These allegations are Thomas Weiss
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April 2, 2024

Senate Committee on Natural Resources and Energy
State House
Montpelier, Vermont

Subject: S.311 SEDHGA's 2024 housing bill

Dear Committee:

This letter and its enclosure are written testimony on S.311.

My experience with Act 250 includes evaluating effects of projects on the environment, serving as an expert witness in an Act 250 case, and researching many of the allegations against Act 250. I am a civil engineer with experience in design of water and wastewater systems.

I think it likely that your committee will move portions of S.311 into H.687. Based on that likelihood, I make requests to leave certain sections of S.311 on the cutting room floor. That means if S.311 is the base bill, those sections should be removed from S.311. If H.687 or S.308 is the base bill, it means leaving the sections out of H.687 or S.308.

My comments will explain:
- Why permanent zoning and subdivision bylaws are not robust enough to earn the benefits proposed by S.311.
- Why merely having municipal water and wastewater systems is insufficient to earn the benefits proposed by S.311.
- Why district commissions need to have all relevant permits in order to issue an Act 250 permit.
- Why the creator of a report on mitigation ratios of primary soils needs to have a focus on food production
- Why the ability to appeal municipal permits and decisions needs to be retained
- Why the tiers of location-based jurisdiction must be implemented simultaneously

Require permanent zoning and subdivision bylaws to be robust

You have had witnesses who have used the word "robust" in relation to the municipal permitting process. Municipal permitting is not robust when it comes to using them as one condition for removing jurisdiction of Act 250 from the designated areas. It is possible that some municipalities have robust planning and subdivision bylaws in relation to the Act 250 criteria. S.311 does not require the bylaws to consider any Act 250 criteria.

The statutes for zoning and subdivisions (subchapters 6 and 7 in chapter 117) do not require these bylaws to address any Act 250 criteria. The statutes make addressing most criteria and subcriteria optional. The remaining few criteria and subcriteria are not addressed by the zoning statutes at all. I am providing a table showing my analysis of this.

The statutes for zoning and subdivision (4413(a)) limit the extent to which the bylaws may regulate development and subdivision that are: state-owned or -operated; community-owned or -operated; schools or educational institutions; for religious purposes; for regional solid waste management; or for hazardous waste management. Act 250 allows evaluation of these types of facilities.

Removing Act 250 from the designated areas loses the many of the benefits of Act 250: active participation by parties other than the applicant; mitigation for loss of primary agricultural soils; and much more.

Requests:
Require that zoning and subdivision bylaws be robust in order to qualify for the benefits proposed by S.311. These benefits are proposed in sections 2 and 24 of S.311. Being robust includes:
: - inviting active participation by interested parties in zoning and subdivision hearings
- expanding municipal jurisdiction to include the facilities over which municipalities now have limited jurisdiction
- requiring that bylaws include provisions to evaluate a project's effects on the Act 250 criteria
- requiring conservation of primary agricultural soils outside designations to compensate for those in them

Require municipal water and wastewater systems to meet all permit requirements

Vermont has 89 municipal wastewater treatment facilities that discharge to surface waters of Vermont. In the most recent twelve months, April 1, 2023 through March 31, 2024, 36 of them had 95 unauthorized discharges not involving combined sewers during those 12 months. An unauthorized discharge is one that is not in compliance with the discharge permit and allows raw sewage or partially treated sewage into the surface waters. Unauthorized discharges often are caused by equipment failures. The total amount of unauthorized discharges in those 12 months was between 50,000,000 and 60,000,000 gallons. To put that in perspective, that is equivalent to Montpelier's WWTF discharging all its sewage, treated or partially treated, over a period of 35 days.

Too many of these wastewater treatment systems are operating under expired permits. Sixty-two of the 89 WWTF's have permits that have expired. That is a major deterioration from three years ago, the previous time I analyzed this. Three years ago, 37 WWTF's were operating on expired permits. In the intervening three years, a few plants received new permits; many more permits expired because new ones were not issued. I acknowledge that Vermont statutes or rules allow WWTF's to operate with expired permits. Much valuable information on wastewater constituents has been lost by not updating permits to include monitoring of constituents now routinely included in discharge permits. The oldest expiration date was June 30, 2009.

