



ACT 47
COMMISSION ON ACT 250

The Next 50 Years

Materials from the Natural Resources Board/Act 250

Commission on Act 250: The Next 50 Years

1	HISTORY.....	1
1.1	CHRONOLOGY	1
1.3	RICHARD BROOKS (LEGAL 1970-1995)	14
1.4	RICHARD BROOKS (REFLECTIONS)	93
1.5	PAUL GILLIES (ACT 250, FROM BIRTH TO MIDDLE AGE, AND POSTSCRIPT)	104
2	PROCESS	136
2.1	HARDCOPY OF THE HISTORY AND OVERVIEW OF ACT 250 POWERPOINT PRESENTATION	136
2.2	BROCHURE.....	223
2.3	PERMIT APPLICATION PROCESS- VALUE STREAM NARRATIVE.....	225
2.3.1	<i>List of Definitions:</i>	225
2.3.2	<i>Pre-Permit Application Process</i>	225
2.3.3	<i>Permit Application Process</i>	225
2.4	VALUE STREAM MAP	227
2.4.1	<i>The Act 250 Pre-Application and Application Process as it currently exists (chart)</i>	227
2.4.2	<i>Post-LEAN revised Act 250 Application process for the future (chart)</i>	227
2.5	LISTING OF CRITERIA	228
3	REQUIRED DATA	229
3.1	MAP SHOWING LOCATION OF ALL ACT 250 BASE PERMITS.....	229
3.2	NUMBER OF PERMITS PER YEAR BY TYPE: 1970-2016.....	231
3.3	NUMBER OF DECISIONS BY DISTRICT: 2007-2016	232
3.4	COMPARISON OF PROCESSING TIMES BY DISTRICT, OVER 5 YEARS	233
3.5	INTRO- DISTRICT PROCESSING	234
3.6	DISTRICT PROCESSING.....	235
3.6.1	<i>Permits issued under 30 days</i>	235
3.6.2	<i>Permits Issued under 60 days</i>	236
3.6.3	<i>Permits issued, more than 90 days</i>	237
3.6.4	<i>Case Histories (permit issued in >60 days)</i>	244
4	STATISTICS ON APPEALS.....	245
5	ENFORCEMENT	246
6	CLIMATE CHANGE MEMO/ PETER GILL	247
7	COMMENTS COLLECTED AT COMMISSION MEETINGS, MUNICIPAL PLANNERS, MUNICIPAL DAY PRESENTATIONS	261

2 PROCESS

2.1 HARDCOPY OF THE HISTORY AND OVERVIEW OF ACT 250 POWERPOINT PRESENTATION

ACT 250: An Overview of Act 250 for the Act 47 Commission

Vermont Natural Resources Board

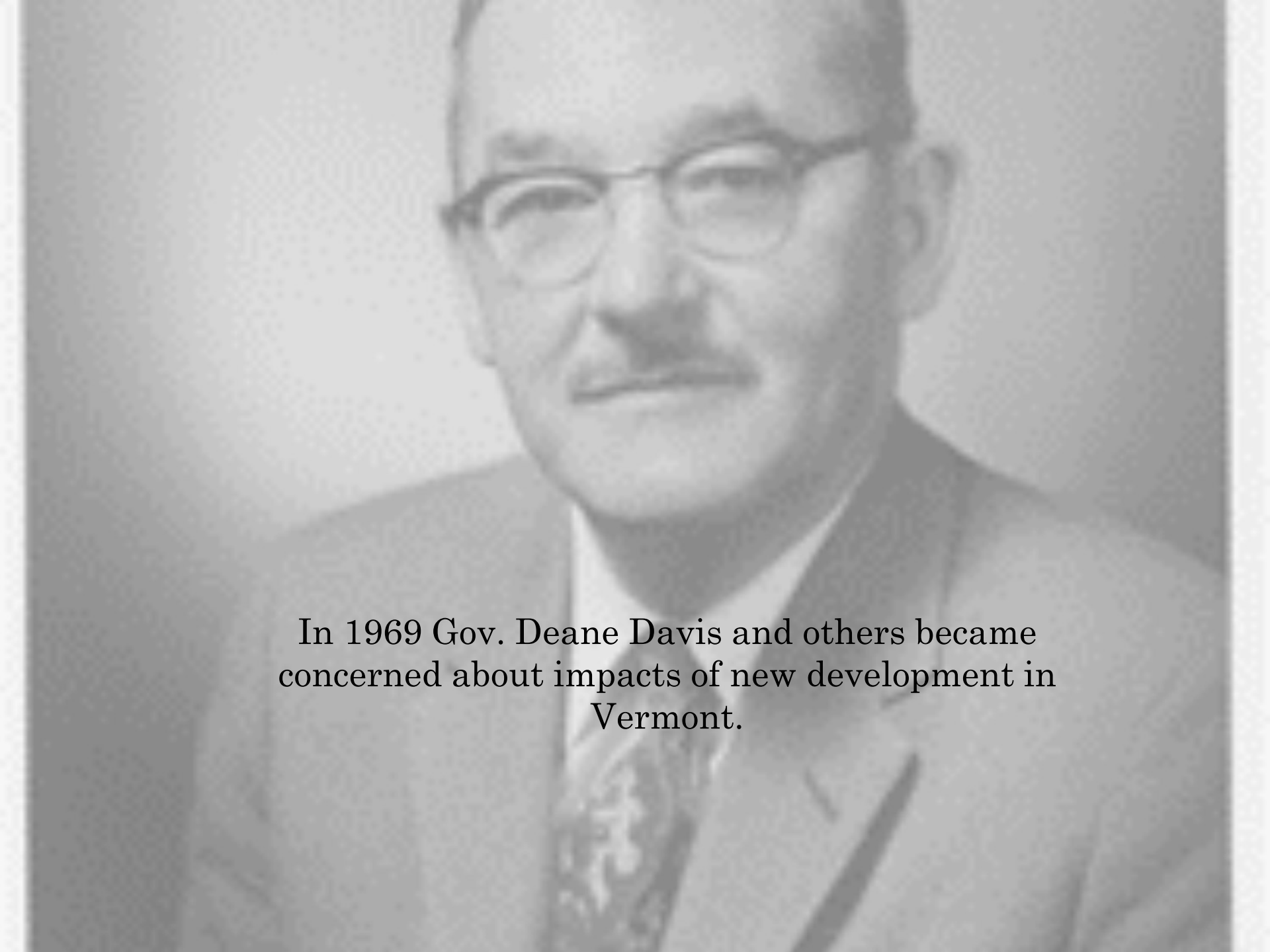
Diane B. Snelling, Chair

Gregory Boulbol, General Counsel

AGENDA

1. Brief Introductions
2. Act 250 – History and Purpose
3. Mechanics of the Natural Resources Board
4. Act 250 Jurisdiction and the Act 250 Application Review Process
5. Party Status
6. The Ten Criteria
7. Quasi Judicial Role/Ethics
8. Hearing Review Process
9. Questions? Answers??

BRIEF HISTORY OF ACT 250



In 1969 Gov. Deane Davis and others became concerned about impacts of new development in 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.



January 19, 1970

The Honorable Deane C. Davis
Governor of Vermont
Montpelier, Vermont 05602

Dear Governor Davis:

In accordance with the provisions of Executive Order No. 7, creating the Governor's Commission on Environmental Control, I transmit herewith the commission report covering the period from June 24, 1969 through January 6, 1970.

This report includes our recommendations for legislation to be enacted during the coming session.

The commission has had fifteen meetings since its establishment, and numerous meetings for the committees to deal with specific subjects. It will continue meeting regularly during the winter.

I wish at this time to express my appreciation to Mr. Forrest E. Orr, Vice Chairman; the members of the commission; and the Advisory Committee for their dedicated efforts during this period. Many of the officers of State Government have also contributed to the work of the commission. Deputy Attorney General John Hansen has been invaluable in his assistance with legal matters.

