

**COMPARISON OF SUBSTANTIVE REQUIREMENTS
OF ACT 250 AND 30 V.S.A. §248**

September 27, 2004

Criterion	Act 250	30 V.S.A. §248
I. PLANNING		
Local or Regional Plan/ Orderly Development	10 V.S.A. § 6086(a)(10) Is in conformance with any duly adopted local or regional plan or capital program under chapter 117 of Title 24. In making this finding, if the board or district commission finds applicable provisions of the town plan to be ambiguous, the board or 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.	30 V.S.A. § 248(b)(1) -- with respect to an in-state facility, will not unduly interfere with the orderly development of the region with <u>due consideration</u> having been given to the <u>recommendations of the municipal and regional planning commissions</u> , the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality.
	10 V.S.A. §6086(a)(9)(A) Impact of growth. In considering an application, the district commission or the board shall <u>take into consideration the growth in population</u> experienced by the <u>town and region</u> in question and whether or not the proposed development would <u>significantly affect their existing and potential financial capacity</u> 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 <u>anticipated costs for education, highway access and maintenance, sewage disposal, water</u>	

	<p><u>supply, police and fire services and other factors relating to the public health, safety and welfare</u>, the district commission or the board 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.</p>	
	<p>10 V.S.A. § 6086(a)(9) Plan is in conformance with a duly adopted capability and development plan, and land use plan when adopted. However, the <u>legislative findings of sections 7(a)(1) through 7(a)(19) of this act shall not be used as criteria</u> in the consideration of applications by a district commission or the environmental board.</p>	
Transportation	<p>10 V.S.A. § 6086(a)(5) 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.</p>	30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. § 6086(a)(5)
Education	<p>10 V.S.A. § 6086(a)(6) Will not cause an unreasonable burden on the ability of a municipality to provide educational services.</p>	30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. § 6086(a)(6)
Municipal Services	<p>10 V.S.A. § 6086(a)(7) Will not place an unreasonable burden on the ability of the local</p>	30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. § 6086(a)(7)

	governments to provide municipal or governmental services.	
		30 V.S.A. 248 (b)(9) with respect to a waste to energy facility , is included in a solid waste management plan adopted pursuant to 24 V.S.A. § 2202a, which is consistent with the state solid waste management plan
Private Utility Services	10 V.S.A. §6086(a)(9)(G) 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 <u>adequate surety is provided</u> 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	
Scattered Development	10 V.S.A. §6086(a)(9)(H) The district commission or board 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.	
Public Utility Services	10 V.S.A. §6086(a)(9)(J) 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, <u>an excessive or uneconomic demand will not be placed on such facilities and services</u> , and the provision of such facilities and services has been <u>planned on the basis of a projection of reasonable population increase and economic growth</u> .	
Development affecting public investments	10 V.S.A. §6086(a)(9)(K) A permit will be granted for the development or subdivision of lands <u>adjacent to governmental and public utility facilities</u> , services, and lands, including, but not limited to, 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, <u>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</u> .	30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. §6086(a)(9)(K)
Rural Growth	10 V.S.A. § 6086(a)(9)(L) Rural growth areas. A	

Areas	<p>permit will be granted for the development or subdivision of rural growth areas when it is demonstrated by the applicant that in addition to all other applicable criteria provision will be made in accordance with subdivisions (9)(A) "impact of growth," (G) "private utility service," (H) "costs of scattered development" and (J) "public utility services" of subsection (a) of this section for reasonable population densities, reasonable rates of <u>growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.</u></p>	
Water Supply	<p>10 V.S.A. § 6086(a)(2) and (3) (2) Does have sufficient water available for the reasonably foreseeable needs of the subdivision or development.(3) Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.</p>	<p>30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. § 6086(a)(2) and (3)</p>
Use of Resources	<p>10 V.S.A. 6086(a)(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 and incorporate the best available technology for efficient use or recovery of energy.</p>	
Water Conservation	<p>10 V.S.A. § 6086(a)(1)(C) 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</p>	<p>30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. § 6086(a)(1)(C)</p>

