



NATURAL RESOURCES BOARD

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ACT 250 NOTICE TO DISTRICT COMMISSIONS REGARDING PERMIT APPLICATIONS RELATED TO THE CORONAVIRUS DISEASE (COVID-19: NRB Statement #2)

March 20, 2020

Preliminary Statement

On March 13, 2020, the Governor of the State of Vermont issued [Executive Order No. 01-20](#) declaring a State of Emergency in response to the Coronavirus Disease. On March 16, 2020, the Governor issued [Addendum 1](#) and [Addendum 2](#) to this Order. Similarly, The Governor issued 3 Directives (Directives 2-4) pursuant to the Executive Order between March 17-29, 2020. All Executive Orders and Directives are available on the Governor's Office [website](#). As part of these Orders, among other things, the Governor has directed that restaurants and bars significantly curtail their business operations in an effort to stymie the transmission of the Corona Virus. Many other governors have instituted similar directives and commerce throughout the country, if not the world, has been, and will continue to be significantly impacted by the Coronavirus and Covid-19.

Given the States of Emergency at the State and Federal level, and the precipitous decline in commerce and travel generally, there are likely to be a number of Act 250 permitted businesses that will not be able to operate in a manner consistent with expectations and business needs. As a result, we anticipate that once the Covid-19 pandemic ceases to be a concern, in an effort to recapture lost revenue, or to fulfill certain contractual obligations, some businesses may choose to: 1) operate in a fashion that is inconsistent with the conditions of their Act 250 Permit, or 2) seek a permit amendment to allow for short term (or long term) changes to their Act 250 Permit.

In recognition of these inevitable consequences, and in an effort to provide a proactive response to these forthcoming Covid-19 permitting challenges, the NRB intends to consider the options it has available with respect to Act 250 violations that are germane to the Covid-19 pandemic. The NRB also encourages District Commissions to expect amendment applications that are the result of the Covid-19 pandemic and to treat those applications swiftly while making certain that these applications continue to receive a robust review. To this end, Act 250 and Rules allow District Commissions some leniency when processing applications, both with respect to the order in which applications are reviewed, and with respect to the required fee for certain projects. This Notice addresses both of these topics, as well as the impact of Act 250 Rule 34(E).

District Commissions have some discretion concerning the order in which they review applications:

Act 250 Rule 13(C) states: “To the extent reasonable, the initial hearings shall be scheduled in the order that completed applications are filed, unless an applicant waives this priority right.” The language of this Rule expressly provides District Commissions with the discretion to determine, under certain circumstances, that it would be *unreasonable* to process applications in the usual course given the State of Emergency discussed above, and to thus assign some priority to application amendments that are a result of the Covid-19 pandemic.¹ Furthermore, Act 250 Rule 13(C) permits District Commissions to affirmatively seek waivers from certain non-Covid-19 related applicants from processing their applications in the usual course.

District Commission Chairs have discretion to waive all, or a portion of an Act 250 fee:

The Act 250 fee statute allows some discretion to District Commission Chairs to waive fees when the impacts of a project have already been reviewed:

In the event that an application involves a project or project impacts that previously have been reviewed, the applicant may petition the Chair of the District Commission to waive all or part of the application fee. If an application fee was paid previously in accordance with subdivisions (a)(1) through (4) of this section, the Chair may waive all or part of the fee for a new or revised project if the Chair finds that the impacts of the project have been reviewed in an applicable master permit application, or that the project is not significantly altered from a project previously reviewed, or that there will be substantial savings in the review process due to the scope of review of the previous applications.

10 V.S.A. § 6083a(f). Pursuant to this language District Commission Chairs may waive fees, fully or partially, for Act 250 permit applications related to Covid-19 if they determine that the impacts resulting from the proposed project have, either in full or in part, been previously reviewed by the Commission. For example, if an entity seeks only to modify its operating hours (or some similar modification), it is more than likely that these impacts have already been reviewed, which would be a favorable consideration when a Chair reviews such a fee waiver request. Furthermore, if no construction is anticipated with respect to such an application, the application fee would be relatively low.

The Impacts of Act 250 Rule 34(E)

Act 250 District Commissions should review Act 250 permit applications related to Covid-19 under Act 250 Rule 34(E) as they would any other permit application. However, if and when Commissions reach the step in the Rule 34(E) analysis where they are considering the factors in subsection (3) of the rule, they should be mindful that the Covid-19 pandemic constitutes a

¹ At their discretion, District Commissions may require a sworn affidavit from applicants whom wish to have their application processed pursuant to this Notice, indicating sufficiently how the need for a permit amendment is related to the Covid-19 emergency.

change in fact beyond the permittee's control and presents several important policy considerations, including but not limited to how business must abide by the federal and state emergency declarations and executive orders.

Conclusion

The NRB asks all individuals to act responsibly and in the interest of their own safety and the safety of others in the Vermont community. The NRB also thanks the Vermont community for its patience and cooperation while it works to ensure permit applications continue to be processed.