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# Natural Resources Board / Act 250

**Annual Report**

**Calendar Year 2023**

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## Vermont Natural Resources Board / Act 250

The Natural Resources Board (NRB) is an independent entity in the executive branch of Vermont state government whose primary function is to administer Act 250 (10 V.S.A. Chapter 151.) There are 29 full-time employee positions and about 70 citizen volunteers serving as [commissioners and board members](#) that support the work of the NRB's central and district offices.

The NRB consists of a full-time chair and four citizen volunteer members, plus up to five alternates. Board members are appointed by the Governor to 4-year staggered terms, except for the Chair, who serves at the pleasure of the Governor.

The Board's primary function is to administer Act 250, Vermont's land use and development law. The Board also promulgates rules, participates in appeals, and enforces against Act 250 violations. The NRB's staff serve nine district commissions from five district offices. District staff are responsible for issuing jurisdictional determinations and guiding applicants, the public, and district commissions through the application review process. The district commissions sit as three-member quasi-judicial bodies to review Act 250 applications. The commissions issue permit decisions based on the application and other filings if no hearing is requested, and hold contested case hearings when facts are disputed or unclear.

NRB's district coordinators, administrative staff, and attorneys support the commissions in their work. The attorneys' support consists of assisting the district commissions and coordinators on procedural and substantive issues that arise in Act 250 proceedings, including legal counsel, research, and document drafting. NRB participates as a party to Act 250 appeals before the Superior Court, Environmental Division.

### Value Added by the Act 250 Program

Generations of Vermonters have valued Act 250's role in protecting Vermont's unique character, but the program's contributions extend well beyond scenery. Act 250 provides a comprehensive process for reviewing proposed land use projects that brings together input from numerous state agencies including the Agencies of Natural Resources (ANR); Agriculture, Food and Markets (AAFM); Transportation (VTrans); and Commerce and Community Development (ACCD), as well as regional planning and municipal officials. Final land use permits incorporate this input and provide an integrated framework for protecting the environment and Vermonters' quality of life, including critical elements that might not otherwise be afforded protection. Here are a few examples.

#### *Habitat*

As a participant in the Act 250 process, ANR often provides comments on the potential habitat impacts of proposed projects. In recent years, district commissions have utilized this input to craft land use permit conditions to protect habitat for a diverse array of species, ranging from rare plants to white-tailed deer to the state endangered northern long-eared bat. This critical habitat protection would not have been provided voluntarily or through municipal review alone.

#### *Farmland*

In coordination with state agriculture authorities, district commissions work to ensure that the state's best farmland is conserved for the future of Vermont's farm economy. Since its inception, Act 250 has directly preserved thousands of acres of farmland via permit conditions on permitted project sites. In areas where preserving prime farmland on or near a project site is impractical, Act 250 assesses mitigation fees, payable by developers to the Vermont Housing and Conservation Board (VHCB). In this way, over its history,

Act 250 permitting has provided millions of dollars to VHCB to help leverage the purchase of permanent conservation easements over tens of thousands of acres of working farmland across Vermont.

### *Rivers and Streams*

In Vermont, there is no statewide law that protects streamside vegetation from development. Through Act 250 permit conditions, with input from the Vermont Fish & Wildlife Department, countless miles of rivers and streams have been permanently buffered with native plants, increasing bank stability and flood resilience, while safeguarding downstream water quality for fishing, swimming, and aquatic life in our cherished lakes and waterways.

### *Infrastructure*

Act 250 partners with VTrans to impose equitable fees on development to fund critical transportation infrastructure projects in the communities most impacted by development. This process ensures that those projects that cause traffic and congestion pay a fair share of the cost of new infrastructure, like traffic signals and road improvements, that keep nearby traffic flowing smoothly and safely.

The following chart outlines just a few of last year’s contributions to the Vermont landscape that most likely would not have occurred without Act 250.

