

*February 15, 2019*

# Natural Resources Board Annual Report Calendar Year 2018



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10 Baldwin Street  
Montpelier, Vermont 05633-3201  
Telephone: 802-828-3309

[nrb.vermont.gov](http://nrb.vermont.gov)

## Message from the Chair

**NATURAL RESOURCES BOARD**  
10 Baldwin Street  
Montpelier, Vermont 05633-3201

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February 14, 2019

To: The Honorable Phil Scott, Governor  
Senator Chris Bray, Chair, Senate Committee on Natural Resources and Energy  
Senator Jeannette White, Chair, Senate Committee on Government Operations  
Representative Amy Sheldon, Chair House Committee on Natural Resources, Fish and Wildlife  
Representative Sarah Copeland-Hanzas, Chair, House Committee on Government Operations

Welcome to the Annual Report of the Natural Resources Board. We hope you will appreciate the revisions we have made to improve the clarity of our reports on processing times and performance measures.

2018 brought many internal changes to the NRB and Act 250. Due to multiple retirements, several resignations, and a promotion, we recruited and filled 8 positions.

We also continued to assist the Commission on Act 250: The Next 50 Years, which was created in 2017 by Act 47. This work has been challenging and deeply rewarding. A part of the Commission's charge was to hold 6 Forums statewide to listen to the public, NRB staff attended all the forums. We developed materials to provide an accurate and consistent basis for the meeting discussions. Listening is essential to improving Act 250, and we heard from many diverse perspectives.

The NRB looks forward to continuing our efforts for improvement, and to working with all of you, and other stakeholders, to find the right way to move forward for the best future for Vermont.

Sincerely,



Diane Snelling

Chair  
Natural Resources Board



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Telephone: (802) 828-3309

## Vermont Natural Resources Board and Act 250

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.) There are 25 full-time employees and approximately 70 citizen volunteers serving as Commissioners and Board members that support the work of the Natural Resources Board's Central Office and the District offices.

The Natural Resources Board consists of a full-time Chair and four citizen volunteer members, plus up to five alternates. Board 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 2018 were Chair Diane B. Snelling (Hinesburg), Vice Chair Dominic Cloud (Essex), Steve Larrabee (West Danville), Marty Illick (Charlotte), and Brad Aldrich (Shelburne). The alternates in 2018 were Julie Wolcott (Enosburg Falls), Gail Fallar (Tinmouth), and Elizabeth Courtney (Montpelier). All must be confirmed by the Senate.



The Board's primary function is to administer Act 250, with emphasis on promulgating rules, participating in appeals, and enforcing Act 250 violations before the Environmental Division of the Superior Court. In addition, they are available to offer support to the nine District Environmental Commissions who review Act 250 applications.

The NRB's management and administrative support of District Commissioners and Board members includes training, ethics support, per diems, expenses, and assisting the Governor's office with nominations.

The District Commissions sit as three-member quasi-judicial bodies to review Act 250 applications. These 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. The NRB participates as a party to Act 250 appeals before the Superior Court, Environmental Division.

Appeals from District Commissions (regarding permits) and from District Coordinators regarding Jurisdictional Opinions (JOs), are heard by the Vermont Superior Court, Environmental Division. The NRB appears and participates in such appeals. The NRB has

authority 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 is also authorized to hear 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.

## Natural Resources Board

### BOARD MEMBERS 2018

- Diane B. Snelling, Chair
- Brad Aldrich (Exp. 1/31/2021)
- Dominic Cloud (Exp. 1/31/2019)
- Martha Illick (Exp. 1/31/2020)
- Steven Larrabee (Exp. 1/31/2022)

### BOARD MEMBERS 2019

- Diane B. Snelling, Chair
- Brad Aldrich (Exp. 1/31/2021)
- Donald Turner (Exp. 1/31/2023)
- Martha Illick (Exp. 1/31/2020)
- Steven Larrabee (Exp. 1/31/2022)