A final report will be submitted at the conclusion of the commission's work.

Respectfully submitted,

The background of the slide is a photograph of the Vermont State Capitol building, a large white neoclassical structure with a prominent golden dome. The building is surrounded by green lawns and trees, with a paved walkway leading towards the entrance. The image is slightly faded to allow the text to be clearly visible.

The Legislature created the former Environmental Board to administer Act 250:

“...in order to protect and conserve the lands and the environment of the state and to insure that these lands and environment are devoted to uses which are not detrimental to the public welfare and interests.”


An Act to Create an Environmental Board and District Environmental Commissions, Pub.Act. No. 250, § 1, 1969, Vt.Laws (Adj.Sess.) 237 (eff. Apr. 4, 1970).

Purpose of Act 250

Act 250 is Vermont's land use statute. It was enacted to protect the state's environmental resources and to preserve its public lands. . . .

When implementing Act 250, the state attempts to coordinate maximum economic development with minimal environmental impact.

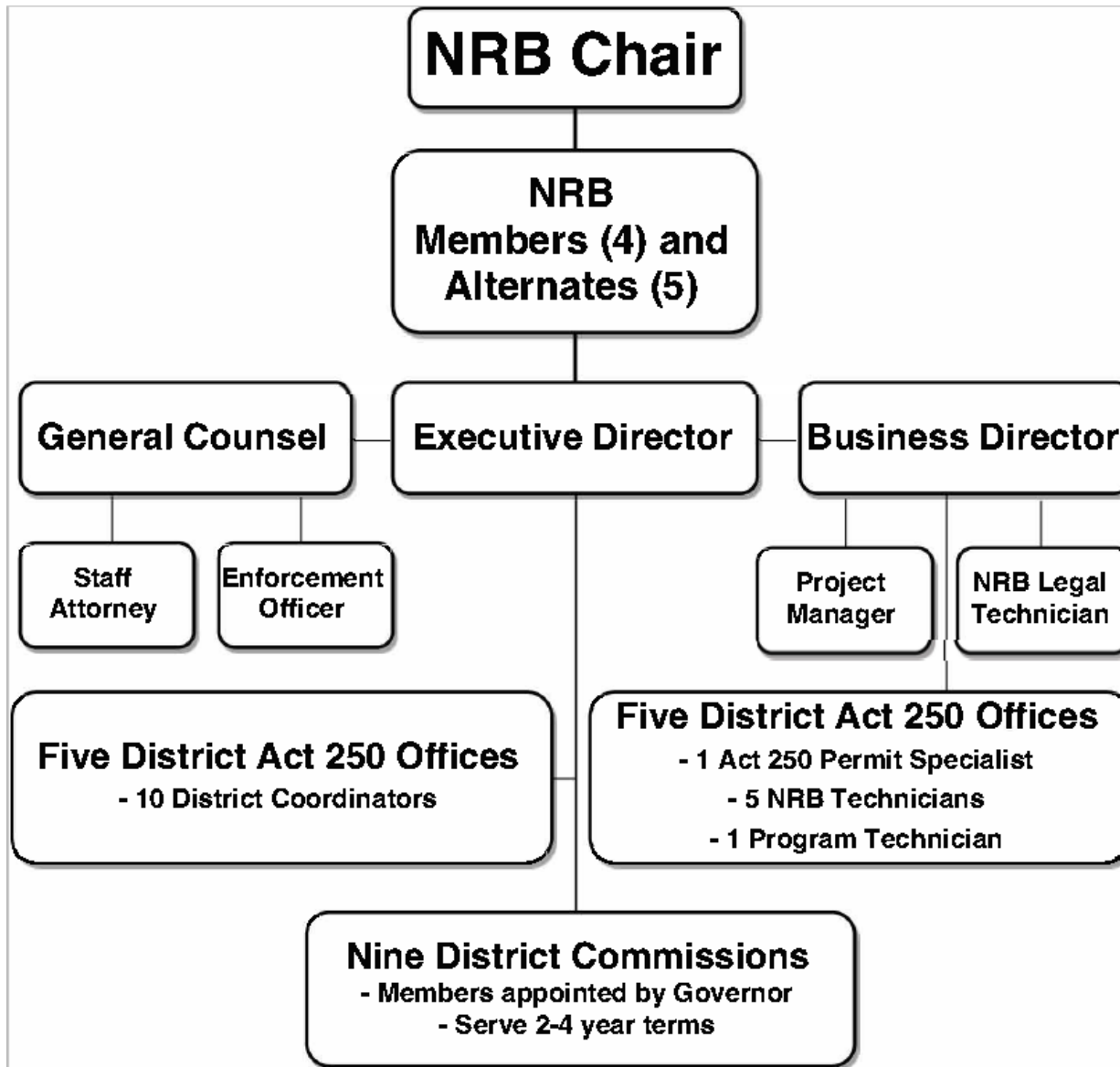
Green Mountain RR Corp. v. State of Vermont, 2003 WL 24051562, at *4 (D. Vt. Dec. 15, 2003), *aff'd sub nom. Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638 (2d Cir. 2005).

A scenic view of a Vermont landscape. In the foreground, there are green trees and a large purple flower. In the middle ground, a white house with a blue roof is visible. The background shows a blue sky with white clouds and a green hillside.

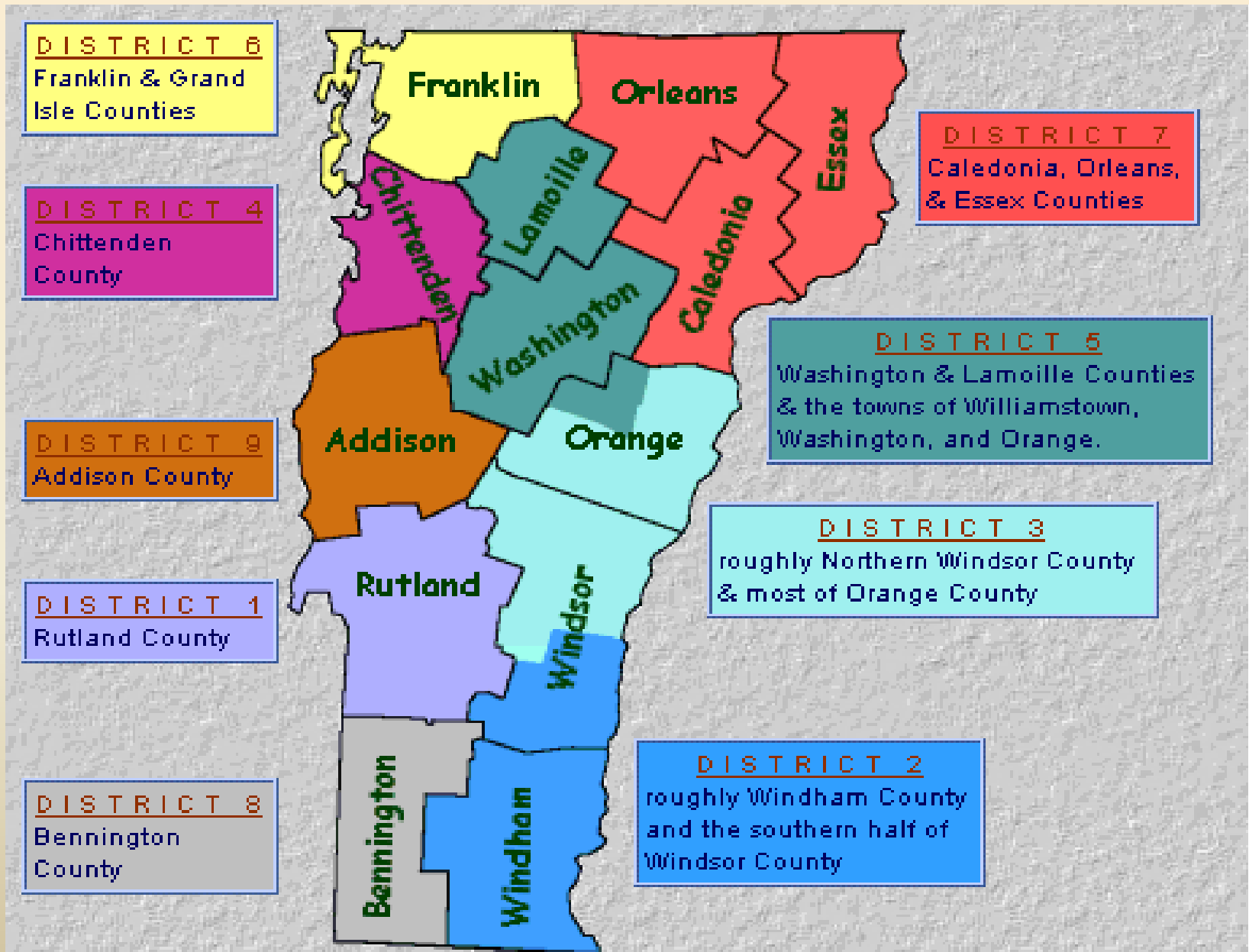
Vermont . . . has managed to keep intact more of the natural beauty and open space that people love about it. A lot of the credit for that goes to a . . . state land-use law, known as Act 250.

