

## MEMORANDUM

TO: Municipal Planning and Development Review Officials  
FROM: John E. Adams and Dale Azaria  
Vermont Department of Housing and Community Development (DHCD)  
DATE: June 9, 2014 (updated 6/18/14)  
RE: **2014 Legislative Revisions to Vermont’s Planning and Development Act, the Downtown Development Act and Act 250**

The General Assembly enacted a number of laws and amendments affecting local planning and regulation. As in past years, we are issuing this memo to inform municipal officials of changes in statute and to provide web links to the pertinent statutory language.

The [Vermont Statutes Online](http://www.vermontstatutesonline.com) are updated in October and will not include the following changes until then. DHCD memos summarizing the statutory changes starting in 2007 can be found at [http://acd.vermont.gov/strong\\_communities/opportunities/planning/statute](http://acd.vermont.gov/strong_communities/opportunities/planning/statute).

Once again, in compiling these statutory amendments, we are indebted to Sharon Murray, for her work as Legislative Liaison for the [Vermont Planners Association](http://www.vermontplanners.org) (VPA) and to the [Vermont League of Cities and Towns](http://www.vermontleague.org) (VLCT) for their 2014 Legislative Updates.

### 2014 Amendments

#### **Incentives for Development in Designated Centers and changes to Act 250**

Act 147 (H.823) - <http://www.leg.state.vt.us/docs/2014/Acts/ACT147.pdf> - amends 10 V.S.A. Chapters 55, 64 & 151, and 24 V.S.A. §4414(7)

In general, Act 147 intends to accomplish two things:

- 1) Provide incentives for development within state designated centers and help address a housing shortage while promoting walkable communities.
- 2) Require large scale commercial development outside of existing settlements to not contribute to a pattern of strip development – or – to infill and minimize characteristics of strip development if located within an existing strip development area.



The bill also adds a new procedure to Act 250 under which a development in a designated downtown development district may obtain expedited findings and conclusions from the District Commission in lieu of a permit or permit amendment from the District Commission.

Under this section:

- A. The District Commission reviews the development under a limited set of the Act 250 criteria and there would be no fee. (Interim policy guidance from the Natural Resources Board is available for download here: <http://www.nrb.state.vt.us/lup/publications.htm> )
- B. Affected state agencies such as the Agencies of Agriculture, Farm and Markets and of Natural Resources, Transportation, etc. must submit written recommendations on the issues under their jurisdiction within 30 days of receiving notice of a complete application for findings. The 30-day comment period also applies to adjoining property owners and others.
- C. There is no hearing unless the District Commission determines there is a substantial issue that requires a hearing.
- D. The District Commission issues a decision within 60 days of issuing a notice of complete application or, if there is a hearing, within 15 days of adjourning the hearing.

The bill also increases the number of mixed-income housing units that can be built before requiring Act 250 review (only applies in Designated Downtowns, Growth Centers and Neighborhood Development Areas) and states that Act 250 jurisdiction over such a project shall count only the housing units within that discrete project (as opposed to all units developed within the past 5 years within a 5 mile radius.)

Affordability requirements for rental housing in mixed income housing projects (as defined in Act 250) are revised and income ceiling for affordable rental housing is raised from 60 to 80 percent of median income and the required duration of affordability has changed from 30 to 20 years.

Population	Previous Unit Threshold	New Unit Threshold
15000+	200	275
10,000 - 15,000	100	150
6,000 - 10,000	50	75
3,000 - 6,000	30	50
<3000	25	25

In an effort to further expedite state permits, ANR is directed to issue a permit for a new or modified connection in a designated downtown to a water or sewer main on submission of a certification by licensed designer and a letter from the owner of the water or sewer main allocating sufficient capacity.

Act 250's "rural growth areas" criterion 9(L) is replaced with a "settlement patterns" criterion – which requires development outside of an existing settlement to:

- i. make efficient use of land, energy, road, utilities and other supporting infrastructure;
- ii. not contribute to a pattern of strip development along public highways;



- iii. if located in an area of strip development, incorporate infill and reasonably minimize the characteristics listed in the definition of strip development

“Strip development” is defined to mean linear commercial development along a public highway that meets three or more characteristics listed in the proposed definition, such as broad road frontage, predominance of single-story buildings, and others.

