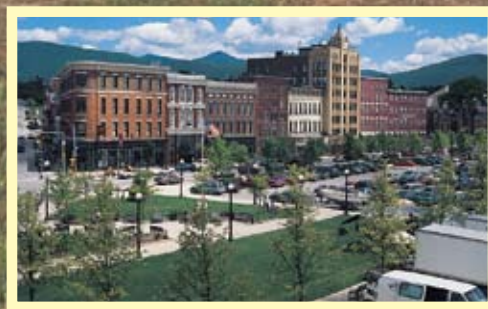


# ACT 250



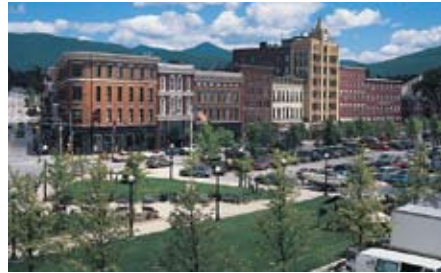
**A GUIDE TO  
VERMONT'S  
LAND USE LAW**







# ACT 250



## **A GUIDE TO VERMONT'S LAND USE LAW**

**State of Vermont  
Natural Resources Board**  
Montpelier, Vermont

November 2000  
Revised September 2003  
Revised August 2006

**This brochure is intended as a guide only and should not be relied upon, for any purpose,  
as a comprehensive or complete statement of the law.**

Reference should be made to the statute (10 V.S.A. Ch. 151), the Act 250 Rules, and decisions of the Environmental Board,  
which are available at the Natural Resources Board and District Commission offices.

