

Determining Developments of Regional Impact How to Make the Call

**Rockingham Planning Commission
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Introduction

In New Hampshire communities, the local land use board (Planning Board, Zoning Board of Adjustment, Historic District Commission and in some instances the Building Inspector or Code Enforcement Officer) is charged with determining when a local development project may have the potential for creating regional impacts as outlined in N.H. RSA 36:54-58. The purpose of this statute is to establish the framework to be followed by a community that is reviewing a development proposal with potential impacts beyond its municipal boundaries. As RSA 36:54-58 explains, a determination of regional impact affords the abutting communities and the regional planning commission the status of abutter. It is also an opportunity to broaden the scope of review and in doing so, gain additional input and technical support in the review of large, complex development proposals and evaluate potential effects on inter-municipal agreements.

The Rockingham Planning Commission has developed this guidance document to aid our communities in evaluating whether a development should be determined to have regional impact. The document summarizes the statutory process that must be followed under New Hampshire state law and suggest several triggering factors that should be considered for making this determination. Bear in mind that the criteria suggested here are our recommendations: they have no regulatory force. Communities should consider declaring projects to have regional impact as a way of maximizing the thoroughness of municipal project review. In doing so, a community can gain insight from the professional planning staff of the regional planning agency as well as planning board members and professional planners in abutting communities. The RPC has professional staff planners with specialized training in the fields of transportation, municipal land use and natural resource management. In addition, the Planning Commission has several years' experience reviewing these kinds of developments (both large-scale retail, industrial and residential) and communities should not hesitate to incorporate this planning expertise in their local review. In other words, this process should be helpful to host community's local review and not a hindrance to it. Remember that neither the RPC, nor the impacted communities have any authority under the regional impact statute to interfere with the decision-making power held by the land use board of the host community.

The statutory guided process for a local land use board to follow when making a determination of regional impact involves three steps and they are as outlined below:

- At the earliest point possible after a local land use board has accepted a proposal as complete for review, the board should determine if the project has the potential to create impacts beyond the municipality's boundaries. **If such impacts are reasonably expected, the statute directs that a local land use board shall**

- formally determine the project to be one of regional significance.** Note that the statute directs that if the land use board has doubt about whether or not the development will have regional impact, it directs that it shall be resolved with a determination that it does have regional impact. This vote should name the communities that are believed to be potentially affected by the proposal. In the case of a determination by the board that the application is a development of regional impact requiring notice in accordance with RSA 36:57, III, the board shall have an additional 30 days to act to approve, conditionally approve, as provided in subparagraph (i), or disapprove.
- Not more than five (5) business days after a local land use board makes this determination the affected communities and the appropriate regional planning commission shall, by certified mail, be made aware of this decision. At this same time the local land use board shall send to each affected municipality and the appropriate regional planning commission a copy of the minutes of the meeting at which the determination was made as well as one copy of the initial development plan set (the cost of which shall be borne by the applicant).
 - All affected municipalities and the appropriate regional planning commission shall be notified by certified mail at least 14 days prior to the public hearing for which public comment will be taken that they are afforded the right to testify as an abutter to the subject development proposal.

Local land use boards in the context of RSA 36:54-58 include planning boards, zoning board of adjustment, historic district commissions, building code board of appeals or building inspectors. When the Building Inspector moves to declare a project to have regional impacts the building inspector shall by certified mail notify the regional planning commission and the affected communities of the project. These additional abutters are provided a 30-day comment period to express project concerns prior to the issuance of a building permit.

The Planning Commission recommends the following language be included in your community's subdivision and site plan review regulations as a way of ensuring that the potential for an application to result in regional impacts gets addressed with each development proposal:

Subdivision Regulations

In accordance with state law any proposed subdivisions which are likely to have impacts beyond the boundaries of the town of _____ shall be processed by the planning board according to the procedures established in **RSA 36:54-58, Review of Developments of Regional Impact.**

Site Plan Review Regulations

In accordance with state law any proposed multi-family or non-residential developments which are likely to have impacts beyond the boundaries of the town of _____ shall be processed by the planning board according to the procedures established in **RSA 36:54-58, Review of Developments of Regional Impact.**

The Rockingham Planning Commission recommends that a project shall be determined to have a substantial regional impact when it meets one or more of the following criteria:

1. The proposed development may significantly affect the economic structure of neighboring communities by:
 - a. increasing the cost of providing energy or other utility services to other towns; or
 - b. affecting the availability or need for workforce housing in the region or in adjacent towns; or
 - c. increasing the need for housing in an adjacent community or region; or
 - d. resulting in the construction of 50 or more residential units where any portion of the development is within 1,000 feet of a municipal boundary; or
 - e. resulting in the construction of a non-residential development that exceeds 50,000 square feet where the proposed development is within 2,500 feet of a municipal boundary; or
 - f. any use or activity involved in transporting, storing or producing hazardous materials.
 2. The proposed development may affect the infrastructure or service capacity of neighboring communities by:
 - a. substantially affecting the level of service of regionally significant highways or transit services, local roads and transportation networks and other transportation facilities within other towns; or
 - b. producing excessive solid waste; or
 - c. generating an increase student population that will adversely affect school capacities in one or more neighboring communities; or
 - d. requiring capital outlay beyond town borders for the expansion or development of additional drainage infrastructure, utility transmission lines, utilities or other public services which is not paid for by the development; or
 - e. generating significant increase in demand for mutual aid emergency response capacity.
 3. The proposed development may affect the land use patterns or regionally significant features of the Region by:
 - a. requiring the alteration, degradation or destruction or designated regionally significant historic, cultural, natural or scenic resources; or
 - b. being located in geographic areas that have not supported the type or intensity of the proposed development in the past; or
 - c. being incompatible with the architectural or design features of nearby existing structures; or
 - d. resulting in increased development in surrounding communities to support the proposed use or activity.
 4. The proposed development may affect the natural resources of the Region by:
 - a. producing excessive pollutants or substantially degrading air quality or water quality or quantity beyond town boundaries or within the watershed (for purposes of quantity we recommend a trigger not higher than 57,600 gallons
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- per day, the NH DES threshold definition of “large groundwater withdrawal”);
or
- b. altering, degrading or destroying the habitat and natural communities of plants and animals that have been identified as worthy of protection at the local or state level threatened or endangered by either the federal government or the State of New Hampshire; or
 - c. substantially reducing the area or productive capacity of regionally significant forested and agricultural lands and/or the proximity of development to regionally significant conservation areas or greenway.

If a project is proposed on land that directly abuts a municipal boundary this should result in an automatic regional impact determination. The proposal should incorporate characteristics described in 1-4 above also. Proximity to a municipal border does not mean the proposal would necessarily also generate regional impacts.

The Rockingham Planning Commission advocates early communication between abutting communities’ planning departments whenever regional impacts may occur. The more abutting communities utilizing this process the easier it will become to address projects across municipal boundaries.

The Planning Commission recommends that planning offices amend their development checklists by adding an item that calls out the potential regional impact of a proposed development.

Developments with Regional Impact

Statutory Authority: refer to RSA 36:54-58

Findings of **YES** on one or more of the items below indicates the need for a local land use board to make a determination that the development proposal results in possible regional impacts.

1. **School Impacts:** Does the development create significant new student population affecting a regional school district? Yes No
 2. **Traffic Generation:** Will the project generate more than 500 vehicle trips per day? Yes No
 3. **Road Networks:** Does the development provide the opportunity to create a more efficient road network for the regional area or potentially affect regional travel patterns? Yes No
 4. **Building Size:** Is the proposed building greater than 50,000 square feet and located within 2,500 feet of a municipal line? Yes No
 5. **Visual Impacts:** Will the development create visual impacts to neighboring municipalities such as light pollution, glare or structures visible from neighboring municipalities? Yes No
 6. **Pollution:** Does the development propose the operation of a facility or business which would generate excessive amount of air pollution, wastewater discharge, noise or hazardous waste transport? Yes No
 7. **Water Supply Impacts:** Will the development require a major impact wetlands permit from NH DES? Yes No

Will impacts to known aquifers occur? Yes No

Does the project involve permitting for a large groundwater withdrawal?
 Yes No

Will the development cause negative impacts to another community's municipal water supply? Yes No
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- 8. **Conservation Lands:** Does the development abut existing conservation lands, greenway or existing farmland such that coordination between municipalities could lead to the creation or preservation of greenways or wildlife habitat areas or prevent fragmentation of forests, farms or other conservation lands? Yes No

- 9. **Economic Impacts:** Does the development propose the creation of business or industry that would significantly impact regional economic development? Yes No

- 10. **Emergency Response:** Does the proposal create a significant increased demand for emergency services response (including mutual aid) from abutting communities? Yes No

- 11. **Historic or Cultural Resources:** Does the proposed development have negative impacts on historic or cultural resources that may have significance regionally? Yes No

- 12. **Other:** Does the development create other regional impacts not listed in items 1 – 11 above? Yes No

Describe:
