vice President, Evernorth
Charlie Hancock	Forest Consultant, North Woods Resource Group

Xusana Davis/Jay Greene	Vermont State Office of Racial Equity
Kirsten Sultan	District 7 Environmental Coordinator
Billy Coster	Agency of Natural Resources
Sabina Haskell	Natural Resources Board
Peter Gill	Natural Resources Board

(Members of our Stakeholder Focus Groups are listed in [Appendix 1.](#))

### Recommendations:

The following recommendations have been developed by the Steering Committee, in consultation with the stakeholder focus groups, and the recommendations represent an initial foundation of proposals that will help to achieve the above-stated goals. The Steering Committee achieved consensus on these recommendations as a package, meaning that the consensus would not remain intact if any individual recommendations were removed from the package.

### **Jurisdiction Recommendation**

The state should adopt a location-based jurisdiction model. The recommendations outlined below contemplate a three-tiered approach to encourage development in compact settlement areas while protecting important natural resource areas.

### **Governance Recommendation**

Structural change is needed to achieve the critical Act 250 performance benefits and to support implementation of the jurisdictional changes outlined in this report. The Steering Committee recommends a professionalized NRB with a full-time Chair and 2-4 paid part-time members with experience in land-use law, development, planning or other relevant background to the Act 250 law. The new board will be able to promulgate rules and policy directives. A professional Board would have the expertise and dedication to take a more active role in policy development, rulemaking, and operational oversight of staff and district commissions.

### **Staffing Recommendation**

Support current staffing levels for the organization. At present there are 28 staff, including 3 limited-service positions which are set to expire in 2026. They include 2 district coordinators and the executive director. The NRB recommends these 3 existing limited-service positions be made permanent.

### **Capability and Development Plan Recommendation**

The Capability and Development Plan consists of a set of policies (with no maps) adopted by the legislature in 1973 for use in coordinating local, regional, and state agency planning. In addition, the legislature stated that these policies could not be applied under Criterion 9 of Act 250. The current Capability and Development Plan consists only of these 1973 policies.

While the Capability and Development Plan exists on paper, it is not utilized in Act 250 permit reviews and the maps that had been drafted in 1972 as part of the interim Capability and Development Plan to show settlements, environmental constraints, and important natural resources are now more than 50 years old. The Capability and Development Plan policies should be replaced by a future land-use mapping process that will be created by the municipalities, Regional Planning Commissions, and one or more state agencies.

## **1. INTRODUCTION**

Vermont has an historic opportunity to update its landmark land use law, Act 250. Act 250 was passed in 1970 in response to rapid and haphazard development and was designed to address the impacts of larger developments on the environment and local government services. That was at a time when local governments had limited planning and land use capabilities. The goal of Act 250 was not to block development, but rather to ensure development that minimized effects on air, water, wildlife, and agricultural soils and local government capacity to service new development. The longstanding vision of Act 250 has been to support compact development surrounded by forests and open lands, including farms and forestry operations.

Vermont now faces two overarching issues: 1) a crisis in fair and equitable housing supply, especially for low- and middle-income Vermonters and for workforce housing to support the economy; and 2) continued development outside of cities and villages, further exacerbating climate change, natural resource degradation, and creating social equity challenges. In short, the Act 250 permit process needs to be updated to encourage development in cities and villages where development is desired and appropriate. At the same time, Act 250 should also be updated to provide targeted location-based jurisdiction over critical natural resource areas that are at the greatest risk from development.

The following report sections: 1) explain the legislative charge of this study, 2) explain the process the Natural Resources Board (NRB) undertook to obtain input from a variety of organizations and businesses with a stake in Act 250; and 3) present the recommendations and options for changes to Act 250 for a) place-based jurisdiction of Act 250; b) Act 250 governance, including the structure of the NRB, staffing of the District Commissions, and Act 250 fees and funding; and c) updating the Capability and Development Plan maps

## **2. LEGISLATIVE CHARGE**

In Act 182 of 2022 and Act 47 of 2023, the Vermont Legislature charged the NRB with drafting a report to address the following issues:

- 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, including biodiversity. Location-based jurisdiction would adjust the threshold for Act 250 jurisdiction based on the characteristics of the location. The report shall also consider whether to develop tiers of jurisdiction—defined as areas with different levels of development potential—as recommended in the Commission on Act 250: the Next 50 Years report.
- An assessment of the current level of staffing of the Board and District Commissions, including whether there should be a district coordinator located in every district.
- Whether the Act 250 permit fees are sufficient to cover the costs of the program and, if not, a recommendation for a source of revenue to supplement the fees.
- Whether permit fees are effective in providing appropriate incentives.
- Whether the Board should be able to assess its cost on applicants.

- How to use the Capability and Development Plan of 1973 to meet the statewide planning goals.
- Whether increasing jurisdictional thresholds for housing development to 25 units under 10 V.S.A. § 6001(3)(A)(iv) would affect housing affordability, especially for primary homeownership, and what the potential impact of increasing those thresholds to 25 units would have on natural and community resources addressed under existing Act 250 criteria.

### **3. THE REPORT PROCESS**

In May 2023, the NRB contracted with the Environmental Mediation Center (EMC), a nonprofit facilitation and mediation organization based in Vermont, to facilitate stakeholder involvement and draft this report. Rather than developing a report on its own, the NRB sought input from a range of stakeholders. In particular, the NRB sought input from stakeholders who are experienced in working with Act 250. The Steering Committee, working in conjunction with focus groups of land use attorneys, engineers/consultants, planners, municipalities, housing/economic development/environmental justice organizations, environmental groups, and working lands operators, met throughout the summer and fall of 2023 to develop recommendations on necessary updates to Act 250.

For additional detail on the study process and protocols, see [Appendix 2](#).

The members of the Steering Committee participated in Steering Committee meetings and participated in meetings of seven separate focus groups. For this process 10 meetings were held with the Steering Committee, and 28 meetings in total were held among the seven focus groups. In addition, online public meetings were held to hear feedback from the public on the draft report.

Overall, this report reflects the consensus recommendations and policy options identified by the Steering Committee. For purposes of this document, consensus is defined as consent of all or almost all members after Steering Committee discussion.<sup>1</sup> Consent means that members can accept or live with, even if reluctantly, the agreement that emerges. In areas where consensus has not been obtained, the Steering Committee reports out areas of agreement and disagreement.

Importantly, the consensus reached by the Steering Committee depended on adopting all the recommendations within this report as a package. This means that the consensus would not remain intact if any individual recommendations were removed from the package. In the sections below, recommendations on which the Steering Committee reached consensus are included in a light green text box. Clarifying notes, options or thoughts for consideration are included in a light blue text box.

### **4. LOCATION-BASED JURISDICTION – ANALYSIS AND RECOMMENDATIONS**

Act 250 has traditionally been implemented as a tool to assess and minimize the impacts of proposed developments on the environment and government services. On the one hand, there is general agreement that Act 250 has improved development in Vermont. On the other hand, the Act 250 vision of compact settlements surrounded by open countryside can be better realized. The

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<sup>1</sup> Although never utilized, members also had an option to “abstain.” Abstention is to step aside, and therefore does not count against consensus.

Legislature's Next Fifty Years report noted that "from 2008 to 2018, 83 percent of new residential structures and 60.63 percent of commercial structures were located outside existing centers" (p. 23). One of the key aspects of jurisdiction is determining the role of Act 250 in both environmental protection and encouraging development where it is desired.

Whether an Act 250 permit is needed before a development can commence depends on the size of the development, the type of development (residential, commercial/industrial or municipal), and the location.

