

Vermont Planning & Development Act

24 VSA Chapter 117

Historical Timeline

1908—30 VSA § 224; municipal authority under supervision of PSB

1928—First planning statute; municipal planning commissions, plans

1931—First zoning statute; zoning commissions, bylaws

1965—Central/state planning office established

1967—Planning and Development Act (24 VSA Ch. 117)

1969—Section 248, CPG (thresholds repealed in 1972)

1970—Act 250; capability and development plan, state land use plan

1975—*City of So. Burlington v. Vermont Electric Power Company*

1977-79—Ch. 117 energy planning, bylaw provisions added

1981—State energy policy, DPS comprehensive energy planning (§ 202)

1984—State land use plan repealed in statute

1987—Act 200; state planning goals, coordinated planning under Ch.117

1995—Office of Policy Research and Coordination eliminated (Executive Order)

2003—Permit reform; bylaws cannot regulate facilities regulated under § 248

2006—*Vermont by Design*; recommendations to improve planning structure

2007-11—Misc. Ch.117 amendments re renewable energy regulation

2012-13—Siting Policy Commission, Report

2015—Municipal party status under § 248, screening ordinances, state setbacks

VT Planning Framework

- **State planning goals**
 - Apply to municipal, regional, state agency planning
- **Roles, responsibilities**
 - VT Department Housing and Community Development
 - Regional planning commissions (11)
 - Municipalities—legislative bodies, planning commissions, development review/zoning boards, advisory committees
- **Municipal and regional plans**
 - Required elements, maps, data and analyses
 - Plan amendment, update, adoption, expiration
 - Supporting plans
- **Plan implementation—regulatory (bylaws), nonregulatory**
 - Municipal zoning, subdivision, hazard area bylaws
 - Capital improvement, resource conservation, housing programs
 - Participation in Act 250, Section 248 proceedings

State Planning Goals, Policies

24 V.S.A. § 4302

- General purpose “... to encourage appropriate development of all lands in this State by the actions of its constituent municipalities and regions, with the aid and assistance of the State...”
- 4 general planning goals – planning process
- 14 specific goals – planning policy considerations
- Consistency w/ state planning goals required for:
 - regional plans
 - regionally approved municipal plans
 - state agency plans that affect land use (3 V.S.A. §4020)

State Goals: Planning Process

(b) It is also the intent of the Legislature that municipalities, regional planning commissions, and State agencies shall engage in a continuing planning process that will further the following goals:

(1) To establish a coordinated, comprehensive planning process and policy framework to guide decisions by municipalities, regional planning commissions, and State agencies.

(2) To encourage citizen participation at all levels of the planning process, and to assure that decisions shall be made at the most local level possible commensurate with their impact.

(3) To consider the use of resources and the consequences of growth and development for the region and the State, as well as the community in which it takes place.

(4) To encourage and assist municipalities to work creatively together to develop and implement plans.

State Planning Goals (Partial)

(1) To plan development so as to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside.

(4) To provide for safe, convenient, economic and **energy efficient transportation systems** that respect the integrity of the natural environment;

(5) To identify, protect, and preserve important natural and historic features of the Vermont landscape;

(6) To maintain and improve the quality of air, water, wildlife, and land resources;

(A) Vermont's air, water, wildlife, mineral and land resources should be planned for use and development according to the principles set forth in **10 V.S.A. § 6086(a)**.

(7) To encourage the efficient use of energy and the development of renewable energy resources;

(9) To encourage and strengthen agricultural and forest industries;

(E) Public investment should be planned so as to minimize development pressure on agricultural and forest land.

(12) To plan for, finance and provide an efficient system of public facilities and services to meet future needs;

Statutory Definitions

24 V.S.A. § 4303

(10) “**Land Development**” – the division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any change in the use of any building or other structure, or land, or extension of use of land.

(24) “**Renewable Energy Resources**” – energy available for collection or conversion from direct sunlight, wind, running water, organically derived fuels, including wood and waste heat, and geothermal sources.