### ALTERNATE BOARD MEMBERS

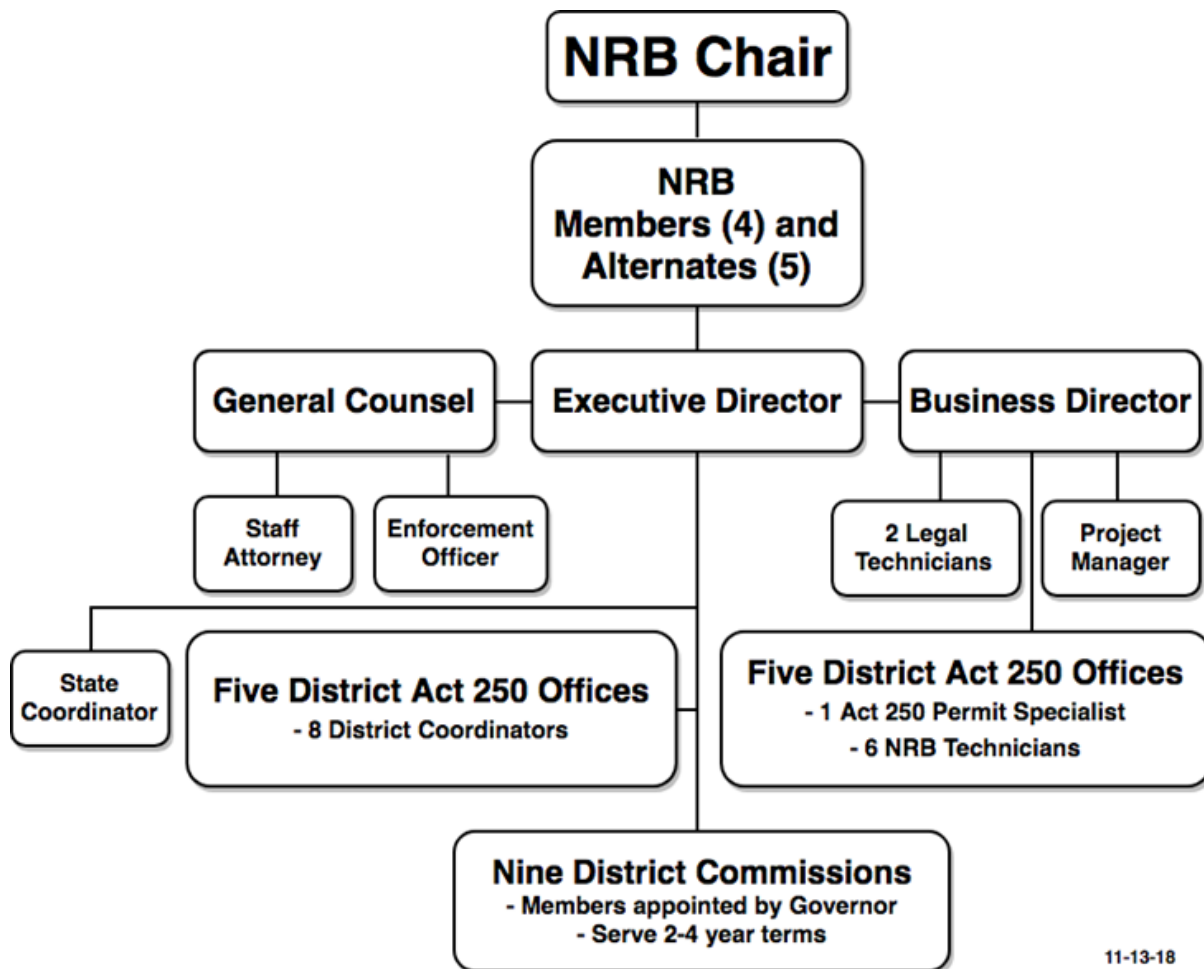
- Elizabeth Courtney (Exp. 1/31/2020)
- VACANT
- Gail Fallar (Exp. 1/31/2017)
- Julie Wolcott (Exp. 1/31/2018)
- VACANT

## NRB Central Office

### NRB EXECUTIVE AND LEGAL STAFF

In early 2018, the Administrative office of the NRB moved to 10 Baldwin Street in Montpelier. The Baldwin Street location is a State-owned, recently renovated Victorian building designed by George Guernsey. The move allowed for the co-locating of the District 5 Commission and office that serves Washington and Lamoille Counties with NRB administrative staff. This situation 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 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, 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, or designee, is also a member of the Downtown Development Board and as such the NRB 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.



11-13-18



Entryway to NRB offices in Montpelier.

***The NRB Executive Director*** undertakes managerial, administrative, and coordinating work for the Natural Resources Board, assists with policy formulation and goal setting, and is also responsible for the recruitment, training, and supervision of the State Coordinator and regionally based District Coordinators. The Executive Director is also involved in the preparation and delivery of statewide education and training for staff and appointed commissioners, development of publications and forms, and outreach to external partners and participants in the Act 250 process.

***The NRB Business Director*** manages the business operations and administrative functions of the Montpelier and District Offices and is also responsible for the Board's budget, finances and information technology systems. The Business Director supervises administrative staff and has responsibility for coordinating administrative support staff training.

***The NRB General Counsel*** supervises an Associate General Counsel and a Compliance and Enforcement Officer. These staff members 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 guide these rules through the rulemaking process (ICAR, public hearings, and LCAR). In addition, legal staff also represent the NRB in front of the Public Utilities Commission if a proposed energy project is sited on a tract of land covered by Act 250.

