

Act 250 Overview for Senate Natural Resources and Energy Committee

January 27, 2015

Vermont Natural Resources Board
Ron Shems, Chair
Lou Borie, Executive Director
Melanie Kehne, General Counsel



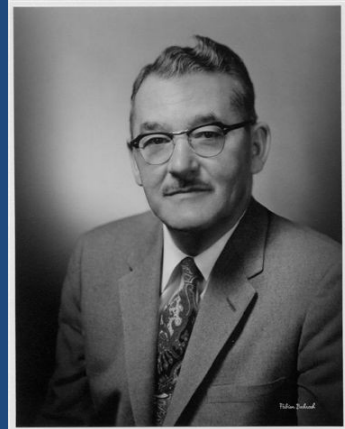
What is Act 250? Act 250 is a law which provides for a citizen-based, quasi-judicial process for reviewing and managing the environmental and fiscal consequences of major subdivisions and developments in Vermont.





History of Act 250

In 1969 Gov. Deane Davis and others became concerned about pollution of Vermont's groundwater and streams from new development, especially in and around ski areas in southern Vermont .







History of Act 250

After hearings by the Gibb Commission and statewide debate the Vermont legislature passed a law to regulate certain kinds of development at the state level, in addition to any existing local review



Natural Resources Board

NRB Chair

Natural Resources Board (4)

Alternate NRB Members (5)

General Counsel

Executive Director

Administration
Manager

Legal Staff (2)

Administrative Staff (2)