Photography: Louis Borie

Editing: Doug Wilhelm

Design: Tim Newcomb

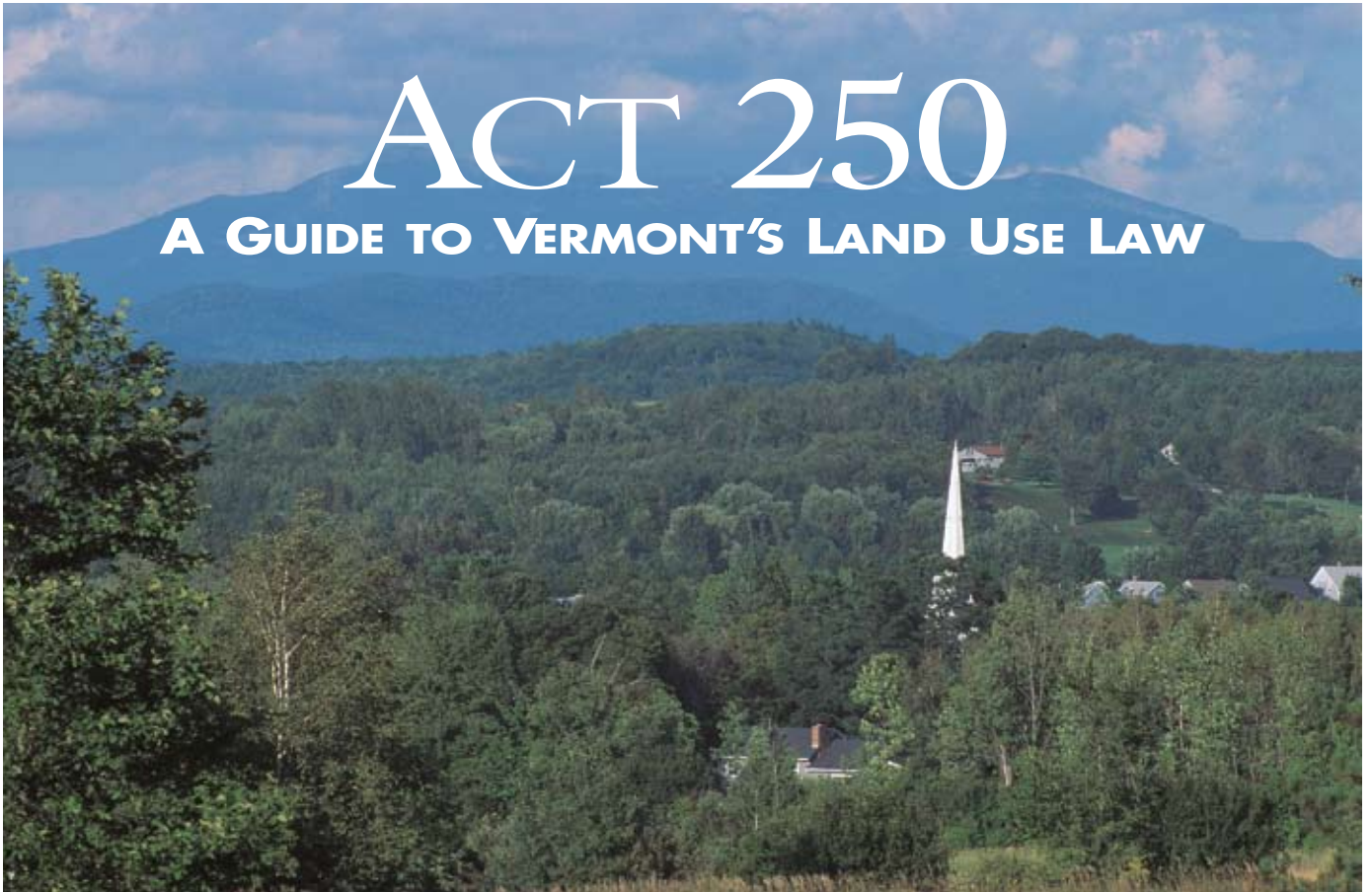
Printed by ecolor Printing

5000, 11/2000

2500, 9/2003

3000, 8/2006

Printed on recycled paper



## CONTENTS

<b>1. “An Idea Whose Time Had Come” .....</b>	<b>2</b>
<i>The Origins and Evolution of Act 250</i>	
<b>2. Impacts and Benefits. ....</b>	<b>4</b>
<i>The Difference Act 250 Has Made for Vermont</i>	
<b>3. What It Is and How It Works .....</b>	<b>6</b>
<i>A Basic Introduction to Act 250</i>	
<b>4. Who Makes the Decisions. ....</b>	<b>9</b>
<i>An Overview of the System</i>	
<b>5. The 10 Criteria .....</b>	<b>11</b>
<i>The Heart of Act 250</i>	
<b>6. How, What, and Where?.....</b>	<b>16</b>
<i>Answers to Frequently Asked Questions</i>	
<b>7. Where to Go for Help. ....</b>	<b>18</b>
<i>A Guide to Act 250 Information &amp; Assistance</i>	

# 1. “An Idea Whose Time Had Come”

## *The Origins and Evolution of Vermont’s Act 250*

*As I was campaigning around ... I myself became aware that environmental protection was a true concern of many, many people.*

Deane C. Davis

Governor of Vermont, 1969-73

The late 1960s brought sudden and dramatic change to Vermont’s quiet countryside. In population and developed areas, the state had hardly grown since the start of the 20th century. Now, almost all at once, new permanent and part-time residents began flooding in.

The opening during the ’60s of Interstate Highway 89, and the southern Vermont sections of I-91, brought Vermont at least an hour closer in driving time for residents of the Boston and New York City areas. At about the same time, IBM began creating a major facility in Essex Junction. Vermont was promoting tourism — and sections of southern Vermont around Stratton and Dover

had, among others, become very popular for skiing. Now suddenly those towns were the sites of massive plans for second-home development on sensitive mountainsides.

*Development was going all over the place — with no concept of how the sewage was going to get down into the ledge, and not run all over ... It was a mess.*

U.S. Sen. James Jeffords

Vermont Attorney General, 1969-73

Gov. Davis, a retired business executive and Vermont native, was deeply concerned — but at that time, there was little he could do. Although Vermont had encouraged local planning during the 60s, it had virtually no environmental regulations or land-use controls. Gov. Davis responded by creating the Governor’s Commission on Environmental Control, chaired by State Representative Arthur Gibb, on May 18, 1969.

*We worked all through the summer ... The big thing was control of land use — and the governor was very definite, and we were very definite, that we wanted strong controls. The question was how to do it.*

Arthur Gibb

State Representative, 1963-70

State Senator, 1971-86



*Act 250 was designed to balance water quality and other environmental values with economic development opportunities in Vermont.*



After holding well-attended hearings throughout the state, in January 1970 the Gibb Commission recommended a number of environmental laws, chief among them a new state system for reviewing and controlling plans for large-scale and environmentally sensitive development. Gov. Davis insisted that this system not be centered in Montpelier — that the power to review projects and grant permits be vested more locally, in a group of regional commissions.

*We knew we could not stop change, and that was not our objective. But we can direct it, and we can ensure quality change, if we establish standards and criteria as guidelines for change. At the same time, it was absolutely critical that we strengthen our economy.*

Elbert “Al” Moulton  
Special Assistant to the Governor, 1969-73

In spring 1970, the Vermont Legislature passed the Land Use and Development Law, since known simply as Act 250. It created nine District Environmental Commissions, whose members were (and still are) laypersons, not government officials. Their decision-making process, supported by a modest staff, would center on 10 criteria for reviewing development and subdivision plans that would involve significant environmental, aesthetic, and/or community impacts. This review of development by local Vermont citizens has, with the 10 criteria, been the center of the Act 250 process ever since.

Act 250 also established the Vermont Environmental Board to review appeals of District Commission rulings. Its original members included a natural-science professor, an architect, a realtor, a community leader and homemaker, a county extension agent, a ski area operator, an engineer, a businessman, and a county sheriff. This lay board heard District Commission appeals for 35 years, until the general appeal function was transferred to the Environmental Court in February 2005.

The 10 criteria of Act 250 have changed little since the passage of the law. Improvements have been adopted, however, to make the system more efficient. In 1994 the Vermont Legislature passed changes to the law designed to improve the efficiency of the process. In addition, the District Commissions also began encouraging parties to mediate their issues rather than go through extended adversarial hearings. In 2004 the Legislature adopted additional organizational and substantive changes to the law. The Environmental Board and Water Resources Board were combined into a single entity, the Natural Resources Board. The Land Use Panel of the Board oversees the Act 250 program, while the Board’s Water Resources Panel provides a forum for meaningful citizen



involvement in the development of water resources management and wetland protection policies. As part of the 2004 amendments, all appeals of District Commission decisions, as well as permit decisions of the Agency of Natural Resources, are now heard by the expanded Environmental Court.

