

COMPARISON: 10 V.S.A. CHAPTER 151 (ACT 250) AND 30 V.S.A. § 248 (SECTION 248)

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AREA	<u>ACT 250</u>	<u>SECTION 248</u>
SCOPE	<p><i>Land use permit</i> required before commencing:</p> <p>Development – multiple categories including:</p> <ul style="list-style-type: none"> • Construction of improvements for commercial or industrial purposes on more than 10 acres of land, or on more than 1 acre if the town does not have both zoning and subdivision bylaws • Construction of 10 or more housing units (threshold higher in certain designated centers) • Construction of improvements for commercial, industrial or residential use above 2500 feet • Construction of a support structure primarily for communication or broadcast purposes if 50 feet or more in height above ground or 20 feet or more above highest point of attached existing structure <p>Subdivision – multiple categories including:</p> <ul style="list-style-type: none"> • Creating 10 or more lots within a five-mile radius or within the area of a District Commission, within a 5-year period • Within a town that does not have both zoning and subdivision bylaws, creating 6 or more lots within a 5-year period • Sale by public auction of any interest in land divided for resale into 5 or more lots within a radius of five miles and within 10 years 	<p><i>Certificate of public good</i> required for:</p> <ul style="list-style-type: none"> • Utility purchase of electric energy or capacity from outside the state for more than 5 years or, in the case of renewable energy, more than 10 years, if purchase exceeds certain percentages of demand • Utility investment in an electric generation or transmission facility outside the state • Construction of or site preparation for in-state electric generation, transmission, and natural gas facilities <ul style="list-style-type: none"> ▶ Natural gas facility: “any natural gas transmission line, storage facility, manufactured-gas facility, or other structure incident to any of the above” • Placement of wireless telecommunications facilities on in-state electric generation or transmission <p>Emergency waivers, to be of limited duration, available for electric transmission facilities, electric generation facilities necessary to assure reliability, and natural gas facilities</p> <p>Notice to Public Service Board required for utility investment in out-of state gas-production facility, or gas purchase > 5 years, if purchase > 10% of demand</p> <p>Opinion may be issued on natural gas facility that requires federal approval</p>
EXEMPTIONS	<ul style="list-style-type: none"> • Pre-existing development or subdivision, unless there is a substantial change • Logging, farming, forestry below 2500 feet 	<ul style="list-style-type: none"> • Replacement with equivalent facilities in the usual course of business • Electric generation solely for on-site consumption by

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	<ul style="list-style-type: none"> • Electric transmission and generation and natural gas facilities (§248) • Wireless telecommunications facilities receiving approval under § 248a • Others 	<p>the owner</p> <ul style="list-style-type: none"> • A natural gas facility by a “company” as defined in the federal Natural Gas Act, except to the extent the company proposes a natural gas facility in Vermont that is not solely subject to federal jurisdiction
DECISION-MAKER	District Environmental Commissions (state divided into nine environmental districts)	Public Service Board
RULES & PROCEDURES	Natural Resources Board	Public Service Board
PARTICIPATION	<p>Statutory parties: applicant; landowner if other than applicant; municipality; municipal and regional planning commissions; affected state agencies</p> <p>Adjoining property owners and other persons may become parties if they demonstrate a particularized interest affected under one or more of the Act 250 criteria</p> <p>Statute authorizes “friends of the commission”</p>	<p>Statutory parties: Department of Public Service; Agency of Natural Resources; regional planning commission</p> <p>Other entities may be granted intervention by right or by permission under the Board’s rules</p> <ul style="list-style-type: none"> • Party by right must show a statutory right to intervene or: (a) a substantial interest that may be adversely affected by the outcome, (b) the proceeding is the exclusive means to protect that interest and (c) the interest is not adequately represented by existing parties • Party by permission must show a substantial interest that may be affected by the outcome of the proceeding and must address: (1) whether the interest will be adequately protected by other parties; (2) whether alternative means exist to protect the interest; and (3) whether intervention will cause undue delay

