



NATURAL RESOURCES BOARD

National Life Drive
Dewey Building
Montpelier, Vermont 05620-3201
Telephone: 802-828-3309
www.nrb.state.vt.us

DATE: February 17, 2015

TO: Senator Chris Bray, Chair, Senate Committee on Natural Resources & Energy
Senator Jeanette White, Chair, Senate Committee on Government Operations
Representative Tony Klein, Chair, House Committee on Natural Resources & Energy
Representative Donna Sweaney, Chair, House Committee on Government Operations
Representative David Deen, Chair, House Committee on Fish, Wildlife & Water Resources

TO: Governor Peter Shumlin

FROM: Jon M. Groveman, Chair 
Louis Borie, Executive Director 

RE: Natural Resources Board Annual Report for Calendar Year 2014

This report is prepared pursuant to 10 V.S.A. Section 6083(d), which requires that the Natural Resources Board (NRB) submit a report annually to the General Assembly:

(d) The Board and Commissions shall make all practical efforts to process matters before the Board and permits in a prompt manner. The Board shall establish time limits for the processing of land use permits issued under section 6086 of this title as well as procedures and time periods within which to notify applicants whether an application is complete. The Board shall report annually by February 15 to the General Assembly by electronic submission. The annual report shall assess the performance of the Board and Commissions in meeting the limits; identify areas which hinder effective performance; list fees collected for each permit; summarize changes made to improve performance; and describe staffing needs for the coming year. The annual report shall list the number of enforcement actions taken by the Board, the disposition of such cases, and the amount of penalties collected. The provisions of 2 V.S.A. § 20(d)(expiration of required reports) shall not apply to the report to be made under this subsection.

A. NRB Structure and Functions

1) Introduction

The Natural Resources Board consists of a full-time Chair and four citizen volunteer members, and up to five alternates. NRB Members, are appointed by the Governor to four-year staggered terms, except the Chair who serves at the pleasure of the Governor. Its members in 2014 were Chair Ron Shems (Moretown), Vice Chair William Boyd Davies (Barton), Elizabeth Wilkel (Walden), Don Sargent (Colchester) and Marty Illick (Charlotte). The alternates in 2014 were Pat Moulton (South Londonderry), Julie Wolcott (Enosburg Falls), Gail Fallar (Tinmouth) and Chuck Haynes (East Montpelier). Chair Ron Shems, member Liz Wilkel and alternate member Pat Moulton have since stepped down. Jon M. Groveman (Marshfield) is the current NRB Chair. All must be confirmed by the Senate.

The Board's primary function is to administer Act 250. This includes supporting the nine District Commissions who review Act 250 applications, procedural and substantive rulemaking, and participation in Act 250 appeals and enforcement of Act 250 before the Environmental Division of the Superior Court (Court).

The District Commissions sit as three-member quasi-judicial bodies to review Act 250 applications. The District Commissions issue permit decisions based on the application and other filings if no hearing is requested. They will hold a contested case hearing if facts are disputed or unclear. Staff support is provided by District Coordinators, administrative staff, and NRB attorneys and staff. NRB attorneys assist the Commissions and Coordinators as needed on procedural and substantive issues that arise in Act 250 proceedings, including legal counsel and research, and drafting. NRB staff organizes and participates in ongoing training of Commissioners and staff, and updates the training manual as necessary.

To help assure program integrity and consistent application of policy, the NRB participates as a party to Act 250 appeals before the Superior Court, Environmental Division.

The NRB also hears request to reconsider jurisdictional opinions (JO) made by District Coordinators at the request of a person aggrieved by the JO. The NRB received and reviewed two such requests in 2013, and five in 2014. The NRB is also authorized to hear appeals from the District Commission related to permit application fees and, certain applications for requests for findings of fact and conclusions of law under specific Act 250 criteria for Designated Growth Centers.

Less formally, NRB staff work with Commissions and Coordinators to assure consistent treatment of emerging state-wide issues, while at the same time, respecting the Commissions' independence and regional perspective.