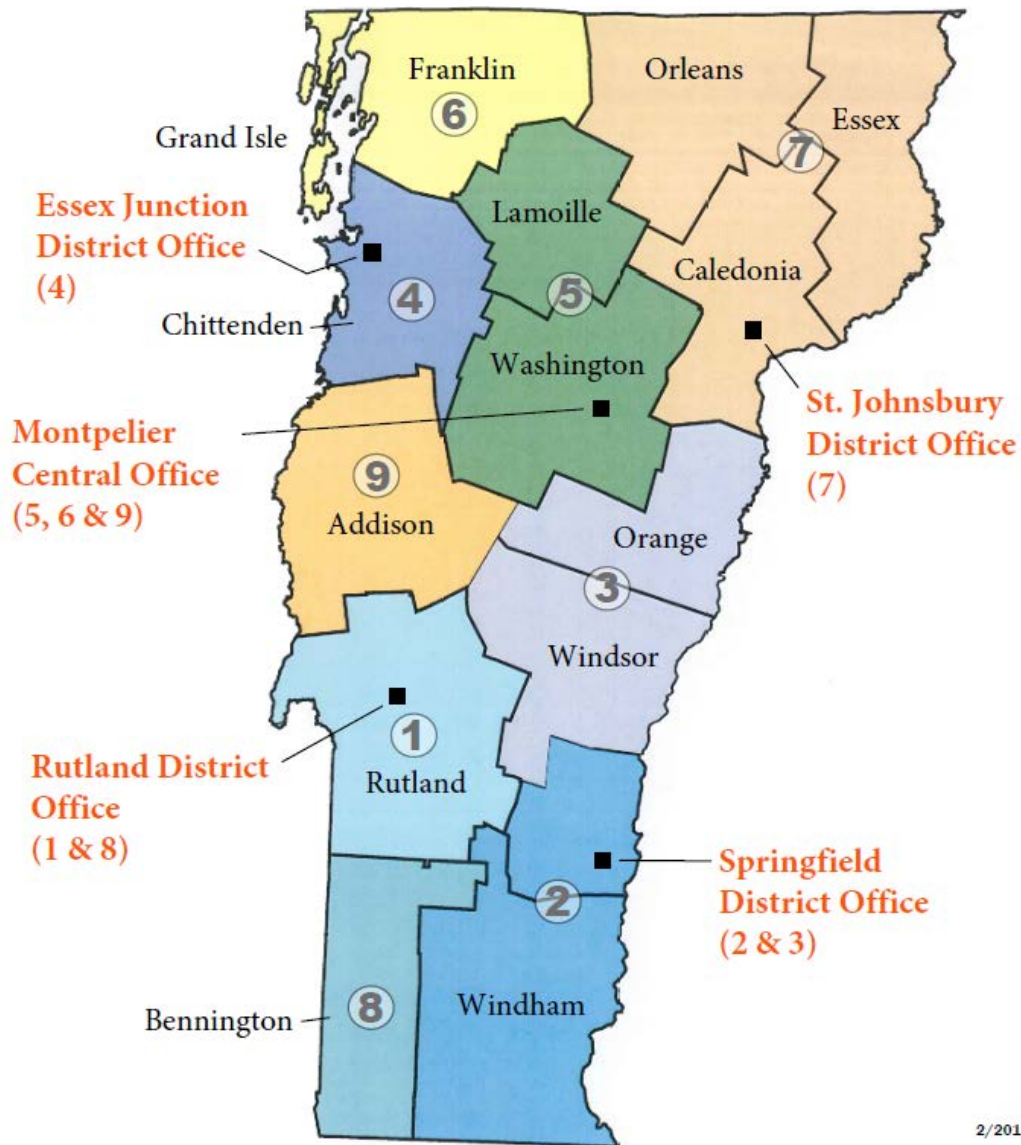
***The NRB Compliance and Enforcement Officer*** assists permittees and applicants with compliance, investigates Act 250 violations, issues citations and notices of alleged violation, and works with the legal staff to prosecute violations.

***The NRB State Coordinator*** position was re-introduced to the staff roster in 2018. The State Coordinator serves as a link between District Coordinators and the Administrative Staff, assists with work in overloaded Districts on an as-needed basis, is called upon to assist in evaluating and formulating policy and procedures, and is tasked with promoting consistency across District offices with emphasis on developing and maintaining training and procedural manuals and delivering ongoing training experiences to staff.

## District Environmental Commissions and Staff

District Commissions are the heart of the Act 250 process. 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. Each of the nine District Commissions is staffed by one or two District Coordinators and Technicians who provide professional and administrative support. District Commission offices are found in four 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 early 2018. Over the past five years, District offices have collectively processed an average of 460 Land Use Permit (Act 250) applications per year.

District Coordinators help 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 Compliance and Enforcement Officer and attorneys to enforce the Act 250 statute and land use permits.



