



NATURAL RESOURCES BOARD

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DATE: February 16, 2016

TO: Governor Peter Shumlin

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

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

RE: Natural Resources Board Annual Report for Calendar Year 2015

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 2015 were Chair Jon Groveman (Marshfield), Vice Chair William Boyd Davies (Barton), Dominic Cloud (Essex), Don Sargent (Colchester), and Marty Illick (Charlotte). The alternates in 2015 were Julie Wolcott (Enosburg Falls), Gail Fallar (Tinmouth), Chuck Haynes (East Montpelier), and Elizabeth Courtney (Montpelier). All must be confirmed by the Senate.

The Board's primary function is to administer Act 250. This includes supporting the nine District Environmental 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 Environmental 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 requests to reconsider jurisdictional opinions (JO) made by District Coordinators at the request of a person aggrieved by the JO. The NRB received and reviewed nine such requests in 2015. 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 JO 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 nine regionally based District Coordinators and Assistant Coordinators. The Director is also responsible for coordinating District Commission training.

The NRB General Counsel supervises a legal staff of one Associate General Counsel and one Enforcement 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 JO 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 Enforcement 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 business and 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, information technology systems and intra-agency communications. The Administration Manager is also responsible for coordinating administrative support staff training.

One NRB Program Technician supports the Montpelier office staff. In summary, seven NRB employees are located in the Montpelier office and 17 are located in five regional offices (with other state agency staff) for a total of 25 employees in 2015. Note that this number includes the elimination of two central office staff positions (one attorney position and one administrative support position) as a result of a reduction to NRB's FY 2016 General Fund appropriation. In 2016 the NRB is losing one additional staff position (District Coordinator) as a result of the retirement incentive program.

Most importantly, the NRB organization includes eight volunteer Board 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, and legal and administrative staff. See organization chart below.

NRB Organizational Chart



3) District Environmental Commissions and Staff

The District Commissions are the heart of the Act 250 process. The nine District Commissions are responsible for assuring that developments and subdivisions comply with Act 250's 10 criteria. Each District Commission is composed of a chair, two members and four alternates, all residing in the district they serve. All Commissioners are appointed by the Governor. In 2015 the nine Commissions were 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 and administrative staff, the Commissions process, on average, 310 Land Use Permit (Act 250) applications per year representing \$600,000,000 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 Superior Court, Environmental Division. The District Coordinators also work collaboratively with NRB's Enforcement Officer to enforce the Act 250 statute and land use permits.

B. Annual Report

This report is based on a statistical analysis of NRB and District Environmental Commission activity during Calendar Year 2015 (CY2015). Fiscal Year (FY) data has been used for the fee revenue analysis.

1) Act 250 Application Volume

	CY2012	CY2013	CY2014	CY2015
Major (Hearing Required)	73	62	88	49
Minor (No Hearing)	<u>267</u>	<u>233</u>	<u>222</u>	<u>252</u>
Total	340	295	310	301

2) Appeals and Reconsiderations

JO Reconsiderations			6	9
JO Appeals	3	2	1	4
District Comm. Decision Appeals	<u>12</u>	<u>10</u>	<u>16</u>	<u>6</u>
Total	15	12	23	19

**3) Processing Time
 (2015 Decisions, Date
 Complete to Date Issued)**

<30 Days	19%	18%	19%	20 %
<60 Days	57%	51%	45%	48 %
<90 Days	71%	67%	63%	66 %
<120 Days	81%	76%	73%	74%
>119 Days	19%	24%	27%	26 %

In CY 2015, 301 Act 250 permit applications were filed with the nine District Commissions, compared to 310 the previous year, a decrease of 3%.

Of the 301 applications filed in CY 2015, 84% were processed as “minor” applications, with no contested-case hearing, while the remaining 16% 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, 137 applications were processed as administrative amendments in 2015, compared to 139 administrative amendments processed in 2014. 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 2015 was 60 days from the date the application was deemed complete until a decision was rendered, compared to 68 days in CY 2014. The median processing time for all CY 2015 permit decisions, including Administrative Amendments, was 31 days. It is important to note that processing times typically include the time required for applicants to obtain underlying permits from other agencies, which are used to demonstrate compliance with several Act 250 criteria. In CY 2015, 48% of all major and minor permit decisions were issued within 60 days and 74% were issued within 120 days. These statistics are comparable to, or better than, 2014 statistics for permit processing times.

Five (5) permit applications were denied in CY 2015, a rate of 1.6% overall (majors and minors combined). This compares to two (2) permit denials in CY 2014. Six (6) Commission decisions, or 1.9%, were appealed in 2015. This compares to an appeal rate of 5.2% in 2014. In addition, there were 4 NRB JO Reconsiderations appealed in 2015.

4) Performance Standards

Statutory and internal performance standards guide the performance of the District Coordinators and District Commissions. Average CY 2015 performance is listed below.

<u>Category</u>	<u>Standard</u>	<u>CY 2015 Performance</u>
a) Application Completeness Review	7 days	1.4 days
b) Minor Applications -- Days to Issue After End of Comment Period Or Last Permit Submitted	10 days	3.9 days
c) Major Applications – Days to Issue After Adjournment (Act 250 Rule Standard)	20 days	7.3 days
d) Days to Schedule Hearing (Majors) (Statutory Standard)	40 days	42 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. Several Act 250 fees were increased in FY 2016 as part of the Executive Fee Bill. Generally, Act 250 permit application fees are based on the estimated cost of construction for each development at \$7.40 per \$1,000.00 of construction cost. Of that total, \$.75 is directed to the Agency of Natural Resources to help offset the cost of ANR's participation in the Act 250 process. Other fees include \$125.00 per subdivided lot and a minimum application fee of \$150 for new Act 250 applications. State and municipal

projects are exempt from fees. 10 V.S.A. § 6083a. Fees are deposited into the Act 250 Special Fund.