Some 10 of these WWTF's are under 1272 orders. A 1272 (V.S.A. title 10) order is issued when a WWTF is violating its permit. A 1272 order contains terms and conditions to correct the violations.

Requests:
Require a municipal water or sewage system to meet the following criteria in order to qualify for the benefits that are proposed under S.311. These benefits are proposed in sections 2, 10, 13, 18, and 24 of S.311.
- A municipal sewage system must have an up-to-date discharge permit or indirect discharge permit.
- A municipal sewage system must not be under a 1272 order.
- A municipal water system must have all of its permits up to date.
- A municipal sewage system must not have had any unauthorized discharges within some specified period. I suggest two years for purposes of starting this discussion.

Confirm that district commissions need to have all relevant permits in order to issue an Act 250 permit

Section 5 proposes to require that district commissions issue Act 250 permits before the commission has all the information it needs to determine that the proposed development or subdivision actually satisfies all the Act 250 criteria. Section 5 overturns the supervisory authority that the district commissions now have. The district commission would not be fulfilling its obligations if it issues an Act 250 permit conditioned on getting another permit. Your committee bill, S.308 (its Sec. 5), takes the opposite approach, affirming in statute the supervisory authority that district commissions now have over environmental matters. H.687 (its sec. 6) also affirms the supervisory authority.

Section 5 of S.311 also proposes to make all other permits or approvals of State agencies non-rebuttable. This provision overturns the principle that technical State permits, developed without public knowledge until the terms have been developed, might not satisfy the criteria of Act 250.

Implementing Section 5 will not save time I looked into potential time savings in 2022. The Natural Resources Board provided a list of housing projects that had Act 250 permits. I researched the time between the receipt of the last permit (or document) by the district commission and when the district commission issued the Act 250 permit.

That research showed that issuing Act 250 permits contingent on getting one or more other permits does not expedite projects. That is because processing of Act 250 permits runs in parallel with processing of other permits. The research found that many Act 250 permits were issued the same day as receipt of the last document and most were issued within one week of receiving the last document. It turns out that 3/4 of those last documents were from other State agencies.

Projects have a schedule that is controlled by the permitting process in its entirety. Removing one permit from the process does not expedite a project.

Implementing Section 5 will deprive parties of their rights under Act 250
Act 250 is unique and comprehensive. It is unique because it is the only permit that allows parties other than the State agency and the applicant to actively participate in the permit process. The parties may submit testimony, bring in their own experts, provide testimony, present positions. The result is that parties have the opportunity to make sure that a project does indeed satisfy all the Act 250 criteria. This ability of parties to participate also shows that Act 250 is not duplicative, because no other permit provides this ability.

The Act 250 process gives the parties the chance to rebut another State permit. I served as an expert witness for a party in an Act 250 hearing. The State permits had a number of deficiencies: failure to acknowledge swimming as an existing use when swimming had occurred many years at the site; relying on a permit to satisfy a criterion when the permit failed to satisfy the criterion; and failure to get a necessary permit.

Other permits combined are not the equal of Act 250 permits.
In 2021 the Agency of Transportation was seeking again to have some of its projects exempt from Act 250. AOT provided a table of all the Act 250 criteria and the permits it used to satisfy the criteria. I testified then before this committee. The Agency of Transportation claimed, incorrectly, that all the other permits it needs to get are an adequate substitute for Act 250. The table listed the act 250 criteria and subcriteria in order and listed the permits it claimed satisfied the criteria. The table showed something different than what AOT claimed. There was no other permit that applied to almost half the criteria and subcriteria.

Here are examples of some permits that failed to satisfy Act 250 criteria.
-. The permit cited by AOT to satisfy productive forest soils (criterion 9C) applied only within the Green Mountain National Forest. It does not apply to the vast majority of Vermont's forests, which are outside the National Forest.
- One permit cited by AOT to satisfy waste disposal (criterion 1B) is for an injection well permit. The criterion specifically prohibits injection of hazardous or toxic materials into groundwater or injection wells. The need for a permit for an injection well and the prohibition of an injection well in Act 250 were both added in 1973.
- AOT cited a permit to satisfy water conservation (criterion 1C). The criterion requires using the best available water conservation technology. The rules for the cited permit do not require that best available technology.