Act 250's transportation criterion (5) includes a new sub-section requiring developments, as appropriate, to incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and existing and planned pedestrian, bicycle, and transit networks and facilities.

The bill also amends the enabling authority for “inclusionary zoning”. Previously, a municipality could require that a certain percentage of housing units in a subdivision or planned unit development meet affordability limits that may include lower income limits and different affordability percentages from those otherwise specified in law. The amendment allows a municipality to adopt similar requirements for any multi-unit development.

### **Growth Center and New Town Center Process Changes**

Act 146 (H.809) - <http://www.leg.state.vt.us/docs/2014/Acts/ACT146.pdf> - amends 24 V.S.A. Chapters 76a & 117

This bill improves the New Town Center and Growth Center designation programs and increases the linkages between 24 V.S.A. Chapter 76A & Chapter 117. Specifically, the bill:

1. Reorganizes and consolidates the growth center application and designation requirements into a single statutory section and clarifies the definition of ‘growth center’.
2. Eliminates the pre-application subcommittee and requires a pre-application meeting with DHCD staff instead.
3. Amends the process for designating new town centers, to make that process more consistent with the designation process for downtown and village centers
4. Requires regional plans to indicate areas in the region that are likely candidates for designation as downtown centers, village centers, new town centers, or growth centers.
5. Requires municipalities to state their intent to apply for designation under chapter 76A in the municipal plan.

The bill also consolidates the Growth Center Planning Manual with the Planning Manual and requires the Commissioner of Housing and Community Development to revise the planning manual by November 15, 2015.



## **Transportation Improvement Districts ('Last One In / Fair Share')**

Act 145 (H.740) - <http://www.leg.state.vt.us/docs/2014/Acts/ACT145.pdf> - amends 10 V.S.A. §4382(a)

Act 145 enables District Commissions and the Agency of Transportation to assess transportation impact fees to fund capital transportation projects. A primary goal of the bill is address the 'fairness' issue of having the all the costs of mitigating transportation impacts fall on the development or subdivision whose impacts 'tip the scale,' causing existing traffic conditions to become unsafe or unreasonably congested.

AOT may establish transportation improvement districts (TIDs) for a discrete geographic area and may assess impact fees through state highway access permits in the TID unless the project is subject to Act 250. The District Commissions may require an Act 250 project within a TID to pay the fee established by VTrans. Outside a TID, the Commission may require an impact fee, and may require payment of that fee to VTrans, or the municipality for a capital transportation project undertaken by a municipality. Fees must be used within 15 years, and Act 145 sets requirements for municipal accounting of these fees. The commission retains their existing authority, including the ability to require on-site mitigation and requiring a project to shoulder the full costs of traffic mitigation.

The bill requires that the fee be set by a formula and sets out the items that the formula must account for or consider to ensure that the fee is proportional to the project's transportation impacts. Additionally, the bill sets out procedures for creation of TIDs and for appeal of TID and transportation impact fee decisions.

## **Prime Agricultural Soils**

Act 159 (H.869) - <http://www.leg.state.vt.us/docs/2014/Acts/ACT159.pdf> - amend 10 V.S.A. §6001 and §6093

A provision in Act 159 amends the definition of "Primary Agricultural Soils" in 10 V.S.A. § 6001 (15) so that the definition focuses on the physical characteristics and quality of the soils and their ability to support agricultural production. It removes the economic and contextual (size and location) considerations contained in the existing statutory definition.

Act 159 also provides a 1:1 mitigation ratio and a presumption of off-site mitigation in Designated Downtowns: Neighborhood Development Areas Associated with Designated Downtowns; New Town Centers in existence as of January1, 2014.

