

VII. TASK GROUP 4: ACT 250 PROCESS; INTERFACE WITH OTHER PERMITTING; APPEALS

A. Application and review process before the District Commissions; role of Natural Resources Board

1. Statistical Analysis

a) *Charge*

Act 47, Sec. 2(e)(1): “A statistical analysis based on available data on Vermont environmental and land use permitting in general and on Act 250 permit processing specifically, produced in collaboration with municipal, regional, and State planners and regulatory agencies.”

b) *Facts/Analysis*

The Joint Fiscal Office utilized permitting data from the Natural Resources Board in completing the statistical analysis of permitting activities. Most data came from annual reports, but in some cases the Board provided updated numbers due to noted inconsistencies in the data between report years. The analysis reflects a ten-year reporting period, from calendar year 2008 through calendar year 2017. After reviewing the data submitted by NRB, ANR and some municipalities, JFO decided to focus the statistical analysis on Act 250 permitting activity only due to the unique nature of the program and the lack of comparability across data sources (i.e. staffing differences, varying administrative complexity and application volume).

Figure 1¹ below shows the total number of Act 250 applications (bars) processed by the Natural Resources Board over a ten-year period as well as major and minor applications, and administrative amendments (lines)². The total annual applications dropped steadily through most of this period with a slight uptick in the past two years, driven by an increase in administrative amendments. Major applications have dropped, while minor applications have remained relatively stable.

As major and minor applications typically require greater effort than administrative amendments, Figure 2 highlights total major and minor applications with an overlay of the median processing times³ for each application type over a ten-year period. An important note is that the processing times are not exclusive of periods when an application resides outside of NRB control (i.e. ANR, applicant, etc.). The NRB does not currently have the capability to break out the time an application spends within its possession from total processing time. Overall, as major and minor applications have dropped over the ten-year period, median processing times have crept up. *2016 stands out significantly in this figure and in Figure 3 but the NRB has stated that the permitting numbers are accurate.* Median times were used rather than average times due to

¹ All figures were derived using data provided by the Natural Resources Board (NRB)

² The numbers for each year, save for 2008, were taken directly from the Natural Resources Board (NRB) annual report for that particular year. Major and minor applications for 2008 were taken from the 2009 report, while the administrative amendments were taken from the report titled “The Next 50 Years,” which was produced by the NRB.

³ Median processing times were provided by the Natural Resources Board (NRB) and may differ from median times shown in annual reports.

the presence of a small number of applications in a typical year that take a very long time to process, and which skews the average significantly. Figure 3 reflects the disparity between average and median processing times.

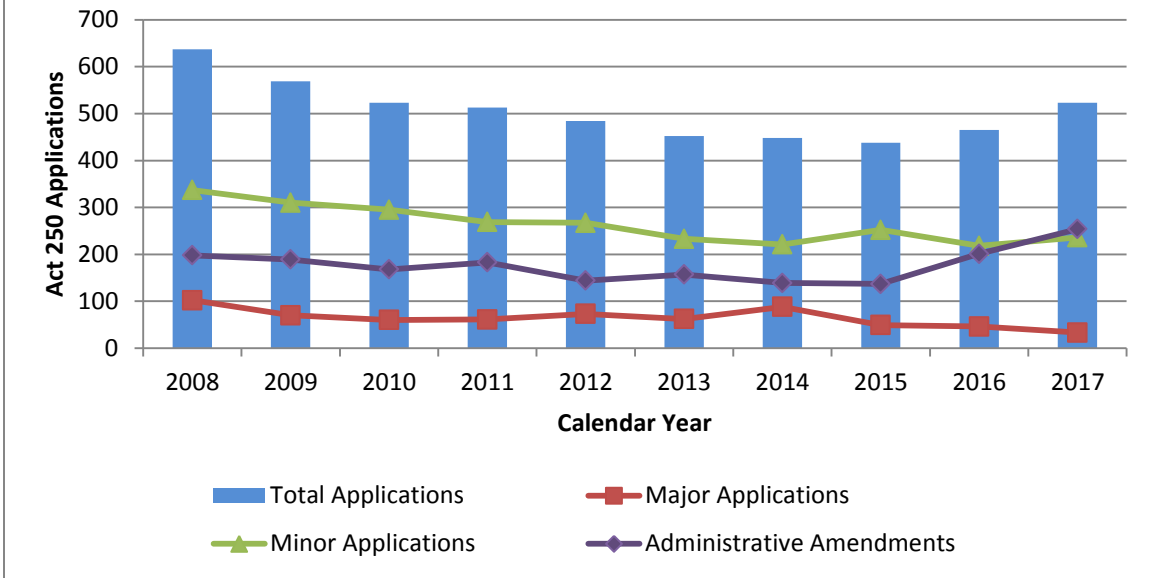
The two primary metrics presented by the NRB in its annual reports to indicate the timeliness of application processing are: 1) Processing times arranged within date ranges, and 2) Performance Standards. Figure 4 shows a ten-year look at processing times based on the percent of applications processed within five date ranges. Over ten years the percent of applications exceeding 119 days for processing has increased while the percentages in other ranges have decreased slightly. The performance standards maintained by the NRB are as follows:

1. Application Completeness Review (internal standard); **7 days**
2. Minors – days to issue after end of comment period (internal standard); **10 days**
3. Majors – days to issue after adjournment (Act 250 rule); **20 days**
4. Majors – days to schedule a hearing (statutory rule); **40 days**

Figure 5 shows how actual application processing results compare to the standards. The standards are represented by dashed lines while actual results are represented by solid lines. This figure represents nine years of performance data rather than ten years due to the fact that two of the four metrics were not given in the 2017 annual report.

The process of performing the statistical analysis was complicated by several factors that should be addressed by the NRB going forward. The annual reports often were inconsistent from year-to-year. For example, prior to 2016 processing times were calculated based on major and minor applications only but in 2016 and 2017 processing times included administrative amendments. Processing times dropped dramatically from prior years but no explanation was given for the change. Additionally, annual numbers given in the report “The Next 50 Years,” which was drafted by the NRB, do not match the numbers in past annual reports. The NRB has also indicated that for any given Act 250 application there is no way of singling out the time an application is in NRB possession from time it might be awaiting action from another party. The NRB has indicated that it is taking actions to address many of these challenges.

**Fig. 1: 10 Year overview of Act 250 Applications
(total and by type)**
Vermont Joint Fiscal Office



**Fig. 2: 10 Year overview of Act 250 applications and Processing Times
(major and minor)**
Vermont Joint Fiscal Office

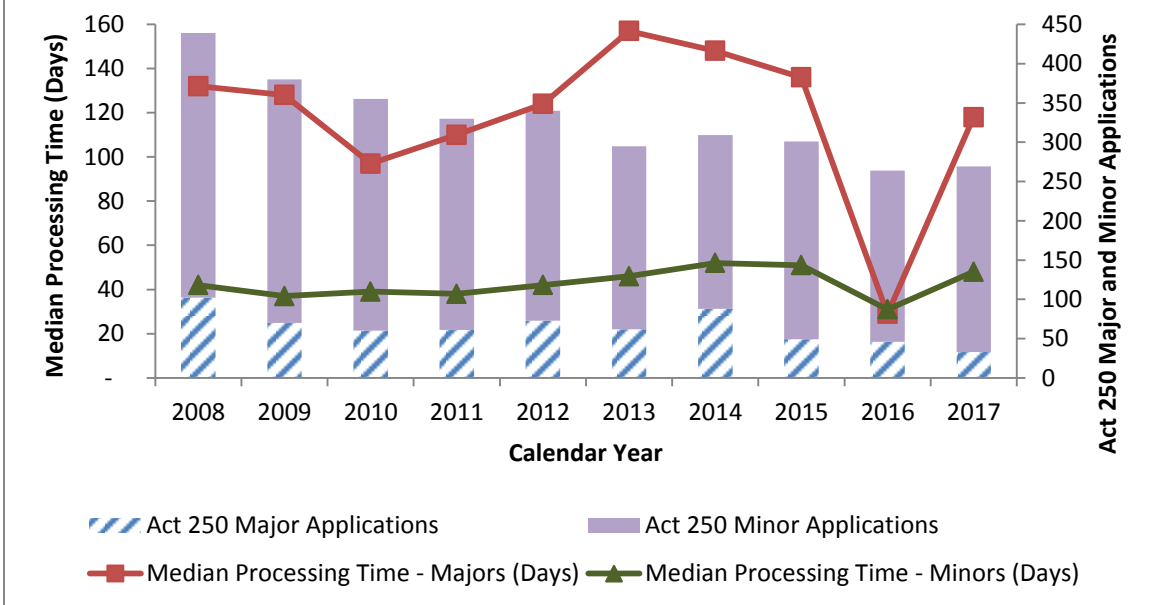


Fig. 3: 10 Year Comparison of Average and Median Processing Times for Major Applications
Vermont Joint Fiscal Office