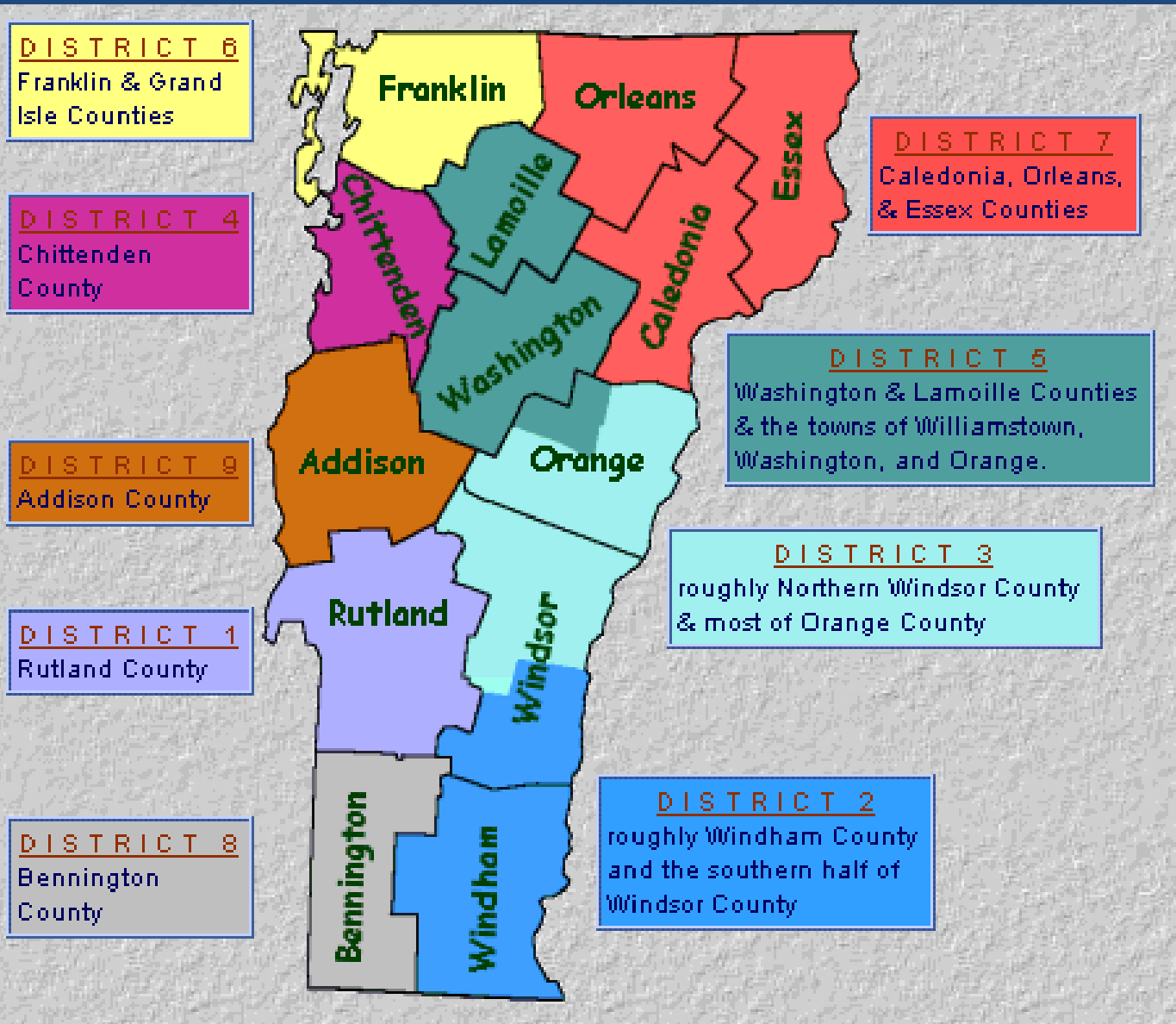
Permit Compliance Officer

Five Regional Act 250 Offices

- 9 District Coordinators
- 2 Asst. District Coordinators
- 7 Administrative Staff

- 9 District Environmental Commissions**
- Members appointed by Governor (63)
- Serve 2 – 4 years terms

9 Environmental Districts – Five Offices



District Offices:

Essex Junction
Barre
St. Johnsbury
Springfield
Rutland

District Commission and Staff

District Commission

- Quasi-judicial body
- Members appointed by Governor, not full-time employees
- Three regular members, up to four alternates
- Three commissioners sit on each case

District Coordinator

- Full-time staff to District Commission
- Provides assistance to applicants, parties, and the general public
- All communications to the District Commission must be submitted to coordinator

District Office Support Staff

- Provide clerical and administrative support

Act 250 Jurisdiction

- Subdivisions of 10 lots or more, or 6 lots in towns without permanent zoning and subdivision regulations.



Act 250 Jurisdiction

- Commercial development on more than 1 acre or more than 10 acres depending on the town.



Act 250 Jurisdiction

- State and municipal projects >10 acres disturbance



Act 250 Jurisdiction

- Housing projects with 10 or more units (higher thresholds for Priority Housing in certain designated centers)



Act 250 Jurisdiction

- Communication towers > 50 feet in height



Act 250 Jurisdiction

- Commercial, residential, or industrial development above 2,500 feet



Act 250 Jurisdiction

- Material change to an Act 250 permitted project
- Substantial changes to pre-existing (pre-1970) projects
- Any withdrawal of more than 340,000 gallons of groundwater per day, if the withdrawal requires a permit under section 1418 of this title or is by a bottled water facility regulated under chapter 56 of this title.
- Exploration for fissionable source materials beyond the reconnaissance phase or the extraction or processing of fissionable source material.
- The drilling of an oil and gas well.

Act 250 Exemptions

- Farming and logging below 2,500 feet
- Electric generation and transmission facilities and telecommunications projects regulated by PSB (Sec. 248 and 248a)
- Agricultural fairs and horse shows; no buildings; open to public for < 61 days per year
- Small scale and on-farm composting

Jurisdictional Opinion Process

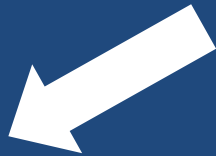
- JO Issued by District Coordinator
 - Letter form or Project Review Sheet
- Reconsideration by Coordinator within 30 days
- Appeal to Environmental Division, Superior Court, within 30 days; prior to appeal, JO is subject to reconsideration by the Natural Resources Board

Application Review Process

Completeness Review
by District Coordinator



Application to Commission
for Major/Minor
Determination



Major - 20%

Hearing scheduled

Minor - 80%

No hearing scheduled unless
requested by a party by deadline --
generally 3 weeks

Application Review Process

Major

Notice Mailed and Published in Newspaper
Within 10 days of filing of complete application

Hearing or Prehearing; Site Visit
Within 40 days of filing of complete application;
not less than 10 days from publication of notice

Hearing Recess Order
Within 14 days of hearing

Last Recess Item Received by Commission

Deliberations and Issuance of Decision
Within 20 Days of receipt of last item, last permit
or completion of deliberations

Application Review Process

Minor

Notice and Proposed Permit Mailed and Published
Within 10 days of filing of complete application

Comment Period for Hearing Request
7 - 20 days



If No Hearing Request:
Commission issues
decision after last
permit or other
evidence received
10 Days

If Hearing is Requested:
Application is processed
as major; hearing is scheduled
Within 20 days of end of
public comment period

Act 250 Party Status

§ 6085. Hearings; party status

- (c)(1) Party status.** In proceedings before the district commissions, the following persons shall be entitled to party status:
- (A) The applicant;**
 - (B) The landowner, if the applicant is not the landowner;**
 - (C) The municipality in which the project site is located, and the municipal and regional planning commissions for that municipality; if the project site is located on a boundary, any Vermont municipality adjacent to that border and the municipal and regional planning commissions for that municipality; and the solid waste management district in which the land is located, if the development or subdivision constitutes a facility pursuant to subdivision 6602(10) of this title;**
 - (D) Any state agency affected by the proposed project;**
 - (E) Any adjoining property owner or other person who has a particularized interest protected by this chapter that may be affected by an act or decision by a district commission.**

The 10 Criteria

1. Air and Water Pollution
2. Water Supply
3. Impact on Existing Water Supplies
4. Soil Erosion
5. Traffic Safety and Congestion
6. Impact on Schools
7. Impact on Municipal Services
8. Wildlife, Historic Sites, and Aesthetics
9. Impact of Growth
10. Conformance with Local and Regional Plans

Criterion 5

(5)(A) Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.