An Act 250 permit is required for developments that would create 10 or more lots or 10 or more dwelling units or create a commercial/industrial development on a tract greater than 10 or more acres in size within five years and a five-mile radius in a municipality with permanent zoning and subdivision regulations. In a municipality without permanent zoning and subdivision regulations, an Act 250 permit is required for a proposed development of six or more lots or dwelling units or commercial/industrial development on a tract more than one acre in size within five years and a five-mile radius.

The recently passed HOME Bill (Act 47) now allows for a 3-year exemption of up to 24 dwelling units within five years and within a five-mile radius to be built without an Act 250 permit in designated downtowns, neighborhood development areas, growth centers, and village centers with permanent zoning and subdivision bylaws.

An Act 250 permit is also required for the construction of improvements for commercial, industrial or residential use above 2,500 feet in elevation, for any construction that would substantially change or expand a pre-1970 development that would require a permit if built today, and for construction for a governmental purpose if the project involves more than 10 acres of land that is to be used as part of a project. If Act 250 jurisdiction is triggered, project developers must apply to a District Environmental Commission for an Act 250 permit.

The facilitation team investigated other states that use location-based jurisdiction for statewide land use planning. One way to address jurisdiction is through the use of tiers that correspond to the capacity and overall sensitivity of areas to accommodate new development. For example, in 2012 the State of Maryland adopted a tiered approach for planning local development.<sup>2</sup> Tiers 1 and 2 identify areas with existing and planned central sewer service, which can support greater density. These tiers are similar to Vermont's designated downtowns and villages. Maryland's Tiers 3 and 4 apply to areas where there is no existing or planned central sewer service. Tier 3 is primarily a rural residential area whereas Tier 4 covers more remote rural areas. Tier 4 limits the size of subdivisions to between three and seven lots, depending on the size of the parcel. The Steering Committee discussed how a tiered approach could work in Vermont and ultimately focused on a three-tiered approach.

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<sup>2</sup> Currently, Maryland has the only state planning effort to designate what it terms "tiers" for different areas based on growth capacity and the sensitivity of the land for development. By comparison, Oregon and Washington both have a state level legal framework for identifying growth areas (inside urban growth boundaries), lower density rural residential areas, and resource-protective farm and forest areas.

**Recommendation—Tiered Approach:** Adopt a location-based jurisdiction framework for Act 250 using tiers that tailor exemptions from Act 250 and establish jurisdictional triggers based on the characteristics of the area. A complete framework of tiers would integrate the recommended designated areas from the ACCD report and provide for appropriate protections of ecologically important natural resources areas. Depending on the tier, developments could be exempt from Act 250, Act 250 jurisdiction could be automatic, or the jurisdictional triggers could change or remain the same.

Develop a process for identifying development-ready areas and those locations with development potential (Tiers 1A and 1B).

Continued jurisdiction and permitting for much of Vermont (Tier 2) and address forest fragmentation by adding the “road rule,” which will increase jurisdiction, and implement new mapping and science-based tools to identify and protect ecologically important natural resource areas (Tier 3).

Create tiers to ensure each designated area is delineated in a way that respects local government, uses the expertise of regional planning commissions, and involves a state agency approval to ensure statewide uniformity.

While designating areas in each tier will require a robust process and mapping, in particular, Tier 3 will require further analysis and public engagement. It is important to note that details of Tier 3 will need to be thoroughly examined and that time is required for RPCs and others to do complete the future land use study’s mapping and outreach to flesh out that concept before the details can be codified in law. See [Appendix 5](#) for suggested implementation timelines, including July 1, 2026, for Tier 3.

### Tier 1 Overview and Definition:

Tier 1 includes those locations with the capacity for growth, where the state wants to encourage development. While the Steering Committee believes it is important to remove Act 250 jurisdiction in suitable Tier 1 areas to encourage growth, there are different levels of capacity for growth and different degrees of municipal planning and administrative capacity within these communities, suggesting that they should not all be treated the same under Act 250. A process is required for each community seeking a Tier 1 area designation.

In general, both Tier 1A and Tier 1B municipalities must have capacity for growth. The contemporaneous studies by the Vermont Association of Planning and Development Agencies and the Vermont Agency of Commerce and Community Development will provide useful guidance in determining standards for capacity for growth in municipalities. The standards for achieving Tier 1A status could also be based in part on the existing Neighborhood Development Area designation standards and include factors such as:

- Existence of municipal water and sewer infrastructure with adequate capacity.

- Existence of permanent zoning and subdivision bylaws and municipal capacity to implement them effectively.
- Existence of a municipal plan that meets to be developed state standards, and regulations that are appropriately protective of natural resources, and other factors determined by the Legislature and a state rulemaking process.
- Adequate professional staff capable of overseeing and administering review.

**Recommendation—Two kinds of Tier 1 areas:** Tier 1A includes areas with water and sewer infrastructure, permanent zoning and subdivision regulations that meet a clearly defined state standard (which would need to be developed), and are consistent with V.S.A. 4302 and 4348, and municipal planning capacity to develop and administer these regulations effectively. Tier 1A areas would include a core compact settlement area plus surrounding development and land to accommodate growth for the next 20 years.

Tier 1B areas include a portion of Vermont towns and villages that have permanent zoning and subdivision regulations and the capacity to accommodate growth, which includes either water and sewer infrastructure or the right soil conditions to handle wastewater. However, overall, their regulations, infrastructure, and planning and administrative capacity do not meet the standards for Tier 1A.

All municipalities would have the opportunity to apply for designation of a Tier 1A or Tier 1B area regardless of their size or existing state designation status under the current state programs.

**Recommendation—Jurisdictional rules:** Tier 1A: Residential, commercial, industrial, and municipal/state developments would be exempt from Act 250 within the designated Tier 1A growth area.

Tier 1B: Within these areas, the current jurisdictional trigger for creation of lots remains in effect. However, to promote density of housing, a single project in Tier 1B may create up to 50 residential units within the Tier 1B designated area within three years before Act 250 review is triggered. For commercial, industrial, and municipal/state developments, the existing Act 250 rules would apply.

Lots or units built within a Tier 1 area do not “count” for purposes of jurisdictional determinations outside that area, such as in an adjacent Tier 2 area.

The Steering Committee discussed the need for clear standards and a robust process for municipalities to designate Tier 1A or 1B areas. The Steering Committee ultimately recommended a process that starts at the local level and involves both regional and statewide review.

Recommendation—Tier 1 Application Process: Applications to designate Tier 1A or Tier 1B areas would originate with municipalities in collaboration with their respective Regional Planning Commissions. Municipalities would develop the application and submit it to the Regional Planning Commission for comment and approval. The Regional Planning Commission would then review the proposal to ensure it is consistent with the regional plan, and provide additional technical input and advice as needed to improve the application.

If the Regional Planning Commission concurs with the municipality’s application, the municipality would submit the application to a statewide review entity for approval. During the state-level review, the Regional Planning Commission’s concurrence would create a presumption that the application is consistent with the regional plan (which would be one of the standards needed for approval).

If the Regional Planning Commission raises objections to the municipality’s application, the municipality could choose to rework the application and resubmit it to the Regional Planning Commission or go ahead and submit the application for review by the state entity without Regional Planning Commission approval. In the latter instance, the municipality would have to demonstrate to the state agency that the application is consistent with the regional plan and explain why it chose not to re-work its application.

