

MEMORANDUM

TO: Municipal Planning and Development Review Officials
FROM: John E. Adams and Dale Azaria
Vermont Department of Housing and Community Development (DHCD)
DATE: July 22, 2015 (Updated 7/28/2015)
RE: **2015 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.vermontstatutes.net) 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://accd.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.vlct.org) (VLCT) for their 2015 Legislative Updates.

Water Quality Bill

Act 64 (H.35) - <http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT064/ACT064%20As%20Enacted.pdf>
- amends various sections of 3 V.S.A, 6 V.S.A., 10 V.S.A., 32 V.S.A and 24 V.S.A. §4302, §4348, §4348a, §4413.

Act 64 provides the necessary legislative changes and additions to implement the Vermont Lake Champlain Phosphorus TMDL Phase I Implementation Plan and statewide Clean Water Initiative. The act creates a new small farm certification program; requires updates to the Required Agricultural Practices; requires water quality training for farmers and custom applicators; updates to the Agency of Agriculture Food and Market’s (AAFM) enforcement authority, including the ability to remove violators from the Use Value Appraisal Program; requires new fees for small, medium, and large farms; and increases fees on commercial feed, fertilizer, and pesticides.



Additionally, the Act requires Agency of Natural Resources to: adopt an anti-degradation implementation rule by July 1, 2016; reorganize the stormwater section (10 V.S.A. § 1264), including requiring the creation of a municipal roads general permit and a permit for existing impervious surfaces of 3 acres or greater that currently do not have permits; deliver a report on lowering the regulatory threshold for impervious surfaces from 1 acre to 0.5 acres; update the basin planning section, Lake Champlain implementation plan section, and section 1266a regarding wastewater treatment facilities; revise the Accepted Management Practices by July 1, 2016; and prepare a report on making the AMPs mandatory.

The Act also provides funding and staffing for AAFM and ANR and for water quality programs and projects. The bill imposes a 0.2% increase in the Property Transfer Tax, which will raise approximately \$5.3 million annually (until repeal on July 1, 2018); requires a report on creating a tax on impervious surfaces; increases DEC permit fees; and creates a Clean Water Fund and Board to receive and manage a majority of the funds.

Section 53 of the act states that it is the State's policy to consider MS4 communities eligible for ANR's Ecosystem Restoration Program, the Clean Water Fund, and any other State water quality financing program.

Municipal and Regional Planning Related Provisions of Act 64

The Act requires ANR to develop a schedule to update the basin plans for the 15 watersheds with plans. Contingent upon available funding, ANR is instructed to contract with regional planning commissions to produce or assist in producing basin plans.

Several amendments to 24 V.S.A. Chapter 117 are included:

24 VSA § 4302. Purpose; goals

The following is added to the state planning goals:

(6) (B) Vermont's water quality should be maintained and improved according to the policies and actions developed in the basin plans established by the Secretary of Natural Resources under 10 V.S.A. § 1253.

24 V.S.A. § 4348. Adoption and amendment of a regional plan

The Agency of Natural Resources and the Agency of Agriculture, Food and Markets have been added to the list of parties RPC's must send proposed regional plans to.

24 V.S.A. § 4348a. Elements of a regional plan.

Regional Plan element 6 has the following added:

(6) A statement of policies on the: (B) protection and improvement of the quality of waters of the State to be used in the development and furtherance of the applicable basin plans established by the Secretary of Natural Resources under 10 V.S.A. § 1253;



24 V.S.A. § 4413. Limitations on municipal bylaws.

Limitations on municipal bylaws are clarified:

(d) A bylaw under this chapter shall not regulate ~~accepted~~ required agricultural ~~and silvicultural~~ practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets ~~or the commissioner of forests, parks and recreation~~, respectively, under ~~10 V.S.A. §§ 1021(f) and 1259(f) and 6 V.S.A. § 4810~~ accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices which are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation.

