



Act 250 Program Study Stakeholder Process June 26, 2023

Introduction

Act 250, Vermont's landmark land use law, was passed in 1970 in response to rapid and haphazard development. Over the years, Act 250 has received minor amendments, but a lack of consensus among stakeholders has prevented significant legislative changes to modernize Act 250.

Act 250's current challenges include balancing between protecting the environment and enabling housing and economic development, minimizing duplicative regulations, enabling smart growth and affordable housing in cities and designated village centers, maintaining rural working lands, and maintaining protections for environmentally sensitive areas.

The many studies on Act 250 have recommended changes that have failed to result in major legislation. Most recently, the Vermont Legislature produced the *Report of the Commission on Act 250: The Next 50 Years* (2019) which details challenges and possible solutions. The next and most crucial step requires a robust process to seek stakeholder input and build consensus among stakeholders with divergent perspectives.

The Environmental Mediation Center has assembled a team comprised of experienced mediators/facilitators, a former legislator, and national land use policy experts familiar with Vermont to not only facilitate the stakeholder meetings but also build consensus that would enable recommendations on changes to Act 250 by the NRB to be enacted into law. (See team bios at the end of study scope.)

Natural Resources Board Scope of Work

The NRB's scope of work includes working with the steering committee to develop a stakeholder engagement plan, developing background reading materials to guide discussions (homework), facilitating all stakeholder meetings, employing other engagement strategies such as focus groups, surveys, and one-on-one interviews, developing promotional material, drafting meeting notes, sharing feedback with the NRB, drafting an initial report, facilitating public meetings on the draft report, and drafting a final report for the NRB.

To optimize stakeholder engagement and satisfaction with the process and increase the likelihood of building consensus among the variety of stakeholders, we will solicit input through holding several smaller meetings, and organizing the meetings by interest groups (developers, environmental groups, and others) rather than substantive issue (e.g., jurisdictional triggers)

These smaller focus group meetings, organized by interest groups, should reduce "grandstanding" and keep the conversation constructive. The facilitators, with input from steering committee, will introduce ideas to "test the waters" and see how a particular interest group reacts to a suggestion from another interest group.

We anticipate 2-3 rounds of meetings with each interest group to discuss the following: 1) key goals of Act 250 and Act 250 reform; 2) discussing and evaluating options for reform; 3) reviewing and commenting on a potential final package of key recommendations.

Some interest groups may require additional meetings to complete the tasks and make recommendations. This iterative approach with each interest group will enable the groups to develop well thought-out proposals. Each interest group would have a member on the steering committee who could share the proposals at stakeholder steering committee meetings in an effort to build consensus.

Based on the directives of Act 182 and S. 100, topic areas that broader groups of stakeholders will discuss include:

1. Act 250 triggers, jurisdiction, and criteria to encourage smart growth, respect local zoning and planning, and minimize sprawl.
2. Permitting process, appeals, and the application in a way that provides a more predictable and consistent program.
3. Deduplicate regulation when possible while also ensuring environmental protections are met.

Given the complexity of the regulatory landscape, the report will be divided into discrete topics:

1. Jurisdiction:
 - Review current jurisdiction and triggers.
 - Make recommendations on jurisdiction/trigger changes to achieve guiding principles.
 - The study should consider recommendations for location-based jurisdiction (i.e., state designated centers, 10-acre towns, 1-acre towns)
 - Role and relevance on jurisdiction of enhanced statewide land use planning as delivered through consistent regional plans
 - Can we move to a system of tiers of regulatory oversight?
2. Criteria:
 - Review current criteria.
 - Is the criterion duplicative of any town, state or federal regulation?
 - If yes, should the criterion be removed, or narrowed to the point it doesn't create a gap in environmental protections.
 - If no, is the criterion relevant and effective to meet or preserve environmental protections. Are updates or revisions necessary to achieve the guiding principles?
3. Governance/Operations:
 - Review and make recommendations for NRB board and staff structure and governance that helps achieve guiding principles.
 - Specifically, to help achieve statewide consistency and predictability.
 - Governance and operations recommendations should build off jurisdiction and criteria recommendations.
 - For example, the fee structure should be reviewed if additional exemptions are recommended.
 - Appropriate staffing levels to achieve desired outcomes.
 - In order to improve the process from beginning to end, the role of other state agencies, permits, fees, appeals, etc. should be analyzed or reconsidered.

Facilitators: Environmental Mediation Center Team Members

Matt Strassberg

Matt has been serving as the director of the EMC since 2007. The EMC administers USDA certified agricultural mediation programs in Vermont, New Hampshire, California, and Hawaii. In addition to mediating thousands of environmental and agricultural cases, Matt has led numerous projects involving the intersection of agriculture and

the environment. He previously worked as an attorney for the Big Mountain Legal Office, the US EPA Region IX in San Francisco, and the Vermont Environmental Board. While he was at the Environmental Board, Matt developed a mediation pilot project. Matt later worked with Green Mountain Environmental Resolutions and the Consensus Building Institute on a project that provided mediation screening on Act 250 and local zoning cases. Matt transitioned from law to mediation because of his preference for creative problem solving and collaborative processes over litigation. Matt has a BS in Forest Biology from SUNY College of Environmental Science and Forestry and a JD from Vermont Law School.

Maxine Grad

Maxine Grad recently retired from 22 years of service in the Vermont House of Representatives. Grad served as Chairwoman of the Vermont House Judiciary Committee from 2014-2022. Prior to being appointed Chairwoman, she served as the vice chair for 12 years. In addition to serving on the House Judiciary Committee, Maxine served on the Judicial Nominating Board, Joint Justice Oversight Committee, Judicial Rules, and Judicial Retention Committees. Grad is known as a collaborative, inclusive and adaptive leader who puts political party aside to work towards a shared outcome.