The state entity would oversee a public review process, provide opportunities for comment, and then issue a determination on the application. There would be a mechanism for challenging and appealing designation decisions at the time of the certification or re- certification. Municipalities that apply for Tier 1 designated areas, but do not succeed, can subsequently re-apply. Municipalities that have designated areas approved for Tier 1B status can later apply for designating the areas Tier 1A. Municipalities can modify their approved plans and re-apply. Tier 1A or 1B area designation must be reviewed and re-certified every 8 years.

### Tier 2 Overview and Definition:

Tier 2 includes the lands that are not in Tiers 1A, 1B, or 3, and is expected to include most of Vermont. The Steering Committee discussed and debated appropriate jurisdictional triggers in Tier 2 and agreed to maintain the existing Act 250 lots and units jurisdictional triggers in Tier 2.

In an effort to address over-development in Tier 2 areas, the Steering Committee discussed adopting a Road Rule where any development that includes 2,000 or more feet of combined roads and driveways would trigger jurisdiction. The Steering Committee discussed the history of the original 800-foot Road Rule that triggered jurisdiction based on 800 feet or more of new road. The old Road Rule could be easily “gamed” by designing a 799-foot road with endless driveways that would not trigger jurisdiction. The 2,000-foot Road Rule that includes combined roads and driveways is intended to address that situation.

The group did not come to consensus if a shorter threshold should also be considered under certain circumstances, and recognized this would need to be discussed in the Legislature.

The Steering Committee also discussed past litigation over the prior Road Rule and noted that trails or access roads actively used for agricultural or forestry operations should not be considered roads. In other words, turning a trail or farm or logging road into a road for development should count towards creating a new road. The Steering Committee also noted that the NRB could engage in rulemaking to clarify a proposed Road Rule, should the Legislature choose to enact it.

**Recommendation—Jurisdiction Triggers for Tier 2:** The existing Act 250 jurisdictional rules on lots and units would apply in all Tier 2 areas, which depends in part on whether a municipality has been deemed a town where a 10-acre commercial project on a 10+ acre tract triggers an Act 250 review or a town where a commercial project on 1+ acres triggers Act 250 review. A so-called “10-acre town” has an Act 250 trigger of 10+ lots in five years and a so-called “1 acre town” has a trigger of 6 lots in five years. Also, the creation of 10+ lots within any Act 250 District (including within 5 miles of the District), within 5 years, triggers Act 250 “subdivision” jurisdiction.

A new road rule in Tier 2 areas is an effort to discourage and prevent fragmentation of intact forest blocks and wildlife corridors and to mitigate sprawl. The road rule would not apply to Tier 1 areas. Under the proposed road rule, Act 250 jurisdiction would apply if a development or subdivision results in 2,000 or more feet of any combination of new roads and driveways, regardless of the number of lots or dwelling units. The road rule represents an added jurisdiction.

Trails and logging roads would not be considered roads unless converted for other purposes.

### Tier 3: Overview and Definition:

Tier 3 is intended to protect a subset of the state’s ecologically important natural resource areas. Tier 3 is a counterbalance to Tier 1 exemptions and is a critical part of the tiered jurisdictional approach to ensure that critical natural resources are protected.

Currently, development at higher than 2,500 feet in elevation automatically triggers jurisdiction because of the sensitive ecosystem above that elevation. There are other critical natural resource areas that could be protected by Act 250. The Steering Committee recommends creating a Tier 3 to protect critical natural resources in addition to the protections provided in Act 250 to address development above 2,500 feet. Any designation of specific Tier 3 areas will require further analysis based on good science, careful mapping, and public engagement. This report outlines a process and makes general recommendations for consideration before any phase of a Tier 3 can be codified.

Forest fragmentation also emerged as an issue of concern. Act 171 directs towns to assess forest blocks and habitat connectors and incorporate this information into a future land use map as part of the town plan. Building on Act 171, municipal identification of forest blocks and habitat connectors could be aided by mapping assistance from the respective Regional Planning Commission and approval of Tier 3 designated areas by a state agency. The expectation is that Tier 3 would apply to a small area of the state.

**Recommendation Jurisdiction Tier 3:** The purpose of Tier 3 is to address ecologically important natural resource areas where Act 250 jurisdiction can provide more protection. Within identified and mapped Tier 3 areas, Act 250 jurisdiction would be automatic.

Similar to designating Tier 1A and 1B areas, designating Tier 3 areas will require an implementation process. There are many existing resources such as the Agency of Natural Resources' Vermont Conservation Design maps. However, ANR points out that those maps were not created for jurisdictional purposes, and while they can serve as a resource, they should be considered along with other science-based resources that the agency will need to be consulted on and potentially create and deploy.

Likewise, the Vermont Association of Planning and Development Agencies' Future Land Use mapping is intended to be a useful resource. The Steering Committee concluded that the Regional Planning Commissions should play an integral part in designating Tier 3 areas because of the potential presence of cross-boundary and or regional/scale resources, the technical nature of the process, and the importance of maintaining Act 250 jurisdiction over local Tier 3 areas.

**Recommendation—Tier 3 Designation process:** Each respective Regional Planning Commission would recommend a mapping process for identifying Tier 3 areas. This should involve a process for reviewing existing maps (such as Vermont Conservation Design drafted by the Agency of Natural Resources and other available science-based resources), a process for public comment, and authorization of a statewide board to review and approve Tier 3 designations.

Each Regional Planning Commission would be primarily responsible for conducting the mapping, in consultation with municipalities, based on consistent and robust standards, and with additional resources and technical support from the state. The Regional Planning Commissions would submit their maps to a statewide entity for approval through a public process, with opportunities for public comment and appeal. This could be the same entity responsible for reviewing and approving Tier 1A and Tier 1B designated areas. Municipalities would have an opportunity to oppose and/or appeal the Regional Planning Commission's proposed maps if they disagree with the Regional Planning Commission's determinations.

Forest Fragmentation Criterion:

To support Tiers 2 and 3, the Steering Committee discussed a new forest fragmentation criterion that could replace Criterion 9(C) forest soils, which has not been effective in addressing impacts to the economic viability and ecological functions of forests. When Act 250 jurisdiction is triggered a new criterion would be applied that would require that a project avoid, or minimize and mitigate undue adverse impacts to the ecological functions of these significant forest blocks, connecting habitat, or rare and irreplaceable natural areas. The Steering Committee recognizes that rulemaking would be necessary to provide detailed requirements.

**Recommendation—Forest Fragmentation Criterion:** The new forest fragmentation criterion should require avoiding, minimizing, and mitigating development impacts through site design, clustering the development, and limiting disturbed areas.

## 5. GOVERNANCE – ANALYSIS AND RECOMMENDATIONS

Issues relevant to the governance of Act 250 include: the NRB structure, District Commissions, NRB central and district office staff, fees, and appeals of Act 250 decisions.

### Natural Resources Board Governance:

The current NRB consists of a chair, four members and up to five alternates appointed by the governor. Currently, among board members, only the chair is involved in the day-to-day operations of Act 250. The Steering Committee reached a consensus that the structure of the NRB needs to change to provide consistency, predictability, oversight, guidance, rulemaking, and policy directives in the Act 250 process. The proposed changes would require board members to be routinely engaged and involved, a time commitment in the operations of Act 250 that has not been expected of the current appointed board members.

The structure of the NRB and the number of board members and staff should be commensurate with the responsibilities assigned to the board. Should the board be tasked with approving designated areas for each tier, it could require more staff, significant time to implement changes and will have funding implications.