### **Values Protected by Act 250 Permits: Calendar Year 2023**

Total acres of Prime Agricultural Soils protected by permit conditions	59.94 acres
Total Prime Agricultural Soil Mitigation Payments assessed	\$941,838
Total Traffic Mitigation Payments assessed	\$233,028
Archeological sites addressed	14 permits
Historic structures addressed	8 permits
Wetlands and wetland buffers protected	77 permits
Riparian zones (river and stream buffers) protected	92 permits
Lake, pond, or large river buffers protected	4 permits
Protection of drinking water Source Protection Areas addressed	26 permits
Habitat areas addressed	34 permits
Noise limitation conditions	192 permits
Quarry or gravel pit reclamation conditions	8 permits

## **Act 250 Applications and Decisions**

### **Applications “Deemed Complete”**

An application is "deemed complete" on the date upon which a district coordinator deems the application to be both technically and administratively complete. Applications that are not sufficiently complete for a commission to review under the statute are returned to applicants with a clear outline of information that is missing or in need of clarification. Until an application is deemed complete, it is not presented to the district commission for review. This critical determination allows an application to move forward for review by the citizen-based district commission.

Among the nine district commissions:

- **386** permit applications were deemed complete in CY 2023.
- **392** permit application-related decisions were issued in CY 2023.

### Applications Deemed Complete per Year

Application Type	CY 2019	CY 2020	CY 2021	CY 2022	CY 2023
Major (hearing required)	23	9	11	14	13
Minor-to-Major (hearing required)	n/r	n/r	n/r	n/r	6
Minor (no hearing)	220	191	248	218	221
Administrative Amendments	202	139	179	144	144
<b>Undetermined as of 12/31/23</b>	n/r	n/r	n/r	n/r	2
<b>TOTALS</b>	<b>445</b>	<b>339</b>	<b>438</b>	<b>376</b>	<b>386</b>

n/r: Not reported under this classification due to database limitations prior to 2023. Therefore, reported herein as minor applications because the applications were deemed complete as such.

### Decisions Issued

Per the table below, of the 392 decisions issued in CY 2023, 146 (37%) were processed as administrative amendments, 224 (57%) as minor applications with no contested-case hearings, 7 (2%) as minor-to-major applications, and 15 (4%) as major applications. Major applications require a public hearing for the review of a project’s conformance to the Act 250 criteria.

### Application Decisions Issued per Year

Application type	CY 2019	CY 2020	CY 2021	CY 2022	CY 2023
Major (hearing required)	37	14	14	21	15
Minor-to-Major (hearing required)	n/r	n/r	n/r	n/r	7
Minor (no hearing)	211	185	248	210	224
Administrative amendments	211	139	180	148	146
<b>TOTALS</b>	<b>459</b>	<b>338</b>	<b>442</b>	<b>379</b>	<b>392</b>

Data presented: only applications for which permits, findings, or permit denials were issued in the calendar year presented. n/r: Not reported under this classification due to database limitations prior to 2023. Therefore, reported herein as major applications because the decisions were eventually issued as such.

### Application Denials

Of the 392 application decisions issued in CY 2023, only two permits were denied, including one amendment application that was dismissed pursuant to Act 250 Rule 34(E).

## Permit Application Processing Performance Standards

Statutory and internal performance standards guide the performance of the district coordinators and commissions. Average CY 2023 performance is listed below compared to the previous four years of data.

## Performance Standards: Comparison with Prior Years in Average Calendar Days<sup>1</sup>

Category	Standard	CY 2019	CY 2020	CY 2021	CY 2022	CY 2023
<b>All applications:</b> Days of initial application completeness review (internal standard)	<b>10 days</b>	7 days <sup>2</sup>	5 days <sup>2</sup>	9 days	19 days	13 days
<b>Minor applications:</b> Days to issue after end of comment period or last item received (internal standard)	<b>14 days</b>	7 days <sup>3</sup>	4 days <sup>3</sup>	3 days	2 days	1 day
<b>Major applications:</b> Days to issue after adjournment (Act 250 Rule standard)	<b>20 days</b>	8 days	1 day	4 days	18 days	2 days
<b>Major applications:</b> Days from deemed complete to pre-hearing or hearing (statutory standard)	<b>40 days</b>	50 days	40 days <sup>4</sup>	59 days	78 days	61 days
<b>Minor-to-Major applications:</b> Days from end of comment period to pre-hearing or hearing (statutory standard)	<b>20 days</b>	37 days	19 days <sup>4</sup>	78 days	104 days	35 days

<sup>1</sup> Figures do not include time periods for decisions on motions to alter, decisions remanded from the court, corrections made to permits to clarify simple errors, formal abandonment proceedings, or application withdrawal proceedings for permit applications that had been inactive for years. Specifics on the omissions are available upon request.