Under Act 250, nine regional commissions review any large-scale development falling within their jurisdictions. Before a development can proceed, it must win a permit from its regional commission. The commissions, supporters say, have done their best to balance economic growth with environmental and aesthetic sensitivity and planning practicality.

Jonathan Walters, *Land-use Laws Are A Battleground*, Chicago Tribune, Nov. 15, 1992.



9 Environmental Districts



ACT 250
JURISDICTION



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


114.01 +/-

115.02 +/-

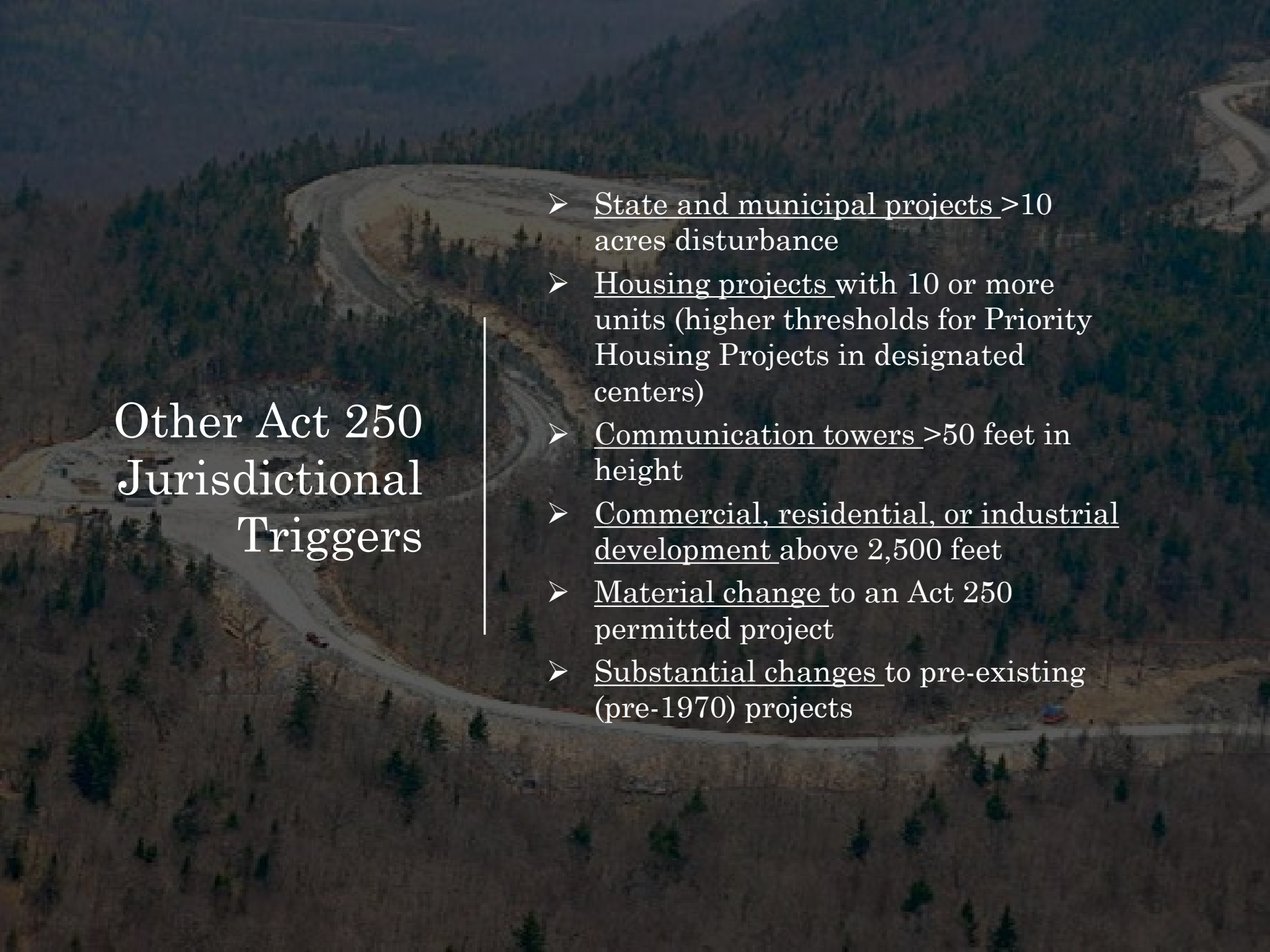
92.02 +/-

VERMONT ST

FIR ST



Commercial development on
>1 or >10 acre



Other Act 250 Jurisdictional Triggers

- State and municipal projects >10 acres disturbance
- Housing projects with 10 or more units (higher thresholds for Priority Housing Projects in designated centers)
- Communication towers >50 feet in height
- Commercial, residential, or industrial development above 2,500 feet
- Material change to an Act 250 permitted project
- Substantial changes to pre-existing (pre-1970) projects

ACT 250
EXEMPTIONS TO
JURISDICTION

Farming below 2,500 feet



Logging below 2,500 feet



Other Statutory Exemptions to Act 250 Jurisdiction

- Electric generation and transmission facilities regulated by PSB
- Agricultural fairs and horse shows; no buildings; open to public for < 61 days per year
- Small scale and on-farm composting
- And others

Exemptions by Rule

Act 250 Rule 2(C)(3) & related definitions:

- Home occupation – defined in Rule 2(C)(17)
Use, by a resident, of a minor portion of the residence + ancillary buildings, for occupation/business customary in residential areas that has no potential for significant impact
- *De minimis* - no potential for significant adverse impact
- Test wells, preparation & plans

Jurisdictional Opinions

(is there Act 250 Jurisdiction over a particular project?)

- 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.

PARTY STATUS

10 VSA § 6085 and Act 250 Rule 14

Party status

- Standard = an aggrieved person need only show a “reasonable possibility that a decision on the proposed project may affect a person’s **particularized interest...**”
- The purpose is to determine whether a person has a sufficient stake in the matter to allow the person to present evidence on a criterion.
- Determining party status and making a determination under a criterion are separate inquiries.