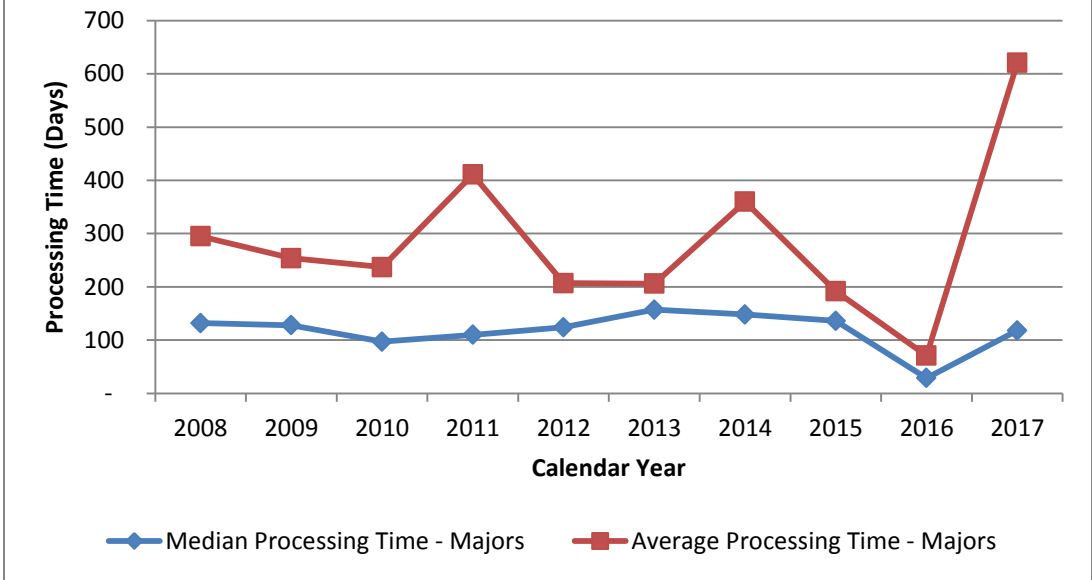


Fig. 4: 10 Year overview of Act 250 Application Processing Times (Majors and Minors, by 30 day Increments)
Vermont Joint Fiscal Office