## CURRENT DISTRICT COMMISSIONS AND STAFF

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### District 1

*Rutland County*

#### Staff

*District 1 Coordinator*

William Burke, Tel. (802) 786-5923

e-mail: [william.burke@vermont.gov](mailto:william.burke@vermont.gov)

*NRB Technician*

Joyce Fagan, Tel. (802) 786-5920

e-mail: [joyce.fagan@vermont.gov](mailto:joyce.fagan@vermont.gov)

#### Address

District #1 Environmental Commission  
440 Asa Bloomer State Office Building  
4th Floor 88 Merchants Row  
Rutland, VT 05701

### District 1 Environmental Commission

*Chair:*

Joshua Terenzini (Exp. 1/31/2021)

*Members:*

John Casella (Exp. 1/31/2021)

Mary Shaw (Exp. 1/31/2023)

*Alternates:*

John Bloomer (Exp. 1/31/2021)

VACANT

Herbert Ogden (Exp. 1/31/2017)

VACANT

### District 2

*Roughly Windham County and the southern half of Windsor County*

#### Staff

*District 2 Coordinator*

Stephanie Gile, Tel. (802) 289-0597

e-mail: [stephanie.gile@vermont.gov](mailto:stephanie.gile@vermont.gov)

*NRB Act 250 Specialist*

Kim Lutchko, Tel. (802) 289-0601

e-mail: [kim.lutchko@vermont.gov](mailto:kim.lutchko@vermont.gov)

*NRB Technician*

Rebecca Bezanson, Tel. (802) 289-0599

e-mail: [rebecca.bezanson@vermont.gov](mailto:rebecca.bezanson@vermont.gov)

#### Address

District #2 Environmental Commission  
100 Mineral Street  
Suite 305  
Springfield, VT 05156-3168

### District 2 Environmental Commission

*Chair:*

Thomas Fitzgerald (Exp. 1/31/2021)

*Members:*

Abbie Corse (Exp. 1/31/2021)

VACANT

*Alternates:*

Chris Callahan (Exp. 1/31/2017)

Cheryl Cox (Exp. 1/31/2017)

Julia Schmitz (Exp. 1/31/2017)

VACANT



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### District 3

*Roughly Northern Windsor County and Orange County (except the towns of Washington, Williamstown and Orange, which are all within District 5)*

#### Staff

*District 3 Coordinator*

Linda Matteson, Tel. (802) 289-0598  
e-mail: [linda.matteson@vermont.gov](mailto:linda.matteson@vermont.gov)

*NRB Act 250 Specialist*

Kim Lutchko, Tel. (802) 289-0601  
e-mail: [kim.lutchko@vermont.gov](mailto:kim.lutchko@vermont.gov)

*NRB Technician*

Rebecca Bezanson, Tel. (802) 289-0599  
e-mail: [rebecca.bezanson@vermont.gov](mailto:rebecca.bezanson@vermont.gov)

#### Address

District #3 Environmental Commission  
100 Mineral Street  
Suite 305  
Springfield, VT 05156-3168

### District 3 Environmental Commission

*Chair:*

Tim Taylor (Exp. 1/31/2021)

*Members:*

Roderick J. Maclay (Exp. 1/31/2023)  
Suzanne Butterfield (Exp. 1/31/2021)

*Alternates:*

Anne Margolis (Exp. 1/31/2021)  
Marvin Harvey (Exp. 1/31/2020)  
Linda Gray (Exp. 1/31/2021)  
Clotilde Hryshko (Exp. 1/31/2019)

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### District 4

*Chittenden County*

#### Staff

*District 4 Coordinators*

Rachel Lomonaco, Tel. (802) 879-5658  
e-mail: [rachel.lomonaco@vermont.gov](mailto:rachel.lomonaco@vermont.gov)

Stephanie Monaghan, Tel. (802) 879-5662  
e-mail: [stephanie.monaghan@vermont.gov](mailto:stephanie.monaghan@vermont.gov)

*NRB Technician*

Christine Commo, Tel. (802) 879-5660  
e-mail: [christine.commo@vermont.gov](mailto:christine.commo@vermont.gov)

*NRB Technician*

Jessica Mason, Tel. (802) 879-5670  
e-mail: [jessica.mason@vermont.gov](mailto:jessica.mason@vermont.gov)

#### Address

District #4 Environmental Commission  
111 West Street  
Essex Junction, VT 05452  
Tel. (802) 879-5614

### District 4 Environmental Commission

*Chair:*

Thomas A. Little, Esq. (Exp. 1/31/2023)

*Members:*

Monique Gilbert (Exp. 1/31/2019)  
Parker Riehle (Exp. 1/31/2023)