The District Commissions are the focal point of the Act 250 process. While the number of applications in the early years of the law were modest, the District Commissions today receive between 600 and 800 applications per year — and they approve more than 98 percent. Many plans are modified during the application process, and District Commissions generally attach conditions to land-use permits, to make sure that the Act 250 criteria are satisfied.

Because of the Act 250 process, the quality of development in Vermont is generally higher than in states without comprehensive land use laws. Act 250 was designed to achieve a balance between economic development and the legitimate interests of citizens, municipalities, and state agencies in protecting the environment. Innovative and bold at its inception, Act 250 is now part of the fabric of Vermont.

*Act 250 was an idea whose time had come. It represented an intuitive, bipartisan, Vermont response by our then-governor, Deane C. Davis, to a clear and present danger ... History records that the most significant period of economic growth in Vermont has occurred following enactment of this visionary statute, which insists that Vermont will employ value-driven criteria as the basis for development decisions. It has tempered how we have grown in a manner that helps make this state the special world that it is.*

Thomas P. Salmon  
Governor of Vermont, 1973-77

## 2. Impacts and Benefits

### *The Difference Act 250 Has Made for Vermont*

The main impact of Act 250 sometimes becomes clearest when a traveler compares Vermont with the many parts of the U.S. countryside where growth has been unrestrained. Vermont's experience has shown that protecting environmental integrity and the strength of communities benefits everyone, forming a strong basis for both Vermont's economy and its way of life.

The Act 250 process can still be complex. Developers and their engineers and consultants have learned that one of the best ways to ease the process of obtaining an Act 250 land use permit is to plan their project to satisfy the 10 criteria. This is true for the natural-resource criteria, and for the criteria that involve fiscal and economic issues. It is true for Criterion 10, conformance with town and regional plans; and it is especially true for Criterion 8, Aesthetics. Developers tend to plan with all 10 criteria in mind — and this is the primary reason for the high quality of development in Vermont.

As a result of Act 250, landscaping plans and color schemes are designed so that small and large projects fit within the landscape. Careful planning under the criteria can significantly soften the aesthetic impacts of virtually every project. The overall result is that, in spite of unparalleled development since the 1960s, the state has for the most part retained its unsurpassed scenic qualities.

It is worth noting that commercial "strip" development, which has marred the Vermont landscape outside several cities and larger towns, mostly involves a sprawl of smaller-scale projects that do not fall under Act 250 jurisdiction.

#### **Citizen Voices and Collaboration**

Because citizens have a voice in the Act 250 process, applicants often work with neighbors and other interested citizens and groups to address the concerns of people who will be affected by a proposed development. This can result in a collaborative planning process that resolves







*Vermont's economy has always been dependent on the use and enjoyment of the state's natural resources. Protecting these natural resources is a prime focus of the 10 criteria of Act 250.*

issues and mitigates impacts even before the permit application is filed. When this occurs, all those who participate have some sense of ownership in the end product.

Even when Vermont's economy suffers a downturn, the Act 250 process has tended to soften the impacts. Because of the 10 criteria, development projects that go forward are often better planned, designed, and constructed than similar projects in other states. As a result, Vermont developments tend to stay economically viable, in both good and difficult times.

The Act 250 criteria have clearly protected many important natural resources — water and air quality, wildlife habitat, and agricultural and forestry soils — that have long been valued by Vermonters and have served as the backbone of the state's economy. As the Vermont economy continues to shift more toward tourism and recreation, it becomes even more important to continue protecting Vermont's scenic and natural beauty. No single law can protect all of Vermont's unique attributes — but Act 250 has played, and continues to play, a critical role in maintaining the quality of life that Vermonters enjoy.

*Review under Act 250's 10 criteria requires that a commercial or residential development be well planned, protecting important resources on the site, such as primary agricultural soils.*



# 3. What It Is and How It Works

## *A Basic Introduction to Act 250*

In passing Act 250, the Vermont Legislature declared that “it is necessary to regulate and control the utilization and usages of lands and the environment to insure that, hereafter, the only usages which will be permitted are not unduly detrimental to the environment, will promote the general welfare through orderly growth and development and are suitable to the demands and needs of the people of this state.”

Findings and Declaration of Intent  
Vermont’s Land Use and Development Law  
Title 10, Chapter 151 (Act 250)

Act 250 (officially, Vermont’s Land Use and Development Law) requires that certain kinds of development and subdivision plans first obtain a land use permit prior to construction. To obtain a permit, developers or landowners apply to the District Environmental Commission administering the law in that particular district. Each District Commission has three members and up to four alternates, all of whom are district residents appointed by the governor.

The District Commission reviews each application carefully, then either grants a permit, generally with conditions, or denies it. The Commission can also make specific findings of fact and conclusions of law that explain its decision in detail.