2) NRB Legal and Administrative Staff

The full-time Chair of the NRB is charged with the overall administration of Act 250. These duties include the NRB budget, procedural and substantive rulemaking, enforcement of Act 250 and mixed Act 250/ANR violations, general oversight of court appeals and Jurisdictional Opinion Reconsiderations, oversight of the offices and employees of the NRB and the District Commissions, stakeholder relations, coordination with other state agencies, and legislative matters. The Chair is also a member of the Downtown Development Board and as such participates in all Downtown Board decision making.

The NRB Executive Director manages the NRB budget, district office functions, information technology systems, statistical tracking and management of Act 250 district caseloads, and directly assists with selected difficult Act 250 cases with major regional or statewide impacts. The Executive Director is also responsible for recruitment, training and supervision of the regionally based District Coordinators and Assistant Coordinators. The Director is also responsible for District Commission training.

The NRB General Counsel supervises a legal staff of two and one Permit Compliance Officer. The legal staff provides a wide array of legal services for the Board, the District Commissions and District Environmental Coordinators. NRB attorneys represent the NRB in environmental enforcement matters and Act 250 appeals before the Superior Court, Environmental Division. They also staff Jurisdictional Opinion reconsiderations for the NRB. The attorneys also draft the Act 250 Rules at the direction of the Board and shepherd those rules through the rulemaking process (ICAR, public hearings and LCAR).

The NRB Permit Compliance Officer investigates Act 250 violations, issues citations and notices of alleged violation, works with the legal staff to prosecute violations, and assists permittees and applicants with compliance.

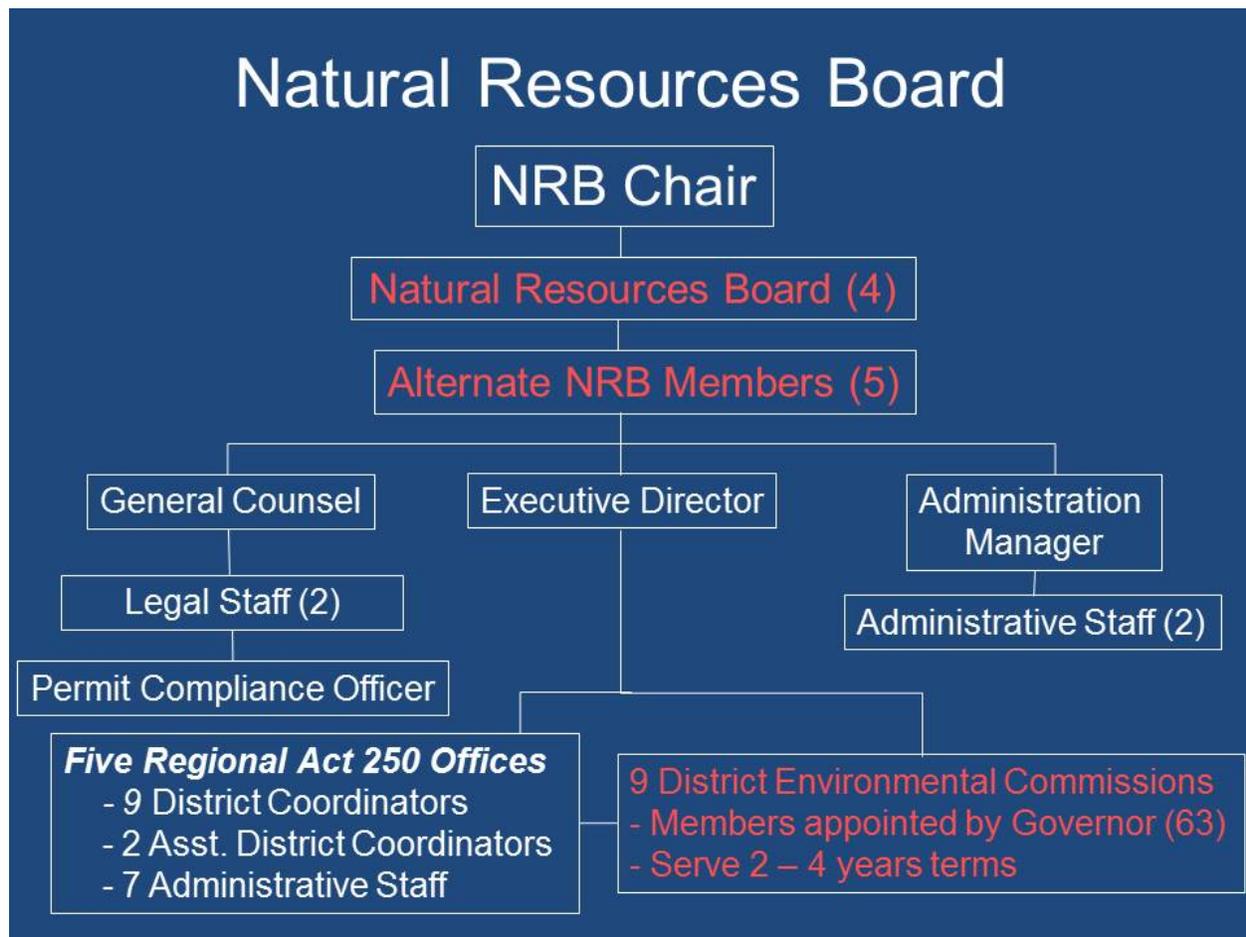
The NRB Administration Manager manages the administrative functions of the Montpelier and District Offices, is responsible for agency accounting, and supervises the administrative staff in Montpelier. The Administration Manager also assists with budget development, report preparation, IT support, intra-agency communications, business and office administration.