*Alternates:*

James McNamara (Exp. 1/31/2021)  
Scott Baldwin (Exp. 1/31/2021)  
Kate Purcell (Exp. 1/31/2021)  
Pamela Loranger (Exp. 1/31/2020)

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## District 5

Washington and Lamoille Counties and the towns of Williamstown, Washington and Orange

### Staff

*District 5 Coordinators*

Susan Baird, Tel. (802) 476-0134

e-mail: [susan.baird@vermont.gov](mailto:susan.baird@vermont.gov)

Josh Donabedian, Tel. (802) 476-0186

e-mail: [joshua.donabedian@vermont.gov](mailto:joshua.donabedian@vermont.gov)

*NRB Technician*

Lori Grenier, Tel. (802) 476-0185

e-mail: [lori.grenier@vermont.gov](mailto:lori.grenier@vermont.gov)

### Address

District #5 Environmental Commission  
10 Baldwin Street  
Montpelier, VT 05633-3201  
Tel. (802) 476-0185

## District 5 Environmental Commission

*Chair:*

Josh Fitzhugh (Exp. 1/31/2021)

*Members:*

Jackie Barnett (Exp. 1/31/2023)

Jeremy Reed (Exp. 1/31/2021)

*Alternates:*

Peter Heitmann (Exp. 1/31/2018)

Ken Goslant (Exp. 1/31/2020)

Joslyn Wilschek (Exp. 1/31/2020)

Matthew F. Krauss (Exp. 1/31/2021)

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## District 6

Franklin and Grand Isle Counties

### Staff

*District 6 Coordinators*

Susan Baird, Tel. (802) 476-0134

e-mail: [susan.baird@vermont.gov](mailto:susan.baird@vermont.gov)

Josh Donabedian, Tel. (802) 476-0186

e-mail: [joshua.donabedian@vermont.gov](mailto:joshua.donabedian@vermont.gov)

*NRB Technician*

Lori Grenier, Tel. (802) 476-0185

e-mail: [lori.grenier@vermont.gov](mailto:lori.grenier@vermont.gov)

### Address

District #6 Environmental Commission  
10 Baldwin Street  
Montpelier, VT 05633-3201  
Tel. (802) 476-0185

## District 6 Environmental Commission

*Chair:*

Daniel Luneau (Exp. 1/31/2021)

*Members:*

Dave Kimel (Exp. 1/31/2023)

John Brigham (Exp. 1/31/2021)

*Alternates:*

Mark Naud (Exp. 1/31/2021)

Megan Manahan (Exp. 1/31/2018)

Ashley Toof (Exp. 1/31/2020)

Sylvia Jensen (Exp. 1/31/2021)

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## District 7

*Caledonia, Orleans and Essex Counties*

### Staff

*District 7 Coordinator*

Kirsten Sultan, Tel. (802) 751-0126

e-mail: [kirsten.sultan@vermont.gov](mailto:kirsten.sultan@vermont.gov)

*NRB Technician*

Gina St. Sauveur, Tel. (802) 751-0120

e-mail: [gina.stsauveur@vermont.gov](mailto:gina.stsauveur@vermont.gov)

### Address

District #7 Environmental Commission  
374 Emerson Falls Rd.  
Suite 4  
St. Johnsbury, VT 05819-2209  
Tel. (802) 751-0120

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## District 7 Environmental Commission

### Chair:

Eugene Reid (Exp. 1/31/2021)

### Members:

Keith Johnson (Exp. 1/31/2021)

Nicole Davignon (Exp. 1/31/2019)

### Alternates:

Clark Atwell (Exp. 1/31/2017)

Dexter Randall (Exp. 1/31/2017)

Patricia Sears (Exp. 1/31/2017)

VACANT

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## District 8

*Bennington County*

### Staff

*District 8 Coordinator*

William Burke, Tel. (802) 786-5923

e-mail: [william.burke@vermont.gov](mailto:william.burke@vermont.gov)

*NRB Technician*

Joyce Fagan, Tel. (802) 786-5920

e-mail: [joyce.fagan@vermont.gov](mailto:joyce.fagan@vermont.gov)

### Address

District #8 Environmental Commission  
440 Asa Bloomer State Office Building  
4th Floor 88 Merchants Row  
Rutland, VT 05701  
Tel. (802) 786-5920

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## District 8 Environmental Commission

### Chair:

Joan Goodrich (Exp. 1/31/2021)

### Members:

Richard Kobik (Exp. 1/31/2021)

Ruth Botzow (Exp. 1/31/2019)

### Alternates:

Leslie Keefe (Exp. 1/31/2019)

Pauline Moore (Exp. 1/31/2021)

Michael McDonough (Exp. 1/31/2019)

Jon Cohen (Exp. 1/31/2018)

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## District 9

Addison County

### Staff

*District 9 Coordinators*

Susan Baird, Tel. (802) 476-0134

e-mail: [susan.baird@vermont.gov](mailto:susan.baird@vermont.gov)

