



Act 250—What it Means For You

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“We can’t make a national park out of the state, but neither do we need to create a commercial jungle...How can we have economic growth and help our people improve their economic situation without destroying the very secret of our success, our environment.” – Former Governor Deane C. Davis – 1970

Working for the Vermont Fish & Wildlife Department over the past ten years, I have been involved in numerous Act 250 cases. Throughout this time, I have been continually amazed by the wide variety of opinions regarding the law and by the public’s general lack of understanding of how it works and what it means for Vermont. While some perceive the law as the savior of Vermont’s traditional working landscapes and our way of life, others deem it as a monster whose entire purpose is to eliminate private property rights and cripple the economy. In this brief article, I’m advocating neither the “monster” nor the “savior” opinion of the law; I will leave that judgment to you. I am hoping, however, to broaden your understanding of the Act and how it relates to the traditions we all enjoy.

Vermont’s Land Use and Development Law (Title 10, Chapter 151), commonly referred to as Act 250, became effective June 1, 1970. It established a statewide system under which subdivision and development of residential, commercial, industrial, and public facilities must receive a permit by the state before construction may begin. To obtain this permit, a developer must satisfy a District Environmental Commission (a three-member panel appointed by the Governor) that the proposed development will meet the requirements of ten criteria. These criteria were chosen by the legislature to assure that the development conforms to local or regional plans and will not adversely affect the environment or municipal services.

In simple terms, Act 250 was designed to be a public process and to provide opportunity for persons with substantial concerns to be heard. The District Environmental Commission has considerable discretion in deciding who has party status in the proceedings. To be a party means that you have the right to present evidence, to cross examine witnesses, and to make arguments to the commission. The municipality in which the project is located, the municipal planning commission, the regional planning commission, and any affected state agency is

automatically granted party status in order to represent the public’s interests. Landowners adjacent to a proposed project, however, have to prove to the commission that their property interests, as relevant to the ten criteria, may be affected by the project in order to be admitted as a party. Through an orderly hearing process, all parties are given the opportunity to testify as to their individual concerns. In consideration of this testimony, the District Environmental Commission then renders a decision. The commission may grant permits outright or may issue permits with specific conditions included in an attempt to alleviate concerns of the affected parties. Permits are rarely denied.

The Vermont Fish & Wildlife Department has been reviewing and commenting on Act 250 applications since the law was enacted. Focusing on the protection of fish and wildlife habitats, the department routinely makes recommendations under the jurisdiction of criterion 8(A), which requires applicants to demonstrate that their project will not imperil necessary wildlife habitat or endangered species. Necessary wildlife habitat is defined as “concentrated habitat which is identifiable and is demonstrated as being decisive to the survival of a species of wildlife at any period in its life.” Using this definition, the department has successfully protected various habitat types including deer wintering areas, mast stands (wildlife feeding areas), wetlands, wildlife road crossings, and habitat for rare and endangered species.

Under criterion 8(A), the department’s formula for conservation is simple: avoid, minimize, and mitigate. Working in cooperation with the landowner/applicant, we strive to first avoid impacting necessary wildlife habitats. When complete avoidance is not possible, we then work to minimize impacts and, mitigate for these impacts by permanently protecting similar habitat elsewhere on the project site. Protection of necessary wildlife habitat through the mitigation process typically results in the implementation of perpetual conservation easements, deed restrictions, or permit conditions depending on the magnitude of impacts incurred as a result of the project. Forest/habitat management recommendations are always included as part of any mitigation agreement.

What does this mean for you? As industrial, commercial, and residential developments continue to prosper throughout the state, the Fish & Wildlife Department will also continue to work to ensure that adequate protective measures are afforded our valuable wildlife habitats. Within virtually every Act 250 application, there is an opportunity for economic growth as well as environmental stewardship. Through the Act 250

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