The Commission must base its review and decision on Act 250’s 10 criteria. Primarily, these focus on the development or subdivision’s projected impacts on air and water quality, water supplies, traffic, educational and municipal services, and historic and natural resources, including scenic beauty and necessary wildlife habitat. Developments must also conform to local and regional land-use plans.

By law, parties to an Act 250 hearing include the applicant, the municipality and its planning commission, the regional planning commission, and affected state agencies. Adjoining property owners and other persons or organizations whose interests may be affected by the proposed project may also petition the District Commission for party status.



*As a part of the application review process, the District Commission or its staff conduct a site visit to review the plans for the proposed development and to assess the potential for environmental impacts.*



After a District Commission makes its decision, any party to the hearing may appeal the decision to the Vermont Environmental Court. Decisions of the Environmental Court may be appealed to the Vermont Supreme Court. Act 250 permits do not supersede or replace the requirements of other local and state permits.

## What Land Uses Require an Act 250 Permit?

- Construction for commercial or industrial purposes on more than 10 acres (except for farming or forestry); or on more than one acre, if the municipality does not have both permanent zoning and subdivision bylaws.
- The construction of 10 or more housing units, including mobile-home parks, within a radius of five miles and within a continuous period of five years. Note: In “designated downtowns” the 10-unit threshold may be higher for certain types of projects involving mixed income housing and mixed uses. See the District Coordinator for your area for more information.



*In towns without permanent zoning and subdivision regulations, an Act 250 permit is required for commercial projects on parcels of more than one acre; in towns with zoning and subdivision regulations, an Act 250 permit is required for commercial development on parcels which are more than 10 acres in size.*



- The subdivision of land into 10 or more lots of any size within a five-mile radius, or within the jurisdiction of a District Commission, during a continuous five-year period.
- The subdivision of land into six or more lots within a continuous five-year period in a town which does not have both permanent zoning and subdivision regulations.
- Construction of improvements for commercial, industrial or residential use above 2,500 feet in elevation.
- Any construction that would substantially change or expand a pre-1970 development that would require a permit if built today.
- Construction for a governmental purpose if the project

*(list continues on next page)*



*The construction of 10 or more housing units, such as condominiums, apartments, or mobile homes, requires a developer to obtain an Act 250 permit.*



*The subdivision of land into 10 or more lots, in towns with permanent zoning and subdivision regulations, also requires an Act 250 permit.*



*Any construction for commercial, industrial or residential use above the elevation of 2,500 feet requires an Act 250 permit.*

involves more than 10 acres, or is part of a larger project that will involve more than 10 acres of land.

- The construction of a support structure, 20 feet tall or higher, primarily for communication or broadcast purposes.
- The exploration, beyond the reconnaissance phase, or the extraction or processing of fissionable source materials.
- The drilling of an oil or gas well.
- The sale, by public auction, of any interest in a tract of land or tracts of land, owned or controlled by a person, which have been partitioned or divided for the purpose of resale into five or more lots within a radius of five miles and within any period of ten years.

### **Exempt Land Uses**

The following activities are exempt from Act 250 jurisdiction:

- Farming and forestry below the elevation of 2,500 feet.
- Construction of electric generation and transmission facilities regulated by the Public Service Board.
- Agricultural fairs and horse shows which do not involve construction of buildings and which are open to the public for 60 days or less per year.



*Farming activities are specifically exempt from Act 250.*



# 4. Who Makes the Decisions

## *An Overview of the System*

**N**ine District Environmental Commissions make the decisions on Act 250 permit applications. The Vermont Environmental Court considers appeals of District Commission decisions; any party to the hearing on a particular application may appeal to the Court. Decisions of the Environmental Court can be appealed to the Vermont Supreme Court.

### The District Commissions

In creating Act 250, the Vermont Legislature divided the state into nine districts, partly by county boundaries but also by geographic and economic regions. Each of the nine is served by a District Environmental Commission, whose makeup includes a chairperson, two members, and up to four alternates.

These are the nine districts:

- **District 1** — Rutland County
- **District 2** — Windham County and the southern half of Windsor County
- **District 3** — Northern Windsor County and Orange County
- **District 4** — Chittenden County
- **District 5** — Washington and Lamoille Counties, and the towns of Williamstown, Washington, and Orange
- **District 6** — Franklin and Grand Isle Counties
- **District 7** — Caledonia, Orleans, and Essex Counties
- **District 8** — Bennington County
- **District 9** — Addison County

Five regional offices serve the nine districts, as shown on the accompanying map.

Each District Commission reviews applications for land use permits, holding hearings on approximately 20 percent of applications and processing the remainder without a hearing. Based on the evidence before

them, District Commissions can grant a permit, deny it, or grant it with conditions.

In Act 250, the Legislature created a process of review by local citizens with a district-wide or regional perspective. Each commissioner is a district resident appointed by the governor. Commissioners are laypeople, neither active elected officials nor state employees. They are compensated for their time and expenses, but are not salaried. Generally, commissioners hold other jobs or are retired. They serve four-year terms, except for the chairperson and alternates, whose terms last two years.