PARTY STATUS ELEMENTS

1. ANY PERSON
2. PARTICULARIZED INTEREST
3. THAT MAY BE AFFECTED BY THE PROJECT (AN ACT OR DECISION OF THE DISTRICT COMMISSION)

ANY PERSON

- Individual
- Association
- Corporation
- Neighborhood association (whether or not incorporated)
- Partnership
- Non-profits with affected members

PARTICULARIZED INTEREST

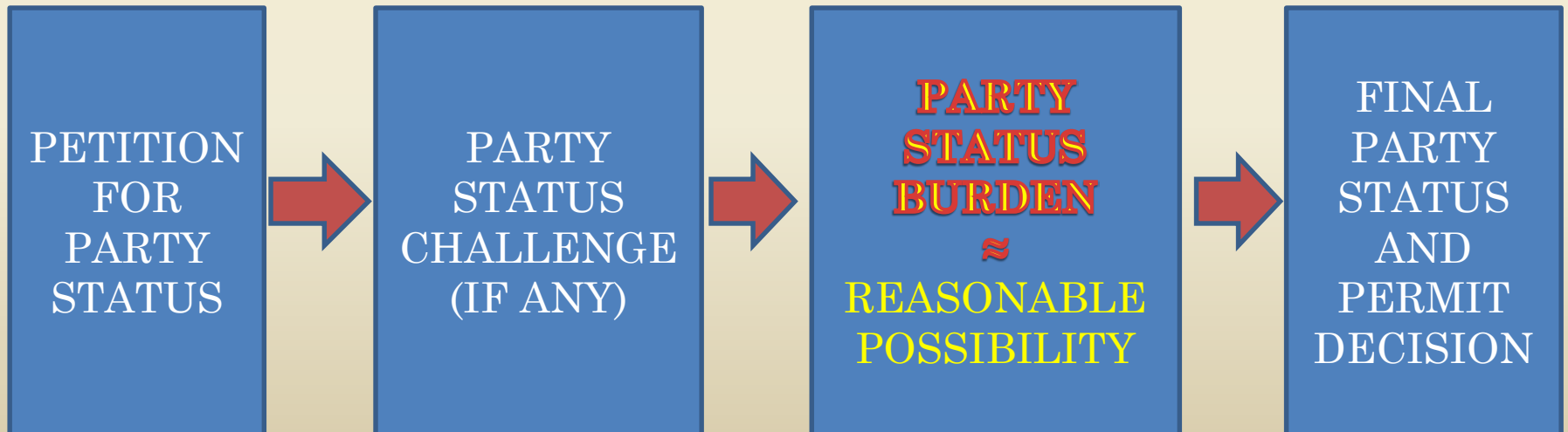
- Something particular to that person rather than the general public
 - The interest must be real – not speculative
 - Examples:
 - Can see it
 - Can hear it
 - Can smell it
 - Affects an activity:
 - I swim there and would like to continue swimming, but run off from the parking lot may affect my enjoyment this activity.
 - I enjoy the view when biking or driving, and the project may affect it.

AFFECTED BY THE PROJECT

- The person's concern or interest must be one that is protected by a criterion:
 - Aesthetics
 - Noise
 - Odors
 - Runoff/water pollution
 - Etc.
- Persons concerned about business competition or other issues beyond act 250 are not parties.

Burden for Showing Party Status

- **reasonable possibility** that a person's particularized interest **may** be affected
- allows one to present their concern under the criteria (merits).



Final Party Status

- Party status should be confirmed **unless** proof shows that there was **no** reasonable possibility of a particular interest being affected. For example, the proof on the merits shows that a party lives 100 miles away rather than the 100 yards stated in the party status petition.
- Lack of participation affects appeal rights — **not** party status

WHY?

➤ IT IS THE LAW

- Act 250 is based on citizen participation before a citizen board.
- Act 250's party status standard parallels federal standing law –In Re: Bennington Wal-Mart (4/24/12) footnote 5.

➤ PROPER PARTY STATUS

- Assures that commissions receive information
- Avoids delays, appeals, and remands.

THE ACT 250 CRITERIA



The 10 Criteria

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

10 V.S.A. § 6086(a)(1) – (10).

Criterion 1: Air

No undue air pollution.

Undue defined: The nature and amount of the pollution, as well as noncompliance with standards, causes adverse health affects.

Examples of undue air pollution include: paint fumes, saw dust, vehicle exhaust, odors, and noise or radio frequencies that present health hazards.

If the project has an Air Pollution permit, this creates a rebuttable presumption of compliance, shifting the burden of proving noncompliance to opponent.

Does the project include mitigating measures?

Criterion 1: Water

No undue water pollution.

Undue defined: the nature and amount of the pollution, noncompliance with standards, and the character of the area, causes adverse health affects.

Whether pollution is “undue” is considered in addition to any of the Criterion 1 sub-criteria.

Permits create rebuttable presumption of no pollution, shifting the burden of proving noncompliance to opponent.

Water pollution can be generated by a sewage treatment plant, construction project, dredging operations near wetlands, and golf course management plans.

Criterion 1(A): Headwaters

Project must meet the health and environmental regulations (VWQS or Wetland Rules) regarding the reduction of the quality of ground or surface waters for lands not devoted to intensive development and...

1. Headwaters (steep slopes and shallow soils) *or*
2. 20 square mile or less drainage area *or*
3. Above 1,500 Feet elevation *or*
4. Public Water supply designation *or*
5. Contributes significant amount of recharge to aquifers

Criterion 1(B): Waste Disposal

The project must:

1. Meet the health and environmental regulations (VWQS, Potable Water Supply Rules, GW Protection Rules, etc.) *and*
2. Not inject waste into groundwater or wells.

Any listed permit* creates a rebuttable presumption of compliance; this shifts the burden of proving noncompliance to the opponent, who can meet this burden with clear and convincing evidence.

*Examples of listed permits include potable water supply and wastewater system permits, discharge permits, sewer line extension permit, certificate of compliance, injection permit, solid or hazardous waste permit, UST permit.

Criterion 1(C): Water Conservation

Project design must:

1. Consider water conservation and recycling where technologically and economically practical,
2. Use Best Available Technology, and
3. Continue efficient operation of these systems.

Project cannot place responsibility for compliance on a lot's buyer by - for example - requiring more efficient flush toilets, shower heads, faucets.