Several board restructuring models were considered, each with legitimate virtues and budgetary implications. Options identified included:

1. Three to five-person professional board, with a full-time chair and two to four paid part-time board members. Should a professional board hear appeals, the increased workload could necessitate an additional 1-2 staff attorneys. Estimated cost of a five-member board: \$900,000 to \$1.1 million.
2. Dual appointments to the NRB board and part-time paid professional District Commission Chairs. Estimated Cost: \$440,000.
3. Professional board with three members and rotating paid professional district commission chairs (hybrid of options 1 and 2). Estimated Cost: \$590,000.<sup>3</sup>

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<sup>3</sup> See [Appendix 3](#) for details on these cost estimates.

**Recommendation—NRB Structure:** Establish a professional board of three to five members as the basic change to achieve the needed Act 250 performance benefits and to support the Act 250 tiers strategy outlined in this report. Members should have relevant professional experience in fields such engineering, law, land use planning, or related fields in development. The Steering Committee agreed that a professional board would be able to take a more proactive role in rulemaking and policy directives. A professional board would also be able to take a more active oversight role in operations, including district offices and NRB staff. The board members should be paid on a part-time basis, which will increase annual costs.

#### Appeals of Act 250 Decisions:

The appeal of Act 250 decisions by applicants or parties with standing can result in considerable expense in time and money. Although the number of appeals each year is relatively small (it varies but 11 per year on average), the impact on an individual project and applicant is a continuing issue, especially when the application involves affordable housing and economic development.

In initial meetings, the Steering Committee spent considerable time discussing appeals of Act 250 permit decisions issued by the District Commissions, focused on who should hear appeals: the Environmental Court, which currently hears appeals, or a professional Natural Resources Board. There are pros and cons to both, and the Steering Committee was unable to reach a consensus about who should hear Act 250 appeals.

To a lesser degree, the Steering Committee also discussed whether appeals should be heard “de novo,” as is now the case or “on the record.” The de novo approach means that the case is heard with a fresh start from the beginning, which can be time-consuming. On-the-record review would require the creation of a record at the District Commission level, with recording of proceedings. One of the advantages of the current system is the informal hearing approach of the District Commissions; this approach would likely change under on-the-record review.

Again, the Steering Committee agreed there were pros and cons to each approach but recognized the public’s strong support for a local, citizen-based and informal District Commission process for deciding permits.

There are two types of appeals: 1) Appeals of Jurisdictional Opinions issued by District Coordinators determining whether an Act 250 permit is required for a specific project; and 2) Appeals of a permitting decision by the District Commission. The Steering Committee did not reach consensus on which body should hear appeals of either Jurisdictional Opinions or permit decisions by the District Commissions.

Under the current system, an appeal from a District Coordinator’s Jurisdictional Opinion is heard by the Environmental Court. The NRB is not generally directly involved in the drafting of the Jurisdictional Opinion and, if it is appealed, the NRB may appear as a party before the Environmental Court, and may take a position, enter into a settlement agreement, or otherwise monitor the case. Some members of the Steering Committee point out structural problems due to limited to no oversight of the District Coordinator’s Jurisdictional Opinions in the first instance and the fact that on

appeal the NRB may reach a different conclusion than the District Coordinator did in the first instance.

### **Professional Board to hear major permits**

The Steering Committee also discussed how a professionalized NRB could hold hearings on major permit applications with participation from the local commission. Local district commissions would continue to decide minor and administrative amendments to permits.

### Permitting Efficiency, Predictability, and Resourcing:

Submitting a complete application and getting an Act 250 permit can take significant time, resulting in higher project costs and inhibiting development. Applicants report that timelines and costs can be unpredictable and inconsistent across districts, in particular those related to determinations of application completeness, and the total timelines required. The Steering Committee discussed a number of changes, each with potential benefits. Not all would be necessarily enacted together because several options are included to address an issue.

**Recommendation:** Provide enhanced oversight capacity within the NRB central office to ensure procedures are applied consistently and correctly at the district level. This could involve, for example, the development of an improved procedural guidance for NRB permitting, with clear standards and workable timelines to improve permitting predictability and consistency. The guidance would be transparent and accessible to the public, and the central office could provide oversight to district staff on its implementation.

### Staffing:

The Steering Committee discussed staffing but did not comment on staffing levels directly. The Steering Committee agreed that adequate staffing should ensure that Act 250 applications can be processed efficiently and uniformly. The Steering Committee also agreed that the NRB should take part in rulemaking and new policy directives which would require staff time to research, implement, and provide training and oversight to implement new directives consistently. Currently, the NRB is composed of 28 staff members including 3 existing limited- service positions that are set to expire in 2026 (two District Coordinators and one Executive Director).

An analysis of future responsibilities will determine what staffing is sufficient in light of the NRB's existing and possible future responsibilities. Options to ensure appropriate staffing could include the list below. At a minimum, the NRB believes that the 3 existing limited-service positions should be made permanent; they include two District Coordinators and one Executive Director. Increased funding would be required to support these positions.

- Ensure all Districts are adequately staffed.
- Make the two existing limited-service roving Coordinator positions permanent.
- Make the existing limited-service Executive Director role permanent to improve consistency and supervision.
- Provide additional support in the pre-application process, especially for applicants with less capacity and/or fewer resources. This could include funding for permit specialists, navigators, or ombuds who can assist applicants in putting their applications together and navigating the permitting process. The staff serving in this role should have specific expertise in Act 250 permitting requirements and processes. Specific options include:
  - Creating an ombuds position within NRB.
  - Creating a new permit specialist role. It would be important to ensure this role is independent from the Act 250 permitting review process, to enable the provision of impartial advice and ensure there are no conflicts of interests. It would also be helpful to place the role within an institution or agency that has an active interest in enabling economic development, and specialized expertise on Act 250.

Improving Consistency and Streamlining the Permitting Process:

The Steering Committee and several focus groups discussed the need to both improve consistency between District Commissions and streamline the process for parties, noting that some regional variation may occur within the Act 250 framework which includes nine commissions from different regions. The Steering Committee reached consensus on the need to encourage better use of pre-hearing conferences, expand the use of administrative amendments for minor changes to permits, and recognize the time that the Chairs of District Commissions dedicate to Act 250 proceedings and compensate them accordingly.

**Recommendation—Improving Consistency and Streamlining the Permitting Process:** Make better and consistent use of pre-application meetings and pre-hearing conferences to help move applications forward.

Expand the scope of administrative amendments.

Compensate District Commission Chairs as part-time employees of the NRB rather than on a per diem basis to support greater involvement and hence consistency in District Commission proceedings.

Overall, as with the changes to board structure, these reforms will require increased General Fund support for the program. This funding should be provided.

Fees:

Act 250 fees are based on the cost of construction, the number of lots created and/or the volume of earth resources extracted for a given project. Act 250 application fees are capped at \$165,000 per application. Historically, Act 250 fees provided about 60 percent of the funding for the operations of

the NRB to administer Act 250. The remaining 40 percent came from the state General Fund. Currently, fees provide about 80 percent of NRB support with 20 percent coming from the General Fund. See the detailed [report on Natural Resources Board fees](#) submitted to the Joint Fiscal Office on Dec. 15, 2023.

The changes in jurisdiction in the HOME Act (Act 47 of 2023) are anticipated to result in approximately \$120,300 in reduced Act 250 fee revenue annually. Proposed exemptions from Act 250 in Tier 1A areas and a higher trigger for residential units in Tier 1B areas would result in a significant additional loss in fee revenue. For example, approximately 40-50% of NRB fees are derived from District 4 (Chittenden County), and substantial development activity within this county could qualify for exemption from Act 250 jurisdiction under the Tier 1A and 1B proposal.