Renewable Energy and Siting of Facilities

Act 56 (H.40) - <http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT056/ACT056%20As%20Enacted.pdf>
- amends 10 V.S.A. § 212. Definitions, various sections of 30 V.S.A., 24 V.S.A. § 2291 and § 4414(15)

This act creates a Renewable Energy Standard (RES) applicable to the supply portfolios of Vermont electric utilities with requirements that start in 2017. The standard includes requirements in three categories that utilities must meet:

- 1) A total renewable energy requirement that rises from 55 percent of a utility's sales in 2017 to 75 percent in 2032. A utility may meet this requirement by owning renewable energy or renewable energy credits (RECs) from any plant, as long as the plant's energy is capable of delivery to New England.
- 2) A distributed renewable generation requirement that rises from one percent of a utility's sales in 2017 to 10 percent in 2032. A utility may meet this category through renewable energy or RECs from plants that come into service after June 30, 2015 and are five MW or less and directly connected to the Vermont utility grid or are net metering systems for which the utility retires the RECs.
- 3) An energy transformation requirement that rises from two percent in 2017 to 12 percent in 2032, except that small municipal utilities will not have to meet this category until 2019. A utility may meet this category through additional distributed renewable generation or "energy transformation projects." Energy transformation projects must deliver energy goods or services other than electric generation and must result in a net reduction in fossil fuel consumption by a utility's customers. The act states that energy transformation projects may include home weatherization or other thermal energy efficiency measures, air source or geothermal heat pumps, and other measures.

Additionally, the act gives municipalities party status in Section 248 proceedings and establishes statewide solar facility setbacks from property lines and highways. Municipalities are also enabled to adopt bylaws or ordinances related to solar screening for PSB consideration in section 248 proceedings.



24 V.S.A. § 4414. Zoning; permissible types of regulations.

* * *

(15) Solar plants; screening. Notwithstanding any contrary provision of sections 2291a and 4413 of this title or 30 V.S.A. chapter 5 or 89, a municipality may adopt a freestanding bylaw to establish screening requirements that shall apply to a ground-mounted plant that generates electricity from solar energy. In a proceeding under 30 V.S.A. § 248, the municipality may make recommendations to the Public Service Board applying the bylaw to such a plant. The bylaw may designate the municipal body to make this recommendation. Screening requirements and recommendations adopted under this subdivision shall be a condition of a certificate of public good issued for the plant under 30 V.S.A. § 248, provided that they do not prohibit or have the effect of prohibiting the installation of such a plant and do not have the effect of interfering with its intended functional use.

(A) Screening requirements under this subdivision shall not be more restrictive than screening requirements applied to commercial development in the municipality under this chapter or, if the municipality does not have other bylaws except flood hazard, 10 V.S.A. chapter 151.

(B) In this section, “plant” shall have the same meaning as in 30 V.S.A. § 8002 and “screening” means reasonable aesthetic mitigation measures to harmonize a facility with its surroundings and includes landscaping, vegetation, fencing, and topographic features.

(C) This subdivision (15) shall not authorize requiring a municipal land use permit for a solar electric generation plant and a municipal action under this subdivision shall not be subject to the provisions of subchapter 11 (appeals) of this chapter. Notwithstanding any contrary provision of this title, enforcement of a bylaw adopted under this subdivision shall be pursuant to the provisions of 30 V.S.A. § 30 applicable to violations of 30 V.S.A. § 248.

Similar language was added under 24 VSA § 2291(28) enabling the adoption of screening requirements as an ordinance.

A ‘Solar Siting Task Force’ is created to study issues pertaining to the siting, design, and regulatory review of solar electric generation facilities and DCHD is tasked with producing a report relating any solar screening requirements adopted by municipalities

Economic Development Bill

Act 51 (S.138) - <http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT051/ACT051%20As%20Enacted.pdf>
- amends many statutes, including 24 V.S.A. § 2291 and § 4471

Sections of Act 51 that relate to planning and land use regulation include the following:

Act 250; Implementation of Criterion 9(L). The bill directs the Natural Resources Board to engage in a public process leading to revisions to its procedures for implementing the settlement patterns criterion



(9L) which was added to Act 250 last year. Also directs the Agency of Commerce and Community Development, in conjunction with the Natural Resources Board and the Agency of Natural Resources, to develop outreach materials for Criterion 9L and a training plan for developers, local officials, and others.

Act 250; Prime agricultural soils. Prime agricultural soil mitigation provisions in Act 250 that formerly applied to state designated growth centers now apply to the following state designated areas: downtown development district, new town centers designated on or before January 1, 2014, and neighborhood development areas associated with a designated downtown development district.

Conditional Use Appeals. 24 V.S.A §4471(e), was updated to add a reference to 'neighborhood development areas' in place of the 'Vermont neighborhoods' designation that has been repealed. This section of statute restricts appeals of appropriate municipal panels' decisions determining that a proposed residential development seeking conditional use approval will not result in an undue adverse effect on the character of the area affected.

Conservation Easements; Acquisition of Land by Public Agencies. The act provides that if an organization, such as a land trust, acquires property subject to a conservation easement that it owns, then the easement stays in effect.

Methane Digesters; Certificate of Public Good. The act clarifies the scope of the Public Service Board's jurisdiction over stand-alone electric generation facilities that are methane digesters using feedstock from off-site farms and states that this jurisdiction shall not include the farms contributing the feedstock.

Regional plans; Comprehensive Economic Development Strategies (CEDs). A new provision in 24 V.S.A. §2787 gives the administration direction to give deference to regional plans and CEDs when addressing adverse local impacts from major employer activity, such as closure, relocation, or reduction in workforce.

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.

Mobile Home Parks

Act 8 (H.123) - - <http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT008/ACT008%20As%20Enacted.pdf>

Act 8 clarifies and expands enforcement authority of the Vermont law governing mobile homes, 10 V.S.A. chapter 153; clarifies the duties of a mobile home park owner with respect to the warranty of habitability and road maintenance; creates a framework for court orders to address the removal of a mobile home from a park after eviction; and clarifies when a mobile home may be considered abandoned after an eviction.



Fair Housing, Evictions and Disposal of Property

Act 9 (H.256) - - <http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT009/ACT009%20As%20Enacted.pdf>

Act 9 clarifies when a landlord may dispose of personal property that is left behind following an eviction. The bill also amends the Fair Housing law as it pertains to retaliation, to clarify that in addition to prohibiting discrimination, the Fair Housing law also prohibits coercion, threats, and interference with the exercise of fair housing rights.

Technical Correction (Building Energy Standards and Certificates of Occupancy)

Act 23 (H.320) - -

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT023/ACT023%20As%20Enacted.pdf>

Section 150 of Act 23 amends 30 V.S.A. § 53(d)(4) to replace 'residential construction' with 'commercial construction.' Note, this change is simply correcting an erroneous reference to residential construction in the commercial building section. The residential building energy standards in 30 V.S.A. § 51 are unchanged by this bill.

30 V.S.A. § 53 Commercial Building Energy Standards

(d)(4) Provision of a certificate as required by subdivision (1) of this subsection and of a certificate as required by subdivision (2) of this subsection shall be conditions precedent to:

* * *

(B) issuance by a municipality of a certificate of occupancy for ~~residential construction~~ commercial construction commencing on or after July 1, 2013, if the municipality requires such a certificate under 24 V.S.A. chapter 117.

Natural Burial Grounds

Act 24 (H.25) - - <http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT024/ACT024%20As%20Enacted.pdf>

Act 24 amends 18 V.S.A chapter 107 (Deaths, Burials, Autopsies) and 121 (Cemeteries) to include language specifically related to natural burial grounds. A natural burial ground is defined in §5302 (11) as "...a cemetery maintained using ecological land management practices and without the use of vaults for the burial of unembalmed human remains or human remains embalmed using nontoxic embalming fluids and that rest in either no burial container or in a nontoxic, nonhazardous, plant-derived burial container or shroud."

The Act sets requirements regarding where new or expanded cemeteries (including potential natural burial grounds) may be located, including the minimum distance a new or expanded cemetery may be from a drilled well, aquifer or water source protection area, and defines restrictions against their placement in river corridors as defined in 10 V.S.A. §1422 and delineated by the Agency of Natural Resources, and within a flood hazard area as defined in 10 V.S.A. §752, and delimited by the Federal Emergency Management Agency, National Flood Insurance Program.

Specific exemptions are created for natural burial grounds, including:



1. A natural burial ground need not have headstones or other permanent markers unless placed in a larger cemetery wherein headstones are required, but the locations and the identities of the human remains must be accurately mapped and filed in the town land record.
2. A natural burial grounds need not have and maintain a fence as long as the perimeter of the natural burial ground is clearly demarcated in a less obtrusive manner, such as by survey markers.

Contaminated Soils

Act 52 (H.269) - -

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT052/ACT052%20As%20Enacted.pdf>

Act 52 creates interim process for transportation, disposal of contaminated development soils within state designated districts, until ANR adopts rules, by July 1, 2016.

Endangered Species / Forest Integrity Recommendations Report

Act 61 (H.5) - - <http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT061/ACT061%20As%20Enacted.pdf>

The act authorizes civil enforcement of threatened and endangered species violations. Additionally, the Commissioner of Forests, Parks, and Recreation is required to consult with interested stakeholders and submit a report to the General Assembly by January 15, 2016 with recommendations to implement policy options to promote forest integrity. The report shall include proposed legislative changes to implement the recommendations of the Commissioner.