This yard is helping to

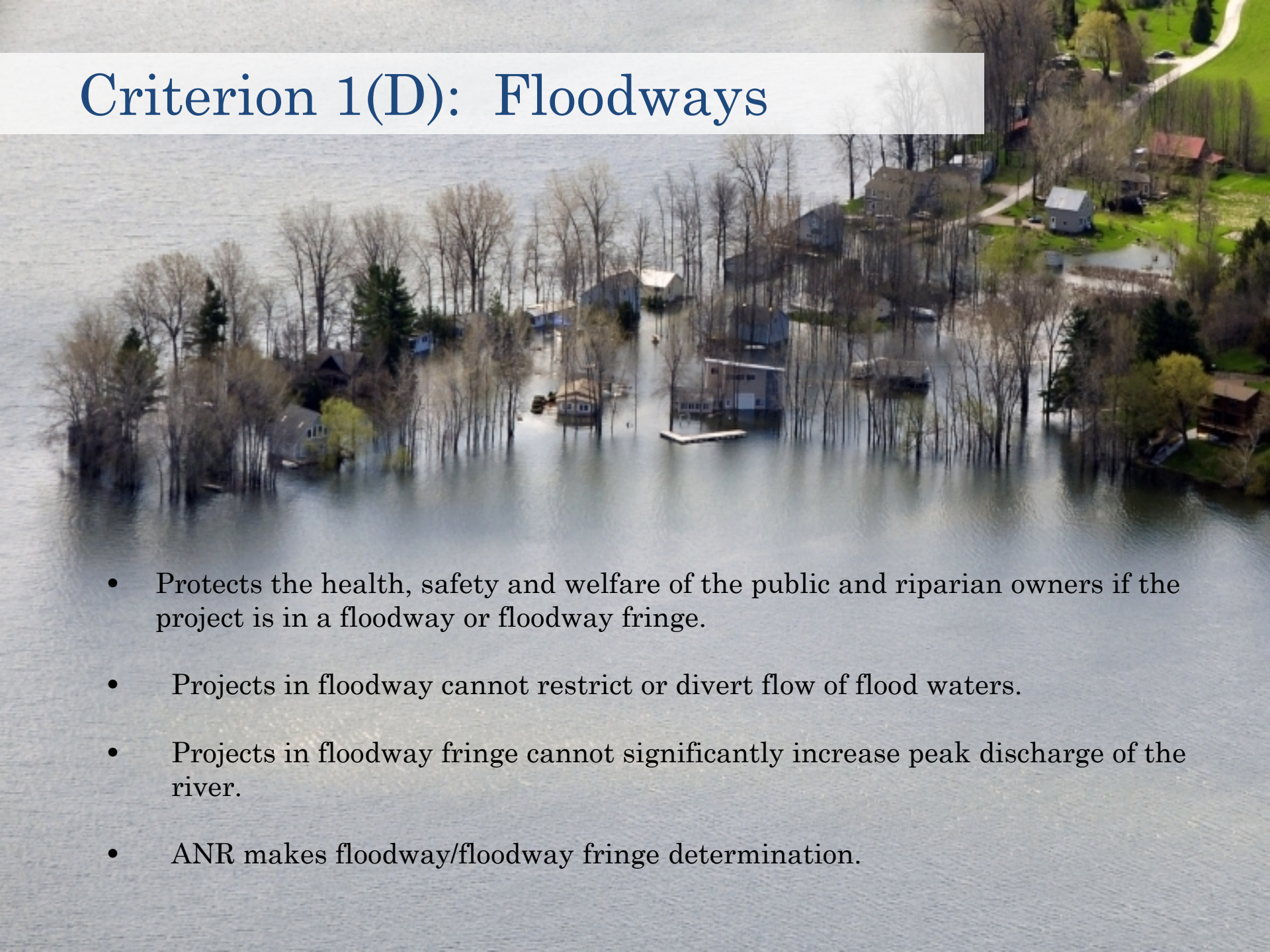
**CONSERVE OUR
WATER SUPPLY**



Central Texas Water Efficiency Network
www.texaswater.org



Criterion 1(D): Floodways

- 
- An aerial photograph showing a residential area that has been severely flooded. The water is murky and covers most of the land, submerging houses, trees, and a dock. The houses are partially underwater, with only their roofs and upper floors visible. The trees are mostly bare, suggesting a late autumn or winter setting. The water extends to the edges of the frame, indicating a large body of water or a significant flood event.
- Protects the health, safety and welfare of the public and riparian owners if the project is in a floodway or floodway fringe.
 - Projects in floodway cannot restrict or divert flow of flood waters.
 - Projects in floodway fringe cannot significantly increase peak discharge of the river.
 - ANR makes floodway/floodway fringe determination.

Criterion 1(E): Streams

Project must, whenever feasible, maintain the natural condition of the stream, and cannot endanger the health, safety or welfare of the public or adjoining landowners.



Criterion 1(F): Shorelines

If the project must necessarily be located on a shoreline, then it must:

1. Retain the shoreline's natural condition
2. Allow continued access to the water
3. Screen development
4. Stabilize the bank from erosion





Criterion 1(G): Wetlands

Project cannot violate the Vermont Wetland Rules

Criterion 2: Sufficiency of Water Supply

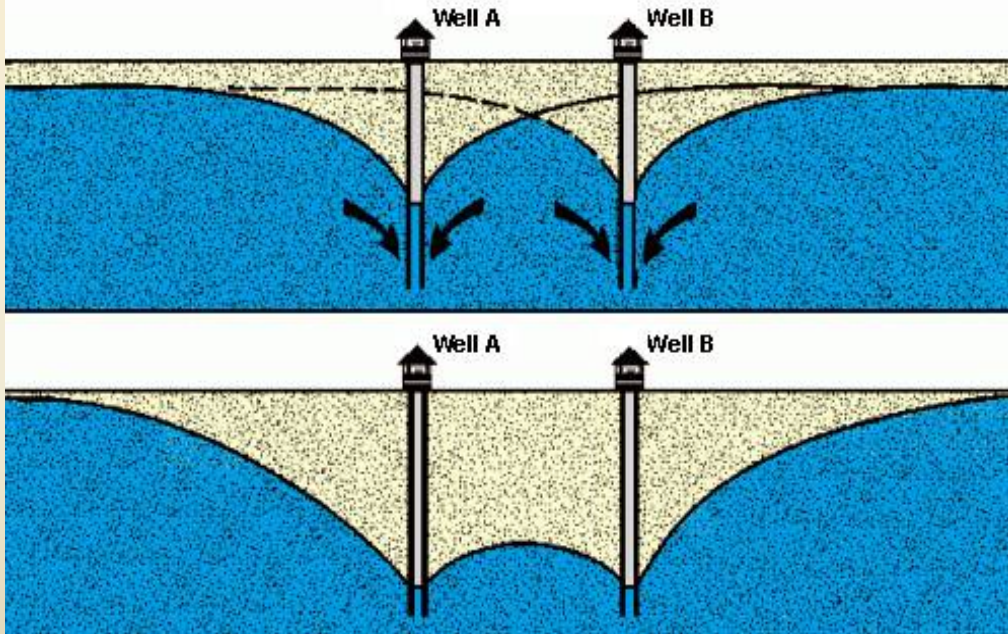
The project must have sufficient water available for its reasonably foreseeable needs.

Applicant has the burden of proving compliance with the Criterion.



Criterion 3: Impact on Existing Water Supply

Well Interference Caused by Overlapping Cones of Depression
Resulting from Insufficient Well Spacing



If the project will utilize an existing water supply, then it cannot place an unreasonable burden on that water supply.

Applicant has the burden of proving compliance with the Criterion.

Criterion 4: Erosion and Capacity of Soil to Hold Water



The project cannot cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

The applicant has the burden of proving compliance with the Criterion.

Criterion 5: Transportation

- ▶ The project cannot cause unreasonable congestion and safety conditions.
- ▶ As appropriate, requires that projects will incorporate transportation demand management strategies.
- ▶ Project's opponent bears the ultimate burden of proving that the project does not comply with the criterion.

Criterion 6: Educational Services



The project cannot place a burden on the municipality to provide educational services.

Prior to the passage of Act 60, Commissions would look at both the impacts of a proposed Project on the operating costs (e.g, the need for additional teachers) created by a project and the increased infrastructure (classrooms) necessitated by the project. Because Act 60 cushions operating costs, the focus under Criterion 6 is now on physical improvements that become necessary because of the project.

Project's opponent bears the ultimate burden of proving that the project does not comply with the criterion.

Criterion 7: Municipal Services

The project cannot place an unreasonable burden on a municipality's ability to provide municipal services.

Municipal services include fire protection, police, sewage treatment, and road maintenance.

Project's opponent bears the ultimate burden of proving that the project does not comply with the criterion.



Criterion 8

A scenic view of a covered bridge with a path leading through it, set against a backdrop of trees and a clear sky. The bridge is made of dark wood and has a steep, gabled roof. The path is paved and leads from the foreground into the distance through the bridge's opening. The surrounding landscape is lush with green trees and a clear sky.

A project cannot have an **UNDUE ADVERSE** effect on:

1. Scenic Natural Beauty
2. Aesthetics
3. Historic Sites
4. Rare or irreplaceable natural areas
5. Archaeology

Criterion 8(A) protects necessary wildlife habitat and endangered species.

Project's opponent bears the ultimate burden of proving that the project does not comply with the criterion.

Criterion 8: Aesthetics, Scenic and Natural Beauty

The *Quechee* test:

1. Does the project have an adverse effect on the aesthetics of the area?

Ask: Does the project fit within the context of its surroundings?