The FY 24 budget relies upon an estimated \$2.766 million in fees; but potential losses from the Tier 1A and Tier 1B exemptions would reduce fee revenue significantly. The Steering Committee discussed in depth several questions and issues surrounding fees including:

- The impact of paying full fees up-front for an application and the possibility of phasing application fee payments for appropriate projects.
- Enacting modified or reduced fees for affordable housing projects.
- Alternatives to the project-cost-basis for fees given several issues with that practice including the disincentive to developers to enhance projects with more costly materials or better efficiency.

In addition, the Agency of Natural Resources calculates an estimated deficit of \$500,000 related to its work with the Act 250 permitting process and requests appropriate additional funding.

**Recommendation:** The Steering Committee did not reach consensus on prospective changes to the fee structure but reached a strong consensus on the need to transition Act 250 to more stable sources of revenue.

Some Steering Committee members suggested reducing fees overall while increasing general fund support, while emphasizing that applicants should not be primarily responsible for funding the program because the program supports a public good for all Vermonters.

#### Reducing Redundancy:

As authorized under statute, Rule 19 currently creates a rebuttable presumption under Act 250 for certain permits. This means that another permit (state or municipal) can provide proof of compliance with elements of certain Act 250 criteria. For example, Act 250 criterion 2 requires that the project has a sufficient supply of potable water available. A municipal permit from the water authority can provide a presumption of compliance with criterion 2. In other instances, permits from the Vermont Agency of Natural Resources create a rebuttable presumption of compliance. Generally, this process simplifies the review process for applicants and the District Commissions. However, a person with

party status or the District Commissions can challenge the other permit directly and through the Act 250 process, which has the potential to create redundancy or inefficiency.

**Recommendation—Streamline:** Change Rule 19 rebuttable presumptions to make ANR permits dispositive for purposes of Act 250 review to reduce redundancy and improve the timeliness of the permitting process. The presumption would apply only in areas where the other permit directly overlaps with the relevant Act 250 criterion, and only to the extent of that direct overlap and where opposing parties have a reasonable opportunity to challenge a proposed permit in the ANR permit process. For example, stormwater permits would close out any debate on addressing stormwater under criterion 1B waste disposal, to the extent that a particular ANR stormwater permit regulates specific pollutants/emissions/impacts, but the permit would not address the broader issue of water pollution under criterion 1, nor impacts beyond the scope of the specific ANR permit.

## 6. MAPPING AND THE CAPABILITY AND DEVELOPMENT PLAN – ANALYSIS AND RECOMMENDATIONS

The Capability and Development Plan of 1973 consists of a set of maps that identified: a) existing settlements; b) constraints to development, such as wetlands; and c) natural resources, such as mineral and aggregate resources. While the Capability and Development Plan is 50 years old, it is more a concept than a tool that can be used in reviewing Act 250 permit applications. The Capability and Development Plan maps need to be updated using digital technology (geographic information systems) in order to:

- Identify Tiers 1A, 1B, 2, and 3; and
- Use the maps in Act 250 reviews.

**Recommendation:** The Capability and Development Plan maps should be replaced by a future land-use mapping process that will be created by the municipalities, Regional Planning Commissions, and one or more state agencies, with a state agency having the authority to make a final determination to approve the maps. State funding for drafting the maps would be needed.

### Forest Processing and Agricultural Soil Mitigation:

The Steering Committee discussed possible Act 250 relief for primary forest processing enterprises (exemptions, waived criteria, reduced mitigation ratios and fees), given the significant role these businesses play in supporting Vermont’s working landscapes by maintaining forests, and minimizing forest conversion for residential and commercial development outside of existing settlements. In particular, the Steering Committee reached consensus on addressing the unfairness of forest processing enterprises sometimes having a higher agricultural soil mitigation ratio than some other industrial enterprises.

**Recommendation:** Enact the provisions in H.128 reducing the agricultural soils mitigation ratio for forest processing enterprises to 1:1, which is the same ratio that industrial parks need to provide.

## 7. CONCLUSION

The Steering Committee reiterates that the above recommendations should be considered as a package, and that the removal of any major components of the package would undermine the careful consensus that the Steering Committee achieved. The Steering Committee also recognizes that implementing these recommendations will need to be phased in as is outlined in the suggested timeline in [Appendix 5](#).

The integration of this study, the Agency of Commerce and Community Development's state downtown designation study and the Vermont Association of Planning and Development Agencies' Future Land Use Map study can help to identify the areas where Act 250 exemptions would apply (Tier 1), where the road rule would apply (Tier 2) and where important natural resources such as forest blocks and wildlife habitat and connectors would automatically trigger an Act 250 review (Tier 3). The three studies together suggest a process to designate those three general areas.

The recommended changes to Act 250, if implemented, would have major budget implications. The exemption of Act 250 projects in Tier 1A and 1B areas would result in a significant loss of fee revenue. An NRB consisting of three or five professionals would increase costs. Making District Commission Chairs part-time employees would also increase costs, as would adding additional District Coordinator staff. Finally, the process of replacing the Capability and Development Plan maps for identifying Tiers 1, 2, and 3 and for Act 250 reviews would require new funding.

Implementing "Necessary Updates to the Act 250 Program" legislation will need to incorporate public engagement and promote equity and expand opportunity for meaningful participation by impacted communities in the decisions affecting their physical and social environment. Act 154 is clear that environmental justice principles must be applied in Act 250 so that all Vermonters share equally in environmental benefits as well as provide equity in shouldering environmental burdens. The NRB's suggested timeline for implementation is included in [Appendix 5](#).

## Appendix 1: List of Focus Group Members

List of Focus Group Members for the Necessary Updates to the Act 250 Program Report

First name	Last Name	Affiliation /Act 250 Focus Group	Organization
AJ	LaRosa	Attorneys	MSK Attorneys
Chris	Boyle	Attorneys	
Chris	Roy	Attorneys	Downs Rachlin Martin
David	Grayck	Attorneys	The Law Office of David L. Grayck, Esq.
Jeff	Polubinski	Attorneys	Gravel + Shea PC
Jim	Dumont	Attorneys	Law Office of James A. Dumont
Liam	Murphy	Attorneys	MSK Attorneys
Mark	Hall	Attorneys	Paul Frank + Collins Attorneys
Melanie	Kehne	Attorneys	Attorney General's Office
Warren	Coleman	Attorneys	MMR, LLC
Chris	Austin	Consultants	Grenier Engineering, PC
Craig	Heindel	Consultants	Waite-Heindel Environmental
Eddie	Duncan	Consultants	Resource Systems Group
Gail	Henderson-King	Consultants	White + Burke Real Estate Advisors, Inc.
Jeff	Nelson	Consultants	VHB
Nate	Sicard	Consultants	Ruggles Engineering Services, Inc.
Serenity	Wolf	Consultants	Steven Associates
Ted	Reeves	Consultants	Reeves Consulting Engineers
Abby	Chaloux	Consultants	MSK Engineering
Annette	Smith	Environmental	Vermonters for a Clean Environment
Ben	Doyle	Environmental	Preservation Trust of Vermont
David	Hurwitz	Environmental	Exit 4 Group in Randolph
David	Mears	Environmental	Audubon Vermont
Kathy	Urffer	Environmental	Connecticut River Conservancy
Lesley-Ann	Dupigny-Giroux	Environmental	UVM
Pollaidh	Major	Environmental	VHCB

