



# Act 250 Overview

February 13, 2020

Senate Committee on Natural  
Resources & Energy

**Diane Snelling, Chair NRB**  
**Greg Boulbol, General Counsel**

## AGENDA

- Act 250 – History and Purpose
- Mechanics of the Natural Resources Board
- Act 250 Jurisdiction
- Quasi Judicial Role
- The Ten Criteria
- Party Status
- Act 250 Application Review Process
- Hearings
- Questions? Answers??

## Brief History of Act 250

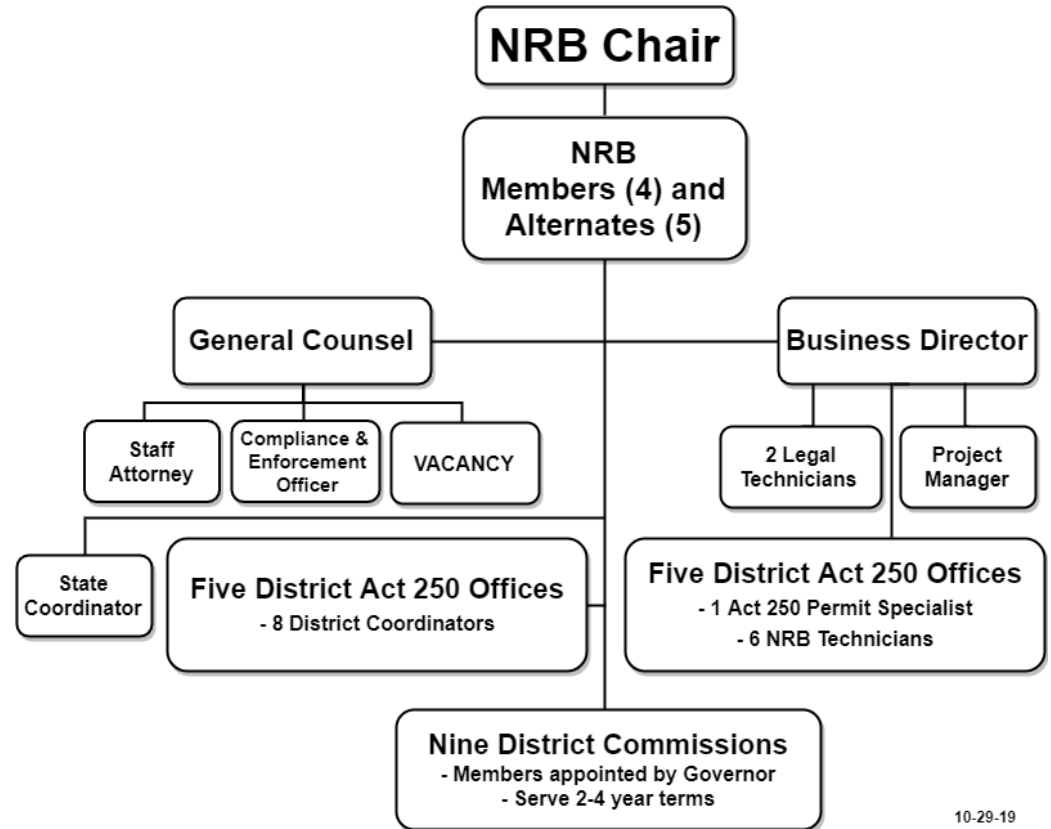
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- In 1969 Gov. Dean Davis and others became concerned about impacts of new development in Vermont.
- After hearings by the Gibb Commission and statewide debate the Vermont legislature passed a law to regulate *certain kinds* of development at the state level, *in addition* to any existing local review.