Act 250 is unique (in its strict sense of one-of-a-kind). It is the only permit that looks at the entirety of a project. This look at the effect of the project on the broad range of criteria shows that Act 250 is not duplicative. No other permit or combination of permits can duplicate that aspect of Act 250.

A number of permits were created at the same time as some of Act 250's sub-criteria. This shows that the legislature and governor realized that both were required and that they were not duplicative. The State permit looks at narrow technical aspects. The Act 250 criterion or sub-criterion becomes part of the comprehensive nature of Act 250: most criteria being worded as "A permit will be granted whenever it is demonstrated by the applicant, in addition to all other criteria, that the development or subdivision will . . ."

Request:
Leave section 5 of S.311 on the cutting room floor.

The creator of a report on mitigation ratios of primary soils needs to have a focus on food production

Section 7 proposes that a select, limited group recommend appropriate ratios of conserving primary agricultural soils when a project destroys primary agricultural soils. The preservation of agricultural soils is highly significant and impacts more than those select groups. For the report to be prepared by the Department of Housing and Community Development gives the strong appearance that the purpose of the report is to allow development of housing and business to convert primary agricultural soils while requiring them to conserve less land.

The supply issues during the COVID 19 pandemic and the steady increase of hunger ever since should have taught us that we need to preserve more primary agricultural soils so that we are less dependent on food brought in from outside Vermont.

The 30x30, 50x50 statutes requires us to conserve large amounts of farmland..

The push for more housing and increased population means that our need to produce more food in Vermont will continue to significantly increase. This is well documented by the Vermont Sustainable Jobs Fund's recently released Farm to Plate report, "Food Security in Vermont: Roadmap to 2035" (January 2024). One primary action toward the goal of food security for all Vermonters is to "Accelerate the permanent conservation of Vermont's agricultural lands as working farms."

With food security in mind, the creator of the report proposed by section 7 needs to be an organization or agency that has a focus on agriculture and food production, and that understands the importance of increasing our locally grown food supply.

Requests:
- Identify and appoint for the development of the report an organization with an expressed purpose to increase food production and food security, and with a track record of inclusive experience with facilitating stakeholder groups. This might be the Vermont Sustainable Jobs Fund's Farm to Plate Program or the Council on Rural Development.
- Expand the list of those to be consulted to include farmers' organizations and those whose mission is to support farming and food supply (Rural Vermont, NOFA Vermont, the dairy farmers, the farmers' market association) and members of the public.
- Transfer the Department of Commerce and Community Development to a consultative role in this report.
- Include opportunities for significant public input at all phases of the development of this report: from the beginning of the report's preparation, during the preparation, and before the report is completed.

Retain the ability to appeal municipal permits and decisions

Section 18 proposes to increase the number of persons who are required in order to appeal a decision by the administrative officer. This is an unreasonably high number of persons. Decisions of administrative officers are made without public notice. Thus usually only the person applicant for a the project knows about the decision. Thus, it will be hard enough to find ten people to appeal a decision. Raising the threshold to 3% of the residents of the town (possibly 5% or 6% of the adults) will be close to impossible.

This section also prohibits appeals of decisions on housing projects. Which also prohibits the developer from appealing an adverse decision. It works both ways.

Request:
Leave section 18 on the cutting room floor.

Act 250 tiers

Request:
Require that the three tiers be implemented simultaneously. If the tier of designated areas is implemented first, it is possible that the tier on critical natural resources will never be implemented.

Other comments on the tiers will be provided when you take up the other bills.

Summary

The portions of S.311 that cover Act 250 propose major changes to the implementation of Act 250. I have explained why those portions should be rejected in some cases and modified in other cases.

This testimony explained:
- Why permanent zoning and subdivision bylaws are not robust enough to earn the benefits proposed by S.311.
- Why merely having municipal water and wastewater systems is insufficient to earn the benefits proposed by S.311.
- Why district commissions need to have all relevant permits in order to issue an Act 250 permit.
- Why the creator of a report on mitigation ratios of primary soils needs to have a focus on food production and farming
- Why the ability to appeal municipal permits and decisions needs to be retained
- Why the tiers of location-based jurisdiction must be implemented simultaneously

Specific requests are included at the end of each section of this testimony.

Thank you for taking the time to read this testimony.

Sincerely,
Thomas Weiss, P. E.