One administrative secretary and one technician support the Montpelier office staff. In summary, 9 NRB employees are located in the Montpelier office and 18 are located in five regional offices (with other state agency staff) for a total of 27 employees.

Most importantly, the NRB consists of 8 volunteer members and alternate members, and 63 volunteer members and alternate members of the nine District Commissions, all appointed by the Governor. The NRB's management and administrative support of

Commissioners and Board Members includes training, per diems, expenses, ethics support, and assisting the Governor's office with nominations. There are approximately 100 people in the NRB organization as a whole, including District Coordinators, District Commissioners, NRB Members and Alternates, legal and administrative staff. See organization chart below.

NRB Organizational Chart



3) District Commissions

The District Commissions are responsible for assuring that developments or subdivisions comply with Act 250's ten criteria. There are nine District Commissions, each composed of a chair, two members and four alternates and each serving one of nine districts. Commissioners reside in the districts served by their Commission. All Commissioners are appointed by the Governor. There are a total of 63 Commissioners. The nine Commissions are staffed by nine District Coordinators, two

Assistant District Coordinators and seven administrative assistants that provide professional and administrative support.

Commission offices are located in five Regional Offices: Springfield, Rutland, Essex, St. Johnsbury and Barre. With the assistance of the District Coordinators, Assistant District Coordinators, and administrative staff, the Commissions process, on average, 325 Land Use Permit (Act 250) applications per year representing \$480,000,000 in annual development activity. The District Coordinators also provide assistance to Act 250 applicants, parties, and the general public who seek to participate in the Act 250 process. This assistance is critical to maintaining an open, transparent and citizen-friendly quasi-judicial process. Another important responsibility of the District Coordinators is issuing Jurisdictional Opinions regarding Act 250 jurisdiction. These Jurisdictional Opinions are subject to reconsideration by the NRB, and then appeal to the Environmental Division of Superior Court.

B. Annual Report

This report is based upon a statistical analysis of NRB and District Environmental Commission activity during Calendar Year 2014 (CY 2014). Fiscal Year (FY) data has been used for the fee revenue analysis.