Josh Donabedian, Tel. (802) 476-0186

e-mail: [joshua.donabedian@vermont.gov](mailto:joshua.donabedian@vermont.gov)

*NRB Technician*

Lori Grenier, Tel. (802) 476-0185

e-mail: [lori.grenier@vermont.gov](mailto:lori.grenier@vermont.gov)

### Address

District #9 Environmental Commission

10 Baldwin Street

Montpelier, VT 05633-3201

Tel. (802) 476-0185

## District 9 Environmental Commission

*Chair:*

Fred Baser (Exp. 1/31/2021)

*Members:*

Al Karnatz (Exp. 1/31/2020)

Connie Houston (1/31/2023)

*Alternates:*

Pete Norris (Exp. 1/31/2017)

Warren Van Wyk (Exp. 1/31/2021)

Katherine Manaras (Exp. 1/31/2017)

VACANT





## ACT 250 Applications

### DEEMED COMPLETE

**NOTE:** The term "deemed complete" is the date in which an application is *both* technically and administratively complete.

This report is based on a statistical analysis of NRB and District Commission activity during Calendar Year 2018 (CY2018). Fiscal Year (FY) data has been used only for the fee revenue analysis.

- In CY2018, 404 permit applications were filed (i.e., deemed complete) among the nine District Commissions. This number should not be compared to the 523 permit applications identified in CY2017. Historical procedures for calculating data differ from current standards that have been, and may continue to be, developed for increased clarity. For instance, previous years may have included altered, remanded, and corrected permit applications and, although these tend to be few, a comparison would not reflect complete accuracy.

Of the 404 applications filed in CY2018, 48% were processed as "Minor" applications with no contested-case hearings, 43% as administrative amendments, and the remaining 9% of applications were processed as "Major" applications. A public hearing is required for Major applications in order to review the project's conformance to the 10 Criteria of Act 250.

<b>Act 250 Applications (Complete)</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018 <sup>1</sup></b>	
MAJOR (Hearing Required)	90	51	46	33	36	
MINOR (No Hearing)	223	258	218	236	192	
Administrative Amendments	143	143	201	254	176	
<b>TOTALS</b>	<b>456</b>	<b>452</b>	<b>465</b>	<b>523</b>	<b>404</b>	
<b>Appeals &amp; Reconsiderations</b>						
JO Reconsiderations	0	6	9	NA	NA	
JO Appeals	2	1	4	8	3	
District Commission Decision Appeals	11	16	6	14	5	
<b>TOTALS</b>	<b>13</b>	<b>23</b>	<b>19</b>	<b>22</b>	<b>8</b>	
<b>Processing Time <sup>2</sup> (Date Complete to Date Issued)</b>	<b>All Application Types</b>	<b>All Application Types</b>	<b>All Application Types</b>	<b>All Application Types</b>	<b>All Application Types</b>	<b>Minor &amp; Major Applications Only</b>
0 – 30 days	45%	50%	47%	56%	49%	16%
31 – 60 days	19%	19%	25%	22%	24%	39%
61 – 90 days	11%	11%	8%	9%	10%	17%
91 – 120 days	7%	5%	4%	4%	6%	8%
More than 120 days	18%	15%	16%	9%	11%	20%

NA = JO Reconsiderations are now heard by the Superior Court, Environmental Division.

<sup>1</sup> In a change from prior years, for this CY18 Annual Report, the Board has more accurately quantified how many of the applications deemed complete between January 1 and December 31, 2018 were actually submitted to the commissions for review, as opposed to permits that were simply revised by the commissions in response to a motion or an order (404 of the 414 processed). The Board omitted a total of 10 records from the calculations because they were either decisions on motions to alter, corrections, or decisions remanded from the court, which are not “applications” and therefore, do not follow the Performance Standard time calculations.

<sup>2</sup> 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 document compliance with several Act 250 criteria. This time can vary from several weeks to several months, and on occasion, a year or more. For CY2018, the Board has provided processing times both with and without Administrative Amendment applications. These figures do not include processing times for altered, remanded, corrected, or withdrawn permits.

**NOTES:** For CY2018, the average processing time for permit application decisions across all application types (Administrative Amendments, Minors, and Majors) was 70.7 days from the date the application was deemed complete until a decision was issued. If considering Minors and Majors alone, the average processing time was 115.9 days.

Two applications were formally abandoned (one Administrative Amendment and one Major) and two Minor applications were formally dismissed in CY2018 following years of applicant inactivity. The total time for these records was removed when calculating average processing times (for details, see footnote to Performance Standards table above).