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CRITERIA	<p>General: Any matter relevant to protecting and conserving the environment of the state – <u>In re Hawk Mt. Corp.</u>, 149 Vt. 179, 184 (1988)</p> <p>Specific:</p> <ol style="list-style-type: none"> 1. Undue <i>water</i> or <i>air pollution</i> <ol style="list-style-type: none"> A. <i>Headwaters</i> B. <i>Waste disposal</i> (including wastewater and stormwater) C. <i>Water conservation</i> D. <i>Floodways</i> E. <i>Streams</i> F. <i>Shorelines</i> G. <i>Wetlands</i> 2. <i>Sufficient water available</i> for project needs 3. Burden on <i>existing water supply</i> 4. <i>Soil erosion</i> and capacity of land to hold water 5. <i>Traffic</i> safety and congestion; incorporation of demand management strategies and connections to adjacent lands and networks 6. Burden on ability of local government to provide <i>education services</i> 7. Burden on ability to provide <i>local governmental services</i> 8. <i>Aesthetics, scenic beauty, historic sites</i>, rare and irreplaceable <i>natural areas</i> <ol style="list-style-type: none"> A. <i>Necessary wildlife habitat</i> and <i>endangered species</i> 9. Conforms with the capability and development plan, including the following considerations: 	<p>General: Any matter relevant to the “general good of the state” – <u>In re Hydro-Quebec</u>, Docket No. 5330 (Vt. Public Svc. Bd, Oct. 12, 1990)</p> <p>Specific:</p> <ol style="list-style-type: none"> 1. For in-state facility: <i>orderly development</i>, with due consideration to local plan and local and regional recommendations, except natural gas line must conform to regional plan 2. <i>Need</i> for present and future demand; comparison to energy efficiency, conservation and load management measures; consideration of economic and environmental costs 3. System <i>stability and reliability</i> 4. <i>Economic benefit</i> to the state and its residents 5. For in-state facility, <i>environmental and land use criteria</i>: <ul style="list-style-type: none"> • Aesthetics, historic sites, air and water purity, natural environment, use of natural resources, public health and safety • <i>Due consideration to Act 250 criteria 1 through 8 and 9(K)</i> 6. <i>Consistency with least-cost integrated plan</i> if purchase, investment, or construction is by a utility 7. <i>Consistency with 20-year electric plan</i>, unless good cause exists otherwise or the petition is for a natural gas facility that is not part of electric generation 8. <i>Outstanding resource waters</i> 9. <i>Waste-to-energy facility</i>; included in local solid waste plan that is consistent with state solid waste plan

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	<p>A. <i>Impact of growth</i> B. <i>Primary agricultural soils</i> C. <i>Productive forest soils</i> D. <i>Earth resources</i> E. <i>Extraction of earth resources</i> F. <i>Energy conservation</i> G. <i>Private utility services</i> H. Costs of <i>scattered development</i> J. <i>Public utility services</i> K. Impact on <i>public facilities, services, and lands</i> L. <i>Settlement patterns</i> 10. Conformance with <i>local or regional plan</i></p>	<p>10. Can be served by <i>existing or planned transmission facilities</i> 11. In-state <i>woody biomass generation</i>: air pollution control compliance, design system efficiency, harvesting procedures and procurement standards</p>
APPLICA-TION PROCESS	<p>Application form issued by Natural Resources Board</p> <p>Notice to statutory parties and adjoining property owners (by statute)</p> <p>Major application:</p> <ul style="list-style-type: none"> • Quasi-judicial hearing • May hold prehearing conference • May require prefiled testimony; typically occurs on controversial cases • Cross-examination <p>Minor application:</p> <ul style="list-style-type: none"> • District Commission issues proposed permit and findings, based on application • Parties may comment and request a hearing • Hearing if Dist. Comm. decides there is a significant issue 	<p>Petition (no form except net metering systems ≤ 150 kW)</p> <p>Notice to a list of state, regional, and municipal agencies (by statute); notice to adjoining property owners (by rule)</p> <p>Default process for purchase, investment or construction:</p> <ul style="list-style-type: none"> • Quasi-judicial hearing, and public hearing if in-state facility • Prehearing conference • Typically requires prefiled testimony • Cross-examination <p>Limited size and scope facility (in-state):</p> <ul style="list-style-type: none"> • Petitioner files proposed certificate, findings, and supporting testimony • Parties may comment and request a hearing • Hearing if Board decides there is a significant issue

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	<p>Statutory periods to hold hearing, issue decision</p> <p>Statute sets burden of proof on applicant except for Criteria 5, 6, 7, and 8, and for 9A unless the town has adopted a capital improvement program</p> <p>Rebuttable presumptions for other permits (e.g., Agency of Natural Resources) authorized by statute and implemented by rule</p> <p>No post-approval submissions and processes to demonstrate compliance with the criteria (often referred to as “conditions subsequent”)</p> <p>Re-examination of party status in final decision</p> <p>Administrative amendments by District Coordinator</p>	<p>No statutory periods to hold hearing or issue decision</p> <p>No statutory burden of proof; Board case law places on petitioner</p> <p>Board case law states rebuttable presumptions given to other permits, although there is no specific statute or rule</p> <p>Routine practice of post-decision submissions and processes to demonstrate compliance with criteria:</p> <ul style="list-style-type: none"> • Certification of general route followed by “post-certification review” • Submission of other required permits <p>For net metering systems, and wireless facilities to be placed on electric generation and transmission, Board:</p> <ul style="list-style-type: none"> • May waive inapplicable requirements and criteria • May modify notice and hearing requirements as appropriate • Shall seek to simplify the application and review process as appropriate
<p>JURISDICTION PROCESS</p>	<p>Administrative:</p> <p>Request for jurisdictional opinion to District Coordinator, with consideration of the Coordinator’s opinion by the Natural Resources Board if contested</p>	<p>Quasi-judicial:</p> <p>Petition for declaratory ruling to Public Service Board</p>

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APPEAL	<p>To the Environmental Division, Superior Court</p> <p>Review is de novo – court hears evidence on issues appealed and applies independent judgment</p>	<p>To the Vermont Supreme Court</p> <p>Review is on the record – court bases decision on the Board’s record and applies deferential standard to findings of fact, application of expertise, and interpretations of enabling statutes</p>