

**State of Vermont
Natural Resources Board
Land Use Panel**

Guidelines

RE: Jurisdictional Opinion Guidelines

JP- 3-2

File Under: Rule 3

Cross Ref: § 6007(c)

Supercedes: 11/28/83

Date: July 22, 2008

These Guidelines govern the issuance of Project Review Sheets (PRS) and Jurisdictional Opinion (JO) letters. A PRS or JO is a determination regarding Act 250 jurisdiction over a specific project pursuant to 10 V.S.A. § 6007(c). The factual basis of the jurisdictional conclusion should be clear from the face of the PRS or JO, so that the project proponent and other interested parties will understand the possible consequences of modifications to the facts and law on which the PRS or JO is based.

A. Project Review Sheets

1. Nature and Purpose: A PRS is a short form Act 250 jurisdictional opinion, and includes determinations of other permit requirements by an ANR permit specialist. Under ordinary circumstances the PRS is the preferred method for making jurisdictional determinations. However, in unusual fact situations or complex cases, or upon request of an applicant, a statutory party, the permit specialist, or an interested person, a formal JO letter should be prepared. (See “Jurisdictional Opinion Letters” below.)
2. Authorization: In most cases, the ANR permit specialist initiates the PRS and then forwards it to the coordinator or assistant coordinator, and in rare situations the chief coordinator (“coordinator,” “assistant coordinator” and “chief coordinator” are hereafter known as “coordinator”), for review.

However, upon request the coordinator may initiate a PRS. If the project has the potential for jurisdiction of one or more ANR permit programs, the PRS is forwarded to the permit specialist for review. Only coordinators may issue a PRS.

3. Form: The PRS form should be obtained from the Environmental Assistance Office of the Agency of Natural Resources. Coordinators should periodically check to make sure that they are using the latest form.
4. Requestor: Any person may request a PRS from a coordinator. 10 V.S.A. § 6007(c). Coordinators may not issue a PRS “sua sponte,” or without a request from another person. Other persons include staff from another state agency, a member of the general public, an applicant or applicant’s representative, or an adjoining property owner. The requestor should be noted on the PRS. In cases where the coordinator has not received a request for a PRS but has sufficient facts about a proposed subdivision or development, the coordinator may advise the project proponent orally or in writing about the need for an Act 250 permit. In these cases the coordinator should make it clear to the project proponent that he/she is not issuing a PRS without a valid request.
5. Additional Inquiry: The coordinator should evaluate whether the requestor has provided sufficient information to make a jurisdictional determination. If additional facts are necessary, these facts may be obtained from the requestor, adjoining property owners, the municipality, state agencies, or other sources. In some instances, it may be desirable to circulate a “proposed” PRS for public comment, or circulate a memo describing the jurisdictional issue and providing the opportunity to submit additional relevant information.
6. Distribution: After the coordinator has signed the PRS it is routed back to the permit specialist for distribution. In cases where the PRS is being issued to determine Act 250 jurisdiction only, the original PRS is sent (or given in person) to the requestor. A copy is filed in the permit file, if the PRS pertains to a permitted project, or in the town file, if the PRS does not pertain to a permitted project. If the requestor is seeking a “final” jurisdictional determination, the coordinator must follow the distribution and notice requirements set out in 10 V.S.A. § 6007(c). If the requestor is not seeking a “final” determination, the PRS may be distributed to statutory parties and adjoining property owners at the discretion of the coordinator. Distribution should be noted on the PRS.
7. Reconsideration and Appeal: Persons who qualify as parties pursuant to 10 V.S.A. § 6085(c)(1)(A) through (E) may request reconsideration from the coordinator within 30 days of the mailing of the PRS pursuant to Act 250 Rule 3(C). The PRS may be appealed to the Environmental Court within 30 days pursuant to 10 V.S.A. § 8504(a).

