



Natural Resources Board Overview

House Natural Resources and Energy Committee

January 14, 2015

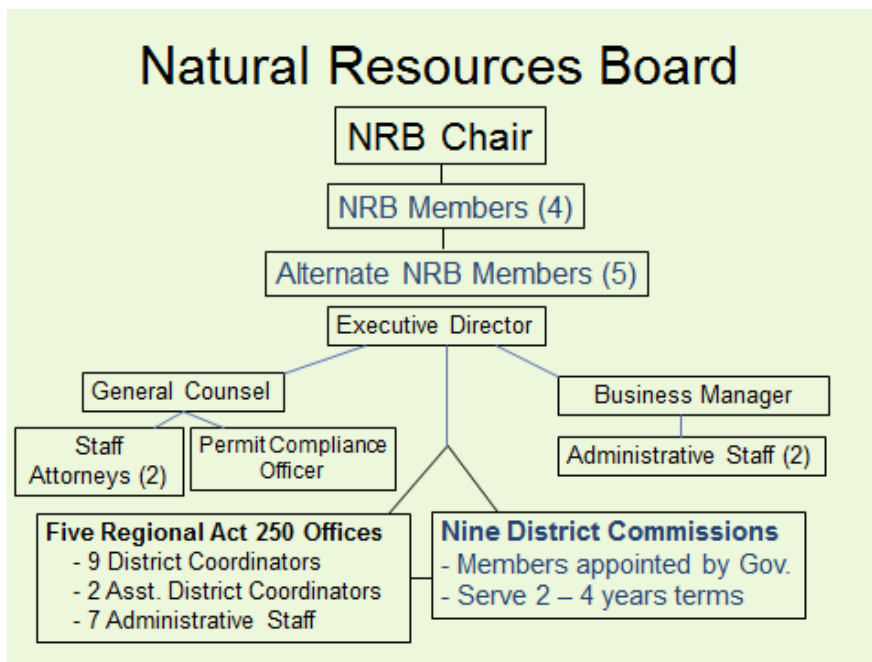
1) Introduction

The Natural Resources Board (NRB) administers Act 250.

The Board consists of a full-time Chair, four citizen members and five alternates, all of whom are appointed by the Governor and confirmed by the Senate. The Chair serves at the Governor’s pleasure. Members and alternates serve four-year staggered terms. The Chair is also a member of the Downtown Board and as such participates as a Board Member in Vermont Development Area designation decisions.

Administration of Act 250 includes oversight, support, advising, and training of the District Environmental Commissions, procedural and substantive rulemaking, enforcement, reconsideration of jurisdictional opinions issued by District Coordinators, and participation as a statutory party in Act 250 appeals to the Environmental Division. The NRB also hears appeals of District Commission fee determinations.

The Commissions process on average (last five years) 450 Act 250 applications per year amounting to approximately \$400,000,000 in development activity per year.