### The Commission Staff

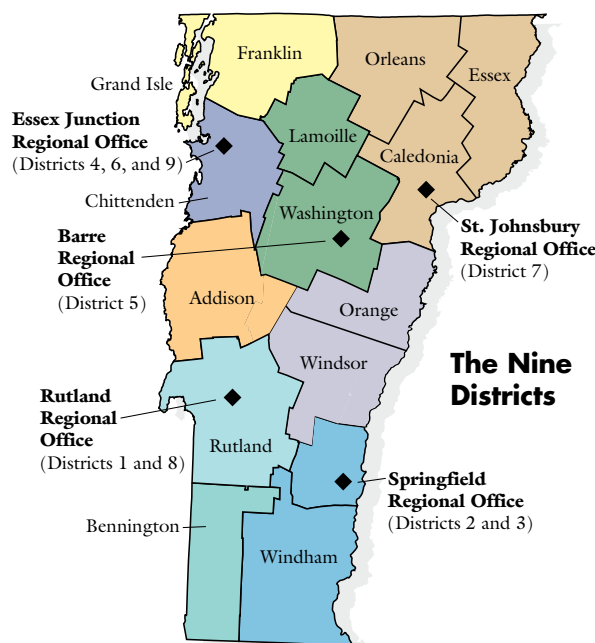
District Commissions are staffed by district coordinators, assistant coordinators, and administrative staff, all of whom are located in the regional offices.

District coordinators and their staffs make the process work. They answer questions, keep records, issue jurisdictional rulings, and provide information about the Act 250 process. They also help applicants prepare materials for presentation to the District Commission, assist at hearings, and draft Commission decisions after hearings adjourn.

They also work on enforcement matters.

Anyone with a question about Act 250 — whether a project has or needs a permit, or if and when a hearing is scheduled — should call the district coordinator for the district involved. (See Section 7 for contact information.)

A chief coordinator, working in the Montpelier office of the Natural Resources Board, assists the nine district coordinators and does administrative work for the Board.



**The Nine Districts**



*Neighbors, town officials, and others can attend the site visit which is held prior to the public hearing for a proposed development. Approximately 20 percent of Act 250 applications are scheduled for a public hearing, while the remaining 80 percent are processed as “minor” applications with no public hearing unless requested.*

## **The Natural Resources Board**

The Natural Resources Board (NRB) was created by Act 115 of the Vermont General Assembly to succeed the Vermont Environmental and Water Resources Boards on February 1, 2005. The NRB has nine members, each appointed by the governor and confirmed by the Vermont Senate. Like the district commissioners, Board members are citizens who serve as required, and are not salaried state employees. They serve four-year terms, receive per diem pay and compensation for expenses.

The Natural Resources Board’s Chairperson is its presiding officer and directs Board policy. The Chair is employed as a state official, and serves at the discretion of the governor.

The members of the Natural Resources Board are divided into two, five-member panels: the Land Use Panel and the Water Resources Panel. The NRB Chair also chairs each of the two panels. The Water Resources Panel adopts rules relating to wetlands and the use of Vermont’s public waters, while the Land Use Panel has primary authority over the Act 250 program, including the adoption of rules to interpret and administer the law. These rules are an indispensable companion to the law itself.

## **The Environmental Court**

Appeals of a District Commission decision to the Environmental Court can be made by any party to the hearing on that application. The applicant, the municipality or its planning commission, the regional planning commission, and affected state agencies are automatically entitled to party status. Adjoining property owners, other persons, and organized groups may also petition the District Commission to participate as a party on one or more of the 10 Criteria. Any party may appeal a decision of the Environmental Court to the Vermont Supreme Court.

The Court also hears appeals of jurisdictional rulings issued by the District Coordinators. These Court decisions can also be appealed to the Supreme Court by any party.

## **The Natural Resources Board Staff**

A full-time executive director heads the Natural Resources Board staff, and a general counsel oversees a small staff of attorneys who advise the Board and each of its panels. A full-time enforcement attorney directs the Board’s efforts to ensure compliance with land use permits issued by the District Commissions. The Board also employs a business manager and other administrative personnel.



# 5. The 10 Criteria

## *The Heart of Act 250*

**T**he 10 criteria described in this section must, by law, be the basis of all District Environmental Commission decisions on applications for land use permits.

Though the Act 250 review process has sometimes been criticized, the 10 criteria have clearly stood the test of time and heavy use. They focus development review on values that Vermonters share: the importance of our natural resources, of our environmental quality and scenic beauty, and of orderly development at a scale our communities and public facilities can absorb without undue strain or adverse effect.

Here are brief descriptions of the 10 criteria:

### **1. Water and Air Pollution**

A development must not result in undue air or water pollution. This can include both direct and diffuse, or non-point, sources of air pollution, such as vehicle exhaust from a project that generates much traffic. Less obvious forms of air pollution — such as dust, noise, and odor — are also covered, and can be especially important when a project would be close to population centers.

Protecting water quality in specific ways are seven subcriteria:

#### **1(A) Headwaters**

An applicant must show that the proposal will not reduce the quality of surface or groundwater flowing through especially sensitive water sources, such as high-elevation areas, small drainage basins, watersheds of public water supplies, and aquifer recharge areas.

