

Ludlow Municipal Development Plan

Appendix F: Act 250 & Local Act 250 Review

Act 250¹

In the spring of 1970, the Vermont Legislature passed the Land Use and Development Act (Act 250) in order to address growth in the 1960s resulting from the opening of I-89 and I-91, development of the IBM facility in Essex Junction, and expansion of ski tourism in Vermont. Act 250 (10 V.S.A., Chapter 151) establishes a state land use permitting process in order to protect the environment.

The law created nine District Environmental Commissions, consisting of three members appointed by the Governor, to review large-scale development projects and subdivisions using 10 criteria that address environment, aesthetic and community impacts. In Ludlow, the District Environmental Commission has jurisdiction over any project that encompasses more than 10 acres, or with more than 10 housing units or housing lots (within a five-year period of time); and may also apply for construction proposed above 2,500 feet of elevation.

Act 250 also created the Vermont Environmental Court to review appeals coming from District Commission rulings.

The Act 250 process allows for the review and comment on all eligible applications by municipal governments, local and regional planning commissions, the state of Vermont, along with other interested parties. Before a proposed development receives approval it must meet the ten criteria set forth in 10 V.S.A. §6086, which are summarized below:

1. Water and Air Pollution – Will not result in undue water or air pollution. Including the following considerations:
 - 1(A) Headwaters – Will not reduce the quality of surface- or ground-waters in sensitive areas, such as small drainage basins, high-elevation areas, watersheds of public water supplies and aquifer recharge areas;
 - 1(B) Waste Disposal – Will meet state standards for waste disposal, including wastewater and stormwater; and must not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells;
 - 1(C) Water Conservation – Must use and maintain the best available water conservation technology as practicable;

¹ Modified based on the 2009 Regional Plan for the Southern Windsor County Regional Planning Commission

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1(D) Floodways – Will not endanger the public health, safety and welfare during flooding. In floodway areas, proposals will not restrict or divert the flow of flood waters. In floodway fringe areas, proposals will not significantly increase the peak discharge of rivers or streams;

1(E) Streams – Proposals along streams or rivers must maintain the natural condition of streams if feasible, and will not endanger the public health, safety and welfare;

1(F) Shorelines – Any proposal along pond or river shorelines must show development in these areas is necessary, maintain the natural condition of the shoreline, and must not diminish public access to public waters; and

1(G) Wetlands – Will not violate the Vermont Water Resources Board rules protecting significant wetlands.

2. Water Supply – Has sufficient water available for the foreseeable needs of the subdivision or development.
3. Impact on Existing Water Supplies – Will not unreasonably burden any existing water supply, if one is utilized.
4. Soil Erosion – Will not cause unreasonable soil erosion or reduce the capacity of the land to hold water.
5. Traffic – Will not cause unreasonably dangerous or congested conditions with respect to highways or other means of transportation.
6. Educational Services – Will not create an unreasonable burden on the educational facilities of the municipality.
7. Municipal or Government Services – Will not create an unreasonable burden on the local government in providing municipal and governmental services.
8. Scenic, Natural Beauty, Aesthetics, Natural Areas and Historic Sites – Will not have an undue adverse effect on aesthetics, scenic beauty, historic sites or natural areas, and
 - 8(A) Wildlife Habitat and Endangered Species – Will not destroy or significantly imperil necessary wildlife habitat or any endangered species.

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9. Conformance with a capability and development plan – Will conform with a capability and development plan, and land use plan if adopted, including the following considerations:

9(A) Impact of Growth – The impact the project will not have an undue burden on the town or region:

9(B) Primary Agricultural Soils – Does not significantly reduce the agricultural potential of soils rated by the Natural Resource Conservation Service of the U.S. Department of Agriculture as prime, statewide or local importance;

9(C) Productive Forest Soils - Will not significantly reduce the potential of productive forest soils as defined in 10 V.S.A. §6001;

9(D) Earth Resources – Will not prevent or significantly interfere with subsequent earth extraction activities;

9(E) Extraction of Earth Resources – Will not unduly impact the environment or surrounding land uses, and require planning for site reclamation;

9(F) Energy Conservation – Will reflect the principles of energy conservation and incorporate the best available energy conservation technologies;

9(G) Private Utility Services – Must show that adequate legal and financial mechanisms are in place for private utilities, such as roads or wastewater facilities, when the proposal utilizes private utilities;

9(H) Costs of Scattered Developments – Costs for public service and facilities required to serve a proposal that is not within or adjacent to a settlement area or village must not exceed the tax revenue and other public benefits generated by the development or subdivision;

9(J) Public Utility Services – Will not place an unreasonable burden on public utility services, such as electricity;

9(K) Development Affecting Public Investments – Will not unnecessarily or unreasonably endanger public or quasi-public investments in adjacent government and utility facilities, services and lands; and

9(L) Rural Growth Areas – Proposals in rural areas will be designed to economize on the cost of roads, utilities and land usage in order to protect municipalities from undue financial burdens.

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10. Local and Regional Plans – Is in conformance with any local or regional plan or capital budget and program.

Local Act 250 Review

In 2007, Ludlow established a Local Act 250 Review procedure in accordance with 24 V.S.A. §4420, 10 V.S.A. Chapter 151 and Natural Resource Board Rule 19, Section (I), Municipal Presumptions. Under Local Act 250 Review, the Ludlow Development Review Board (DRB) reviews projects for compliance with Criteria 6 (Educational Services), 7 (Municipal or Government Services) and 10 (Conformance with the Municipal Plan). This only applies to larger projects that need to go through the state Act 250 review process. Local Act 250 Review allows for greater local control and should streamline the state Act 250 process. (See the Ludlow Zoning Bylaws for more information.)