In FY 2016, the NRB is relying on Special Funds to cover 79% of its annual expenditures for personal service and operating costs, with the remaining 21% covered by General Funds. Fees collected in the last six fiscal years are as follows:

FY 2010	\$ 1.458M
FY 2011	\$ 1.580M
FY 2012	\$ 1.961M
FY 2013	\$ 2.214M
FY 2014	\$ 2.035M
FY 2015	\$ 2.407M

Special Fund spending authority for the last six fiscal years:

FY 2010	\$ 1.748M
FY 2011	\$ 1.965M
FY 2012	\$ 1.965M
FY 2013	\$ 1.965M
FY 2014	\$ 2.017M
FY 2015	\$ 2.017M

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 Enforcement 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 2011	\$ 96,166.00
CY 2012	\$ 60,130.00
CY 2013	\$ 44,172.00
CY 2014	\$ 29,253.00
CY 2015	\$ 72,894.00

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.

8) Participation in Court Appeals (CY 2015)

The NRB has statutory authority to participate as a party in Act 250 appeals to the Environmental Division. In CY 2015, the NRB reviewed 14 Act 250 permit decisions and four JO reconsiderations 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 JO reconsideration. The Board voted to participate in all four appeals related to JO reconsideration decisions.

9) Environmental Rulemaking and Policy Work

In 2015, the NRB adopted rules that addressed Act 250 Master Plans and other miscellaneous updates to its rules. The final adopted rule changes [can be found here](#).

In addition, as directed by S.138, the NRB worked in conjunction with ACCD and ANR to revise its guidance related to Criterion 9(L) of Act 250. Criterion 9(L) was amended in 2014 to address settlement patterns and strip development. After a stakeholder process that began last spring, a final draft was submitted to the NRB for review in January. The Board intends to adopt the guidance at its March 2016 meeting.

10) 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 ANR on mixed Act 250 and ANR enforcement matters. The NRB's enforcement staff consists of one General Counsel, one Associate General Counsel, and one Enforcement Officer. The Chair of the Board directs the enforcement program.

2015 Enforcement Activity

This year the Board's Enforcement Officer (EO) investigated approximately 102 complaints. Some of those complaints were not deemed violations. Six were referred to the Agency of Natural Resources. The Enforcement Officer referred 19 investigations to the NRB attorneys for formal enforcement and issued 10 citations.

The NRB enforcement program resolved nine cases this year through Assurances of Discontinuance and 10 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 Enforcement Officer, to levy fines of up to \$3,000 per citation. The program issued 22 Notices of Alleged Violation in seven different Act 250 Districts in 2015. 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 maintained the running average. Several enforcement cases resulted in environmental protection such as restoration or reclamation activity not reflected in penalty amounts.

The Board also continues to improve the rate of collection of assessed penalties. Of the \$78,950 in assessed penalties in 2015, the Board has collected \$61,982. The Board has also stepped up efforts to recover the costs of enforcement in recent years.

Enforcement Activity Summary

	CY 2012	CY 2013	CY 2014	CY 2015
Investigations Opened	102	75	132	102
Investigations Referred to NRB Enforcement	20	35	29	19
Resolved Enforcement Actions (including citations)	19	19	23	19
Total Penalties Assessed	\$183,180	\$220,740	\$103,264	\$78,950
Total Penalties Collected	\$82,421	\$177,890	\$90,000	\$61,982
Total Enforcement Costs Assessed	\$5,912	\$8,021	\$5,282	\$7,267

Note: CY 2015 estimates do not include a \$205,000.00 settlement negotiated by the Attorney General's Office in cooperation with ANR and NRB.

11) Information Technology and Business Process Improvement

Permit Mapping: In 2015 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 90% of the state. Our goal is to complete this map by July 1, 2016. This map will become an integral part of the new Act 250 web portal (see below).

New Act 250 Database and Online Application Form: NRB is currently working with the IT staff of the Agency of Natural Resources to develop a new Act 250 database web site and online Act 250 application form. The web 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. The portal will replace the current Act 250 database portal hosted by ANR on its website. The new online application form will enable applicants to complete an Act 250 application online, including payment of the associated fee. Applicant and project information will populate the Act 250 database described above.

Paperless Application Pilot Project: NRB has been implementing electronic filing and distribution procedures for Act 250 permit applications for several years in order 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. 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.

In 2015 we surveyed participants in the pilot project and received favorable feedback overall. Our goal is to implement electronic filing for all Districts by the end of 2016. This will be facilitated through the use of tablet devices for District Commissions which will enable Commissioners to view permit applications during hearings. The cost of purchasing devices is included in NRB's FY 2016 budget.

Business Process Improvement

In December 2015 the NRB participated in a LEAN event sponsored by ANR. The week-long event focused on documenting the current Act 250 permit application process, determining which steps in the process add value and which do not, and identifying changes which can lead to a more efficient and timely process overall, without compromising any of the natural resource and other public values which Act 250 seeks to protect. NRB central office and district office staff are working on an Implementation Plan to carry out the changes. Key Performance Indicators have also been adopted to measure the success of these changes. Overall progress will be reported to the Legislature as part of ANR's regular LEAN reporting.