(26) “**Should**” – an activity is encouraged but not mandated.

Municipal Planning Commission Duties

24 V.S.A. §4325

Planning Commissions *may*:

- Undertake comprehensive planning
- Undertake capacity studies, make recommendations on matters of land development...historic and scenic preservation, **the conservation of energy and renewable energy resources...** (added 1979)
- Prepare plans, bylaws, amendments
- Prepare building, plumbing, fire, electrical, housing and related codes, construction specifications
- Prepare capital budgets and programs
- Participate in regional planning programs

RPC Optional Powers

24 V.S.A. § 4345

Any regional planning commission...*may*:

(1)...work with regulated utilities, the Department of Public Service, the Department of Public Safety, potential developers of distributed power facilities, adjoining regional planning commissions, interested regional entities from adjoining states, and citizens of the region **to propose and evaluate alternative sites for distributed power facilities that might provide uninterrupted local or regional power** at least for identified critical service providers in time of extended national, statewide or regional power disruption or other emergency (added 2005).

(6) Undertake studies and make recommendations on ... the **conservation of energy and the development of renewable energy resources**... (added 1979).

RPC Duties (Partial)

24 V.S.A. § 4345a

Regional planning commissions...*shall*:

- Provide technical and legal assistance to municipalities in preparing, maintaining plans, bylaws, etc.
- Review municipal plans, confirm municipal planning efforts
- Prepare a regional plan
 - Develop a regional database compatible with state's geographic information system
 - Identify areas of regional significance
- **Appear before** the District Environmental Commission and **the Public Service Board to aid in making determinations**
- Define **“substantial regional impact”** in the regional plan, as the term may be used with respect to its region
 - **to be given due consideration, where relevant, in state regulatory proceedings.** (Added 1989)

Municipal Plan

- “Municipality” includes towns, cities, incorporated villages
- Municipalities are authorized, *but not required*, to develop and adopt municipal plans
- *May* be consistent w/goals, *must* include required elements
- Prepared by volunteer planning commission (appointed or elected), typically w/ staff, RPC or consultant assistance
- Community outreach mandated, to include at least two public hearings (planning commission, legislative body)
- Adopted by legislative body or voters
- Must be updated, readopted every 5 years to remain in effect
- Must be in effect to adopt/amend bylaws, capital improvement programs, be considered in state regulatory proceedings (Act 250, Section 248)
- Bylaws, other implementation programs must conform to the plan (as “conform” is defined in statute).

Regional Plan

- General purpose to guide and accomplish coordinated, efficient and economic development of the region... including **“reasonable use of renewable energy resources”**
- Prepared by regional commission staff, sometimes w/ outside assistance (state, consultants, etc.)
- Must be consistent with goals, include required elements
- Citizen participation solicited throughout process; at least two public hearings required
- Adopted by not less than 60% vote of commissioners representing municipalities; veto provision
- Updated, readopted every 8 years to remain in effect
- Must be in effect to be considered in state regulatory proceedings (Act 250, Section 248)

Required Plan “Elements”

24 V.S.A. § 4382 (Municipal), § 4348a (Regional)

- **Objectives, policies, programs to guide future growth and development of land, public services and facilities, and to protect the environment**
- **Land use plan, map**
- Transportation plan, map
- **Utility and facility plan, map**
- **Policies on the preservation of rare and irreplaceable natural areas, scenic and historic features and resources**
- Educational facilities plan, map
- **Energy plan**
- Housing element
- Economic development element
- **Flood resilience plan**
- Statement indicating how plan relates to development trends and plans for adjacent municipalities, areas, regions
- Implementation program

Land Use Element

- Map, and
- Statement of present and prospective land uses, indicating areas proposed for forests, recreation, agriculture, residence, commerce, industry, public and semi-public uses and open spaces reserved for flood plain, wetland protection or other conservation purposes
- Present and prospective location, amount, intensity and character of land use; timing or sequence of development in relation to the provision of community facilities and services
- Areas, if any, proposed for designation under 24 V.S.A. Ch.76A (downtown, village, growth centers, neighborhood areas)
- Locations for proposed development with the potential for regional impact, as determined by the RPC (regional plans)