2. Is the adverse effect undue?
 - a. *Does the project violate a clear, written community standard?*
 - b. *Does the project's impact offend the sensibilities of the average person?*
 - c. *Has the applicant failed to take reasonable steps to mitigate the adverse impact?*

Criterion 8: Historic Sites

The three-step test:

1. Is the project affecting an historic site?
2. If the project IS affecting an historic site, is the effect adverse?
3. If the effect IS adverse, is it undue?

Criterion 8: Rare and Irreplaceable Natural Areas

1. Will the project affect a natural area?
 - a. Is it an identifiable ecological community;
and
 - b. Does it predominate over human influences

2. Is the natural area rare and irreplaceable?
 - a) Infrequent occurrence
 - b) Rare plants
 - c) Valuable

2. Is the effect adverse?

2. If the effect IS adverse, is it undue?
 - a. Failure to mitigate



Criterion 8(A): Necessary Wildlife Habitat

A giant panda is shown eating bamboo in a natural habitat. The panda is the central focus, with its black and white fur clearly visible. It is holding a bamboo stalk in its mouth and using its paws to peel and eat it. The background is a soft-focus natural setting with more bamboo and greenery.

Any project that will destroy or significantly imperil necessary wildlife habitat must comply with subcriteria:

1. The public benefit (financial, social, cultural, etc.) of the project must outweigh the cost of habitat loss;
2. All feasible means of prevention or lessening impact must be applied; and
3. The applicant does not own a reasonably acceptable alternative site.

Criterion 9(A): Impact of Growth

A project cannot place an undue burden on existing AND potential financial capacity of the municipality in accommodating the growth that results from the project.*

*Must consider secondary impacts i.e. if a new hotel will require additional housing for the hotel's workers.

Criterion 9(B): Primary Agricultural Soils

A project that results in any reduction in the agricultural potential of primary agricultural soils must meet 4 sub-criteria:

1. The project cannot significantly interfere with adjoining lands' agricultural potential; AND
2. Applicant does not own suitable non-PAS land*; AND
3. The project is designed to minimize the reduction of agricultural land*; AND
3. Suitable mitigation is provided.

** Note: 2 & 3 do not apply in Growth Centers.*

Criterion 9(C): Productive Forest Soils

A project that causes a reduction in the productive potential of forest soils must meet sub-criteria:

1. A project cannot interfere with forestry on adjoining lands; AND
2. There can be no other available land owned by the applicant; AND
3. There must be a plan to minimize the reduction on the potential of the soil

Criterion 9(D): Earth Resources

A project may not prevent or significantly interfere with lands that have a high potential for the extraction of mineral or earth resources.

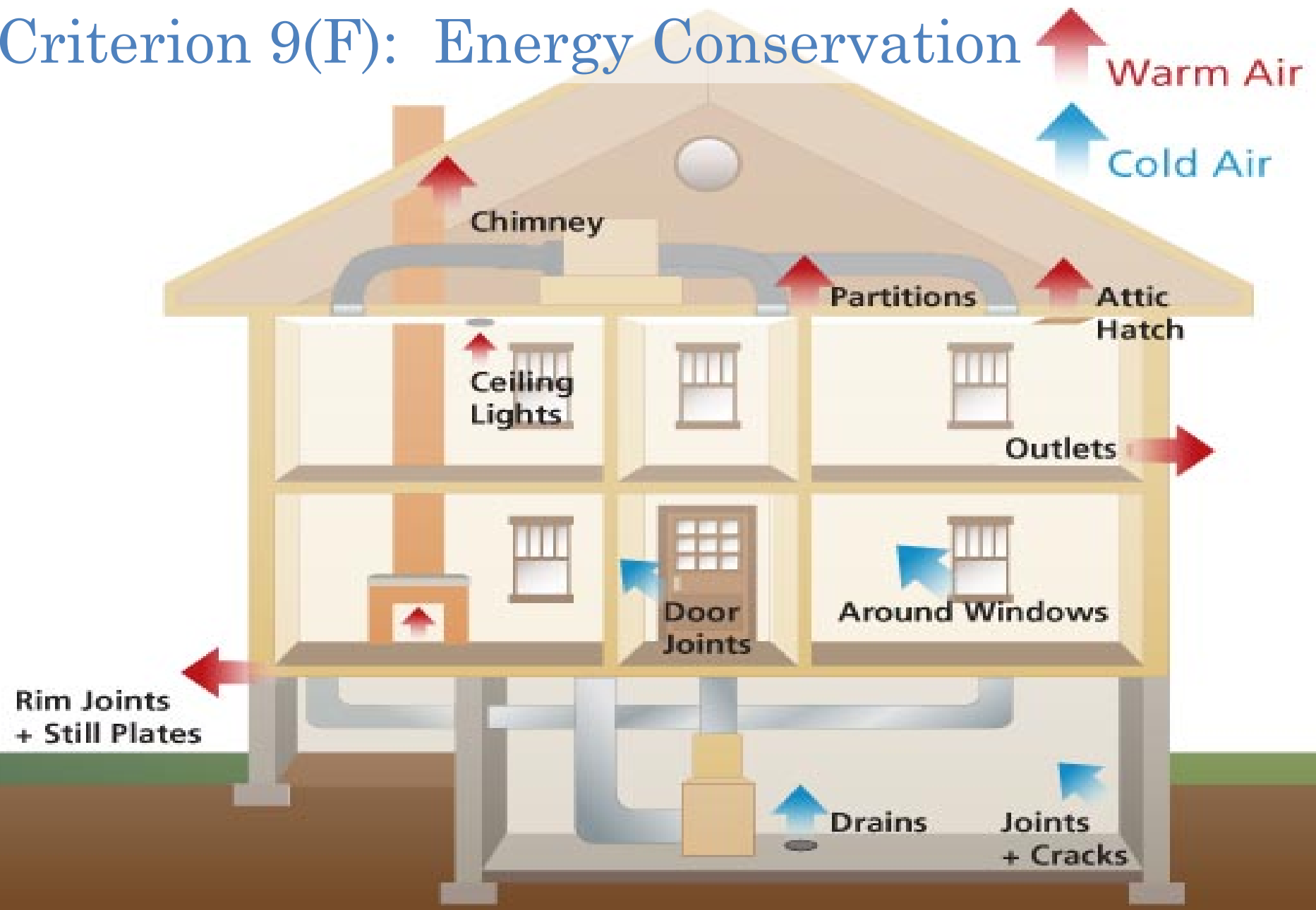


Criterion 9(E): Extraction of Earth Resources

A large-scale mining or construction site. In the foreground, a yellow Caterpillar bulldozer is positioned on a dirt path. Behind it, a large conveyor belt system is visible, transporting material from a pile of earth on the left towards a processing area on the right. The background shows a steep, rocky hillside under a clear sky. The scene is filled with industrial equipment and large mounds of earth and gravel.

Must reclaim the project site afterwards...
....at which point, jurisdiction lifts.

Criterion 9(F): Energy Conservation



Criterion 9(G): Private Utility Services

Projects relying on private utility services must conform with municipal plan or capital plan, or provide adequate surety to the municipality in case the municipality must assume responsibility for utility services.



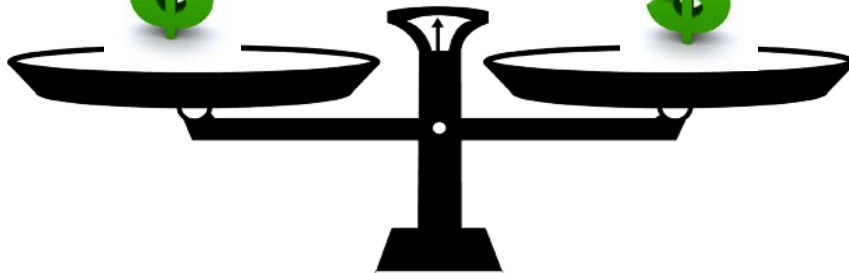
Criterion 9(H): Cost of Scattered Development

The cost of public services for the project cannot outweigh the tax revenue and public benefit from the project.