1) Act 250 Application Volume

	CY2011	CY2012	CY2013	CY2014
Major (Hearing Required)	61	73	62	88
Minor (No Hearing)	<u>269</u>	<u>267</u>	<u>233</u>	<u>221</u>
Total	330	340	295	309

2) Appeals and Reconsiderations

JO Reconsiderations			2	6
JO Appeals	3	2	2	1
District Comm. Decision Appeals	<u>12</u>	<u>10</u>	<u>10</u>	<u>16</u>
Total	15	12	14	13

**3) Processing Time
 (2014 Decisions, Date
 Complete to Date Issued)**

<30 Days	23%	19%	18%	19 %
<60 Days	60%	57%	51%	45 %
<90 Days	73%	71%	67%	63 %
<120 Days	82%	81%	76%	73%
>119 Days	18%	19%	24%	27 %

In CY 2014, 309 Act 250 permit applications were filed with the nine District Commissions, compared to 295 the previous year, an increase of 4.7%.

Of the 309 applications filed in CY 2014, 72% were processed as “minor” applications, with no contested-case hearing, while the remaining 28% of applications were processed as “major” applications. A public hearing is required for major applications, to review the project’s conformance to the 10 Criteria of Act 250.

In addition to the above statistics, 139 applications were processed as administrative amendments in 2014, compared to 157 administrative amendments processed in 2013. Administrative amendments are issued “for record keeping purposes or to provide authorization for minor revisions to permitted projects raising no likelihood of impacts under the criteria of the Act.” Act 250 Rule 34(D). Administrative Amendments are

processed without a hearing, typically within several days; the amendment is distributed to all statutory parties and adjoining property owners with opportunity for reconsideration within 15 days.

The median processing time for all major and minor decisions in CY 2014 was 68 days from the date the application was deemed complete until a decision was rendered, compared to 57 days in CY 2013. The median processing time for all CY 2014 permit decisions, including Administrative Amendments, was 35 days. It is important to note that these figures include the time required for applicants to obtain underlying permits from other agencies, which are used to demonstrate compliance with several Act 250 criteria. Performance standards for these permits can be up to 180 days. In CY 2014, 45% of all major and minor permit decisions were issued within 60 days and 73% were issued within 120 days.

Two (2) permit applications were denied in CY 2014, a rate of .6% overall (majors and minors combined). This compares to five (5) permit denials in CY 2013. Sixteen (16) Commission decisions (majors and minors), or 5.2%, were appealed in 2014. This compares to an appeal rate of 3.4% in 2013. In addition, there was one (1) NRB Jurisdictional Opinion Reconsideration (JO) appealed in 2014. There were two direct appeals of JOs in 2013.

4) Performance Standards

Statutory and internal performance standards guide the performance of the District Coordinators and District Commissions. Average CY 2014 performance is listed below.

<u>Category</u>	<u>Standard</u>	<u>CY 2014 Performance</u>
a) Application Completeness Review	7 days	2.5 days
b) Minor Applications -- Days to Issue After End of Comment Period Or Last Permit Submitted	10 days	3 days
c) Major Applications – Days to Issue After Adjournment (Act 250 Rule Standard)	20 days	3 days
d) Days to Schedule Hearing (Majors) (Statutory standard)	40 days	37 days

5) NRB Special Fund - Permit Application Fees

The NRB is funded with a combination of General Funds and Special Funds generated by Act 250 application fees. Generally, Act 250 permit application fees are based on the estimated cost of construction for each development at \$5.40 per \$1,000.00 of construction cost and \$100.00 per subdivided lot. (Not including land acquisition costs.)

State and municipal projects are exempt from paying fees. 10 V.S.A. § 6083a. Fees are deposited into the Act 250 Special Fund (SF).

In FY 15, the Board is relying on Special Funds to cover 72% of its annual expenditures for personal service and operating costs, with the remaining 28% covered by General Funds. Fees collected in the last six fiscal years are as follows:

FY 2009	\$ 1.393M
FY 2010	\$ 1.458M
FY 2011	\$ 1.580M
FY 2012	\$ 1.961M
FY 2013	\$ 2.214M
FY 2014	\$ 2.035M

Special Fund spending authority for the last six fiscal years:

FY 2009	\$1.911M
FY 2010	\$1.748M
FY 2011	\$1.965M
FY 2012	\$1.965M
FY 2013	\$1.965M
FY 2014	\$2.017M

In FY 2014 NRB exceeded its Special Fund target by \$18,000. This is the second year in a row the target has been exceeded, after four years during the economic recession when the target was not met. .