#### **1(B) Waste Disposal**

A development or subdivision must not “result in the injection of waste materials or harmful or toxic substances into groundwater or wells.” Soils must be adequate for on-site sewage disposal, or a municipal treatment system must have adequate reserve capacity. Also, stormwater runoff from the developed site must not cause pollution or sedimentation in nearby streams.

#### **1(C) Water Conservation**

To protect Vermont’s water supplies, new developments must use the best available technology for water conservation.

#### **1(D) Floodways**

To protect public safety and prevent flooding damage, if a project will be located in a floodway or on its fringes, it must not restrict or divert the flow of floodwaters. Also, a new development must not significantly increase

the peak discharge of a river or stream within or downstream from the area to be developed.

#### **1(E) Streams**

To the greatest extent possible, projects near streams must maintain the stream’s “natural condition” — and must not endanger the health, safety, and welfare of adjoining landowners or the general public.

Maintaining a stream’s natural condition means controlling erosion, maintaining stream banks, and not degrading the water quality. This often requires a buffer zone between the project and the stream. When impacts on a stream cannot be avoided, measures must be taken that adequately protect the stream’s integrity.





### 1(F) Shorelines

Any applicant proposing a project along a lake, pond, or river shoreline must show that this location is necessary to fulfill the project's purpose. The applicant must also prove that the natural condition of the shoreline will be maintained to the greatest feasible extent. This may mean planting new vegetation to shield the project from the water body, and/or to stabilize the bank against erosion.

Also, a project must not diminish continued public access to public waters.

### 1(G) Wetlands

Developments must not violate the rules of the Vermont Water Resources Panel that protect "significant" wetlands. Among other factors, wetlands are deemed



significant when they filter pollutants, reduce erosion, recharge water aquifers, reduce flooding, provide recreational or educational opportunities, or provide vital habitat or breeding grounds to fish, other wildlife, or endangered or threatened plants.

If a project involves a significant wetland, the District Commission must decide whether the proposed use of the wetland is "allowed" or "conditional" under Vermont Wetland Rules. Wetlands may not be drained, dredged, or filled, or be adversely affected by a change in water flow. However, educational, recreational, and wildlife management uses are allowed.

Applicants whose projects would disturb a wetland or its buffer zone must obtain a "conditional use determination" (CUD) from the Vermont Agency of Natural Resources, by proving that the project will not adversely affect the wetland.

Even if not found significant under Wetland Rules, a wetland may still be protected under Act 250 criteria on waste disposal, erosion control, flooding, shorelines, or necessary wildlife habitat.

## 2. Water Supply

Applicants must show that sufficient water is available for the reasonably foreseeable needs of their development. This water must come from a private source, such as a spring or well, or from a municipal water system or other public source.



### 3. Impact on Existing Water Supplies

If a proposed project will use an existing water supply, it must not unreasonably burden that supply. This protects existing users of a private or public water supply from having that supply diminished.

### 4. Soil Erosion

Because soil erosion from development sites is a principal cause of water pollution in Vermont, a proposed project must not cause “unreasonable soil erosion or reduction in the capacity of the land to hold water.” Satisfying this criterion may require the use of erosion-control measures to contain soil on the site before it flows downhill toward a stream or river. These devices may be removed once a site is stabilized by new vegetation or impervious surfaces.



### 5. Traffic

Review under this criterion most often focuses on safety and congestion related to automobile traffic — but it can also involve traffic on waterways or railways, in airports or airways, or in any other means of transportation, current or proposed.

The District Commission may consider the impacts of a proposed development on safety at intersections, signalization, the number of travel lanes, the width of roads, speed



limits, and whether an area is at high risk for accidents. The Commission can also consider how much traffic adjoining roadways can handle, especially at peak hours.

The Commission cannot deny a permit application under this criterion. But it can impose reasonable conditions in a permit, such as requiring that turning lanes or other traffic improvements be installed.

### 6. Educational Services

This criterion addresses the impact of a development or subdivision on the ability of a municipality to provide educational services. If a residential or commercial project will necessitate an expansion of the town’s educational facilities and if the tax revenues to be generated by the project will not cover the costs of this expansion, this may pose an unreasonable financial burden on the town’s ability to educate its students. Review under this criterion is designed to relieve such projected negative impacts.



### 7. Municipal or Government Services

This criterion ensures that a proposed project will not place an unreasonable burden on the ability of a municipality to provide such vital services as waste disposal, fire and police protection, rescue services, water and sewage treatment, and road maintenance.

### 8. Scenic and Natural Beauty, Aesthetics, Natural Areas, Historic Sites

This criterion addresses a range of issues, from scenic quality to impact on historic areas. Under the first part of the criterion, the District Commission asks two essential questions:

- Will the project have any “adverse” aesthetic impacts on the scenic quality of the area? And, if so,
- Will those impacts be considered “undue” when taking into consideration the type of development proposed and its surroundings?



This criterion also requires that a development not have undue adverse impact on a recognized natural area, or on any site that is listed on the state or national register of historic places. If a site is deemed historically significant by the Vermont Advisory Council on Historic Preservation, it also qualifies for protection under this criterion.