**Public
Services**



**Tax Revenue &
Public Benefit**



**Non-Contiguous
Settlement**

Criterion 9(J): Public Utility Services

Sufficient public utility facilities and services must be available; projects cannot impose excessive demand on such services, and facilities must be planned based on reasonable growth projections.



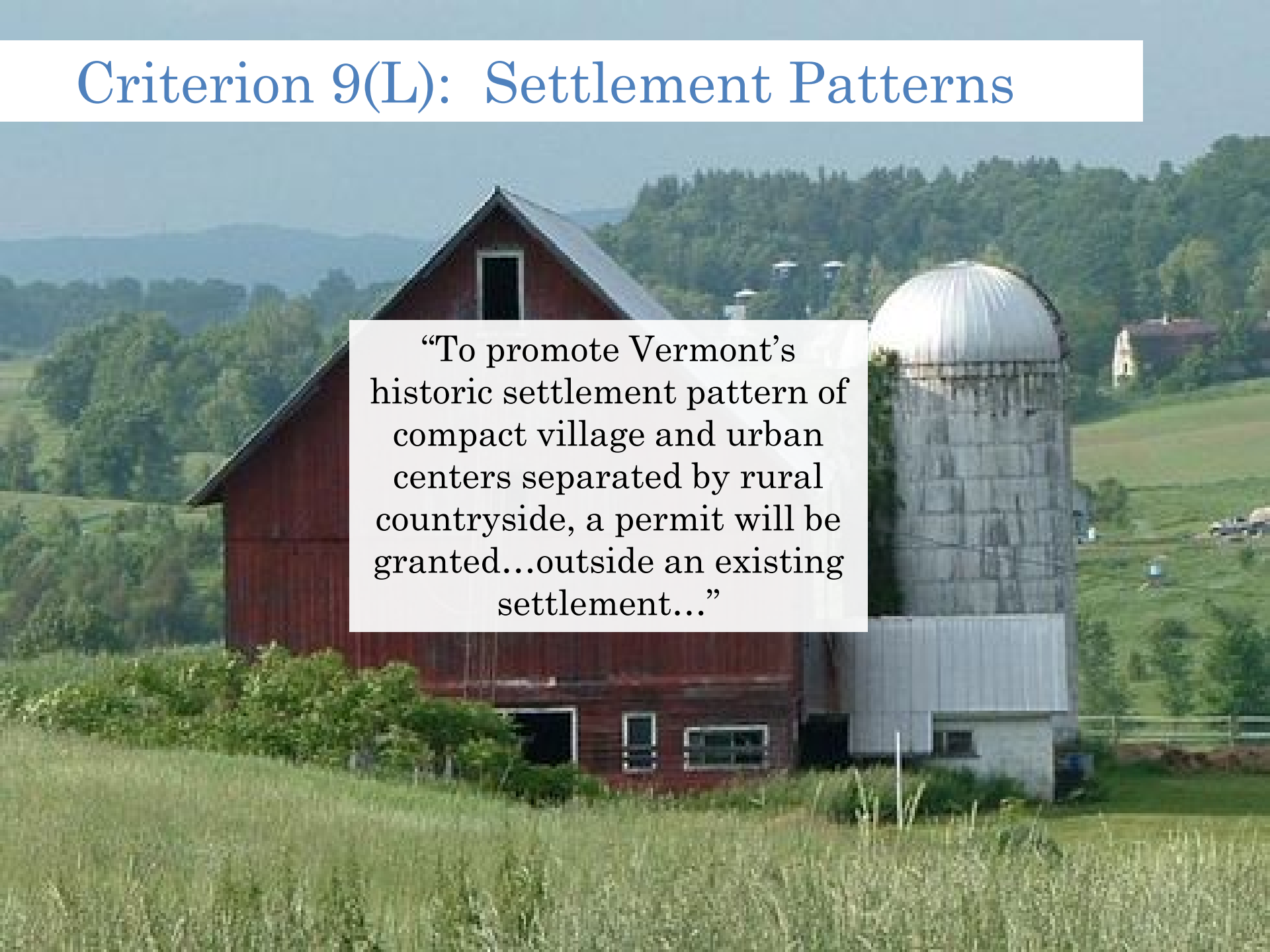
Criterion 9(K): Public Investments



This criterion is often considered in conjunction with Criterion 5: Transportation.

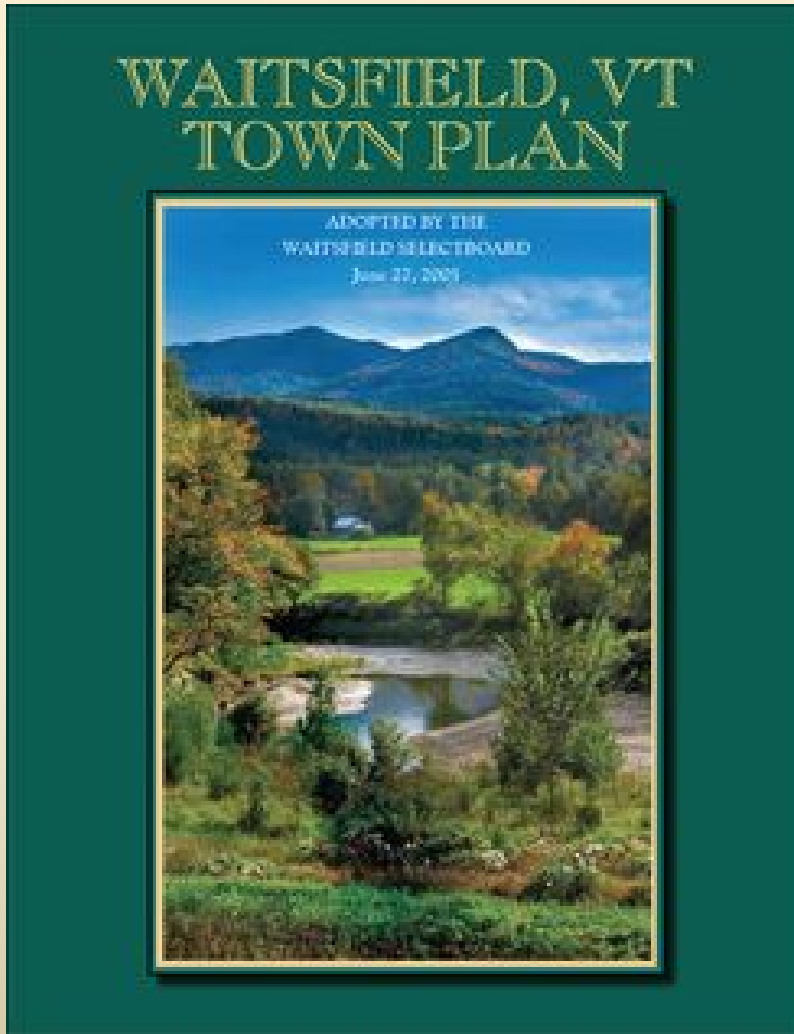


Criterion 9(L): Settlement Patterns

A photograph of a rural landscape featuring a large red barn with a gambrel roof and a tall silver silo with a domed top. The barn and silo are situated in a field of tall grass, with rolling green hills and a forested background under a clear sky. A white text box is overlaid on the barn, containing a quote.

“To promote Vermont’s historic settlement pattern of compact village and urban centers separated by rural countryside, a permit will be granted...outside an existing settlement...”

Criterion 10: Conformance with Local or Regional Plan



Project cannot conflict with the municipal plan.

Act 250 only enforces clear, mandatory language in plans. Not zoning (but look to zoning to interpret any ambiguity).

Compliance must be with a regional plan if the project has regional significance.

Burden of Proof

- Applicant must produce enough evidence for findings on all criteria.
- Applicant has burden of proof on Criteria 1 – 4, 9* and 10. 10 V.S.A. § 6088(a).
- Opponent has burden of proof on Criteria 5 – 8. 10 V.S.A. § 6088(a).