6) Act 250 Fees/Post Construction Certificates

Permittees are required to file a post construction certification (PCC) of actual construction costs and pay any additional fees due. The Permit Compliance Officer reviews the estimated construction costs listed in all Act 250 applications and compares this information with the project's PCC that must now be filed upon substantial completion of the development. Permit fees collected in response to the post construction certification for the last five years are shown below:

CY 2009	\$177,095.00
CY 2010	\$ 64,922.00
CY 2011	\$ 96,166.00
CY 2012	\$ 60,130.00
CY 2013	\$ 44,172.00
CY 2014	\$ 29,253.00

7) Downtown Development Board

The Chair of the NRB is a member of the Downtown Development Board, which is responsible for designating downtown development districts, village centers, new town centers, growth centers and neighborhood development areas, and for awarding financial incentives, pursuant to 24 V.S.A. Chapter 76A.

In 2014, the Chair and NRB staff worked with the Department of Housing and Community Development (DHCD) on legislation to follow up on DHCD's Act 59 report for improving the Growth Center designation process and statute. The NRB also worked closely with VTrans and the Agency of Natural Resources as part of this process.

This process resulted in legislation that made the following changes to Act 250: Criterion 5B, which requires examination of pedestrian, cycling and other alternative modes of transportation, and Criterion 9L to encourage growth in designated centers, support traditional settlement patterns, and prohibit strip development.

8) Participation in Court Appeals (CY 2014)

The NRB has statutory authority to participate as a party in Act 250 appeals to the Environmental Division. In CY 2014, the NRB reviewed 14 Act 250 permit decisions and one jurisdictional opinion reconsideration appealed to the Environmental Division. The NRB decided to participate as a party in 13 of these appeals. One appeal was withdrawn by the appellant and re-filed as a jurisdictional opinion reconsideration. The Board also voted to participate in the single appeal from a jurisdictional opinion reconsideration decision. That jurisdictional appeal has been stayed at the appellant's request, while the appellant seeks an Act 250 permit at the District Commission.

9) Environmental Rulemaking and Policy Work

In 2014, the NRB initiated a stakeholder process to review its Master Plan Policy and partial findings rule, pursuant to Section 38 of Act 199 of 2013 (adj.). This resulted in draft amendments to the Act 250 Rules. Also in 2014, the Board reviewed other possible amendments to the Act 250 Rules, and voted to initiate rulemaking on a comprehensive package of revisions. The proposed Act 250 Rule revisions are available on the Board's website at:

<http://www.nrb.state.vt.us/rulemaking/act250/act25020152.htm>

The Board also adopted a Procedure to implement the new Act 250 Criterion 9(L) (settlement patterns), which took effect on June 1, 2014.

11) Enforcement and Compliance

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, Emergency Administrative Orders, Assurances of Discontinuance, and Civil Citations with respect to violations of Act 250, and cooperates with the Agency of Natural Resources (ANR) on mixed Act 250 and ANR enforcement matters. The NRB's enforcement staff consists of one general counsel and two staff attorneys who dedicate roughly one-third to one-half of their time toward enforcement matters, and one Permit Compliance Officer. The Chair of the Board directs the enforcement program.

2014 Enforcement Activity

This year the Board's Permit Compliance Officer (PCO) investigated approximately 130 complaints. Some of those complaints were not deemed violations. Others were referred to the Agency of Natural Resources (eleven) and the Attorney General's Office (two). The Permit Compliance Officer referred twenty-nine investigations to NRB attorneys for formal enforcement and issued three citations.

The NRB enforcement program resolved fifteen cases this year through Assurances of Discontinuance and eight were resolved through Civil Citations. Assurances of Discontinuance are settlement agreements that often include civil penalties and compliance requirements. Civil Citations are tickets issued by the Permit Compliance Officer, to levy fines of up to \$3,000. The program issued fourteen Notices of Alleged Violations in seven different Act 250 Districts in 2014. Notices of Alleged Violation 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.