	<u>economically practical</u> , utilizes the best available technology for such applications, and provides for continued efficient operation of these systems.	
Stability and Reliability		30 V.S.A. § 248(b)(3) -- will not adversely affect system stability and reliability
II. NEED/ECONOMICS		
Need		30 V.S.A. § 248(b)(2) --is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost effective manner through energy conservation programs and measures and energy-efficiency and load management measures, including but not limited to those developed pursuant to the provisions of sections 209(d), 218c, and 218(b) of this title (Title 30).
Economic Benefit		30 V.S.A. § 248(b)(4) -- will result in an economic benefit to the state and its residents
IRP		30 V.S.A. § 248(b)(6) – consistent with principles in utility’s IRP
III. ENVIRONMENT		
<u>General</u>		30 V.S.A. § 248(b)(5) -- will not have an undue adverse effect on esthetics, historic sites, air and water purity, the natural environment and the public health and safety , with <u>due consideration having been given to the criteria specified in 10 V.S.A. § 1424a(d) and § 6086(a)(1) through (8) and (9)(K); (Act 250 criteria)</u>
<u>Water/Air</u>		
Water/Air Pollution	10 V.S.A. § 6086(a)(1)Will not result in undue water or air pollution . In making this determination [the environmental board] shall <u>at least consider</u> : the	30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. § 6086(a)(1)

	<p><u>elevation</u> of land above sea level; and in relation to the flood plains, the <u>nature of soils and subsoils</u> and their ability to adequately support waste disposal; the <u>slope</u> of the land and its effect on effluents; the <u>availability of streams</u> for disposal of effluents; and the applicable <u>health and environmental</u> conservation department <u>regulations</u>.</p>	
Waste Disposal	<p>10 V.S.A. § 6086(a)(1)(B) the development or subdivision will meet any applicable health and environmental conservation department regulations regarding the disposal of wastes, and will <u>not involve the injection of waste</u> materials or any harmful or toxic substances into ground water or wells.</p>	<p>30 V.S.A. § 248(b)(5) incorporates 30 V.S.A. § 6086(a)(1)(B)</p>
Resource Waters		<p>30 V.S.A. § 248(b)(8) -- does not involve a facility affecting or located on any segment of the waters of the state that has been designated as outstanding resource waters by the water resources board, except that with respect to a natural gas or electric transmission facility, the facility does not have an undue adverse effect on those outstanding resource waters</p>
		<p>30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. § 1424a(d) – outstanding resource waters -- the board may consider, but shall not be limited to considering, the following:</p> <p>(1) existing water quality and current water quality classification, (2) the presence of aquifer protection areas, (3) the waters' value in providing temporary water storage for flood water and storm runoff, (4) the waters' value as fish habitat, (5) the waters' value in providing or maintaining habitat for threatened or endangered plants or animals, (6) the waters' value in providing habitat for wildlife, including stopover habitat for migratory birds, (7) the</p>

		presence of gorges, rapids, waterfalls, or other significant geologic features , (8) the presence of scenic areas and sites , (9) the presence of rare and irreplaceable natural areas , (10) the presence of known archeological sites , (11) the presence of historic resources, including those designated as historic districts or structures , (12) existing usage and accessibility of the waters for recreational, educational, and research purposes and for other public uses , (13) studies, inventories and plans prepared by local , regional, statewide, national, or international groups or agencies, that indicate the waters in question merit protection as outstanding resource waters, (14) existing alterations, diversions or impoundments by permit holders under state or federal law.
Headwaters	10 V.S.A. § 6086(a)(1)(A) 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) <u>headwaters</u> of watersheds characterized by steep slopes and shallow soils; or (ii) <u>drainage areas</u> of 20 square miles or less; or (iii) <u>above 1,500 feet</u> elevation; or (iv) <u>watersheds</u> of public water supplies designated by the Vermont department of health; or (v) areas supplying significant amounts of <u>recharge waters</u> to aquifers.	30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. § 6086(a)(1)(A)
Floodways	10 V.S.A. § 6086(a)(1)(D) A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria: (i) the development or subdivision of lands within a floodway will not restrict or divert the flow of	30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. § 6086(a)(1)(D)