<b>First name</b>	<b>Last Name</b>	<b>Affiliation /Act 250 Focus Group</b>	<b>Organization</b>
Thomas	Weiss	Environmental	Self-employed
Abby	Long	Housing/Economic Development/Environmental Justice	Kingdom Trails Association
Brian	Bertsch	Housing/Economic Development/Environmental Justice	Allen Brook Development, Inc. dba Omega Real Estate Associates
Candace	Morgan	Housing/Economic Development/Environmental Justice	Green Mountain Power
David	White	Housing/Economic Development/Environmental Justice	White & Burke
Joe	Greene	Housing/Economic Development/Environmental Justice	Joseph Architects
Kirsten	Merriman	Housing/Economic Development/Environmental Justice	Champlain Housing Trust
Molly	Mahar	Housing/Economic Development/Environmental Justice	Vermont Ski Areas Association
Peter	Paggi	Housing/Economic Development/Environmental Justice	Windsor and Windham Housing Trust
Peter	Tucker	Housing/Economic Development/Environmental Justice	Vermont Realtors
Roland	Groeneveld	Housing/Economic Development/Environmental Justice	OnLogic
Tim	Frost	Housing/Economic Development/Environmental Justice	Peregrine Design Build
Tom	Bachman	Housing/Economic Development/Environmental Justice	GBA Architects
Trey	Martin	Housing/Economic Development/Environmental Justice	VHCB
Alex	Weinhagen	Planning and Towns	Town of Hinesburg
Charlie	Baker	Planning and Towns	CCRPC
Chris	Campany	Planning and Towns	Windham Regional Commission
Lee	Krohn	Planning and Towns	Retired Manchester Town Manager
Meagan	Tuttle	Planning and Towns	Office of City Planning - Burlington
Sharon	Murray	Planning and Towns	Front Porch Community Planning and Design
Tom	Kennedy	Planning and Towns	Mount Ascutney Regional Planning Commission

<b>First name</b>	<b>Last Name</b>	<b>Affiliation /Act 250 Focus Group</b>	<b>Organization</b>
Greg	Tatro	Working Lands	G.W. Tatro
Abbey	Willard	Working Lands	AAFM
Beth	Kennet	Working Lands	Liberty Hill Farm
Janet	Steward	Working Lands	Shat Acres
Katharine	Servidio	Working Lands	FPR
Mark	Rabon	Working Lands	
Tad	Cooke	Working Lands	Larklea
Tucker	Riggs	Working Lands	LSF Forest Products
Peter	Kopsco	District Environmental Coordinator District 3	
Kaitlin	Hayes	District Environmental Coordinator District 4	
Susan	Baird	District Environmental Coordinator District 5	
Kevin	Anderson	Natural Resources Board Statewide District Coordinator	
Aaron	Brondyke	Natural Resources Board State Coordinator	

## Appendix 2: Group Protocols and Ground Rules for the Act 250 Study

### Vermont Natural Resources Board Stakeholder Steering Committee on Legislative Report: “Necessary Updates to the Act 250 Program”

#### Group Protocols & Ground Rules June 2023

##### I. Introduction

[Act 182](#) of 2022 and [Act 47](#) of 2023 charged the Chair of the Natural Resources Board (NRB) with reporting to the House Committees on Environment and Energy and on Ways and Means and the Senate Committees on Finance and on Natural Resources and Energy on necessary updates to the Act 250 program, on or before December 31, 2023. In June 2023, the NRB convened a stakeholder Steering Committee to help the NRB design and implement a robust process for stakeholder input and build consensus among stakeholders with divergent perspectives. This document summarizes the Steering Committee’s Charge and Process, Membership, Decision Making, Meetings, Member Responsibilities, and Facilitator Responsibilities. We provide this summary to Steering Committee members and other interested parties so that the engagement process is understood by all.

##### II. Charge and Process

Under the terms of Act 182 and Act 47, the NRB’s report to the legislature shall include:

- 1) 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, including biodiversity. Location-based jurisdiction would adjust the threshold for Act 250 jurisdiction based on the characteristics of the location. This section of the report shall consider whether to develop thresholds and tiers of jurisdiction as recommended in the Commission on Act 250: the Next 50 Years Report.
- 2) How to use the Capability and Development Plan to meet the statewide planning goals.
- 3) An assessment of the current level of staffing of the Board and District Commissions, including whether there should be a district coordinator located in every district.
- 4) Whether the permit fees are sufficient to cover the costs of the program and, if not, a recommendation for a source of revenue to supplement the fees.
- 5) Whether the permit fees are effective in providing appropriate incentives.
- 6) Whether the Board should be able to assess its costs on applicants.
- 7) Whether increasing jurisdictional thresholds for housing development to 25 units would affect housing affordability, especially for primary homeownership, and what the potential

impact of increasing those thresholds to 25 units would have on natural and community resources addressed under existing Act 250 criteria.

- 8) A proposed framework for delegating administration of Act 250 permits to municipalities.

The Steering Committee's role is to advise the NRB on 1) the contents of this report, and 2) work with stakeholder groups to incorporate their expertise through effective stakeholder outreach and consensus building. Outreach will include multiple meetings with specific groups of stakeholders with an interest in Act 250; the facilitators and the NRB will seek suggestions from the Steering Committee on whom to include in these meetings and will deliberate on the feedback received.

With the assistance from the facilitation team, the Steering Committee should develop a set of policy recommendations for consideration by the NRB, which the NRB may utilize to fulfill its reporting obligations under Act 182. Given the complexity of the regulatory landscape, the Steering Committee's policy recommendations shall be divided into four discrete topics: 1) jurisdiction, 2) capability and development plan, 3) staffing and operations, and 4) fees. The NRB's final report to the Legislature may include the Steering Committee policy recommendations alongside any additional commentary and perspectives from the NRB.

### **III. Membership**

The Steering Committee consists of members representing a variety of sectors that routinely interact with Act 250, including representatives from real estate development, environmental protection, municipal/regional planning, economic development, housing, agriculture and forestry, legal advocacy, state agencies, and the judiciary. Representatives from the NRB will participate in the Steering Committee and will be responsible for convening meetings of the Steering Committee.

Appointed members of the Steering Committee are expected to attend all or almost all meetings. Members of the Steering Committee were appointed by the NRB in consultation with the EMC facilitation team.

### **IV. Decision-Making**

- A. Consensus:** The Steering Committee will strive to operate by consensus to develop its recommendations. Consensus is defined as consent of all or almost all members after Steering Committee discussion. Members may choose to "abstain." Abstention is to step aside, and therefore does not count against consensus. Consent means that members can *accept or live with*, even if reluctantly, the agreement that emerges. Consensus may be on a particular recommendation or on a comprehensive set of recommendations with their advantages and disadvantages clearly articulated.
- B. Decision making in the absence of consensus.** Should consensus not be obtained on recommendations, the Steering Committee will report out areas of agreement and disagreement alongside any consensus recommendations. The Steering Committee will note if agreement was not reached due to incomplete information, and what information would be needed to reach a decision.