<sup>2</sup> From 2009 through 2020, this performance standard was 7 days.

<sup>3</sup> From 2009 through 2020, this performance standard was 10 days.

<sup>4</sup> Figures do not include one application that followed the minor-to-major review process because that decision was issued without a hearing.

## Performance Standards: Ranges and Averages for CY 2023

Category	Standard	Range		Average
		Minimum	Maximum	
<b>All applications:</b> Days of initial application completeness review (internal standard)	<b>10 days</b>	0 days	224 days	13 days
<b>Minor applications:</b> Days to issue after end of comment period or last item received (internal standard)	<b>14 days</b>	0 days	20 days	1 day
<b>Major applications:</b> Days to issue after adjournment (Act 250 Rule standard)	<b>20 days</b>	0 days	6 days	2 days
<b>Major applications:</b> Days from deemed complete to pre-hearing or hearing (statutory standard)	<b>40 days</b>	14 days	275 days	61 days
<b>Minor-to-Major applications:</b> Days from end of comment period to pre-hearing or hearing (statutory standard)	<b>20 days</b>	15 days	109 days	35 days

## Average Days from Deemed Complete to Decision Issued per Year per Application Type

Application type	CY 2019	CY 2020	CY 2021	CY 2022	CY 2023
Major (hearing required)	245	205	296	362	264
Minor-to-Major (hearing required)	n/r	n/r	n/r	n/r	336
Minor (no hearing)	83	88	100	98	103
Administrative amendments	8	8	15	7	6

Data presented: only applications for which permits, findings, or permit denials were issued in the calendar year presented. n/r: Not reported under this classification due to past database limitations prior to 2023. Therefore, reported herein as major applications because the decisions were eventually issued as such.

Note: The application processing times reported above include time spent by applicants obtaining certain permits from other state agencies that are used to document compliance with several Act 250 criteria. This time can vary from several weeks to several months, and on occasion, a year or more. The Board has broken down processing times by type of application review process [administrative amendment, minor review, major review, and applications that started as a minor review, but later went to hearing (major review)]. These figures do not include processing times for altered, remanded, corrected, or withdrawn permits.

## Days from Deemed Complete to Decision Issued per Year per Application Type for CY 2023

Application type	Range		Average
	Minimum	Maximum	
Major (hearing required)	76	511	264
Minor-to-Major (hearing required)	98	1020	336
Minor (no hearing)	19	871	103
Administrative amendments	0	412	6

## Jurisdictional Opinions

Act 250 authorizes district coordinators to issue jurisdictional opinions (JOs). JOs are written statements that serve as the official determination of whether an activity requires an Act 250 permit. Any person may request a JO from a coordinator in the district where the potential project is located. The increase number of JOs issued results from a change to the state environmental permit request program operated by the Agency of Natural Resources (Permit Navigator) and the increase in American Rescue Plan Act (ARPA) projects requiring Act 250 JOs.

## JO Decisions Issued per Year

	CY 2019	CY 2020	CY 2021	CY 2022	CY 2023
Issued JOs	28	30	67	138	227

Data presented: These figures do not include altered, corrected, reconsidered, dismissed, or withdrawn JOs.

# Performance Improvement

## Resources Required for Effective Performance

To be successful and effective, the Act 250 process must be responsive to the needs of all participants impacted by the program—applicants and parties, the public, and staff. Therefore, effective performance requires continuous review and improvement in the following areas:

- adequate staffing of staff positions and district commissions;
- up-to-date resources (Rules and guidance);
- training opportunities for internal and external stakeholders;
- efficient and accessible document management; and
- clear guidance and direction.

## Staffing

The NRB received American Rescue Plan Act (ARPA) State Fiscal Recovery (SFR) funds. With these funds, the NRB hired three temporary (three-year limited-service) positions—an executive director and two district coordinators—during the latter half of CY 2022. The executive director position provides organizational leadership, operational management, and direction over the program, district commissions and district coordinators. The two new district coordinator staff positions have been deployed on a statewide basis to ensure consistency of service across the state for all projects. The addition of these positions will continue to facilitate the review of ARPA-funded projects without delaying other projects. These positions have been instrumental in 2023 as the number of ARPA projects tracked by the NRB has exceeded 400. The Necessary Updates to Act 250 Report recommends the retention of these positions.