Encl. Act 250 Criteria as Covered by Zoning

Act 250 Criteria
As Covered by Zoning
Prepared March 1, 2024

Things lost:
Meaningful participation in the development of a permit by parties with particularized interests (which Act 250 has and zoning lacks)

4413(a)
- Jurisdiction over state-owned or -operated institutions and facilities
- Jurisdiction over community-owned- or- operated institutions and facilities
- Jurisdiction over public and private schools and other educational institutions certified by the Agency of Education
- Jurisdiction over churches and other places of worship, convents, and parish houses
- Jurisdiction over regional solid waste management facilities
- Jurisdiction over hazardous waste management facilities

4420 - Local Act 250 review of municipal impacts

4412 - ability to review the increased housing densities of 4412(12) and (13) for effects on any of the Act 250 criteria, including: congestion, growth, effects on municipal facilities and services.

subject	Act 250 criterion or subcriterion (6086(a))	Coverage by Chapter 117, subchapters 6 and 7.
Water pollution	(1) Will not result in undue water . . . pollution. In making this determination it shall at least consider: the elevation of land above sea level; and in relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable Health and Environmental Conservation Department regulations.	Optional - 4411(b)((3)(C)) - steep slope Optional - 4412(2)(A) - small lots Optional - 4414(1)(D) - shorelands Optional - 4414(2) - overlay districts Optional - 4414(9) - stormwater management and control Optional - 4414(13) - wastewater and potable water supply systems Several provisions benefit from having municipal water and sewer available. However, those provisions do not require determinations as to whether the water supply or sewer system is functioning properly or has sufficient capacity for the development.

subject	Act 250 criterion or subcriterion (6086(a))	Coverage by Chapter 117, subchapters 6 and 7.
Air pollution	(1) Will not result in undue . . . air pollution. In making this determination it shall at least consider: . . . the applicable Health and Environmental Conservation Department regulations.	Optional - 4414(5) - performance standards
Headwaters	(1)(A) Headwaters. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable Health and Environmental Conservation Department regulation regarding reduction of the quality of the ground or surface waters flowing through or upon lands which are not devoted to intensive development, and which lands are: (i) headwaters of watersheds characterized by steep slopes and shallow soils; or (ii) drainage areas of 20 square miles or less; or (iii) above 1,500 feet elevation; or (iv) watersheds of public water supplies designated by the Agency of Natural Resources; or (v) areas supplying significant amounts of recharge waters to aquifers.	Not addressed in subchapters 6 or 7.
Waste disposal	(1)(B) Waste disposal. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable Health and Environmental Conservation Department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells.	Optional - 4414(5) - performance standards
Water conservation	(1)(C) Water conservation. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the design has considered water conservation, incorporates multiple use or recycling where technically and economically practical, utilizes the best available technology for such applications, and provides for continued efficient operation of these systems.	Not addressed in subchapters 6 or 7.
Flood hazard areas and river corridors	(1)(D) Flood hazard areas; river corridors. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision of lands within a flood hazard area or river corridor will not restrict or divert the flow of floodwaters; cause or contribute to fluvial erosion; and endanger the health, safety, and welfare of the public or of riparian owners during flooding.	Optional - 4411(a)(5) - regulate uses Optional - 4411(b)((3)(G) and (H) - additional classifications in districts Optional - 4413(a)(2) - regulate for compliance with flood insurance Optional - 4414(1)(G) - RC's / buffers Optional - 4414(2) - overlay districts Optional - 4424 - shorelands; river corridor protection areas; flood or flood hazard area