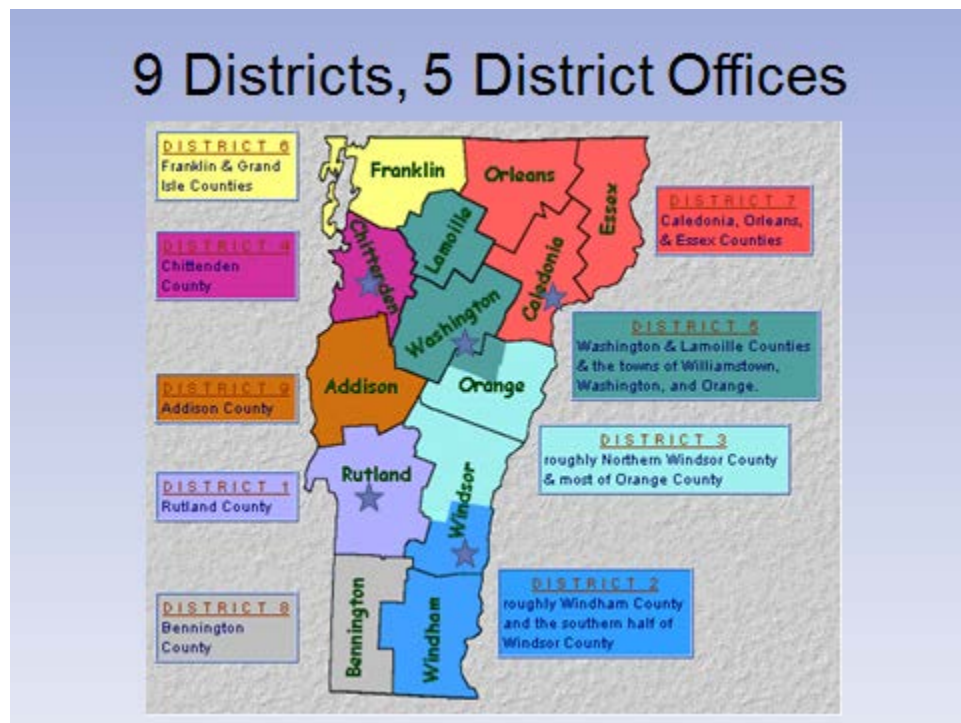
3) District Commissions and NRB Staff

Act 250 permitting decisions are made by nine separate District commissions each serving a specific geographic area. A map of the districts is attached. Each Commission is composed of a chair, two members, and four alternates appointed by the Governor. Chairs and alternates serve two-year terms. Members serve four-year terms.

Eighteen NRB employees are divided between five regional offices and the main office in Montpelier. The offices in Springfield, Rutland, Essex Junction, St. Johnsbury and Barre house nine separate District Commissions. Three Commissions are co-located in Essex, and two Commissions are co-located in the Rutland and Springfield offices. The Barre and St. Johnsbury offices serve single Commissions. Each commission is assigned a District Coordinator who manages the Act 250 process for the Commission.

In addition, nine employees are located in our Montpelier office and serve the overall program and the NRB. These employees include the NRB Chair, Executive Director, the General Counsel, two associate general counsels, a permit compliance officer, an administrative services coordinator, and two administrative support staff.

In total there are approximately 100 people in the NRB organization as a whole, including District Commissioners, NRB Members and Alternates, District Coordinators, legal and administrative staff.



4) NRB Budget and Funding

The NRB's FY 2015 budget is approximately \$2.8 million. The Board is funded through a combination of General Funds and Special Funds from Act 250 permit application fees. Currently 72% of the Board's budget comes from permit application fees and 28% is supported by the General Fund. Permit application fees have been relatively stable over the past three fiscal years, averaging just over \$2 million per year. However, fees can vary significantly from year to year depending on economic cycles.

5) Act 250: Vermont's Land Use and Development Law

Act 250 is Vermont's Land Use and Development Law, enacted in 1970. It is administered by the nine District Environmental Commissions. Act 250 assures that development and subdivision conform to 10 comprehensive environmental criteria before the District Commission can issue a land use permit. The Criteria are:

1. Air and Water Pollution
2. Water Supply
3. Impact on Existing Water Supplies
4. Soil Erosion
5. Traffic Safety and Congestion
6. Impact on Schools
7. Impact on Municipal Services
8. Wildlife, Historic Sites, and Aesthetics
9. Impact of Growth
10. Conformance with Local and Regional Plans

Jurisdiction

- Subdivisions of 10 lots or more, or 6 lots in towns without permanent zoning and subdivision regulations
- Commercial development on more than 1 acre in towns without permanent zoning and subdivision
- Commercial development on more than 10 acres in towns with permanent zoning and subdivision
- State and municipal projects with more than 10 acres of disturbance
- Housing projects with 10 or more units (higher thresholds up to 275 units for Priority Housing Projects in certain designated areas)
- Communication towers >50 feet in height
- Commercial, residential, or industrial development above 2,500 feet
- Commercial composting



- Material change to an Act 250 permitted project
- Substantial changes to pre-existing (pre-1970) projects

Exemptions from Jurisdiction

- Farming and logging below 2,500 feet
- Electric generation and transmission facilities and telecommunications projects regulated by PSB (Sec. 248 and 248a)
- Agricultural fairs and horse shows; no buildings; open to public for < 61 days per year
- Small scale and on-farm composting

Jurisdictional Opinion Process

- JO Issued by District Coordinator - Letter form or Project Review Sheet
- Reconsideration by District Coordinator within 30 days
- Appeal to Environmental Division, Superior Court, within 30 days; prior to appeal, JO is subject to reconsideration by the Natural Resources Board

Application Process

Applicants typically submit an Act 250 application after any necessary local permits have been obtained, but usually concurrently with applications to the Agency of Natural Resources technical permits such as wastewater or stormwater. The first step in the review process is for the District Coordinator to determine whether the application is complete, which must occur within 7 days. If the application is not complete, the District Coordinator notifies the applicant in writing of the outstanding information that must be submitted.

Once the application has been deemed complete, the District Commission reviews the application to determine whether it will be processed as a Minor or Major application. For Minor applications a notice and draft permit are prepared and distributed to the statutory parties and to adjoining property owners, with a comment period of usually 3 weeks during which comments may be submitted or a hearing may be requested. If a valid hearing request is received during the comment period the District Commission schedules a hearing to discuss the issues that have been raised.