Act 250 violations fall into two general categories: (1) activities commenced prior to the issuance of a required Land Use Permit or permit amendment, or (2) activities that violate a condition of an existing permit. About 50% of the resolved cases involved violations of permit conditions, and the remaining 50% involved commencement of construction without an Act 250 permit. The number of resolved cases increased slightly from the previous year, although the amount of assessed penalties decreased from 2013. Several enforcement cases resulted in environmental protection such as restoration or reclamation activity not reflected in penalty amounts.

The Board has also improved the rate of collection of assessed penalties. Of the \$103,264 in assessed penalties, the Board has collected \$90,000. Also in 2014, the Board adopted a process for the collection of unpaid penalties through the Department of Taxes Setoff Debt Program in accordance with 32 V.S.A. Ch. 151, to help recover unpaid penalties. The Board has also stepped up efforts to recover the costs of enforcement in recent years.

Enforcement and Compliance Activity Summary

	CY 2011	CY 2012	CY 2013	CY 2014
Investigations Opened	90	102	75	132
Investigations Referred to NRB Enforcement	27	20	35	29
Resolved Enforcement Actions	7	19	19	23
Total Penalties Assessed	\$72,380	\$183,180	\$220,740	\$103,264
Total Penalties Collected	\$46,375	\$82,421	\$177,890	\$90,000
Total Enforcement Costs Assessed	\$700	\$5,912	\$8,021	\$5,282

12) Technology Initiatives

The NRB recognizes the need for electronic filing of permit applications and improved access to permit information and documents. Several initiatives are currently being implemented, with oversight by the Executive Director, including the use of PDF “smart form” technology, an interactive map of Act 250 permits throughout the state, a new Act 250 database web page, and a paperless application process.

Application Smart Form: In early 2014 several Act 250 application forms were consolidated into a new PDF smart form application. The new form automatically adapts to the particular type of Act 250 application being submitted and the issues presented by the specific project, thereby reducing the size and complexity of the form and increasing the consistency of information. The form also includes internal logic to insure that fees are calculated correctly and that other information is presented in the correct format. The form also facilitates submittal of an electronic copy of the application.

Permit Mapping: In 2014 NRB made significant progress toward completing an online map showing the location of all Act 250 permitted properties in the state. This map is being populated by the District Office staff and is currently completed for approximately 85% of the state. Our goal is to complete this map by July 1, 2015. This map will become an integral part of the new Act 250 web portal (see below).

New Act 250 Database Web Site: In 2014, NRB completed an engagement with an outside vendor to gather the requirements for a new Act 250 database web site. This portal will include information and search capabilities for all Act 250 permits issued since 1970, including a complete record of permit documents for more recent permits. This portal will replace the current Act 250 database portal hosted by ANR on its website.

Paperless Application Pilot Project: NRB has been implementing electronic filing and distribution procedures for Act 250 permit applications for several years. The primary goal of this effort is to facilitate the filing of permit application documents by applicants and other participants and to make these documents available on line. This effort has also reduced the filing of paper documents by Act 250 applicants, parties, and state agencies, resulting in savings in postage, copying costs, and, most importantly, our forest resources.

In 2014, we launched a pilot project in District 2 (Windham and Southern Windsor Counties) to eliminate all paper from Act 250 filings in that district. Starting in March, 2014, applicants in District 2 have been filing only an electronic copy of the application; the 8 complete paper copies of the application (four submitted to the Act 250 office and four distributed to the town, regional planning commission, and Agency of Natural Resources) are not required. All documents are uploaded to the online Act 250 database (a current procedure for all districts) where they can be viewed by the District Commission, towns, regional planning commissions, state agencies, and the public. All follow-up submissions are submitted in electronic format. We recently surveyed the pilot participants and received favorable feedback overall. Our goal is to implement electronic filing for all Districts in 2015. This implementation depends on being able to acquire tablet or laptop devices for District Commissions which will enable Commissioners to review permit applications during hearings. The cost of purchasing devices is included in NRB's FY 2016 budget.