



Natural Resources Board Annual Report For Calendar Year 2017

10 Baldwin Street
Montpelier, Vermont 05620-3201
Telephone: 802-828-3309
www.nrb.state.vt.us

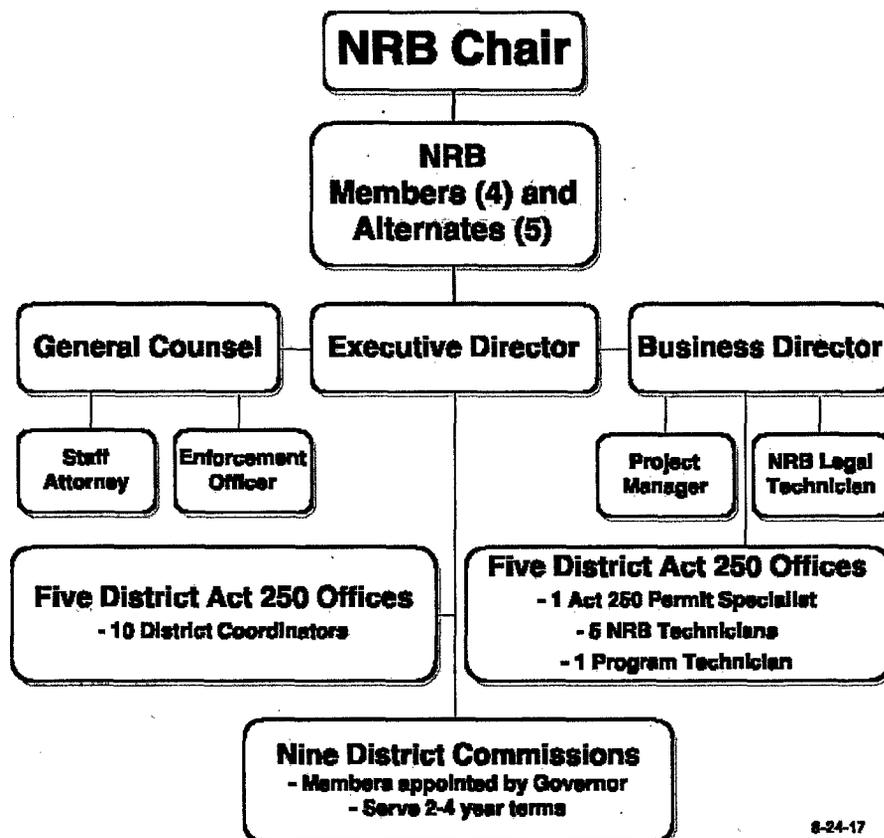
TO: Governor Phil Scott
Senator Chris Bray, Chair, Senate Committee on Natural Resources & Energy
Senator Jeanette White, Chair, Senate Committee on Government Operations
Representative David Deen, Chair, House Committee on Natural Resources, Fish and Wildlife
Representative Maida Townsend, Chair, House Committee on Government Operations

FROM: Diane B. Snelling, NRB Chair

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



8-24-17

The Natural Resources Board (NRB) is an independent entity in the Executive Branch of Vermont State Government whose primary function is to administer Act 250 (10 V.S.A. Chapter 151.) Twenty-four full-time employees and approximately 70 citizen volunteers serving as Commissioners and Board members support nine Environmental Commissions located in five District offices that are supported by full-time staff.

The NRB consists of a full-time Chair and four citizen volunteer members, plus up to five alternates. NRB Members are appointed by the Governor to four-year staggered terms, except for the Chair who serves at the pleasure of the Governor. Its members in 2017 were Chair Diane B. Snelling (Hinesburg), Vice Chair Dominic Cloud (Essex), Don Sargent (Colchester), Marty Illick (Charlotte), Brad Aldrich (Shelburne). The alternates in 2017 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, participation in Act 250 appeals, and enforcement of Act 250 before the Environmental Division of the Superior Court.

The NRB's management and administrative support of District 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, including District Commissioners, District Coordinators, Board members and alternates, and legal and administrative staff. (See the organizational chart above.)