In CY2018, 55% of all major and minor permit decisions were issued within 60 days. When Administrative Amendments are added, the percentage for all applications issued in 60 days or less rises to 73% for the same timeframe. A total of 89% were issued within 120 days

Two Major permit applications were denied in CY2018, representing 6.3% of major decisions issued.

Five of the 32 District Commission major decisions issued, or 16%, were appealed in CY2018. This compares to an appeal rate of 42% of major decisions in 2017. In addition, there were three NRB Jurisdictional Opinions appealed in 2018.

## Performance Standards

Statutory and internal performance standards guide the performance of the District Coordinators and Commissions. Average CY2018 performance is listed below.

### PERFORMANCE STANDARDS - CY2018

Category	Standard	CY2018 Performance <sup>3</sup>
<b>All Applications</b> Average Days for Initial Application Completeness Review (Internal Standard)	7 Days	4.6 Days
<b>Minor Applications</b> Average Days to Issue after End of Comment Period or Last Item Received (Internal Standard)	10 Days	7.5 Days
<b>Major Applications</b> Average Days to Issue After Adjournment (Act 250 Rule Standard)	20 Days	7.6 Days
<b>Major Applications</b> Average Days from Deemed Complete to Pre-Hearing or Hearing (Statutory Standard)	40 Days	42.1 Days <sup>4</sup>
<b>Minor-to-Major Applications</b> Average Days from End of Comment Period to Pre-Hearing or Hearing (Statutory Standard)	20 Days	21.5 Days

<sup>3</sup> These figures do not include time periods for decisions on motions to alter, decisions remanded from the court, corrections made to permits to clarify simple errors, formal abandonment proceedings, or application withdrawal proceedings for permit applications that had been inactive for years. Specifics on the omissions are available upon request.

<sup>4</sup> This average figure includes one case wherein a District Commission granted an applicant's request for additional time to revise their application materials prior to scheduling a hearing. This extended period lasted more than three and a half months. If this one unusual case were omitted, this average would be 39.9 days.

**PERFORMANCE STANDARDS – COMPARISON WITH PRIOR YEARS**

<b>Category</b>	<b>CY2014</b>	<b>CY2015</b>	<b>CY2016</b>	<b>CY2017</b>	<b>CY2018 <sup>5</sup></b>
<b>All Applications</b> Average Days for Initial Application Completeness Review (Internal Standard)	2.5 Days	1.4 Days	2.9 Days	2.6 Days	4.6 Days
<b>Minor Applications</b> Average Days to Issue After End of Comment Period or Last Item Received (Internal Standard)	3 Days	3.9 Days	7 Days	NR	7.5 Days
<b>Major Applications</b> Average Days to Issue After Adjournment (Act 250 Rule Standard)	3 Days	7.3 Days	15 Days	4.3 Days	7.6 Days
<b>Major Applications</b> Average Days from Deemed Complete to Pre-Hearing or Hearing (Statutory Standard)	37 Days	42 Days	38 Days <sup>6</sup>	NR	42.1 Days <sup>7</sup>
<b>Minor-to-Major Applications</b> Average Days from End of Comment Period to Pre-Hearing or Hearing (Statutory Standard)	NA	NA	NA	NA	21.5 Days

NR = not reported; NA = not available because not previously presented in annual reports.

<sup>5</sup> These figures do not include time periods for decisions on motions to alter, decisions remanded from the court, corrections made to permits to clarify simple errors, formal abandonment proceedings, or application withdrawal proceedings for permit applications that had been inactive for years. Specifics on the omissions are available upon request.

<sup>6</sup> This average does not include 2 cases where the District Commission granted the applicant and parties additional time to resolve contested issues prior to scheduling a hearing.

<sup>7</sup> This average figure includes 1 case wherein a District Commission granted an applicant's request for additional time to revise the application materials prior to scheduling a hearing. This extended period lasted more than three and a half months. If this one unusual case were omitted, this average would be 39.9 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, the NRB directs \$0.75 per \$1,000.00 of its application fees 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 FY2019, 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.

Total fees collected by Act 250 in the last five fiscal years:

FY 2014	\$2.035M
FY 2015	\$2.407M
FY 2016	\$2.397M
FY 2017	\$2.881M
FY 2018	\$1.773M

Special Fund spending authority for the NRB for the last five fiscal years:

FY 2014	\$2.017M
FY 2015	\$2.017M
FY 2016	\$2.330M
FY 2017	\$2.274M
FY 2018	\$2.245M

## Certification of Actual Construction Cost Fees

Following the completion of project construction, each permittee is required to file a form certifying actual construction costs (CACC) and pay any additional Act 250 permit fees due. Since CACC fees are directly related to the actual costs of construction, total annual fees can vary significantly from one year to the next. CACC fees collected for the last five years are presented below:

FY 2014	\$ 29,253
FY 2015	\$ 72,894
FY 2016	\$ 133,611
FY 2017	\$ 49,884
FY 2018	\$ 105,421

## Participation in Court Appeals (CY2018)

The NRB has statutory authority to participate as a party in Act 250 appeals to the Superior Court, Environmental Division. In CY2018, the NRB reviewed 5 Act 250 permit decisions and 3 Jurisdictional Opinions that were appealed to the Superior Court, Environmental Division. The NRB participated, through its attorneys, as a party in all 8 of these appeals. Through its attorneys, the NRB works toward resolution of appeals either by 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, the NRB cooperates with ANR on mixed Act 250/ANR enforcement matters. The NRB's enforcement staff consists of the General Counsel, the Associate General Counsel and one full-time Enforcement and Compliance Officer. The Chair of the Board directs the enforcement program.

### 2018 ENFORCEMENT ACTIVITY

This year, the NRB's Enforcement Officer investigated approximately 93 complaints. Some of these complaints were not deemed violations. Others were referred to the Agency of Natural Resources. The Enforcement Team initiated 4 formal enforcement actions and resolved 9 violations through formal enforcement.

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. 44% of the resolved cases involved violations of permit conditions, and the remaining 56% involved commencement of construction without an Act 250 permit.

The Board assessed \$47,895 in penalties this year and assessed enforcement costs of approximately \$3,407. Several enforcement cases resulted in environmental protection, such as restoration or reclamation activity not reflected in penalty amounts.

The NRB enforcement program resolved 5 cases this year through Assurances of Discontinuance and 4 were resolved through Civil Citations. 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 10 Notices of Alleged Violation in eight different Act 250 Districts in 2018. 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. In 2018, the resignation of the Associate General Counsel and the promotion of the Compliance and Enforcement Officer created the need for recruitment and impacted the number of enforcement actions initiated. As a result, the number of cases resolved fell in 2018.

Enforcement	CY2014	CY2015	CY2016	CY2017	CY2018
New Investigations Opened	132	102	98	84	93
Formal Enforcement Actions Initiated	29	19	24	16	6
Violations Resolved through Formal Enforcement	23	19	23	22	9
Violations and Complaints Resolved without Formal Enforcement			39	62	38
Total Penalties Assessed	\$103,264	\$78,950	\$143,302	\$117,100	\$47,895
Total Penalties Collected <sup>8</sup>	\$90,000	\$61,982	\$72,366	\$185,273	\$41,920
Enforcement Costs Assessed	\$5,282	\$7,267	\$16,342	\$15,485	\$3,407

<sup>8</sup> Total penalties collected does not reflect outstanding payments not yet due or those penalties paid in 2019 and does potentially include penalties assessed in previous years.

## Information Technology and Business Process Improvement

### NEW ACT 250 DATABASE, DEVELOPMENT OF ONLINE APPLICATION FORM & CONTINUED INCREASE IN TECHNOLOGICAL INNOVATION

In 2018 the NRB continued to improve public access to its data and decisions. Endeavors to improve public access to NRB information were ongoing in 2018. We are currently working with IT staff from the Agency of Digital Services to develop a new Act 250 database website and online Act 250 application form. The web portal will include information and search capabilities for Act 250 permits. The portal will replace the current Act 250 database portal hosted by the Agency of Natural Resources on its website. The new application form will enable applicants to complete the Act 250 application entirely online.

### What is Act 47?

#### THE ACT 47 COMMISSION ON ACT 250 – THE NEXT FIFTY YEARS

Act 47 was passed in 2017 and created a commission on Act 250: The Next 50 Years. The Commission was charged with a comprehensive review of Act 250.

In 2018, the Act 47 Commission on Act 250 held six forums around the State as a public engagement opportunity designed to gather suggestions from citizens and interested organizations on how the State might better protect the environment and regulate

development within the context of Act 250. Through these engagements, Act 47 Commission members, legislators and NRB staff were able to share information with attendees, receive input on experiences and gather opinions and respond to questions. Additional information was gathered through written comments posted online and through a statewide survey. The results of this effort can be reviewed in the Commission's recommendations to the Legislature.

The review of Act 250 involved significant NRB staff time in CY 2018. NRB Staff attended all the statewide hearings and, also participated in related meetings and events such as the Vermont Planners Association Conference on Act 250. Additionally, the NRB maintained an active effort throughout the process to respond to inquiries, opportunities and requests.

The Act 47 Commission on Act 250 continued into early 2019, developing their final report and recommendations. The NRB anticipates considerable ongoing discussion and legislative proposals in 2019.



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 [sic] 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.”*



This document has been prepared pursuant to 10 V.S.A. Section 6083(d), which requires that the Natural Resources Board (NRB) submit a report annually to the General Assembly (see statutory reference below.) In addition, a copy is made available to the Governor and the Committees noted below.

*(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.*