## Act 182/Act 47 Legislative Study: “Necessary Updates to the Act 250 Program”

In 2023, under the directives of [Act 182](#) and [Act 47](#), the Board completed a study on the “necessary updates to the Act 250 program.” This study included (1) an analysis of location-based jurisdiction, (2) how to use the Capability and Development Plan to meet statewide planning goals, (3) an assessment of board and district commission staffing, (4) sufficiency of permit fees to cover program costs, (5) review of incentives as related to permit fees, and (6) ability of program to assess its costs on applicants. The study resulted in a consensus report entitled, [Natural Resources Board Necessary Updates to Act 250](#). Key recommendations from the report’s steering committee included:

- Adopt tiers of jurisdiction based on the location of the project.
  - o Tier 1A represents developed areas with sufficient municipal review, administrative structure, and wastewater and water supply capacity to support development. Development and subdivision in these development-ready areas would not require an Act 250 permit.
  - o Tier 1B represents developed areas without sufficient municipal administrative capacity. To support housing construction, up to 50 units of housing could be constructed, but other development and subdivision jurisdictional triggers would remain.
  - o Tier 2 represents working and rural lands. Current jurisdictional triggers would remain and any cumulation of road and driveway construction in excess of 2,000 linear feet would also require an Act 250 permit.
  - o Tier 3 represents ecologically important natural resource areas. With the input of the municipality and Regional Planning Commission(s), development and subdivision would automatically require an Act 250 permit. However, existing logging and farming roads would not require a permit unless converted to other purposes.



- Enact a new forest fragmentation criterion.
- Create a professional Board consisting of 2-4 part-time members and one full-time chair to take a more proactive role in rulemaking and policy.
- Implement various recommendations to improve consistency and streamline permitting, including making ANR permits dispositive.
- Provide a stable revenue source for the Board, rather than the current reliance on fees.
- Support the development of future land use maps by the Regional Planning Commissions.
- Allow a 1:1 ratio for the mitigation of primary agricultural soils for forest processing enterprises.
- Continue to fund the three existing ARPA funded positions.

## Training, Guidance, and Rulemaking

The NRB organized and delivered numerous Act 250 trainings this year. The NRB finalized training of our ARPA-funded roving District Coordinators and held six half-day training sessions for new district commissioners. For the public, through a combination of online and in-person presentations, the Board presented four informational sessions about the Act 250 process. These trainings engaged regional planning commissions, municipal officials, and Act 250 participants, including consultants and attorneys from throughout the state. In addition, the NRB staffed a table at ANR's Municipal Day event, held staff meetings in February and October, and its annual meeting in November, which included training for the District Commissioners and district staff on the Administrative Procedures Act, public water supply permitting, and lake, river, and wetland buffers.

In 2023, the NRB comprehensively reviewed its procedure and guidance documents, indexed all active documents for the public, and identified outdated documents for removal or revision. In 2024, the NRB will begin updating those documents as well as the Act 250 Rules. The changes and additions will focus on providing clarity to internal operations and external participation in the application review process. These changes will be accompanied by internal and external trainings.

This year, the NRB issued two new significant guidance documents. First, the NRB developed guidance outlining the HOME Act exemptions to further the development of housing. Second, the NRB, as a result of the summer's severe flooding events, deployed a guidance document and process to implement the Governor's July 2023 Severe Storm Executive Order. This effort facilitated mineral extraction and asphalt plant operations to rebuild Vermont's roads and infrastructure.

The NRB initiated a comprehensive review of its current rules but did not commence the rulemaking process this year. The NRB anticipates significant rulemaking activity in the coming years based on this review and the potential legislative changes contemplated as a result of its report on necessary updates to the law.

## Environmental Justice

The NRB participated in several meetings of the Interagency Environmental Justice Committee as authorized by 3 V.S.A. Ch. 72. Additionally, the statute requires the NRB to report to the Environmental Justice Advisory Council all environmental justice and Title VI complaints received on an annual basis. In furtherance of that requirement, the NRB created a webpage that provides the public with information about what qualifies as a complaint and how to lodge one with the NRB. The NRB received no documented environmental justice or Title VI complaints during 2023.