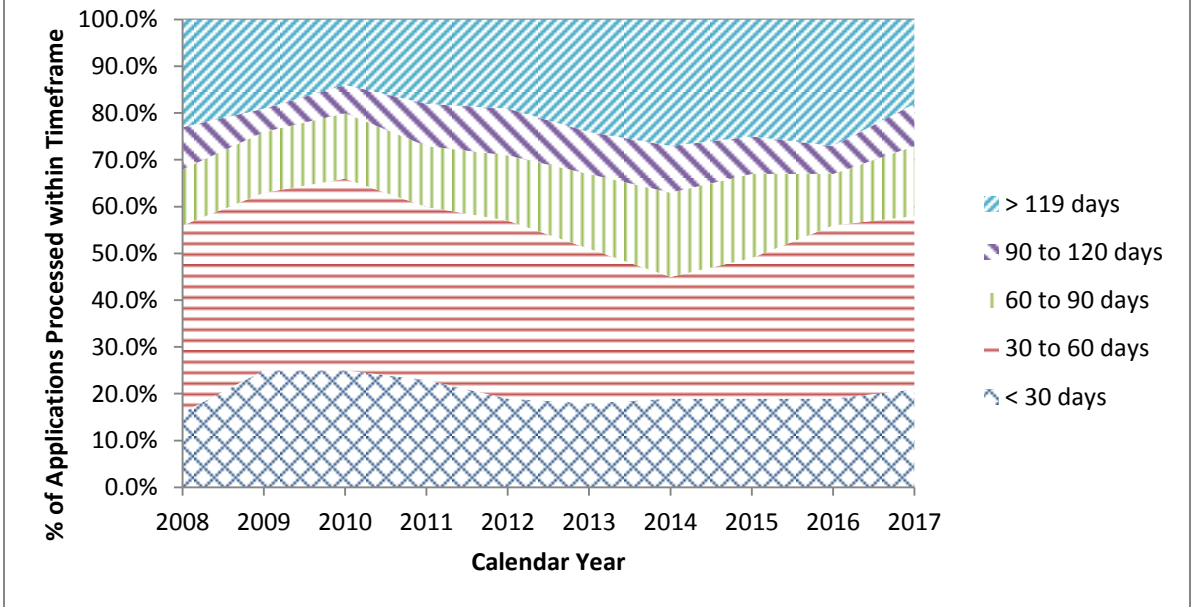
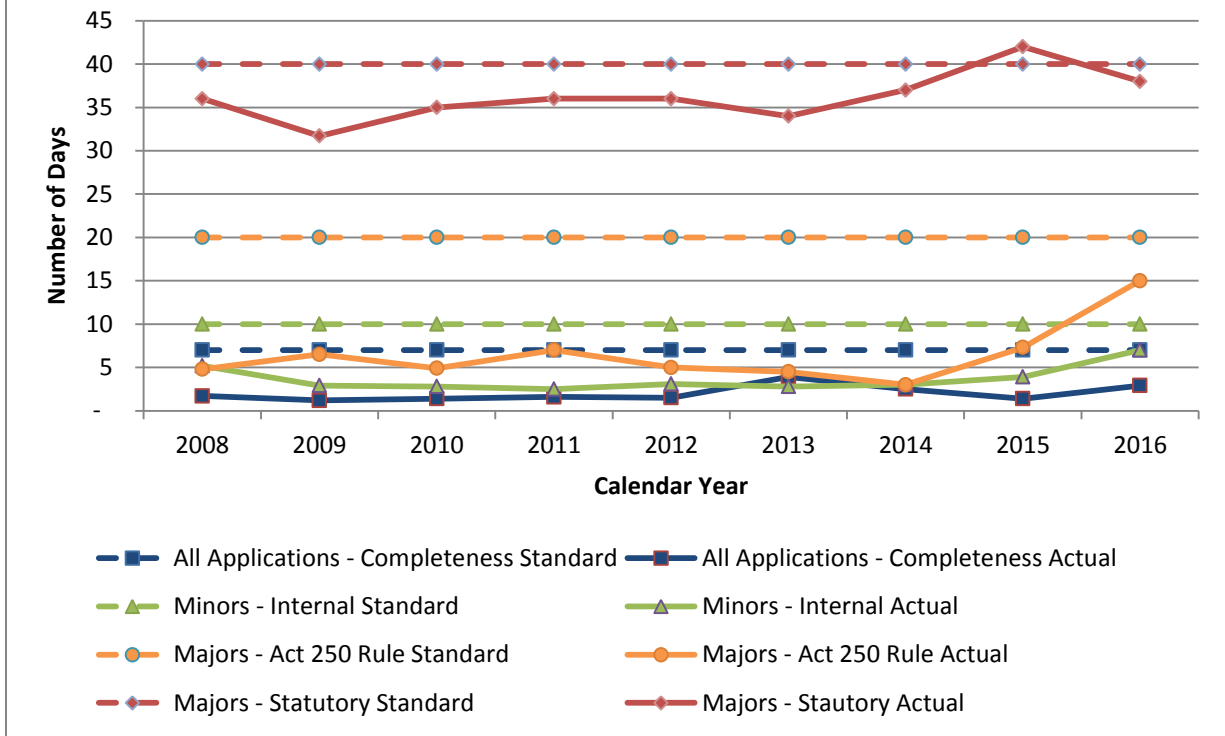


Fig. 5: 9 Year overview of Act 250 Performance Standards
Vermont Joint Fiscal Office



Proposed Recommendations:

1. Better Permit Tracking – *The NRB database should be updated to allow point-to-point monitoring of applications as they move through the review process. If an application goes back to the applicant for revision or to ANR for additional permitting then the database should reflect who possesses an application at a given time.*
2. Address Delayed Applications – *Some Act 250 applications have taken years for a final decision, in one case over 16,000 days (almost 44 years). These outliers significantly complicate any effort to accurately analyze average permitting results. In some cases these are abandoned applications and in others there may be ongoing litigation. A better permit tracking system would allow NRB to isolate these outliers more easily and explain the circumstances surrounding any delay in its reports to the public. NRB should also consider adopting a*

- rule to periodically “check-in” on delayed applications to determine whether action might be taken to move it along or close it out.*
- 3. Improve Annual Reports – Past reports often contain inconsistencies with how permitting data is presented year-to-year. This reality created significant complications for JFO in performing a statistical analysis. The NRB should be more transparent in highlighting major changes to the presentation of its permitting statistics and should provide data in a more consistent format in general going forward.*
 - 4. Address DC variances – The NRB hinted that some district commissions may track permit applications differently in regards to the performance standards. This would skew the actual processing performance in relation to the standards. These variations between DCs should be resolved.*

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