B. Jurisdictional Opinion Letters

1. Nature and Purpose: A JO is a more formal determination concerning Act 250 jurisdiction over a specific project, with a more detailed analysis written in letter format. Requests for speculative opinions based upon incomplete facts or hypothetical situations should not be accepted; a specific proposal must exist which presents a complete factual record and an identifiable question for resolution.
2. Authorization: Only coordinators may issue a JO.
3. Requestor: Any person may request a JO from a coordinator. 10 V.S.A. § 6007(c). Coordinators may not issue a JO “sua sponte,” or without a request from another person. Other persons may include staff from another state agency, a member of the general public, an applicant or applicant’s representative, or an adjoining property owner. The NRB compliance officer may request a JO and may provide the coordinator with facts gathered in the course of a compliance investigation. The requestor should be noted in the text of the JO. In cases where the coordinator has not received a request for a JO but has sufficient facts about a proposed subdivision or development, the coordinator may advise the project proponent orally or in writing about the need for an Act 250 permit. In these cases the coordinator should make it clear to the project proponent that he/she is not issuing a JO without a valid request.
4. Format and Contents:
 - a. Written JOs should be drafted using the state-approved electronic letterhead provided by NRB staff. A written JO should not be issued as part of the body of an email message. However, a written JO may be issued as an email attachment. (See “Distribution” below.)
 - b. While each JO should be tailored to the complexity and nature of the issues presented, the JO should generally conform to the JO shell and should contain the following elements:
 - i. JO File Number -- JOs should be numbered using the following convention: Jurisdictional Opinion #[District Number] - [JO number (number consecutively from year to year)] (R) (if the JO is a reconsideration). Example: Jurisdictional Opinion #7-247(R).

- ii. A restatement of the question at issue; what issue of applicability or interpretation has been raised?
 - iii. Brief statement of pertinent facts; a statement of facts submitted by the requesting person appended to the opinion will suffice.
 - iv. Discussion, including reference to pertinent statute or rule.
 - v. Conclusion; answer the question.
 - vi. A statement of reconsideration and appeal rights.
5. Additional Inquiry: The coordinator should evaluate whether the requestor has provided sufficient information to make a jurisdictional determination. If additional facts are necessary, these facts may be obtained from adjoining property owners, the municipality, state agencies, the NRB compliance officer, or other sources. In some instances, it may be desirable to circulate a “proposed” JO to statutory parties and adjoining landowners for public comment, or circulate a memo describing the jurisdictional issue and providing the opportunity to submit additional relevant information.
6. Distribution: The coordinator should determine the extent of distribution sought by the requestor. If the requestor is seeking a “final” jurisdictional determination, the coordinator must follow the distribution and notice requirements set out in 10 V.S.A. § 6007(c). If the requestor is not seeking a “final” determination, the JO may be distributed to statutory parties and adjoining property owners at the discretion of the coordinator. A copy of the JO should be filed in the permit file, if the JO pertains to a permitted project, or in the town file, if the JO does not pertain to a permitted project. Distribution should be noted in the JO.

All JOs should be distributed electronically to the Agency of Natural Resources and other affected state agencies using the protocol outlined in the “Guidelines for Sending District Commission Documents by Email (E-notification).” The coordinator may also distribute a JO to the requestor, other statutory parties, or adjoining property owners using this protocol if such entities have agreed to receipt by email.

An electronic copy of the JO should always be sent to the Board’s Business Manager and Chair. Electronic copies may also be sent to other NRB staff at the discretion of the coordinator.

JOs not distributed electronically should be sent by US Mail.

7. Reconsideration and Appeal: Persons who qualify as parties pursuant to 10 V.S.A. § 6085(c)(1)(A) through (E) may request reconsideration from

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the coordinator within 30 days of the mailing of the JO pursuant to Act 250 Rule 3(C). The JO may be appealed to the Environmental Court within 30 days pursuant to 10 V.S.A. § 8504(a).

8. Performance Standard: The performance standard for completion of a JO is 20 days after the coordinator has obtained sufficient facts constituting a complete record upon which to base the decision. In cases where a public comment period has been established to obtain additional relevant facts, the performance standard is 20 days from the date established by the coordinator to receive additional information or public comment.
9. The Land Use Panel of the Natural Resources Board reserves the right to initiate any enforcement matter or action at any time whether or not a JO or PRS has been issued.

Approved by the Land Use Panel on June 22, 2008

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