## Scanning Project

Through continued implementation of a 2021 SFR funding award, the NRB will complete a pilot project to digitize land use permit records in two of our nine Act 250 districts. The overall goals of this project are to make our land use permit records readily available to the public and staff, to permanently preserve our records, and, over the long-term, to reduce NRB physical storage space. In 2023, the NRB finalized a business process to undertake this work and was awarded a one-time general fund appropriation of \$1M to continue this project in other Act 250 districts. Also in 2023, the NRB and ADS executed a contract with a vendor to provide high-volume digitization services. Records digitization with the vendor commenced in early 2024.

## Records Management Project

From 2021 to 2023, NRB worked with the Vermont State Archives and Records Administration (VSARA) to establish a records management workgroup to define procedures for records management, retention, and disposition. To date, NRB has completed all necessary record schedules in collaboration with our partners at VSARA. In 2023, the NRB began the disposition of paper records pursuant to the approved records schedules. In 2024, the NRB plans to continue this work and develop a records management policy to manage our digital records over the long-term. The overall goals of this project are to develop a consistent way to manage our records while fulfilling legal mandates, to permanently preserve our records, and to reduce our physical storage space.

## NRB Special Fund

### Permit Application Fees Collected

The NRB is funded by a combination of General Funds and Special Funds generated by Act 250 application fees. The NRB assesses permit application fees based on project construction costs, the number of subdivided lots created, the volume of earth resources extracted, and a supplemental fee at a reduced rate for the review of master plans involving phased development. State and municipal projects are exempt from fees, and residential development in a state-designated Vermont Neighborhood or Neighborhood Development Area is charged no more than 50% of the fee otherwise assessed. By statute, a permit application fee may not exceed \$165,000.00. In FY 2023, the NRB relied on Special Funds to cover 80% of its annual expenditures for personal service and operating costs, with the remaining 20% covered by General Funds.

Total permit application fees collected in the last five fiscal years are presented below:

FY 2019	\$2.134M
FY 2020	\$1.878M
FY 2021	\$1.726M
FY 2022	\$2.689M
FY 2023	\$2.683M

### Certification of Actual Construction Cost Fees Collected

Following the completion of project construction, each permittee is required to file a form certifying actual construction costs (CACCs) and pay any additional Act 250 permit fees due. Because CACC fees are directly related to the actual costs of construction, total annual fees can vary significantly from one year to the next.

Total CACC fees collected in the last five fiscal years are presented below:

FY 2019	\$163,651
FY 2020	\$212,608
FY 2021	\$60,799
FY 2022	\$93,945
FY 2023	\$98,790

## Appeals

The NRB has statutory authority to participate as a party in Act 250 appeals to the Superior Court, Environmental Division. In 2023, the NRB participated in 32 appeals, 13 of which were filed in 2023. Of those 13 cases filed in 2023, 7 were appeals of Act 250 district commission decisions and 6 were JO appeals. Three cases were appealed from the Superior Court, Environmental Division to the Vermont Supreme Court in 2023.

### Appeals per Year

Type of appeal	CY 2019	CY 2020	CY 2021	CY 2022	CY 2023
JO appeals (district coordinators)	6	7	2	7	6
District commission decision appeals	8	3	4	10	7
<b>TOTALS</b>	<b>14</b>	<b>10</b>	<b>6</b>	<b>17</b>	<b>13</b>

## Compliance and Enforcement

The NRB is authorized to enforce Act 250 pursuant to the Environmental Enforcement Act, Title 10, Chapter 201. The NRB has direct authority to issue administrative orders (AOs), emergency AOs, assurances of discontinuance (AODs), and civil citations with respect to violations of Act 250. The NRB collaborates with ANR on mixed Act 250/ANR enforcement matters.

The NRB's Enforcement staff consists of the General Counsel, the Associate General Counsel, legal technician, and two full-time Compliance and Enforcement Officers. The Chair of the Board directs the Board's enforcement program.