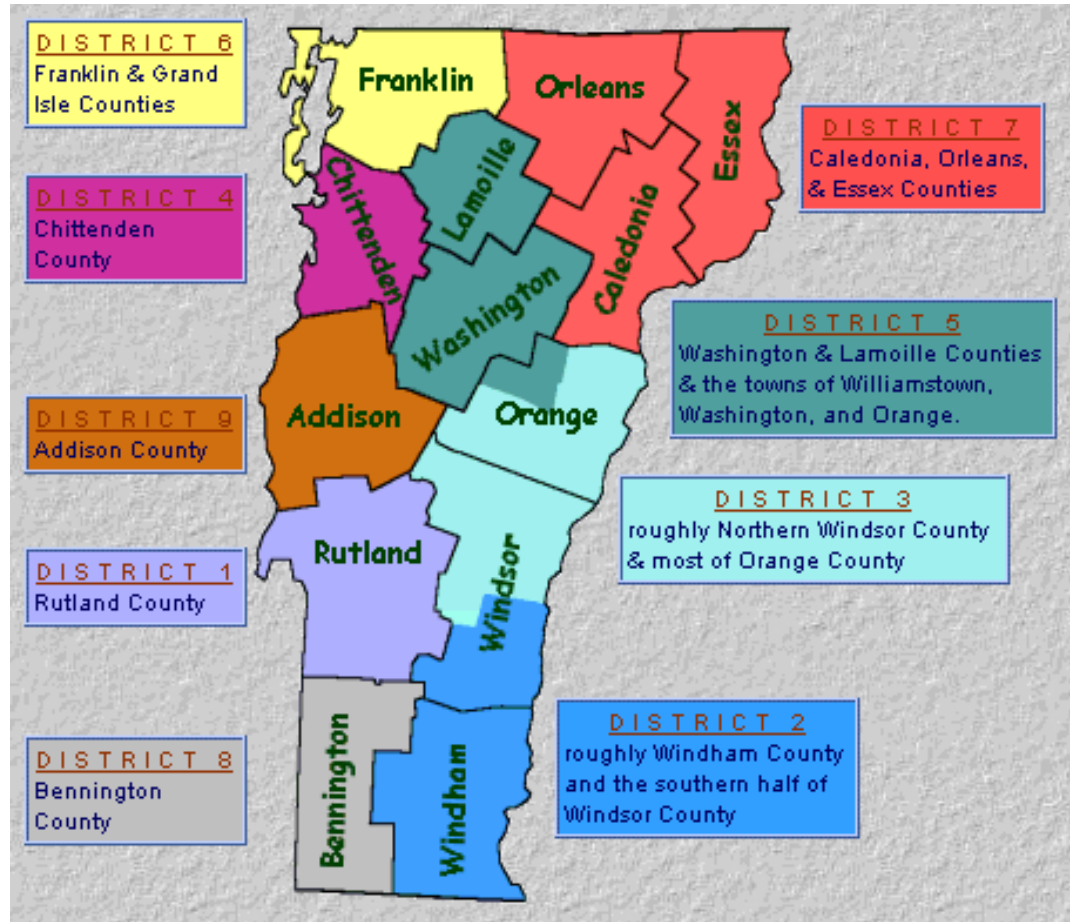


# Natural Resources Board

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# 9 Environmental Districts





# ACT 250 JURISDICTION

Subdivisions of 10 lots or more, or 6 lots in towns without permanent zoning and subdivision regulations.


114.01 +/-

115.02 +/-

92.02 +/-

VERMONT ST

FIR ST



Commercial development on  
>1 or >10 acre



# Other Act 250 Jurisdictional Triggers

- State and municipal projects >10 acres disturbance
- Housing projects with 10 or more units (higher thresholds for Priority Housing Projects in designated centers)
- Communication towers >50 feet in height
- Commercial, residential, or industrial development above 2,500 feet
- Material change to an Act 250 permitted project
- Substantial changes to pre-existing (pre-1970) projects

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# ACT 250 EXEMPTIONS TO JURISDICTION

# Farming below 2,500 feet



Logging below 2,500 feet



# Other Statutory Exemptions to Act 250 Jurisdiction

- Electric generation and transmission facilities regulated by PUC.
- Agricultural fairs and horse shows; no buildings; open to public for < 61 days per year
- Small scale and on-farm composting
- And others

# Exemptions by Rule

Act 250 Rule 2(C)(3) & related definitions:

- Home occupation – defined in Rule 2(C)(17)  
Use, by a resident, of a minor portion of the residence + ancillary buildings, for occupation/business customary in residential areas that has no potential for significant impact
- *De minimis* - no potential for significant adverse impact
- Test wells, preparation & plans

Jurisdictional  
Opinions  
(is there Act 250  
Jurisdiction over  
a particular  
project?)

- Issued by District Coordinator (Letter form or Project Review Sheet)
- Reconsideration by Coordinator within 30 days
- Appeal to Environmental Division, Superior Court, within 30 days.