For Major applications the District Commission schedules a public hearing, which must be within 40 days of receipt of a complete application. At the hearing the District Commission rules on any party status requests, then the applicant presents a project overview and describes how the project complies with the 10 criteria. The District Commission has the opportunity to ask questions first, then parties have an opportunity to ask questions and present their own testimony.

One of the hallmarks of Act 250 is the access it provides to ordinary citizens to participate in the review of Act 250 permit applications and to seek formal party status, which also provides for the right of appeal. Anyone who can demonstrate a “particularized interest” that is related to one of Act 250’s criteria and that may be affected by the proposed project is entitled to party status. It’s a relatively low bar to get over and the District Commission makes a preliminary determination on party status requests at the outset of a hearing and then makes a final determination at the close of the hearing.



This gives the Commission the ability to hear from potential parties during the hearing and then make an informed decision about whether a potential party has met the test for party status and the ability to appeal. The District Commission can also grant Friend of the Commission status which comes with the ability to participate in the hearing, but not appeal the decision.

It is important to note that there are a number of criteria, such as Criterion 1- Air Pollution, Criterion 1(B) Wastewater, Criterion 2 – Water Supply, and Criterion 4 – Wetlands where the applicant can satisfy the Act 250 criterion by submitting an ANR permit, which creates a rebuttable presumption that the project complies with the Act 250 Criterion. This means that applicants do not need to spend time and resources in the Act 250 process discussing how the project will handle wastewater disposal because it is handled through the ANR permitting process. There are currently 16 ANR or Agency of Agriculture permits that create rebuttable presumptions under one or more Act 250 criteria.

Typically at the end of a hearing, there is a list of outstanding issues or permits which the applicant must submit and the Commission issues a recess memo within a week confirming the outstanding items. Once all of the outstanding items or permits are submitted, the Commission deliberates on the case and issues a decision. Our performance standards require that a decision is issued within 20 days of the last item being submitted and the completion of Commission deliberations.

Application Statistics

	CY 2013	CY 2014
Majors	66	88
Minors	237	221
Administrative Amendments	<u>166</u>	<u>136</u>
Total	469	445

Additional statistics on application volume and performance standards will be presented in the NRB Annual Report which is submitted to the Legislature on February 15.

6) Public Access, Electronic Application, and Distribution Initiatives

NRB Database Project: All Act 250 permit applications are currently available to review on the Public Act 250 Database site within a day or two of the submission of the application. This includes all exhibits and supporting documents associated with the application. This provides access to state agencies and the public to review all Act 250 applications for the purpose of determining whether to submit comments to the District Commission or seek participation as a party.

NRB has recently deployed a new internal database to track Act 250 applications and generate statistical reports. Phase II of this project, which we hope to complete this year, is to build a new public website database which will replace the existing public Act 250 database and add functionality such as being able to search for information using a GIS map tool.



Act 250 Permit Map: We have almost completed the process of creating a GIS data layer showing the location of all Act 250 permits in the state. This data layer is part of the ANR Natural Resources Atlas and this is the map that would be linked to our new public database.

NRB Electronic Document Distribution: NRB has adopted a practice of distributing all legal notices and final permits to state agencies and other interested parties by email distribution. This provides more timely notice to these parties and also saves on postage, copying costs, and staff time to prepare mailings. Within the past several years we have also worked with ANR staff to implement electronic distribution of many of the 2500+ Project Review Sheets which are issued each year jointly by the NRB and the ANR.

Smart Form Act 250 Application: In 2013 we initiated a new consolidated Act 250 fillable application form which simplifies filling out the application, adapts the form in real time to different types of projects, and also facilitates the electronic distribution of applications.

Paperless Application Pilot Project: In 2014 the District 2 Environmental Commission initiated a pilot project to eliminate all paper from the Act 250 application process. Applicants have been instructed to submit only the electronic fillable application form and all exhibits in pdf format to the District Office and to distribute the application electronically to all statutory parties such as state agencies, the town, and the regional planning commission. Adjoining property owners receive notice of the application by US mail, but if they choose to participate they are asked to provide an email address to eliminate the need to receive any additional paper.

We are hoping to implement this paperless application process statewide later this year, however this depends on being able to provide technology to our District Commissions to enable viewing application materials at home and at hearings.

Case Management Software: The NRB is partnering with the Attorney General's Office and other agencies to evaluate enterprise case management software that could be used to manage enforcement cases and appeals in which the NRB participates. Eventually we hope this case management software will integrate with a fully electronic permit application process, similar to the one which the Agency of Natural Resources initiated for two of its permit programs several years ago.