subject	Act 250 criterion or subcriterion (6086(a))	Coverage by Chapter 117, subchapters 6 and 7.
Streams	(1)(E) Streams. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision of lands on or adjacent to the banks of a stream will, whenever feasible, maintain the natural condition of the stream, and will not endanger the health, safety, or welfare of the public or of adjoining landowners.	Optional - 4411(b)((3)(B) - additional classifications in districts
Shorelines	(1)(F) Shorelines. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other criteria, the development or subdivision of shorelines must of necessity be located on a shoreline in order to fulfill the purpose of the development or subdivision, and the development or subdivision will, insofar as possible and reasonable in light of its purpose: (i) retain the shoreline and the waters in their natural condition; (ii) allow continued access to the waters and the recreational opportunities provided by the waters; (iii) retain or provide vegetation which will screen the development or subdivision from the waters; and (iv) stabilize the bank from erosion, as necessary, with vegetation cover.	Optional - 4411(a)(1) - uses in shorelands Optional - 4411(b)((3)(B) - additional classifications in districts Optional - 4414(1)(D) - shorelands Optional - 4414(2) - overlay districts Optional - 4424 - shorelands; river corridor protection areas; flood or flood hazard area; special or freestanding bylaws
Wetlands	(1)(G) Wetlands. A permit will be granted whenever it is demonstrated by the applicant, in addition to other criteria, that the development or subdivision will not violate the rules of the Secretary of Natural Resources, as adopted under chapter 37 of this title, relating to significant wetlands.	Optional - 4411(b)((3)(F) - additional classifications in districts Optional - 4414(1)(D) - shorelands
Available water	(2) Does have sufficient water available for the reasonably foreseeable needs of the subdivision or development.	Optional - 4414(13) - wastewater and potable water supply systems
Existing water supply	(3) Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.	Optional - 4414(13) - wastewater and potable water supply systems
Soil erosion	(4) Will not cause unreasonable soil erosion . . .	Not addressed in subchapters 6 or 7.
Water capacity	(4) Will not cause . . . reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.	Not addressed in subchapters 6 or 7.
Transportation (A)	(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.	Optional - 4411(b)(3)(A) - additional classifications in districts Optional - 4411(b)((3)(E) - additional classifications in districts Optional - designations - 4414(1)(C) - airport hazard areas Optional - 4414(3) - conditional uses (roads and highways)

subject	Act 250 criterion or subcriterion (6086(a))	Coverage by Chapter 117, subchapters 6 and 7.
Transportation (B)	(5)(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.	Optional - 4414(1)(A) - designations
Educational services	(6) Will not cause an unreasonable burden on the ability of a municipality to provide educational services.	Optional - 4414(3) - conditional uses
Municipal and governmental services	(7) Will not place an unreasonable burden on the ability of the local governments to provide municipal or governmental services.	Optional - 4414(3) - conditional uses Optional - 4414(3) - conditional uses
Scenic or natural beauty	(8) Will not have an undue adverse effect on the scenic or natural beauty of the are . . .	Optional - 4414(2) - overlay districts
Aesthetics	(8) Will not have an undue adverse effect on . . . aesthetics . . .)	Optional - 4411(b)((3)(F) - additional classifications in districts Optional - 4414(1)(E) - design review districts Optional - 4414(15) - solar plants; screening
Historic sites	(8) Will not have an undue adverse effect on . . . historic sites . . .	Optional - 4411(b)((3)(F) - additional classifications in districts Optional - 4414(1)(F) - local historic districts and landmarks Optional - 4414(11) - archaeological resources
Natural areas	(8) Will not have an undue adverse effect on . . . rare and irreplaceable natural areas.	Optional - 4411(b)((3)(F) - additional classifications in districts

subject	Act 250 criterion or subcriterion (6086(a))	Coverage by Chapter 117, subchapters 6 and 7.
Wildlife habitat and endangered species	(8) (A) Necessary wildlife habitat and endangered species. A permit will not be granted if it is demonstrated by any party opposing the applicant that a development or subdivision will destroy or significantly imperil necessary wildlife habitat or any endangered species; and (i) the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision will not outweigh the economic, environmental, or recreational loss to the public from the destruction or imperilment of the habitat or species; or (ii) all feasible and reasonable means of preventing or lessening the destruction, diminution, or imperilment of the habitat or species have not been or will not continue to be applied; or (iii) a reasonably acceptable alternative site is owned or controlled by the applicant which would allow the development or subdivision to fulfill its intended purpose.	Optional - 4411(b)((3)(F) - additional classifications in districts
Capability and development plan	(9) Is in conformance with a duly adopted capability and development plan, and land use plan when adopted. However, the legislative findings of subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria in the consideration of applications by a District Commission.	[NOTE: There is no duly adopted capability and development plan.]
Growth	(9)(A) Impact of growth. In considering an application, the District Commission shall take into consideration the growth in population experienced by the town and region in question and whether or not the proposed development would significantly affect their existing and potential financial capacity to reasonably accommodate both the total growth and the rate of growth otherwise expected for the town and region and the total growth and rate of growth which would result from the development if approved. After considering anticipated costs for education, highway access and maintenance, sewage disposal, water supply, police and fire services, and other factors relating to the public health, safety, and welfare, the District Commission shall impose conditions which prevent undue burden upon the town and region in accommodating growth caused by the proposed development or subdivision. Notwithstanding section 6088 of this title, the burden of proof that proposed development will significantly affect existing or potential financial capacity of the town and region to accommodate such growth is upon any party opposing an application, excepting however, where the town has a duly adopted capital improvement program the burden shall be on the applicant.	Not addressed in subchapters 6 or 7.