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. The NRB attorneys assist the District Commissions and Coordinators as needed on procedural and substantive issues that arise in Act 250 proceedings, including legal counsel, research, and drafting. NRB staff organizes and participates in the ongoing training of District Commissioners and staff and updates the training manual as necessary.

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



District Commissioners engaged in a site visit with Act 250 applicant.

Until July 1, 2016, the NRB also heard 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 four such requests in 2016. Appeals from a District Coordinator's decision on a JO now go directly to the Superior Court, Environmental Division. 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. As of the passage of Act 174 in 2016, the NRB will soon be hearing appeals of energy compliance determinations issued by the Commissioner of the Department of Public Service under 24 V.S.A. §4352(a).

Less formally, NRB staff work with District Commissions and Coordinators to ensure consistent treatment of emerging state-wide issues related to the 10 Criteria of Act 250, while concurrently respecting the District Commissions' independence and regional perspective.

NRB LEGAL AND EXECUTIVE 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 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 Downtown Development Board 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.

Late in 2017, the Administrative office of the NRB moved to 10 Baldwin Street in Montpelier. (Photo



to the left shows the entryway to the new offices.) The Baldwin Street location is a State-owned, recently renovated Victorian building designed by George Geurnsey. Co-locating the District 5 Commission and office that serves Washington and Lamoille Counties with Administrative staff affords NRB leadership direct contact with the work of a District Commission, serves as an important connection between the two major functions of the NRB, and results in operational cost efficiencies.

The NRB Executive Director manages district office functions, manages the budget, information technology systems, and the statistical tracking and management of Act 250 district caseloads and directly assists with select Act 250 cases with major regional or statewide impacts. The Executive Director is also responsible for the recruitment, training, and supervision of the 10 regionally based District Coordinators and for the coordination of District Commission training.

The NRB Business Director manages the business, operations, and administrative functions of the Montpelier and District Offices. The Business Director supervises administrative staff. The Business Director is responsible for budget development and execution, finances, information technology systems, and intra-agency communications. The Business Director is also responsible for coordinating administrative support staff training.

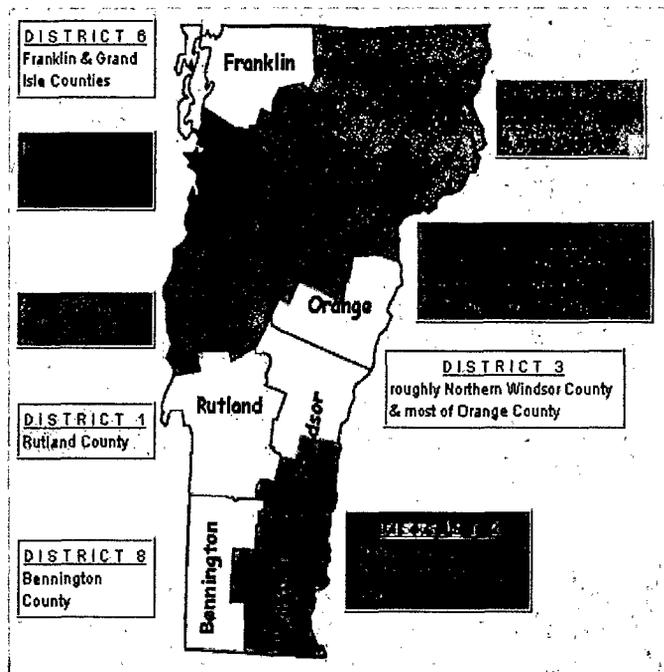
The NRB General Counsel supervises a legal staff of one Associate General Counsel and one Enforcement Officer. The legal staff provide a wide array of legal services for the Board, District Commissions, and District Coordinators. NRB attorneys represent the NRB in environmental enforcement matters and Act 250 appeals before the Superior Court, Environmental Division. They also draft Act 250 Rules at the direction of the Board and shepherd these rules through the rulemaking process (ICAR, public hearings, and LCAR), and will soon be staffing appeals of the Public Service Board's energy compliance determinations.

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.