#### **8(A) Necessary Wildlife Habitat and Endangered Species**

If a development or subdivision “will destroy or significantly imperil” necessary wildlife habitat or endangered species, the District Commission must weigh the economic, social, cultural, or recreational benefit offered by the development against the economic, environmental, or recreational benefit provided by the habitat or species. The review must also consider whether the applicant will use all “feasible or reasonable means of preventing or lessening” this adverse impact.

Most projects can be designed to avoid undue adverse impact on these resources.



### **9. Conformance with Capability and Development Plan**

This criterion covers a number of issues that relate to public and private infrastructure, natural resource areas, and planning for orderly growth.

#### **9(A) Impact of Growth**

The projected growth from a project, together with other growth expected by the town or region, must not unduly burden the town or region’s financial capacity to provide such needed services as education, fire, police, and sewage disposal. Large projects, especially, are carefully reviewed under this subcriterion.

#### **9(B) and 9(C) Primary Agricultural Soils and Productive Forest Soils**

The District Commission must find that the proposed project does not result in any reduction of the potential of primary agricultural soils or productive forest soils or find that the project meets the subcriteria of 9(B) and 9(C) and any applicable rules of the Land Use Panel.

#### **9(D) and 9(E) Earth Resources**

These subcriteria protect lands with high potential for the extraction of earth resources. They cover the actual impacts of a resource extraction project, and also require planning for future rehabilitation of the site. The aim is to protect important earth resources from being destroyed by development, and to make sure that resource extraction



does not impair water quality, visual resources, and future alternate uses of the area. Applicants must also address such issues as noise, dust, and traffic impacts resulting from a resource extraction project.

### 9(F) Energy Conservation

A project must use the best available technology for the efficient use or recovery of energy, based on reasonable estimates of life-cycle cost to the ultimate consumer. The result is lower utility bills today, and the conservation of energy resources for the future.



### 9(G) Private Utility Services

When a subdivision or development relies on privately owned utility services — such as roads or wastewater facilities — the applicant must show that adequate legal and financial mechanisms are in place to protect the municipality in case it must assume responsibility for these utilities. The District Commission may condition the land use permit to require the applicant to maintain, repair, and replace private utilities when necessary.

### 9(H) Costs of Scattered Development

When a proposed development will be located outside an existing settlement, such as a town center, the costs of public services and facilities that the development requires must not outweigh the tax revenues or other public benefits — such as new jobs, or needed housing — that the development will bring.

### 9(J) Public Utility Services

The District Commission must find that a proposed project will not place an unreasonable burden on electric, gas, or other public utilities. This promotes sound energy planning for the future.

### 9(K) Development Affecting Public Investments

A project must not needlessly or unreasonably endanger public investments — such as schools, parks, roads, or waste disposal facilities, among others — that are located next to the proposed development. For example, a



development must not interfere with public access to a next-door school or park.

### 9(L) Rural Growth Areas

To help protect municipalities from undue financial burdens, developments and subdivisions in rural growth areas must be planned in order to “economize on the cost of roads, utilities, and land usage.” This is one of several criteria in Act 250 that are intended to protect municipalities from undue financial burdens caused by new development.

## 10. Local and Regional Plans

Any proposed project must conform with duly adopted local and regional plans. These plans are updated with public input in Vermont every five years, taking into account recent changes in population, land use, and public infrastructure. This criterion seeks to ensure that new development respects the wishes of Vermont citizens about the future of their town and region.



## 6. How, What, and Where?

### *Answers to Frequently Asked Questions*

*Please note: Addresses and phone numbers of all Act 250 offices are listed in Section 7, and on our Web site: [www.nrb.state.vt.us/lup](http://www.nrb.state.vt.us/lup)*

#### **What is Act 250?**

Act 250 is a Vermont law designed to control development proposed on a relatively large scale, and/or in sensitive areas. The Act 250 process both protects Vermont's environment and gives neighbors, municipalities, local and regional planning commissions, and other interested parties a chance to participate and express concerns.

#### **How does Act 250 work?**

Development and land subdivision proposals that fall under the Act's jurisdiction must apply for a land use permit. This permit can be granted, denied, or granted with conditions by one of Vermont's nine District Environmental Commissions, whose members are laypersons appointed by the governor. To learn more, see Section 4. District Commission decisions can be appealed to the Vermont Environmental Court.

#### **Isn't it very difficult to get an Act 250 permit?**

Act 250 is a comprehensive law that evaluates the probable impact of developments according to a set of 10 criteria. But of the 600-800 Act 250 applications that are submitted each year throughout Vermont, about 98 percent are approved — most with conditions, to ensure that they meet the 10 criteria. Generally, 80% of Act 250 permit applications are treated as "minors" — where no hearing is held unless requested.

#### **What are the 10 criteria?**

These are the specific standards that District Commissions must use to evaluate every development and subdivision application that falls under Act 250. The 10 criteria focus on projected impacts on air and water quality, water supplies, traffic, local schools and services, municipal costs, and historic and natural resources, including scenic beauty. Developments must also conform to local and regional land use plans. For more details, see Section 5.