Utility and Facility Element

- Map, and
- Statement of present and prospective community facilities and public utilities showing existing and **proposed...power generation plants and transmission lines**,... and
- Recommendations to meet future needs for community facilities and services

Energy Element

- Analysis of energy resources, needs, scarcities, costs and problems within the municipality/region;
- Statement of policy on the conservation of energy;
- **Statement of policy on the development of renewable energy resources;**
- Statement of policy on patterns and densities of land uses likely to result in the conservation of energy.

Regional v. Municipal Plan

24 V.S.A. § 4348(h)

In proceedings under 10 VSA Chapter 151, 10 VSA Chapter 159 and **30 VSA § 248** in which provisions of a regional plan or a municipal plan are relevant to the determination of any issue in those proceedings:

- (1) the provisions of the regional plan shall be given effect to the extent that they are not in conflict with the provisions of a duly adopted municipal plan;
- (2) to the extent that such conflict exists, the regional plan shall be given effect if it is demonstrated that the project under consideration in the proceedings would have a substantial regional impact.

(Added 1987)

Plan Implementation

- Must conform to and implement the municipal plan, and be adopted for purposes set forth under state planning goals
- Regulatory
 - Zoning, subdivision, site plan bylaws
 - Hazard area bylaws (flood, river corridor, etc.)
 - Planned unit development, phased development
 - Official map
 - Local Act 250 Review
 - Other codes, ordinances (under 24 V.S.A. Chapters 59, 61, etc.)
 - Participation in Act 250, Section 248 proceedings
- Nonregulatory
 - Capital improvement, housing, land conservation, historic preservation, energy efficiency programs, etc.
 - State designation programs under Ch.76A
 - Supporting plans, studies

Bylaws: Limitations

A bylaw under this chapter shall not regulate public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248 [§ 4413(b)].

Prior to 2003:

Unless reasonable provision is made for the location of any of the following in a bylaw...the following uses may be regulated only with respect to size, height, bulk, yards, courts, setbacks, density of buildings, off-street parking and loading facilities and landscaping or screening requirements:

(1) Public utility power generating plants and transmission lines [former § 4409]

Bylaws: Limitations

- Height of wind turbines w/ blades $< 20'$ in diameter, or rooftop solar collectors $< 10'$ high on sloped roofs ($>5^\circ$), mounted on complying structures, shall not be regulated unless the bylaws provide specific standards for regulation [§ 4412(6)].
- Notwithstanding any provision of law to the contrary, a bylaw adopted under this chapter shall not:
 - (1) Regulate the installation, operation, and maintenance, on a flat roof (slope $\leq 5^\circ$) of an otherwise complying structure, of a solar energy device that heats water or space or generates electricity.
 - (2) Prohibit or have the effect of prohibiting the installation of solar collectors not exempted from regulation..., clotheslines or other energy devices based on renewable resources [§ 4413(g)].

Zoning: Permissible

A municipality may:

- Adopt zoning and subdivision bylaws to encourage energy conservation and to protect and provide access to renewable energy resources [§ 4414(6)].
- Encourage the use of low-embodied energy in construction materials, planned neighborhood developments that allow for reduced use of fuel for transportation, and increased use of renewable technology by providing for regulatory incentives...[§ 4414 (14)].

Statutory Review Standards

- **Subdivision bylaws**—may include specific development standards to promote the conservation of energy or to permit the use of renewable energy resources [§ 4418 (2)(C)].
- **Site plan review**—may impose conditions with regard to the protection and utilization of renewable energy resources [§ 4416(a)].
- **Conditional use review**—proposed use shall not result in an undue adverse impact to the utilization of renewable energy resources [§ 4414(3)].
- **Planned unit development**—may be used to encourage and preserve opportunities for energy-efficient development and redevelopment [§ 4417(a)(7)].