## **Municipal Jurisdiction and NFIP**

Act 107 (H.676) - <http://www.leg.state.vt.us/docs/2014/Acts/ACT107.pdf> - amends 24 V.S.A. § 4413(a)

This bill clarifies state and municipal jurisdiction over state and community owned buildings and facilities for the purposes of the National Flood Insurance Program (NFIP); ensures full state compliance with NFIP; gives ANR explicit authority to regulate activities exempt from municipal regulation within river corridors; and extends the Floodplain Rule adoption and implementation deadlines.



Section 4413(a) of Title 24 lists development that municipalities may regulate for limited purposes, and it was previously unclear whether municipalities may regulate such development for the purposes of NFIP. The change in language explicitly states that municipalities may regulate the development listed in 4413(a) for the purposes of compliance with NFIP, except for state-owned and operated institutions and facilities, which will be regulated under the Rule:

(2) Except for State-owned and -operated institutions and facilities, a municipality may regulate each of the land uses listed in subdivision (1) of this subsection for compliance with the National Flood Insurance Program and for compliance with a municipal ordinance or bylaw regulating development in a flood hazard area or river corridor, consistent with the requirements of subdivision 2291(25) and section 4424 of this title. These regulations shall not have the effect of interfering with the intended functional use.

### **Site Plan Review and State Highway Access**

Act 167 (H.872) - <http://www.leg.state.vt.us/docs/2014/Acts/ACT167.pdf> - amends 24 V.S.A. § 4416

Section 26 of this bill adds the following requirement for municipal site plan review:

(b) Whenever a proposed site plan involves access to a State highway, the application for site plan approval shall include a letter of intent from the Agency of Transportation confirming that the Agency has reviewed the proposed site plan and is prepared to issue an access permit under 19 V.S.A. § 1111, and setting out any conditions that the Agency proposes to attach to the section 1111 permit.

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### **Miscellaneous Amendments Relevant to Local Planning and Regulation**

*A number of other bills that have some bearing on local planning or regulation but that do not directly involve changes to Chapter 117, Chapter 76A or Act 250 were also passed. These include the following.*

### **Shoreland Protection**

Act 172 (H.526) - - <http://www.leg.state.vt.us/docs/2014/Acts/ACT172.pdf>- amends 10 V.S.A. Chapter 49A

This bill authorizes the state to implement a regulatory program to manage “impervious surfaces and cleared areas” within shoreland areas. The bill requires that, “a person shall not create cleared area or impervious surface in a protected shoreland area without a permit...” and the jurisdiction of the bill covers land within 250 feet of the mean water level of all lakes over 10 acres, except for private ponds. If a municipality has a shoreland ordinance that provides standards that are “at least as stringent as” by being “functionally equivalent” to the standards in the bill, the authority to administer shoreland protection standards can be delegated to the town for review of development in the shoreland protection area.

Shoreland management standards contained in the bill include 1) protection of existing natural vegetation within 100 feet of the mean water level and guidelines for management of that vegetation that allow some thinning, pruning and tree removal to allow access to the shore, 2) a maximum of 20% impervious area per lot, and 3) a maximum of 40% cleared area per lot. Additional language in the bill allows adjusting the



standards to meet site specific conditions, pre-existing small lots and pre-existing development that cannot meet the standards.

Some of the activities and areas exempted from needing a permit include: Construction within the footprint of an impervious surface (existing as of July 1, 2014), management of vegetative cover, agricultural activities, designated downtowns and village centers, and urban and industrial redevelopment.

### **Open Meeting Law Changes**

Act 143 (H.497) - <http://www.leg.state.vt.us/docs/2014/Acts/ACT143.pdf> - amends 1 V.S.A.

This bill makes significant changes to the Open Meeting Law, 1 V.S.A. Chapter 5, Subchapter 2, sections 310 to 314.

### Meeting Agendas:

Meeting agendas must be posted in or near the municipal office and in at least two other designated public places in the municipality, as well as posted on the organization's website (if it has one) at least 48 hours before a regular meeting and at least 24 hours before a special meeting. Meeting agendas must also be made available to any member of the public or press upon request.

