

STATE OF VERMONT
NATURAL RESOURCES BOARD - DISTRICT COMMISSIONS

ACT 250

The following general information is provided to assist participants and observers at Act 250 hearings in following and understanding what is taking place. In all cases when specific information about Act 250 is required, you should refer to 10 V.S.A. Chapter 151 (the Act 250 statute) and the Act 250 Rules, available from the Natural Resources Board's main office and regional offices, as well as on our web site (see next page for addresses).

The Act 250 hearing is conducted by a three-member District Environmental Commission. Each Commission also has up to four alternate Commissioners. The Commissioners are appointed by the Governor of the State of Vermont. Their responsibility is to consider evidence presented by legally designated parties and to evaluate each Act 250 application in accordance with the 10 Criteria below. The District Coordinator's role is to assist the District Commission in the procedural aspects of the application review, as well as to provide advice to the applicant and the various parties.

Statutory parties are: the applicant; the municipal planning commission; the municipality (represented by either the selectboard, aldermen, or trustees), the regional planning commission; and affected State agencies. Adjoining property owners and other persons with a particularized interest that may be affected under any of the 10 Criteria may also be admitted as parties, pursuant to 10 V.S.A. Sec. 6085.

Adjoining property owners, other persons, and organizations seeking party status must make their request on or before the first day of the hearing (or prehearing conference if one is held) and must state the details of their particularized interest in the proceedings under the 10 criteria of Act 250. "Particularized Interest" means any interest protected under the Act 250 criteria that may be affected by the proposed project. In the case of an adjoining property owner, those interests often relate directly to the potential for impacts on land owned next to the project tract, but the interests need not relate to land ownership or the land itself. The interest must be specific and particular to the individual and thus distinguishable from the interests of the general public. For instance, a petitioner for party status must adequately demonstrate a potential impact relating to aesthetics, noise, stormwater runoff, traffic, air or water pollution, or other project impacts under the criteria that are specific to that individual. A party status request by a person must provide a description of the location of the person's property in relation to the proposed project. A request by an organization must describe the organization, its purposes, and the nature of its membership.

The District Commission may also allow persons not accorded party status the opportunity to participate in the proceeding as a "friend of the commission," pursuant to 10 V.S.A. Sec. 6085(c)(5). In this instance, the participation may be limited to the filing of memoranda, proposed findings of fact and conclusions of law, and argument on legal issues. A petition to participate as a friend of the commission shall identify the interests of the petitioner, the desired scope of participation, and shall state the reasons why the petitioner's participation will be beneficial to the District Commission.

10 CRITERIA

Before granting a permit, the District Commission must ensure that the development or subdivision meets the following criteria:

- (1) Will not result in undue water or air pollution.

This criterion deals with water and air pollution generally and such specific matters relating to water pollution as: (A) Headwaters; (B) Waste disposal (including wastewater and stormwater); (C) Water Conservation; (D) Floodways; (E) Streams; (F) Shorelines; and (G) Wetlands.

- (2) Has sufficient water available for the needs of the subdivision or development.
- (3) Will not unreasonably burden any existing water supply.

- (4) Will not cause unreasonable soil erosion or affect the capacity of the land to hold water.
- (5) (A) Will not cause unreasonably dangerous or congested conditions with respect to highways or other means of transportation. (B) As appropriate, will incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services.
- (6) Will not create an unreasonable burden on the educational facilities of the municipality.
- (7) Will not create an unreasonable burden on the municipality in providing governmental services.
- (8) Will not have an undue adverse effect on aesthetics, scenic beauty, historic sites or natural areas, and 8(A) will not imperil necessary wildlife habitat or endangered species in the immediate area.
- (9) Conforms with the Capability and Development Plan, including the following considerations:
 - (A) The impact the project will have on the growth of the town or region; (B) Primary agricultural soils; (C) Productive forest soils; (D) Earth resources; (E) Extraction of earth resources; (F) Energy conservation; (G) Private utility services; (H) Costs of scattered developments; (J) Public utility services; (K) Development affecting public investments; and (L) Settlement Patterns.
- (10) Is in conformance with any local or regional plan or capital facilities program.

The burden of proof is on the applicant for Criteria 1, 2, 3, 4, 9, and 10. The burden of proof is on those opposing the application for Criteria 5, 6, 7, 8, and often 9(A). A permit can be conditioned but not denied under Criteria 5, 6, and 7. Regardless of the burden of proof, the Commission must have enough information to make findings under all of the criteria.

At the conclusion of the hearing, the District Commission will either adjourn the hearing or declare a recess to allow additional information to be presented. If the hearing is adjourned, the Commission will issue a decision in the form of Findings of Fact and Conclusions of Law, and, if appropriate, a Land Use Permit, within twenty days. A decision issued by the District Environmental Commission may be appealed to the Superior Court, Environmental Division (Environmental Court) by the applicant, the town, the regional planning commission, a state agency, or any "person aggrieved" by the Commission's decision, pursuant to 10 V.S.A. Sec. 8504. An appeal of a decision of the Environmental Court is to the Vermont Supreme Court.

Act 250 permits do not supersede or replace the requirements of other local or state permits. For additional information about Act 250 and its relationship to local or state land use laws, contact the Natural Resources Board, Montpelier, Vermont (802-828-3309) or the District Coordinator at any of these locations:

Districts #1 and 8

440 Asa Bloomer State
Office Building, 4th Floor
Rutland, VT 05701
(802-786-5920)
(Location: 88 Merchants Row)

Districts #4, 6 and 9

111 West St.
Essex Jct., VT 05452
(802-879-5614)

District #7

1229 Portland St., Suite 201
St. Johnsbury, VT 05819-2099
(802-751-0120)

Districts #2 and 3

100 Mineral Street
Suite #305
Springfield, VT 05156
(802-885-8855)

District #5

5 Perry Street Suite 60
Barre, VT 05641-4267
(802-476-0185)

Natural Resources Board

Dewey Building
National Life Drive
Montpelier, VT 05620-3201
(802-828-3309)

Natural Resources Board Website: www.nrb.state.vt.us