	<p>flood waters, and endanger the health, safety and welfare of the public or of riparian owners during flooding; and (ii) the development or subdivision of lands within a floodway fringe will not significantly increase the peak discharge of the river or stream within or downstream from the area of development and endanger the health, safety, or welfare of the public or riparian owners during flooding.</p>	
Streams	<p>10 V.S.A. § 6086(a)(1)(E) 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 <u>will not endanger the health, safety, or welfare of the public or of adjoining landowners.</u></p>	30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. § 6086(a)(1)(E)
Shorelines	<p>10 V.S.A. § 6086(a)(1)(F) 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 <u>screen the development or subdivision from the waters</u>, and (iv) stabilize the bank from erosion, as necessary, with vegetation cover</p>	30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. § 6086(a)(1)(F)
Wetlands	<p>10 V.S.A. § 6086(a)(1)(G) -- A permit will be granted whenever it is demonstrated by the applicant, in addition to other criteria, that the development or</p>	30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. § 6086(a)(1)(G)

	subdivision will not violate the rules of the water resources board , as adopted under section 905(9) of this title, relating to significant wetlands.	
Soils		
Soil Erosion	10 V.S.A. § 6086(a)(4) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.	30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. § 6086(a)(4)
Agricultural Soils	10 V.S.A. §6086(a)(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 significantly reduce the agricultural potential of the primary agricultural soils ; or, (i) the applicant can realize a <u>reasonable return on the fair market value of his land only</u> by devoting the primary agricultural soils to uses which will significantly reduce their agricultural potential ; and (ii) there are no nonagricultural or secondary agricultural soils owned or controlled by the applicant <u>which are reasonably suited to the purpose</u> ; and (iii) the subdivision or development has been planned to minimize the reduction of agricultural potential by providing for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to <u>economize on the cost of roads, utilities and land usage</u> ; and (iv) 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.	
Forest and secondary agricultural soils	10 V.S.A. §6086(a)(9)(C). A permit will be granted for the development or subdivision of forest or secondary 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 significantly reduce the potential of those soils for commercial forestry , including but not limited to specialized forest uses such as maple production or Christmas tree production, of those or adjacent primary agricultural soils for commercial agriculture; i) <u>the applicant can realize a reasonable return on the fair market value of his land only</u> by devoting the forest or secondary agricultural soils to uses which will significantly reduce their forestry or agricultural potential ; and (ii) there are no nonforest or secondary agricultural soils owned or controlled by the applicant which are <u>reasonably suited to the purpose</u> ; and (iii) the subdivision or development has been planned to minimize the reduction of forestry and agricultural potential by providing for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to <u>economize on the cost of roads, utilities and land usage</u> .	
Earth Resources	10 V.S.A. §6086(a)(8)(D) A permit will be granted if it is demonstrated by the applicant that development of lands with a high potential for extraction of mineral or earth resources will not	

	prevent or significantly interfere with subsequent extraction or processing	
Extraction of Earth Resources	10 V.S.A. §6086(a)(8)(E) A permit will be granted when the extraction or processing operation and disposal of waste will not have unduly harmful impact on the environment and surrounding land uses and development, and when a site rehabilitation plan is approved that insures that upon completion of extraction or processing, site will be left in a condition suitable for an approved alternative use or development, and no extraction permitted from beneath water except for gravel and silt pursuant to applicable regulations	
<u>Plants/</u> <u>Animals</u>		
Wildlife habitat/ endangered species	10 V.S.A. §6086(a)(8)(A) 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	30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. §6086(a)(8)(A)

	allow the development or subdivision to fulfill its intended purpose.	
Aesthetics		
Scenic and Natural Beauty, Aesthetics, Historic Sites, & Rare, Irreplaceable Natural Areas	10 V.S.A. § 6086(a)(8) Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.	30 V.S.A. § 248(b)(5) incorporates 10 V.S.A. § 6086(a)(8)
	<i>Environmental Board applies Quechee Lakes analysis: (1) whether impact adverse, (2) if so, whether adverse impact undue (violates clear, written community standard, or is offensive or shocking because it is out of character with its surroundings, or significantly diminishes the scenic qualities of the area or applicant fails to take generally available mitigating steps that a reasonable person would take). “Natural beauty and aesthetics” are defined as those <u>currently existing in the area</u> where the project will be located taking into account both natural and man-made features. Quechee Lakes Corp., #3W0411-EB (Vt. Env. Bd. Jan. 13, 1986)</i>	<i>PSB applies Environmental Board’s Quechee Lakes analysis: decision. See Petition of Green Mountain Power Corporation Docket No. 6975 (Vt. Pub. Serv. Bd. Aug. 9, 2004).</i>