## V. Meetings

- A. **Agenda:** The facilitators, with support from NRB staff, are responsible for developing an agenda for all meetings of the Steering Committee that will be distributed ahead of time, at least two business days before each meeting.
- B. **Materials:** Materials and “homework” that provide background and/or inform deliberations will be prepared by the facilitation team and the NRB and distributed ahead of time, at least two business days before each meeting. Homework may include questions for Steering Committee members to review and consider in advance of meetings.
- C. **Frequency and Location.** The Steering Committee will meet approximately two times a month through Winter 2023, for 2–3-hour meetings. Longer and/or more frequent meetings may be called, if necessary, at specific junctions throughout the process. Steering Committee meetings may be held virtually or in-person.
- D. **Technical Assistance:** The facilitation team, with support from the NRB, will work to provide the Steering Committee’s with technical assistance and data needs. The Steering Committee may also accept technical assistance from representatives of other organizations or may also seek technical assistance from its members’ own organizations.
- E. **Summaries:** Summaries of each Steering Committee meeting will be prepared by NRB staff in consultation with the facilitators. The summaries will be written without attribution.

## VI. Steering Committee Member Responsibilities

- A. **Norms:** In the interests of a productive process, the facilitation team asks the Steering Committee to honor some norms that help pursue finding consensus if possible. These include:
  - Not attributing statements to others in the process or seeking to speak on behalf of them; please speak for yourself and the interests you hope to represent.
  - Refraining from personal attacks or intentional disruptions of the process.
  - Recognizing that hearing a diversity of opinions and needs is the purpose of the study and recommendation work you are contributing to; please listen to others as you hope they would listen to you.
  - Coming to meetings having prepared by studying documents provided.
- B. **Searching for Consensus:** Steering Committee members will strive throughout the process to engage in constructive, good faith dialogue with other members of the group, bridge gaps in understanding, seek creative resolution of differences, and seek opportunities to make informed recommendations. Steering Committee members will help others understand them and work to understand others. They will seek to represent the needs, goals, and

perspectives of their own constituencies, as well as those of current and future residents of Vermont as a whole, including the most vulnerable.

- C. Conferring with constituencies:** At multiple intervals throughout the process, Steering Committee members may be asked to confer with their constituencies to react and bring forth ideas for the Steering Committee to consider. Steering Committee members should seek to bring back productive ideas for the Steering Committee.

## **VII. Facilitator Responsibilities**

- A.** The facilitators serve at the discretion of the NRB. The facilitators are responsible for helping to ensure that the process runs smoothly. They will develop meeting agendas, develop and vet meeting support materials, and help the parties resolve their differences and achieve consensus on the issues to be addressed. The facilitators have no decision-making authority and cannot impose any solution, settlement, or agreement on the Steering Committee.
- B.** The facilitators will develop and compile draft and final versions of the Steering Committee policy recommendations, and an initial draft of the NRB's report to the legislature.
- C.** The facilitators may hold individual meetings with Steering Committee members from time to time to discuss goals, concerns, and group progress. Steering Committee members may request these meetings and such meetings will be held in confidence.
- D.** The facilitators will abide by the Ethical Standards of the Association of Conflict Resolution. In part, these standards require that: "The neutral must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action and a commitment to serve all parties as opposed to a single party."

### Appendix 3: Cost Estimates for NRB Board Governance and Staffing Reforms

As recognized in the Report, the governance structure of the Natural Resources Board should be “professionalized,” to provide appropriate oversight of operations, rule-making authority and policy guidance. Remaining questions include whether it should be a 5-person or 3-person board and whether the professionalized board duties should include hearing appeals or deciding major permit applications.

The salary calculations in the chart below are based on the Public Utility Commission’s part-time commissioners’ salary and benefits plan.

All costs below are not accounted for in current NRB budgets. These changes will require higher General Fund appropriations dependent on the legislative changes made.

**New, additional costs associated with legislative requests from Act 182:**

Position	NRB
Part-time NRB members	\$158,184 per member (based on PUC part-time commissioner pay & includes benefits)
1-2 additional staff attorneys	\$111,845 per attorney (Staff attorney III pay plan mid-range & includes benefits)
District Commission Chairs paid part-time (40%)	\$48,672 per commission chair (no benefits)
Other misc. costs (travel, mileage, expert witnesses, etc.)	\$30,000
Additional district staff /offices	\$102,000 per district coordinator \$72,388 per district technician (includes benefits); additional district office space averages \$20,000 per office.

- Using the Public Utility Commission as a model, its 2 part-time commissioners in FY24 are paid \$121,680.00 annually. While the salary for these members is calculated for a two-thirds time position (26.4 hours per week), the commissioners’ work varies depending on the project.
- The part-time PUC commissioners also receive benefits, which brings the compensation package to approximately \$158,184 per position.
- It would be appropriate to use the same pay scale for the new part-time Natural Resources Board members as Act 250 projects require similar professional backgrounds for Act 250 as PUC commissioners bring to their regulatory processes.
- Should a new NRB board be empowered to hear appeals it would require the support of at least one additional attorney to address the increased workload.

- Regardless of whether a NRB hears appeals or major applications, there are other associated costs, related to travel and mileage reimbursements for the NRB to hear cases locally, associated costs with a nominating committee and potentially hiring expert witnesses for appeal cases.

**Totals:**

5-person NRB:	\$ 807,630
5-person NRB hearing appeals (1 attorney):	\$ 919,475
5-person NRB hearing appeals (2 attorneys):	\$1,031,320
3-person NRB:	\$ 492,262
3-person NRB hearing appeals (1 attorney):	\$ 603,107
3-person NRB hearing appeals (2 attorneys):	\$ 714,952
Dual-appoint/NRB board & 9 PT Commission Chairs:	\$ 438,048
5-person combo (2 professional, 2 Chairs):	\$ 589,606

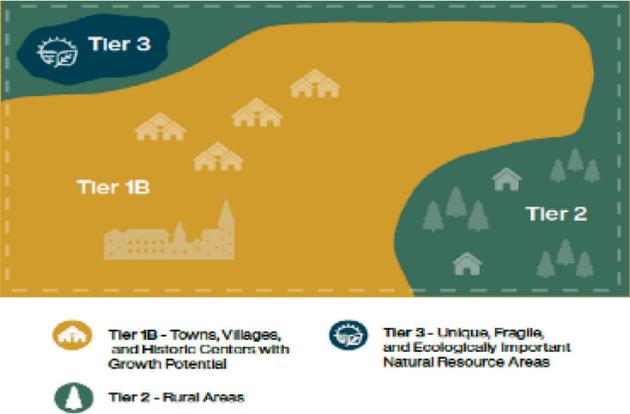
# Appendix 4: Illustrations of Designated Tier Areas in Municipalities

The following illustrations are intended to demonstrate how the political boundaries of a municipality are likely to include designated areas from different tiers.

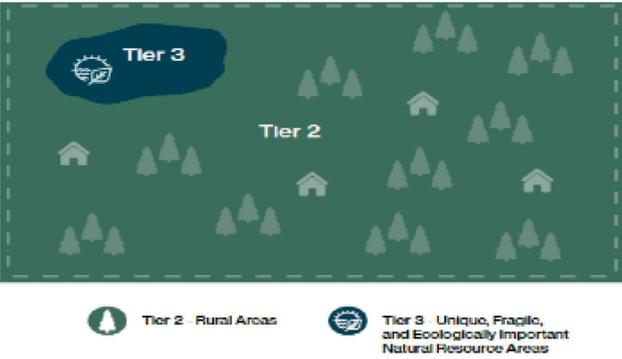
## Tier 1A Planned Growth Area with Some Tier 2:



## Tier 1B Village Center with Some Tier 2 and 3:



## Tier 2 Rural Area with Some Tier 3:



## Appendix 5: NRB Suggested Timeline

Suggested Timeline for Implementation:

Action	Timeframe or deadline
Implement new structure of NRB governance /professional board	New board seated by Jan. 1, 2025
Draft rules /process for location-based jurisdiction /Tiers	12/31/24
ICAR/LCAR and public process, Tiers program adopted and becomes law by 07/01/25	06/30/25
Future Land-Use Mapping /Revamped C&D Plan drafted and approved through public process	07/01/26

**Note: The NRB recognizes that a more appropriate timeline to concurrently implement location-based jurisdiction with tiers 1A, 1B, 2 and 3 could be July 1, 2026, when exemptions from Act 47 expire.**

## Appendix 6: Comments and Feedback Received

A draft of this report was sent out by the Natural Resources Board for public comment in early December of 2023 and on December 14 the Natural Resources Board Chair, Sabina Haskell and the facilitation team held a virtual public meeting attended by more than 100 participants. Public comments were received via e-mail and through comments at the virtual meeting.