Any addition to or deletion from the agenda must be the first act of business at the meeting. Other adjustments to the agenda may be made at any time during the meeting.

Written correspondence or e-mails between members of a public body for purposes of scheduling a meeting, setting an agenda, or distributing meeting materials are not "meetings" per se, but all such written correspondence must be available for inspection and copying under the State's Public Records law.

### Electronic Participation:

Members of a public body must be allowed to participate in a meeting via speakerphone or other electronic means, including full participation in all discussion and votes, provided that they can hear the meeting and the other meeting participants can hear them.

If any member of the public body is participating in a meeting electronically, all votes at that meeting must be taken by roll call.

Meetings conducted primarily via conference call must include a physical location that is open to the public, which must be included in the meeting notice. At least one member of the public body or staff person must be at the physical location.



### Executive Session:

The decision to go into executive session to discuss contracts, labor relations agreements, or litigation requires a specific finding that premature general public knowledge would put the public body at a substantial disadvantage.

Consideration of the appointment, employment, or evaluation of public employees may be conducted in executive session, but the final decision to hire or appoint a public employee must be done in open meeting, and the reasons for the final decision must be explained in open meeting.

### Meeting Minutes:

Meeting minutes must be posted to an organization's website within 5 days of the meeting, assuming that the organization has a website.

Minutes must include (at a minimum) a list of all members who were present, a list of other active participants at the meeting, all motions or proposals offered or considered, as well as the disposition of the same, and the results of any votes. If any vote is taken by roll call the individual votes must be in the minutes.

### Enforcement:

The Attorney General will give the organization notice of an alleged violation. The organization must respond within 7 days by either acknowledging the violation and agreeing to cure it, or by disputing that a violation has occurred. The organization can cure the violation by either ratifying or declaring as void any action taken at a meeting in violation of the open meeting rules and adopting measures to prevent future violations. In such case, there is no liability. If the action violation isn't cured, or if a court finds that there was a violation after the organization denied one, the organization may be liable for attorney's fees in addition to the other applicable penalties.

### **Telecommunication Facilities ('248a')**

Act TBD (H.297) - <http://www.leg.state.vt.us/docs/2014/bills/Passed/H-297C.pdf> - amends 30 V.S.A. §248a

Sections 17 & 18 of the bill amend 30 V.S.A § 248a by extending the Public Service Boards authority over telecommunications facilities from July 1, 2014 to July 1, 2017 and includes several provisions for municipal participation in the review of applications for certificates of public good. Municipalities may now require that applicants filing with the PSB attend a meeting with the municipality's legislative body or planning commission. The PSD will also be required to participate in meetings between towns and Petitioners' where the town has requested a meeting based upon any substantive issue.





The PSD would also be required to develop a guide by September 1, 2014, for local officials and regional commissions describing how to navigate the PSB process for certifying telecommunications facilities.

In addition, the PSD may retain experts prior to an actual petition being filed and billback those experts to the petitioner.

### **Parking Meters**

Act 122 (H.584) - <http://www.leg.state.vt.us/docs/2014/Acts/ACT122.pdf> - amends 24 V.S.A. §2291

Municipalities are now given the authority to use parking meter revenue for any municipal purpose (such as transportation demand strategies) – whereas previously, the revenue could only be used to purchase, maintain, police, and repair parking lots and parking meters.

### **Economic Development**

Act TBD (S.220) - <http://www.leg.state.vt.us/docs/2014/bills/Passed/S-220C.pdf>

S.220 clarifies the 1:1 prime agricultural soil mitigation ratio for permitted industrial parks by defining “industrial parks” to exclude areas with office and retail not incidental to the industrial uses. S.220 also simplifies the requirements for permits allowing project expansion within an industrial park.

The bill also makes industrial park planning, development or improvement eligible for the Vermont Economic Development Authority funding.

Additionally, Downtown Tax Credits are now available to “install or improve data or network wiring, or heating, ventilating, or cooling systems reasonably related to data or network installations or improvements,” in qualified buildings.