Grad has received Department of Defense recognition for her leadership in passing laws protecting military families, and awards and recognition for her leadership on protecting reproductive liberty, prevention of sexual, domestic and gun violence and creating the Vermont Purple Heart Trail. Maxine served as a governor's appointee to the Community Violence Prevention Task Force (Gov. Scott); Governor's Commission on Women, which she also chaired (Gov. Dean); and Vermont's first Victims Compensation Board (Gov. Kunin).

Prior to running for political office, Grad practiced law in the private and public sector. She taught public policy and advocacy classes at Woodbury College and Community College of Vermont. She is a graduate of the Snelling Institute for Leadership. She received her BA, Phi Beta Kappa from Clark University in Geography, and her JD, Cum Laude and MA Environmental Law from Vermont Law School. Maxine completed mediation training at University of Wisconsin (Madison) and Harvard University.

Jack Kartez

Dr. Jack Kartez is Professor Emeritus of Community Planning and Development at the Edmund S. Muskie School of Public Service, University of Southern Maine and co-founder of the USEPA Region I Environmental Finance Center. Kartez staffed Oregon's revolutionary land use program in its early years enforcing LCDC's innovative regulations including leading the first enforcement of the statewide affordable housing policy and championing accommodations for farm family needs. He also served local governments as a planner in Washington State and Idaho. Kartez has been a practicing mediator, facilitator, and ADR trainer since the 1980s. As a university-based public servant, he has served as the facilitator-designer for many large-scale statewide and multi-state processes such as the first and second Maine Greenhouse Gas Reduction (Climate Change) Plans, the New England Governors Blue Ribbon Commission on the Future of Land Conservation, and the Maine Governor's Conference on Natural Resource-Based Industries, involving 700 people. As a consultant he has facilitated or mediated many community-level issues such as health facility location, seasonal housing regulation, and endangered species protection. His 2006 full-length documentary film (with NH film-maker Melissa Paly) "Growing Together: Consensus Building, Smart Growth and Community Change," was a Tully Award winner. He is a graduate of Vermont Academy, Middlebury College, and the Universities of Oregon and North Carolina.

Toby Berkman

Toby Berkman is a Senior Associate at CBI and affiliated faculty at the Program on Negotiation at Harvard Law School. An attorney by training and a former litigator, Toby has been facilitating dialogue and mediating complex public disputes for more than a decade. His practice focuses on helping organizations and stakeholders collaborate more effectively around difficult public issues, both domestically and internationally. His recent project work includes facilitating Governor Scott's Future of Agriculture Commission with VAAF and VACCD, building

consensus around a statewide building decarbonization plan as lead facilitator for the Massachusetts Commission on Clean Heat, and facilitating strategic planning-related processes with regional planning commissions in New Hampshire and Western Massachusetts. He is a graduate of Harvard Law School and the Harvard Kennedy School of Government, and has authored articles on conflict management and dispute resolution in leading publications including the *Harvard Law Review*, the *Journal of Dispute Resolution*, and others. His wife is from Middlebury and he loves to visit his in-laws at her childhood home.

Tom Daniels

Tom Daniels is a native of Burlington and grew up in the house his great-grandparents built. Tom is the Crossways Professor of City and Regional Planning at the University of Pennsylvania, where he teaches courses on Land Use Planning, Growth Management, and Environmental Planning. Tom holds a BA in Economics from Harvard and a Ph.D. in Agricultural Economics from Oregon State. He is a leading scholar on farmland preservation and state-level planning. He is the author or co-author of seven books, including, *Holding Our Ground: Protecting America's Farms and Farmland* (Island Press 1997), *The Small Town Planning Handbook* (American Planning Association 2007), and *The Law of Agricultural Land Preservation in the United States* (American Bar Association 2018). Tom often serves as a consultant to state and local governments and non-profits. He has been involved as a consultant in Act 250 cases and has written articles about Act 250 and the Vermont landscape.

Project Advisors

Mark Lapping

Mark B. Lapping is the Distinguished University Professor Emeritus of the Edmund S. Muskie School at the University of Southern Maine in Portland. Previously he served the University as its Provost/Vice President for Academic Affairs from 1994-2000 and 2007-2009. Prior to that he was the founding Dean of the Bloustein School of Planning and Public Policy at Rutgers University where he was also the Associate Director of the New Jersey Agricultural Experiment Station. He also served as the founding Director of the School of Rural Planning and Development at Ontario's University of Guelph and as Associate Director of the Environmental Program at the University of Vermont. He has served on the Board of the National Campaign for Sustainable Agriculture and many other farming-related bodies. He is the author/co-author of 10 books and many journal articles, reviews and monographs.

Pat Field

Pat Field is a Senior Mediator at the Consensus Building Institute. Pat has worked extensively in Vermont since the early 2000s on issues ranging from energy policy to land use dispute resolution to agriculture and water quality to Payment for Ecosystem services to supporting development of Vermont's Climate Action Plan. Pat has helped thousands of stakeholders reach agreement on natural resource, land use, water, and air issues across the United States and Canada. Pat is listed on the roster of conflict resolution professionals of the U.S. Institute for Environmental Conflict Resolution and the Massachusetts Office of Dispute Resolution. He holds an M.C.P. in Urban Planning from the Massachusetts Institute of Technology and is co-author of the award-winning book, *Dealing with an Angry Public*, as well as numerous journal articles and research papers.