

H.120: Capability & Development Plan

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Planning Basis for Development Regulation – Act 250 is pretty unique in that it integrates environmental regulation, intended to protect the state’s critical environmental resources from the impacts of development (criteria 1-4), with land use regulations that more broadly address the cumulative impacts of growth and development on areas of critical state, regional, and local interest, local communities, public infrastructure and services, and the overall pattern of development in the state (criteria 5-10). In this context Act 250 is similar to local land use regulations that both reflect and affect more broadly defined public priorities and development objectives in relation to private development interests and property rights. In this context, a plan – like the former capability and development plan under Chapter 151 – typically serves as the basis in public policy for the regulation of land use and development, particularly as needed to sort through, prioritize, and address competing interests and objectives.

Local example: A Vermont municipality cannot adopt or update subdivision, zoning or other development regulations without first having an adopted plan for development. The plan provides the legal justification and context for proposed development regulations. It also serves as a guide for how regulations are applied in the review of development. By law, zoning and other development regulations must be consistent with and implement the plan. In land use law, this legal requirement is referred to as “the consistency doctrine.”

By law, the planning process must include an analysis of existing conditions and public input to define community priorities in relation to competing interests – and result in a plan, including policies and maps, that identify where and how development should occur. The adopted plan forms the basis in public policy for land conservation programs, development regulations, and for targeted capital infrastructure investments in support of development. A plan must also be periodically updated and readopted – in Vermont, every eight years – to remain in effect, and to consider and recommend proposed updates to the development regulations.

By law, a municipal (or regional) plan must include both land use policies and maps that, at the local level, serve as the basis for development regulation. At the regional level the plan serves as the basis and guide for regional participation in Act 250 and Section 248 review.

As originally enacted, Chapter 151 (State Land Use and Development Plans) incorporated the same legal doctrine – the Capability and Development Plan was intended to provide a set of policies and maps as a guide for use in coordinated state agency planning and Act 250 development review. Like Chapter 117 governing local plans and bylaws, Chapter 151 as enacted included provisions for the development of state plans, as implemented through Act 250 criteria. These plans were subject to a public review and hearing process prior to adoption by the Governor and General Assembly – a process that still exists in statute.

Capability & Development Plan – The Capability and Development Plan called for in Chapter 151 was originally intended for use in:

- coordinating state agency, regional, and municipal planning,
- the preparation of a state land use plan, and
- by District Commissions in Act 250 review.

The C&D Plan is specifically referenced for consideration under Criterion 9 – project “conformance with a duly adopted capability and development plan” as intended to address state land use and development concerns. This complements the review of plans under Criterion 10 – project conformance with local and regional plans, as intended to address municipal and regional development concerns.

The initial, 1971 “Interim” Capability Plan, prepared with assistance of the State Planning Office, referenced:

- **Existing conditions** (development context) – data, information focusing on development trends, concerns, and the capability or capacity of land to support development (development context)
- **State policies** (legislative context) for land use and development
- **Maps** – a set of four per county, now digitally archived at VCGI (spatial context) – identifying:
 - development limitations (e.g., wetlands, steep slopes)
 - areas of critical state interest referenced under Act 250 criteria
 - existing land use.

1973 (Act 85) – Controversies over maps, and in particular the draft state land use plan, resulted in redefining the “Capability and Development Plan” as legislative intent – a set of policy statements, stripped of maps and guidance, which were also specifically excluded from consideration under Criterion 9. As a result, many of the sub-criteria under 9 specific to development have been reviewed over the years absent any policy or spatial context.