#### **How do I know if I need an Act 250 permit for my project?**

An Act 250 permit is required for certain kinds of development — such as subdivisions of 10 lots or more, the building of 10 or more housing units, development above 2,500 feet in elevation, and commercial projects on more than 10 acres (if the town has permanent zoning and subdivision regulations) or on more than one acre (if it does not). These categories are briefly described in Section 3. To determine whether you need a permit, contact your Act 250 district coordinator (see the list in Section 7).

#### **How much does it cost to obtain an Act 250 permit?**

The application fee is \$4.75 per \$1,000 of construction costs, including site preparation, utilities, buildings, and landscaping. (For example, a \$100,000 project would have an Act 250 application fee of \$475.) In addition, a fee of \$100 per lot is required for residential or commercial subdivisions. Municipal and state projects are exempt from Act 250 fees.

#### **What is the difference between a "major" and a "minor" application?**

A "major" application is subject to a public hearing before the District Environmental Commission. A "minor" application will not receive a public hearing unless one is requested by an interested party, a local or state agency, or the District Commission.

It is only after an application is submitted that the District Commission determines whether it is major or minor. A well-planned project and a thoroughly completed application will improve the likelihood of an application being processed as a minor.

#### **How long does it take to get an Act 250 permit?**

Two-thirds of Act 250 permits are issued in less than 60 days. More complex projects, in particular, may take longer. In general, the more effort you put into preparing a complete and thorough application, the less time the review process will require.



## **Where can I get a copy of the Act 250 application forms?**

You can:

- obtain the application forms on our Web site (see the address above);
- pick them up at any of the five regional Act 250 offices (see the addresses and phone numbers in Section 7), or at the office of the Natural Resources Board in Montpelier (also in Section 7);
- call and ask us to send you the forms by mail; or
- purchase a copy on disk, by calling the Natural Resources Board at (802) 828-5441.

## **How can I get help filling out the application?**

If you are new to the Act 250 process, or have questions about filling out the application, we encourage you to schedule a pre-application meeting with the district coordinator or assistant coordinator. They will discuss your project and how to fill out the forms.

If you feel you need more extensive help, private Act 250 consultants are also available (for a fee).

## **A proposed development project located on a property near mine is going through the Act 250 process. Can I participate?**

If you are an adjoining property owner, you will be notified by mail when the Act 250 application is filed. Adjoining property owners and other persons or organizations with interests that may be affected by the project can petition the District Commission for party status under one or more of the 10 criteria. Party status enables full participation under those criteria and also the right of appeal.

In either case, to request party status from the District Commission, you need to attend the first hearing or the prehearing conference, if one is held. To learn more about party status, contact the district coordinator in your area.

## **Is Act 250 the only permit I need?**

Along with an Act 250 permit, chances are your project will require other permits, issued by the municipality and other state agencies. Having received some of these permits can create a presumption before the District Environmental Commission that your project complies with one or more of the Act 250 criteria.

The Agency of Natural Resources publishes the Vermont Permit Handbook, a comprehensive listing of permits and licenses commonly required by all Vermont agencies, departments, and the U.S. Army Corps of Engineers. The Permit Handbook can be viewed on line at ANR's web site ([www.anr.state.vt.us](http://www.anr.state.vt.us)) or by visiting ANR's main office in Waterbury or one of the five regional Act 250 offices (see Section 7).

If you have any more questions about Act 250, please call the district coordinator in your area. See the list in Section 7 — or check the Web site: [www.nrb.state.vt.us/lup](http://www.nrb.state.vt.us/lup).

# 7. Where to Go for Help

## *A Guide to Act 250 Information and Assistance*

*A. If you have questions about whether your project needs a permit, or about pending applications, call the District Environmental Commission office that serves your area:*

**District 1 — Rutland County  
District 8 — Bennington County**

440 Asa Bloomer State Office Building  
4th Floor  
Rutland, VT 05701  
(located at 88 Merchants Row)  
786-5920

**District 2 — Windham County  
and the southern half of Windsor County  
District 3 — Northern Windsor County  
and Orange County**

100 Mineral Street  
Suite 305  
Springfield, VT 05156  
885-8855

**District 4 — Chittenden County  
District 6 — Franklin and  
Grand Isle Counties  
District 9 — Addison County**

111 West Street  
Essex Jct., VT 05452  
879-5614

**District 5 — Washington and Lamoille  
Counties, and the towns of Williamstown,  
Washington, and Orange**

5 Perry Street, Suite 60  
Barre, VT 05641  
476-0185

**District 7 — Caledonia, Orleans,  
and Essex Counties**

1229 Portland Street  
Suite 201  
St. Johnsbury, VT 05819  
751-0120

*B. If you have a question about an appeal, call:*

**Vermont Environmental Court**  
2418 Airport Road  
Barre, VT 05641  
828-1660

*C. For the Act 250 statute, application forms,  
rules, announcements, staff listings, etc.,  
check the Web site:*

**[www.nrb.state.vt.us/lup](http://www.nrb.state.vt.us/lup)**





**State of Vermont**  
**Natural Resources Board**  
Montpelier, Vermont