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 the 10 criteria of Act 250. Each District Commission is composed of a chair, two members, and four alternates, all residing in the district they serve. All District Commissioners are appointed by the Governor. In 2017, the nine District Commissions were staffed by 10 District Coordinators and seven administrative staff that provide professional and administrative support.

District Commission offices are found in five Regional locations: Springfield, Rutland, Essex, St. Johnsbury, and as noted in a prior section of this report, the D5 office moved to Montpelier from Barre in late 2017. With the assistance of the District Coordinators and administrative staff, the District Commissions process, on average, between 450 - 525 Land Use Permit (Act 250) applications per year, representing \$884,000,000 in annual development activity.



District Coordinators aid Act 250 applicants, parties, and the 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 District Coordinators is issuing Jurisdictional Opinions (JO's) regarding Act 250 jurisdiction. These are subject to appeal to the Superior Court, Environmental Division. The District Coordinators also work collaboratively with the NRB Enforcement Officer and attorneys to enforce the Act 250 statute and land use permits.

ACT 250 APPLICATIONS (COMPLETE APPLICATIONS)

This report is based on a statistical analysis of NRB and District Commission activity during Calendar Year 2017 (CY2017). Fiscal Year (FY) data has been used for the fee revenue analysis.

- In CY2017, 523 permit applications were filed among the nine District Commissions, compared to 465 the previous year; an increase of 12.5%.
- Of the 523 applications filed in CY2017, 45% were processed as “Minor” applications and 49% as administrative amendments, with no contested-case hearing; the remaining 6% 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.

Act 250 Applications				
(Complete Applications)	2014	2015	2016	2017
MAJOR (Hearing Required)	90	51	46	33
MINOR (No Hearing)	223	258	218	236
Administrative Amendments	143	143	201	254
TOTALS	456	452	465	523
Appeals & Reconsiderations				
JO Reconsiderations	0	6	9	0
JO Appeals	2	1	4	8
District Commission Decision Appeals	11	16	6	14
TOTALS	13	23	19	22
Processing Time*				
(Date Complete to Date Issued)				
0 – 30 days	45%	50%	47%	56%
31 – 60 days	19%	19%	25%	22%
61 – 90 days	11%	11%	8%	9%
91 – 120 days	7%	5%	4%	4%
More than 120 days	18%	15%	16%	9%

*It is important to note that processing times include the time needed for applicants to obtain underlying permits from other agencies, which are used to demonstrate compliance with several Act 250 criteria. This time can vary from several weeks to several months.

The average processing time for all decisions in CY2017 was 51 days from the date the application was deemed complete until a decision was issued, compared to 88 days in CY2016. The NRB is working to increase consistency and timeliness in its procedures, and it is likely that a portion of this improvement is attributable to these efforts. It is also important to note that a total of six (6) applications (evenly split between Majors and Minors) were officially abandoned or dismissed in CY2017 due to continued and extensive inactivity, and the total time was removed from calculating average processing time.

In CY2017, 78% of all major and minor permit decisions were issued within 60 days – a 6% improvement over CY2016; a total of 91% were issued within 120 days.

Two (2) permit applications were denied in CY2017; a rate of 6% of major decisions issued. (Minor applications and administrative amendments cannot be denied.)

Fourteen (14) District Commission major decisions, or 42%, were appealed in CY2017. This compares to an appeal rate of 23% of major decisions in 2017. In addition, there were eight (8) NRB Jurisdictional Opinions appealed in 2017.

PERFORMANCE STANDARDS

Statutory and internal performance standards guide the performance of the District Coordinators and Commissions. Average CY2017 performance is listed below.

Category	Standard	CY2017 Performance
Application Completeness Review	7 Days	2.6 Days
Major Applications – Average Days to Issue After Adjournment (Act 250 Rule Standard)	20 Days	4.3 Days

NRB SPECIAL FUND - PERMIT APPLICATION FEES

The NRB is funded by a combination of General Funds and Special Funds generated by Act 250 application fees. Act 250 permit application fees are based on the estimated cost of construction for each development at \$6.65 per \$1,000.00 of construction cost. Additionally, \$0.75 per \$1,000.00 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 \$187.50 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 FY2018, the NRB is relying on Special Funds to cover 81% of its annual expenditures for personal service and operating costs, with the remaining 19% covered by General Funds.