District Commissions:  
QUASI JUDICIAL ROLE







# The Quasi-Judicial Role

The District Commission is a quasi judicial body

Commission sits as a mini - administrative court

As an administrative tribunal, the Commission's sole focus is to render decisions on Act 250 applications

As the judges hearing these applications you must base your decision on the information submitted by the applicant.

The ultimate decision on the application, including any conditions, must be supported by the information/evidence submitted by the parties

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# THE ACT 250 CRITERIA

# The 10 Criteria

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

# The 10 Criteria

- Burden of proof. 10 V.S.A. § 6088.
  - Applicant bears burden of proving compliance with Criteria 1, 2, 3, 4, 9 & 10.
  - Opponent bears burden of proving unreasonable or adverse effect under Criteria 5 – 8.
- Conditions, conditions, conditions.  
10 V.S.A. § 6086(c).



# Citizen-Based Project Review Process



# PARTY STATUS

10 V.S.A. § 6085 AND ACT 250 RULE 14

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# WHY IS PARTY STATUS SO IMPORTANT?

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Party status provides participants with the rights to testify or present evidence on an application to a commission; and to appeal a commission decision.

## IT IS THE LAW

- Act 250 is based on citizen participation before a citizen board.
- Act 250's party status standard parallels federal standing law.

## PROPER PARTY STATUS

- Assures that commissions receive information.
- Avoids delays, appeals, and remands.

# STATUTORY PARTIES

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*10 V.S.A. § 6085(c)(1):  
The following persons  
shall be entitled to  
party status:*

The applicant

The landowner

The municipality in which the project site is located, and the municipal and regional planning commissions for that municipality

Municipalities and regional planning commissions adjacent to the project

State agencies affected by the project



# OBTAINING PARTY STATUS

## (IF NOT A STATUTORY PARTY)

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- “any ...person who has a particularized interest protected by this chapter that may be affected by an act or decision by a District Commission.” 10V.S.A. § 6085
- Standard: an aggrieved person need only show a “reasonable possibility that a decision on the proposed project may affect a person’s particularized interest ...”
- The purpose of determining party status is to determine whether a person has a sufficient stake in the matter to allow the person to present evidence on a criterion.
- Determining whether a person should have party status and determining whether a project complies with a criterion are separate inquiries.

# PARTY STATUS ELEMENTS

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1



ANY PERSON

2



PARTICULARIZED  
INTEREST

3



MAY BE AFFECTED  
BY THE PROJECT

# FINAL PARTY STATUS

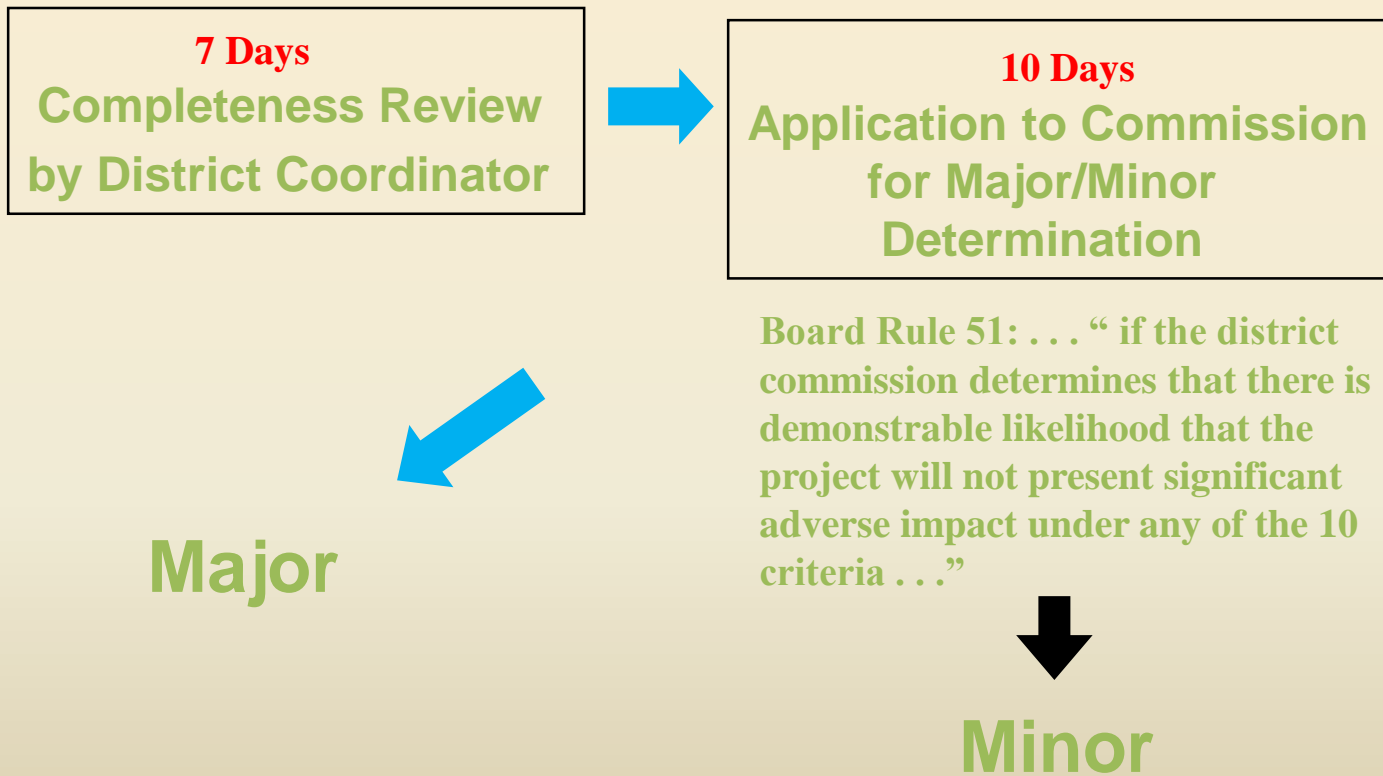
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- Party status should be confirmed unless proof shows that there was no reasonable possibility of a particular interest being affected.