* If town does not have duly adopted capital improvement program, opponent has burden of proof on Criterion 9A. 10 V.S.A. § 6086(a)(9)(A).

QUASI JUDICIAL ROLE/ETHICS

The Quasi-Judicial Role

- The District Commission is a quasi judicial body
- Commission sits as a mini -administrative court
- As an administrative tribunal, the Commission's sole focus is to render decisions on Act 250 applications
- As the judges hearing these applications you must base your decision on the information submitted by the applicant.
- The ultimate decision on the application, including any conditions, must be supported by the information/evidence submitted by the applicant

The Quasi-Judicial Role

Confidentiality

- General rule: do not communicate about a case.
 - Exceptions:
 - Okay to discuss case privately with other District Commissioners on the case, your district coordinator or NRB staff.
 - Okay to refer questions to the district coordinator and NRB attorneys.
- Ex Parte Communications
 - Cannot communicate with parties outside the context of a hearing
 - Decision must be based on the record.
 - All parties have the right to address all the evidence.
- Attorney-client communications/attorney work product (from an NRB attorney).

The Quasi-Judicial Role

Due Process

- Protects the rights of all involved – applicants, opponents and other interested parties.
- Allows opportunity for a fair hearing, where the decision will be based on the record.
- Ensures that everyone has an opportunity to put in and respond to all the evidence.
- Fosters respect for the process.

The Quasi-Judicial Role

Ethics

- Executive Code of Ethics EO 09-11
 - Applies to all appointees, including District Commission and NRB members and alternates.
 - Prohibits:
 - Conflict of Interest
 - Appearance of Conflict of Interest
 - “Affecting adversely the confidence of the public in the integrity of state government.”
 - Disclosure of confidential information.
 - Using public office to advance personal interest, etc.

The Quasi-Judicial Role

Ethics--Conflicts

- You must recuse yourself if you have a conflict of interest. Executive Code, Section III A.
- “Conflict of interest” = “a significant interest, of an Appointee, of a member of his or her immediate family or household or of a business associate, in the outcome” of any pending matter.

The Quasi-Judicial Role Ethics--Types of Conflict of Interest

- Financial
- Strong opinion/prejudice/bias
- Associational/Relationship-Based
 - Familial relationship with party, witness, or person who might benefit
 - Business relationship
 - Other close relationship

The Quasi-Judicial Role

Ethics-- *Appearance* of Conflict

- Executive Code also requires recusal for apparent conflicts.
- *“the impression that a reasonable person might have, after full disclosure of the facts, that an Appointee’s judgment might be significantly influenced by outside interests, even though there is no conflict of interest.”*

Executive Code, Section I B.

The Quasi-Judicial Role Ethics-- The Bottom Line:

- Public Confidence

The Executive Code effectively prohibits appointees from “[a]ffecting adversely the confidence of the public in the integrity of state government.”

The Quasi-Judicial Role

Ethics— Recusal, 10 V.S.A. § 6031

- Statutory process for recusal:
- (b) As soon as practicable after grounds become known, a party may move to disqualify a Board member or District Commissioner from a particular matter before the Board or District Commission.
 - (1) The motion shall contain a clear statement of the specific grounds for disqualification and when such grounds were first known.
 - (2) On receipt of the motion, a District Commissioner who is the subject of the motion shall disqualify himself or herself or shall refer the motion to the Chair of the Board.
 - (A) The Chair of the Board may disqualify the District Commissioner from the matter before the District Commission if, on review of the motion, the Chair determines that such disqualification is necessary to ensure compliance with subsection (a)(ethical standards) of this section.
 - (B) On disqualification of a District Commissioner under this subsection, the Chair of the Board shall assign another District Commissioner to take the place of the disqualified Commissioner. The Chair shall consider making such an assignment from among the members of the same District Commission before assigning a member of another District Commission.

Who the attorneys represent

- The Natural Resources Board:
 - Provide guidance and advice on general matters including policy initiatives, rule making, guidance documents and legislative initiatives.
 - Represent the NRB at the Superior Court, Environmental Division in appealed matters (permits and JOs).
 - Enforcement matters (advise board, negotiate and prosecute).
- District Commissions and District Coordinators:
 - Provide guidance and advice on general matters including issues concerning certain criteria, procedural matters and evidentiary matters.
 - Provide advice concerning jurisdictional questions (coordinators).

THE ACT 250
PROCESS (AFTER
JURISDICTION)

Application Review Process

7 Days
**Completeness Review
by District Coordinator**



**Application to Commission
for Major/Minor
Determination**



Major

**Board Rule 51: . . . “ if the district
commission determines that there is
demonstrable likelihood that the
project will not present significant
adverse impact under any of the 10
criteria . . .”**



Minor

Application 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

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

What happens at a hearing?

- Chair opens hearing, explains process
- Applicant presents overview
- District Commission accepts petitions for party status; makes preliminary determinations
- Applicant presents information under the 10 Criteria, including any expert witnesses (civil engineer, traffic expert, etc.)
- District Commission asks questions
- Parties have opportunity to ask questions (cross-examine)
- Parties have opportunity to present their own evidence, including expert witnesses
- After hearing, commission issues recess memo listing outstanding items
- Rule 19 Permits: Rebuttable presumptions



Citizen-Based Review Process



Decisions and Permits

- Decisions – applications are either approved, approved with conditions, or denied. Findings of Fact and Conclusions of Law are drafted and issued.
- Permits Granted and Conditions Attached – when permits are granted they are subject to a wide range of conditions – transportation, erosion control measures; energy efficiency; etc.
- Permits Denied – if a commission finds that the project will be detrimental to the public health, safety or general welfare it will be denied. Permits may not be denied under Criteria 5, 6 and 7 – but conditions can be applied under these criteria.
- Nature of Permits – LUPs run with the land; they are transferrable; project completion; expiration dates; non-use (abandonment).

Findings of Facts and Conclusions of Law

- What are findings of fact and conclusions of law?
 - *Findings of fact* are statements of fact that a district commission believes are true and wants to use as a basis for granting, denying or conditioning of a permit.
 - *Conclusions of law* are the application of law to the findings of fact (i.e. whether the statutory criteria of Act 250 have been met or whether Act 250 jurisdiction applies).

- What is the function of findings of fact and conclusions of law?
 - “The purpose of findings of fact and conclusions of law . . . is to make a clear statement to the litigants, and to [a reviewing court] if an appeal is taken, of what was decided and how the decision was reached.” *Louis Anthony Corp. v. Dept. of Liquor Control*, 139 Vt. 570, 573 (1981).
 - Findings of fact and conclusions of law which are supported by the evidence and well-written (1) encourage confidence in the system on the part of the litigants, making it more likely that the result will be accepted; and (2) help the reviewing court to understand better the issues and to render a just decision.

- How do findings of fact and conclusions of law relate to one another?
 - Findings of fact are based on the evidentiary record. The conclusions of law are based on the findings of fact.



Appeals

Appeals of a District Commission are heard by the Environmental Court; ultimately the Supreme Court.

- Findings, conclusions, conditions and Jurisdictional Opinions may lead to an appeal.
- Hearings on appeal are *de novo* – meaning they are heard “anew.” Facts must be re-established.
- Party must participate at District Commission level to appeal.

RESOURCES

- District Coordinator and Support Staff
- Natural Resources Board Administrative and Legal Staff ((802) 828-3309)
- Training Manual (Also on web site:
<http://nrb.vermont.gov/regulations/commission-manual>)
- Web site: www.nrb.Vermont.gov
 - Staff addresses, phone #, email
 - Statute and Act 250 Rules
 - Environmental Board Decisions (1980 - 2008)
 - District Commission Cases ([ANR Database](#))
 - E-Note Index

QUESTIONS??