subject	Act 250 criterion or subcriterion (6086(a))	Coverage by Chapter 117, subchapters 6 and 7.
Primary agricultural soils	(9)(B) Primary agricultural soils. A permit will be granted for the development or subdivision of primary agricultural soils only when it is demonstrated by the applicant that, in addition to all other applicable criteria, either, the subdivision or development will not result in any reduction in the agricultural potential of the primary agricultural soils; or: (i) the development or subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential; (ii) except in the case of an application for a project located in a designated area listed in subdivision 6093(a)(1) of this title, there are no lands other than primary agricultural soils owned or controlled by the applicant which are reasonably suited to the purpose of the development or subdivision; (iii) except in the case of an application for a project located in a designated area listed in subdivision 6093(a)(1) of this title, the subdivision or development has been planned to minimize the reduction of agricultural potential of the primary agricultural soils through innovative land use design resulting in compact development patterns, so that the remaining primary agricultural soils on the project tract are capable of supporting or contributing to an economic or commercial agricultural operation; and (iv) suitable mitigation will be provided for any reduction in the agricultural potential of the primary agricultural soils caused by the development or subdivision, in accordance with section 6093 of this title and rules adopted by the Natural Resources Board.	Not addressed in subchapters 6 or 7.
Productive forest soils	(9)(C) Productive forest soils. A permit will be granted for the development or subdivision of productive forest soils only when it is demonstrated by the applicant that, in addition to all other applicable criteria, either, the subdivision or development will not result in any reduction in the potential of those soils for commercial forestry; or: (i) the development or subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential; and (ii) except in the case of an application for a project located in a designated growth center, there are no lands other than productive forest soils owned or controlled by the applicant which are reasonably suited to the purpose of the development or subdivision; and (iii) except in the case of an application for a project located in a designated growth center, the subdivision or development has been planned to minimize the reduction of the potential of those productive forest soils through innovative land use design resulting in compact development patterns, so that the remaining forest soils on the project tract may contribute to a commercial forestry operation.	Not addressed in subchapters 6 or 7.

subject	Act 250 criterion or subcriterion (6086(a))	Coverage by Chapter 117, subchapters 6 and 7.
Earth resources	(9)(D) Earth resources. A permit will be granted whenever it is demonstrated by the applicant, in addition to all other applicable criteria, that the development or subdivision of lands with high potential for extraction of mineral or earth resources, will not prevent or significantly interfere with the subsequent extraction or processing of the mineral or earth resources.	Not addressed in subchapters 6 or 7.
Extraction of earth resources	(9)(E) Extraction of earth resources. A permit will be granted for the extraction or processing of mineral and earth resources, including fissionable source material: (i) When it is demonstrated by the applicant that, in addition to all other applicable criteria, the extraction or processing operation and the disposal of waste will not have an unduly harmful impact upon the environment or surrounding land uses and development; and (ii) Upon approval by the District Commission of a site rehabilitation plan that ensures that upon completion of the extracting or processing operation the site will be left by the applicant in a condition suited for an approved alternative use or development. A permit will not be granted for the recovery or extraction of mineral or earth resources from beneath natural water bodies or impoundments within the State, except that gravel, silt, and sediment may be removed pursuant to the rules of the Agency of Natural Resources, and natural gas and oil may be removed pursuant to the rules of the Natural Gas and Oil Resources Board.	Not addressed in subchapters 6 or 7.
Energy conservation	(9)(F) Energy conservation. A permit will be granted when it has been demonstrated by the applicant that, in addition to all other applicable criteria, the planning and design of the subdivision or development reflect the principles of energy conservation, including reduction of greenhouse gas emissions from the use of energy, and incorporate the best available technology for efficient use or recovery of energy. An applicant seeking an affirmative finding under this criterion shall provide evidence that the subdivision or development complies with the applicable building energy standards under 30 V.S.A. § 51 or 53.	Optional - 4413(g) (solar collectors are not energy conservation.) Optional - 4413(g) clotheslines) Optional - 4414(6) - access to renewable energy resources Optional - 4414(8) - waivers Optional - 4418(2) - subdivisions
Private utilities	(9)(G) Private utility services. A permit will be granted for a development or subdivision which relies on privately owned utility services or facilities, including central sewage or water facilities and roads, whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the privately owned utility services or facilities are in conformity with a capital program or plan of the municipality involved, or adequate surety is provided to the municipality and conditioned to protect the municipality in the event that the municipality is required to assume the responsibility for the services or facilities.	Optional - 4418(1) - subdivisions