The following presents Fees collected in the last five fiscal years.

FY 2013	\$2.214M
FY 2014	\$2.035M
FY 2015	\$2.407M
FY 2016	\$2.397M
FY 2017	\$2.881M

Special Fund spending authority for the last five fiscal years is as follows:

FY 2014	\$2.017M
FY 2015	\$2.017M
FY 2016	\$2.330M
FY 2017	\$2.274M

POST CONSTRUCTION CERTIFICATES (PCC) FEES

Permittees are required to file post construction certification (PCC) of actual construction costs and pay any additional fees due. The NRB Enforcement Officer reviews the estimated construction costs listed in all Act 250 applications and compares this information to the project's post construction certification that must now be filed upon substantial completion of the development.

Since PCC fees are directly related to the estimated cost of construction, total annual fees can vary significantly from one year to the next. The average annual permit fee total for the past five years is \$67,105.59. Permit fees collected in response to the PCC for the last five years are presented below:

FY 2014	\$ 29,253.00
FY 2015	\$ 72,894.00
FY 2016	\$ 133,611.00
FY 2017	\$ 49,884.98



PARTICIPATION IN COURT APPEALS (CY2017)

The NRB has statutory authority to participate as a party in Act 250 appeals to the Superior Court, Environmental Division. In CY2017, the NRB reviewed 14 Act 250 permit decisions and 8 Jurisdictional Opinions that were appealed to the Superior Court, Environmental Division. The NRB participated, through its attorneys, as a party in all 22 of these appeals. Through its attorneys the NRB works toward resolution of appeals either through settlement or through the court process. The Board participated in 3 appeals at the Vermont Supreme Court through representation by the Attorney General's Office.

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/ANR enforcement matters. The NRB's enforcement staff consists of one General Counsel, one Associate General Counsel (each designating part of their time to enforcement matters), and one full-time Enforcement Officer. The Chair of the Board directs the enforcement program.

From The Findings, Sec. 1 of Act 250 "...it is necessary to regulate and control the utilization and usages of lands and the environment to insure that, hereafter, the only usages which will be permitted are not unduly detrimental to the environment, will promote the general welfare through orderly growth and development and are suitable to the demands and needs of the people of this state."

2017 ENFORCEMENT ACTIVITY

This year, the NRB's Enforcement Officer investigated approximately 84 complaints. Some of these complaints were not deemed violations. Others were referred to the Agency of Natural Resources. The Enforcement Team initiated 16 formal enforcement actions and resolved 22 violations through formal enforcement.

The NRB enforcement program resolved 21 cases this year through Assurances of Discontinuance, and 1 was resolved through a Civil Citation. Assurances of Discontinuance are settlement agreements that often include civil penalties and compliance requirements. Civil Citations are tickets issued by the Enforcement Officer that levy fines of up to \$3,000 per citation. The Enforcement Team issued 14 Notices of Alleged Violation in six different Act 250 Districts in 2017. 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 and (2) activities that violate a condition of an existing permit. 48% of the resolved cases involved violations of permit conditions, and the remaining 52% involved commencement of construction without an Act 250 permit. The number of resolved cases maintained the running average.

The Board assessed over \$117,000 in penalties this year and recovered enforcement costs of approximately \$15,500. Several enforcement cases resulted in environmental protection, such as restoration or reclamation activity not reflected in penalty amounts.

	CY2013	CY2014	CY2015	CY2016	CY 2017
New Investigations Opened	75	132	102	98	84
Formal Enforcement Actions Initiated	35	29	19	24	16
Violations Resolved through Formal Enforcement	19	23	19	23	22
Violations and Complaints Resolved without Formal Enforcement				39	62
Total Penalties Assessed	\$220,740	\$103,264	\$78,950	\$143,302	\$117,100
Total Penalties Collected*	\$177,890	\$90,000	\$61,982	\$72,366	\$185,273
Enforcement Costs Assessed	\$8,021	\$5,282	\$7,267	\$16,342	\$15,485

* Total penalties collected does not reflect outstanding payments not yet due or those penalties paid in 2018 and does potentially include penalties assessed in previous years.