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**THE LAND USE PERMIT  
APPLICATION REVIEW  
PROCESS**

# Application Review Process



# Application Process

## *Minor*

**Notice and Proposed Permit Mailed and Published**

**Within 10 days of filing of complete application**

**Comment Period for Hearing Request**

**20 days**



**If No Hearing  
Request:  
Commission Issues  
Decision after Last  
Permit or Other  
Evidence Received**

**10 Days**

**If Hearing is Requested:  
Application is Processed  
as **Major**; Hearing is Scheduled**

**Within 20 days of end of  
public comment period**

# Application Review Process

## *Major*

**Notice Mailed and Published in  
Newspaper**

**Within 10 days of filing of complete application**

**Hearing or Prehearing; Site Visit**

**Within 40 days of filing of complete  
application;  
not less than 10 days from publication of notice**

**Hearing Recess Order**

**Within 14 days of hearing**

**Last Recess Item Received by Commission**

**Deliberations and Issuance of Decision**

**Within 20 Days of receipt of last item, last permit  
or completion of deliberations**

# What happens at a hearing?

- Chair opens hearing, explains process
- Applicant presents overview
- District Commission accepts petitions for party status; makes preliminary determinations
- Applicant presents information under the 10 Criteria, including any expert witnesses (civil engineer, traffic expert, etc.)
- District Commission asks questions
- Parties have opportunity to ask questions (cross-examine)
- Parties have opportunity to present their own evidence, including expert witnesses
- After hearing, commission issues recess memo listing outstanding items
- Rule 19 Permits: Rebuttable presumptions



# Decisions and Permits



Decisions – applications are either approved, approved with conditions, or denied. Findings of Fact and Conclusions of Law are drafted and issued.



Permits Granted and Conditions Attached – when permits are granted they are subject to a wide range of conditions – transportation, erosion control measures; energy efficiency; etc.



Permits Denied – if a commission finds that the project will be detrimental to the public health, safety or general welfare it will be denied. Permits may not be denied under Criteria 5, 6 and 7 – but conditions can be applied under these criteria.



Nature of Permits – LUPs run with the land; they are transferrable; project completion; expiration dates; non-use (abandonment).

# Appeals

Findings, conclusions, conditions and Jurisdictional Opinions may lead to an appeal.

Appeals of a District Commission and a District Coordinator are heard by the Environmental Court; ultimately the Supreme Court.

Hearings on appeal are *de novo* –Facts must be re-established.

Party must have participated at District Commission level to appeal (unless the appeal is in the nature of a party status denial)

# ACT 250 RESOURCES