(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. In determining appropriateness under this subdivision (B), the District Commission shall consider whether such a strategy, access, or connection constitutes a measure that a reasonable person would take given the type, scale, and transportation impacts of the proposed development or subdivision.

- Applicants are now explicitly directed to incorporate TDM, Bike/ped, transit, connections when appropriate

Act 145 – Transportation Impact Fees

Provides for two scenarios by which a transportation mitigation fee may be imposed by a district commission:

- In most areas, the mitigation fee will be determined on a case-by-case basis by the District Commission if there is a planned transportation improvement project that will mitigate the impact of the development (using a fair share approach, not last-one-in)
- In areas where a higher level of development is anticipated, a Transportation Improvement District (TID) approach would be applied based on a transportation infrastructure plan.
- VTrans will establish Transportation Improvement Districts

New Criterion 9(L)

(L) Settlement patterns. To promote Vermont's historic settlement pattern of compact village and urban centers separated by rural countryside, a permit will be granted for a development or subdivision outside an existing settlement when it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision:

(i) will make efficient use of land, energy, roads, utilities, and other supporting infrastructure;

(ii)(I) will not contribute to a pattern of strip development along public highways; or

(II) if the development or subdivision will be confined to an area that already constitutes strip development, incorporates infill as defined in 24 V.S.A. § 2791 and is designed to reasonably minimize the characteristics listed in the definition of strip development under subdivision 6001(36) of this title.

Criterion 9(L)

I. **Existing Settlement.** Is the Project in a state-designated center or other Existing Settlement?

- Designated centers pursuant to 24 V.S.A. Ch. 76A:

- Downtown Development District
- Village Center
- Growth Center
- New Town Center
- Neighborhood Development Area
- Vermont Neighborhood

Other existing settlement:

- An existing center that is compact in form and size; that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other; that has significantly higher densities than densities that occur outside the center; and that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens.
- *If IN an existing settlement, 9L does not apply. If OUTSIDE of an existing settlement, apply 9L.*

Criterion 9(L)

II. Efficient Use. All projects outside existing settlements must make efficient use of:

- Land
- Utilities
- Energy
- Other supporting infrastructure
- Roads

III. Strip Development. Projects outside existing settlements cannot contribute to a pattern of strip development, but if the project is confined to an area that *already* constitutes strip development, it can infill and minimize strip characteristics.

“Strip development” means linear commercial development along a public highway with 3 or more of the following characteristics:

- Broad road frontage
- Predominance of single-story buildings
- Limited reliance on shared highway access
- Lack of connection to any existing settlement except by highway
- Lack of connection to surrounding land uses except by highway
- Lack of coordination with surrounding land uses
- Limited accessibility for pedestrians

Criterion 9(L)

- A. Is the Project “confined to” existing strip development in a built-up area? If so, project must **infill** and minimize characteristics of strip development. **Infill** means “the use of vacant land or property within a built-up area for further construction or development.” 24 V.S.A. § 2791.
- B. Will the Project contribute to a pattern of strip development? Possible Factors:
- Does the Project itself have characteristics of strip development? If the Project has one or more strip characteristics, it may be more likely to contribute to a pattern of strip.
 - Zoning of adjacent land, especially along a highway, so it is available for commercial development in strip form. Does local zoning prevent or enable strip development?
 - High traffic counts. There may be evidence in a given case that higher traffic counts increase the likelihood that a project will contribute to strip development
 - Presence or extension of municipal services. Will the Project require a sewer, water, power or other utility extension? Can the extension of municipal services open other land to development? This factor also has bearing on the question of efficient use of infrastructure.
 - Project type. Does the type of land use lend itself to strip? Industrial might not, for instance. Retail might. Land uses that generate more vehicle trips may be more likely to contribute to strip development.

Resources

- District Coordinator and Support Staff
- Natural Resources Board Administrative and Legal Staff
- Training Manual (on web site)
- Web site: www.nrb.state.vt.us
 - Will be updating this year
 - Staff addresses, phone #, email
 - Statute and Act 250 Rules
 - Environmental Board Decisions (1980 - 2008)
 - District Commission Cases (ANR Database)
 - www.nrb.state.vt.us/nrb/lup
 - E-Note Index