INFORMATION TECHNOLOGY AND BUSINESS PROCESS IMPROVEMENT

New Act 250 Database and Online Application Form & Increased Technological Innovation. The NRB launched its new website www.nrab.vermont.gov in early 2017. Two additional endeavors, underway in 2017, are on track to improve public access to NRB information. Currently, the NRB is working with the IT staff of the Agency of Natural Resources to develop a new Act 250 database website and online Act 250 application form. The web portal will include information and search capabilities for all of the Act 250 permits that have been 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 the Act 250 application online, including payment of the associated fee. Applicant and project information will populate the Act 250 database described above.

Work Continues on the NRB LEAN Process. A week-long event in CY2015 focused on the Act 250 permit application process. NRB staff continue to carry out the improvement recommendations through the implementation plan. Key Performance Indicators are being tracked to measure the success of these changes. Significant progress has been made by improving the applicant's application guidance documents.

Overall completion of the Business Improvement Plan to date is 46%. Progress is reported to the Legislature as part of ANR's regular Lean Reporting.

Targeted Action Plans. Two TAP efforts for permit improvement are ongoing with significant progress made in 2017. The Executive Branch Workgroup concluded its collaborative efforts, resulting in a report provided to the Act 47 Commission at the onset of their work.

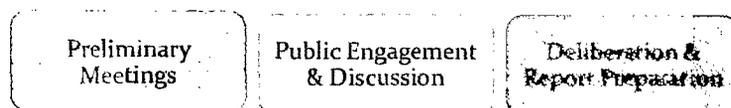
ENVIRONMENTAL RULEMAKING AND POLICY WORK

In accordance with Act 171, the Board Chair participated in the Forest Integrity Study Committee. The Committee issued a report on February 3, 2017 that did not result in definitive or consensus recommendations for the Legislature. As a result, the Board recommended that the Legislature establish a Commission on the Vermont Landscape to develop an educational outreach process to engage an open discussion about how Vermont looks. This Commission would result in proposed legislation that balances the common good of the Vermont landscape with opportunities for smart growth.

As a result of Act 174 of 2016 (energy siting), the Legislature designated the Board as the appellate body responsible for reviewing appeals of determinations of energy compliance issued by the Commissioner of Public Service. In accordance with the Vermont APA, the Board has issued a procedure to be followed by the NRB and by parties for all such appeals. No such appeals have been lodged since the enactment of the statute.

The Commission on Act 250 – The Next Fifty Years (Act 47) In May 2017, Governor Scott signed Act 47 establishing the Commission on Act 250: The Next 50 years. Composed of six legislators who will serve until December 2018, the Commission is tasked with the actions noted in the graphic that follows.

Phases of Work for the Commission on Act 250 – The Next Fifty Years



The Commission is charged with reviewing the goals of Act 250 and assessing the outcomes of Act 250's implementation over the past 47 years. To accomplish the work specified in Act 47, work is separated into three phases (as noted above). A committee of advisors, having specific expertise in various disciplines that intersect with Act 250 were identified within the legislation that created the Commission. Members of this group exist to assist the Commission and the NRB Chairperson serves as the Chairperson for this group.

The review of Act 250 captured NRB staff time in CY 2017, and it is anticipated that this will continue through the completion of the Commission's tenure which concludes in December 2018. In addition to the NRB Chair, General Counsel and the Executive Director regularly attend Commission meetings and respond to inquiries, opportunities and requests. In addition, various groups and organizations whose missions overlap with Act 250 permitting are engaging with the NRB in conversations, meetings, and special events to explore the organization's history, possibilities for new responsibilities and discussion of the role of the NRB for the future. Additional information on the Commission and the process is found at:

<https://legislature.vermont.gov/committee/document/2018/333/Date>