A summary of the comments appears below, without attribution to any one commenter. The summary presents the comments according to topical themes, which reflect the issues that the Legislature charged the NRB with investigating.

### Location-based Jurisdiction: The Four Tiers:

#### **Tiers 1A and 1B**

Support for exempting tier 1A areas from Act 250 review generally received strong support as did raising the housing unit trigger for Act 250 to 50 units in tier 1B areas. These recommended changes were seen as important for increasing housing development in already populated areas and minimizing environmental impact.

A commenter asked about tier 1A designation and Future Growth Areas. Tier 1A designation can include Future Growth Areas that are not yet developed but will be needed for development over the next 20 years.

A commenter wondered whether the zoning and subdivision ordinances in the tier 1A and 1B areas would welcome and promote the expansion of housing supply.

A commenter wanted to see a discussion of how Tiers 1A and 1B would fit the report on designated downtowns from the Agency of Commerce and Community Development. Another noted that terms like growth centers, villages and designation need to clearly discriminate between the existing ACCD program and what is proposed for the tiers.

A question was raised whether an existing development with an Act 250 permit would be exempt from Act 250 for further phases of the development. Similarly, a commenter advocated a process for extinguishing existing Act 250 permits in Tier 1A areas so all future permit modifications would only go through the local land use approval process.

A question posed whether the Tier 1A and 1B designations would have ratings with regard to sewer systems. That is, could development occur in a Tier 1A or 1B area with a failed sewer system without Act 250 review?

A commenter pointed out that the report states “Ability to be in Tier 1A depends in part on a municipal plan that meets standards that are not yet developed.” The commenter wanted to see new standards that require municipalities to evaluate projects in a Tier 1A or 1B area using all the criteria of Act 250. In short, there should be no blanket exemption of any of the Act 250 criteria.

One commenter contended that the 50-unit trigger in Tier 1B areas was too high.

Another comment was that the Natural Resource Board, not the Agency of Commerce and Community Development, should be the state agency to review and approve or deny applications for Tier 1A and Tier 1B designation.

## **Tier 2**

Tier 2 garnered some support with only two comments against re-instituting the road rule. One comment questioned how to measure forest fragmentation; the other comment argued that the road rule would not be effective in addressing rural sprawl.

Another concern that was voiced was the inability of the 10-lot trigger to control sprawl because developers build 9-unit subdivisions in the countryside.

One commenter asked whether the committee considered lot-based, rather than unit-based triggers.

A number of commenters voiced concerns about the viability of rural communities in Vermont and the need to support beneficial growth in those places as well as in the largest more urbanized parts of Vermont. This concern was heard both during the verbal on-line meeting comments and follow-up written comments received.

## **Tier 3**

One commenter asked whether the tiers contain different levels of environmental sensitivity.

Another commenter stated that mitigation is inappropriate for forest fragmentation and another commenter voiced concern about imposing fragmentation control on an entire state that is largely forested.

### Staffing of the Natural Resources Board and District Commissions:

One commenter called for hiring more District Coordinators and providing more training to District Commissioners and Coordinators.

Another commenter suggested adding an ombudsman to correct problems with the Act 250 process when they happen.

Another commenter voiced concerns that some District Coordinators' limited expertise can cause unnecessary delays in the application process. Other comments pointed to the potential benefit of having Montpelier central office expertise tied more closely to District Coordinator work to provide support.

One commenter wanted to see a recommendation on whether each district should have its own coordinator. The commenter advocated for each district to have its own coordinator.

A comment on the needed experience or expertise of Natural Resources Board members focused on the environment or land use.

Another concern was with a suggested three-member Natural Resources Board, with the suggestion that seven members or nine members would be better.

A request was made for more information on the duties of a permit specialist.

#### Act 250 Permit Fees:

One commenter suggested funding Act 250 in total from the General Fund and eliminating Act 250 fees to encourage developers to invest in high quality materials and projects.

Another commenter stated that the report did not address whether the permit fees are effective in providing appropriate incentives.

#### Capability and Development Plan:

One commenter noted that in 1973, the legislature limited the Capability and Development Plan to a set of policies adopted by the legislature (without any maps) for use in coordinating local, regional, and state agency planning. In addition, the legislature stated that these policies no longer be applied under Criterion 9 of Act 250. The current Capability and Development Plan consists only of these 1973 policies.

#### The Effects of Increasing Jurisdictional Thresholds for Housing Development to 25 Units:

One commenter contended that this issue was not addressed in the study.

Another commenter with development expertise pointed out that too many projects are built for smaller numbers of units to avoid Act 250 review, thus artificially dampening the housing supply market.

#### Other Comments:

The Steering Committee did not reach a consensus on whether the Environmental Court should continue to hear appeals of Act 250 decisions or whether a reconstituted and professional Natural Resources Board should hear appeals.

Individual comments received were also split, with some favoring the current Natural Resources Board as a legally sound body while others raised concerns about the time and cost of appeals to the Environmental Court. In addition, one commenter called for on-the-record review for appeals, noting that the de novo review process is lengthy and costly for real estate developers and can drive up the cost of housing.

Another commenter raised the question: why not agree to move reconsideration decisions away from district staff and to Montpelier officials so there is an informal fast procedure to get an independent look at district decisions by people who have knowledge of how the issues have been administered statewide to ensure consistency?

One commenter stated that there are successful land use regulations that protect natural resources and promote walkable communities; Vermont doesn't do that, and sprawl remains a problem.

Greater emphasis on equity is needed in the report.

Another commenter stated that the report did not respond to most of the charges given to the Natural Resources Board by the Legislature.

One commenter stated that Act 250 is an unpredictable and costly process that landowners and developers seek to avoid. There are many sub-permits involved, not just the Act 250 permit.

As a way to help streamline the Act 250 process, one commenter supported making rebuttable presumptions dispositive. One commenter argued against dispositive permits for Act 250 because Act 250 is not redundant.

Another suggestion was to set a time limit on Act 250 decisions; if not denied with the time limit, the project would receive Act 250 approval.

Updates to Act 250 must be clearly defined and administered. There is far too much subjectivity and inconsistency across the state in the current implementation of Act 250.

Streamlining or eliminating the Act 250 process for on-farm businesses would help maintain the working rural landscape.

On the one hand, there was one comment opposing the recommended change of criterion 9 (c) from forest soils to forest fragmentation because of a concern about how to measure forest fragmentation.

On the other hand, a commenter contended that the report seemed to advocate making logging easier, which will not help to fight climate change. A third commenter contended that there should be no adverse impact on forest resources and that mitigation is inappropriate for forest fragmentation.

To read all submitted written comments, see [Public Comments and Feedback: Natural Resources Board Necessary Updates to Act 250](#) document on NRB's website.