subject	Act 250 criterion or subcriterion (6086(a))	Coverage by Chapter 117, subchapters 6 and 7.
Scattered development	(9)(H) Costs of scattered development. The District Commission will grant a permit for a development or subdivision which is not physically contiguous to an existing settlement whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs of public services and facilities caused directly or indirectly by the proposed development or subdivision do not outweigh the tax revenue and other public benefits of the development or subdivision such as increased employment opportunities or the provision of needed and balanced housing accessible to existing or planned employment centers.	Optional - designations - 4414(1)(A)
----	(9)(I) [NOTE: There is no (I) in the statutes.]	
Public utilities	(9)(J) Public utility services. A permit will be granted for a development or subdivision whenever it is demonstrated that, in addition to all other applicable criteria, necessary supportive governmental and public utility facilities and services are available or will be available when the development is completed under a duly adopted capital program or plan, an excessive or uneconomic demand will not be placed on such facilities and services, and the provision of such facilities and services has been planned on the basis of a projection of reasonable population increase and economic growth.	Optional - 4418(1) - subdivisions
Public investments	(9)(K) Development affecting public investments. A permit will be granted for the development or subdivision of lands adjacent to governmental and public utility facilities, services, and lands, including highways, airports, waste disposal facilities, office and maintenance buildings, fire and police stations, universities, schools, hospitals, prisons, jails, electric generating and transmission facilities, oil and gas pipe lines, parks, hiking trails and forest and game lands, when it is demonstrated that, in addition to all other applicable criteria, the development or subdivision will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the facility, service, or lands.	Not addressed in subchapters 6 or 7.

subject	Act 250 criterion or subcriterion (6086(a))	Coverage by Chapter 117, subchapters 6 and 7.
Settlement patterns	(9)(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; and (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, will incorporate 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.	Optional - 4414(1)(A) - designations Optional - 4418(1) - subdivisions
Local or regional plan; capital program	(10) Is in conformance with any duly adopted local . . . plan . . . under 24 V.S.A. chapter 117. In making this finding, if the District Commission finds applicable provisions of the town plan to be ambiguous, the District Commission, for interpretive purposes, shall consider bylaws, but only to the extent that they implement and are consistent with those provisions, and need not consider any other evidence.	Not addressed in subchapters 6 or 7. [NOTE: Zoning is supposed to implement the local plan and in theory zoning bylaws are in conformance with the local plan.]
Local or regional plan; capital program	(10) Is in conformance with any duly adopted . . . regional plan . . . under 24 V.S.A. chapter 117. In making this finding, if the District Commission finds applicable provisions of the town plan to be ambiguous, the District Commission, for interpretive purposes, shall consider bylaws, but only to the extent that they implement and are consistent with those provisions, and need not consider any other evidence.	Not addressed in subchapters 6 or 7.
Local or regional plan; capital program	(10) Is in conformance with any duly adopted . . . capital program under 24 V.S.A. chapter 117. In making this finding, if the District Commission finds applicable provisions of the town plan to be ambiguous, the District Commission, for interpretive purposes, shall consider bylaws, but only to the extent that they implement and are consistent with those provisions, and need not consider any other evidence.	Optional - 4403(1) - nonregulatory implementation tools Optional - 4417(c) - PUD's Optional - 4422 - adequate public facilities; phasing