### 2023 Enforcement Activity

The NRB investigated approximately 294 complaints, including 136 new complaints received in 2023. Some of these complaints were not deemed violations, some were referred to ANR, and others resulted in enforcement action by the NRB. The Enforcement team addressed or initiated 50 formal enforcement actions. In addition, 115 alleged violations were resolved, including 13 cases resolved through formal enforcement, and 102 complaints were resolved without formal enforcement action through voluntary compliance or through determinations that no violation occurred or the NRB lacked jurisdiction.

The board assessed \$43,845.00 in penalties this year and assessed enforcement costs of approximately \$3,824.00. All assessed penalties are deposited in the General Fund. NRB enforcement costs are deposited in the Act 250 Special Fund. In addition to the assessment of penalties, several enforcement matters imposed compliance directives, such as restoration or reclamation activities.

The NRB Enforcement Program resolved cases this year through 3 AODs and 6 civil citations (2 citations were withdrawn during settlement discussions). AODs are settlement agreements that often include civil penalties and compliance directives. Civil citations are tickets issued by the enforcement officers that levy fines of up to \$3,000 per citation. The enforcement team sent 20 Notices of Alleged Violation (NOAVs) in 8 different Act 250 Districts in 2023. NOAVs are warning letters that set out the facts of an alleged violation and invite a response. These often include compliance directives and may be followed up with further enforcement action, including penalties.

Of the 2023 formal enforcement cases, there were: 9 earth extraction, 10 housing, 5 recreation, 2 retail, and 24 other projects (some of the other projects involved rare, threatened, or endangered species or wetland encroachments). Of the 2023 resolved cases there were: 16 earth extraction, 19 housing, 14 recreation, 8 retail, 2 transportation and utility, and 56 other projects.

### Enforcement Metrics

	CY 2019	CY 2020	CY2021	CY 2022	CY 2023
New investigations opened	60	86	107	103	136
Formal enforcement actions initiated or ongoing	16	21	34	41	50
Violations resolved through formal enforcement	13	9	14	11	13
Violations and complaints resolved without formal enforcement	25	44	51	66	102
Total penalties assessed <sup>1</sup>	\$209,375 <sup>2</sup>	\$35,800	\$14,175	\$64,200	\$43,845
Total penalties collected <sup>3</sup>	\$92,767 <sup>4</sup>	\$34,760 <sup>5</sup>	\$23,808	\$72,579 <sup>6</sup>	\$43,845 <sup>7</sup>
Enforcement costs assessed <sup>8</sup>	\$29,931 <sup>9</sup>	\$2,510	\$5,604	\$11,234	\$3,824

<sup>1</sup> All penalties assessed are deposited in the General Fund and include issued AODs, AOs, and civil citations.

<sup>2</sup> Total penalties assessed include NRB penalties of \$156,375 + ANR penalties of \$24,750 (for cases that included an ANR violation in which NRB took the lead) + Supplemental Environmental Project funds of \$28,250.

<sup>3</sup> Total penalties collected may include penalties assessed in previous years that are on a payment plan.

<sup>4</sup> CY 2019 total penalties collected include \$72,950 of NRB penalties + \$19,817 of NRB enforcement costs.

<sup>5</sup> CY 2020 total penalties collected include \$28,323 of NRB penalties + \$6,437 of NRB enforcement costs.

<sup>6</sup> CY 2022 total penalties collected include \$60,700 of NRB penalties + \$11,879 of NRB enforcement costs.

<sup>7</sup> Includes \$13,200 assessed within a mixed ANR/NRB AOD and also includes \$19,380 paid to VT Fish & Wildlife Department as a Supplemental Environmental Project for endangered bat population surveys.

<sup>8</sup> All NRB enforcement costs assessed are deposited in the Act 250 Special Fund

<sup>9</sup> Enforcement costs in CY 2019 include costs for both NRB (\$27,928) and ANR (\$2,003).

### Staffing Needs for the Coming Year

As stated above, NRB received ARPA SFR funds to fill three positions and recommended in its report, Necessary Updates to Act 250, that those position be made permanent positions. The funding to implement that recommendation will not be required until FY 2026.



This document has been prepared pursuant to [10 V.S.A. Section 6083\(d\)](#), which requires that the Natural Resources Board submit a report annually to the General Assembly. In addition, a copy is made available to the Governor.