

**Act 250  
Overview  
April 14, 2021**



## Ground Rules

Feel free to Interrupt and ask questions

## Brief History of Act 250

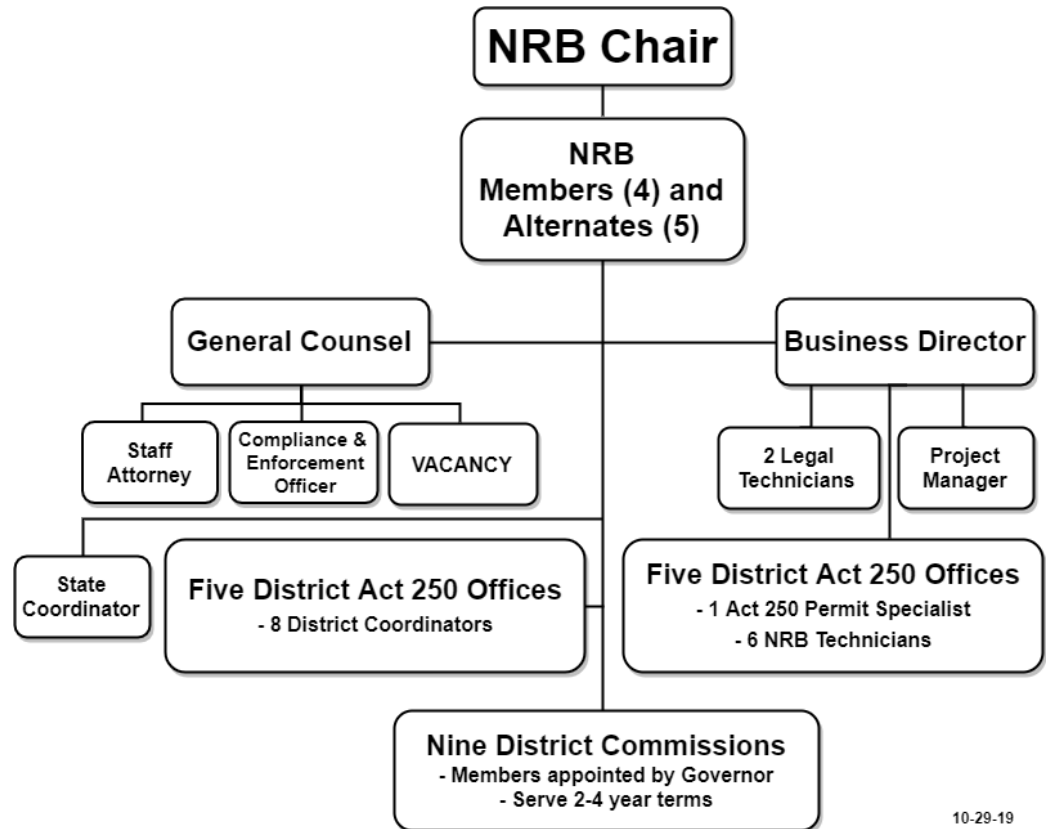
---

- 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.

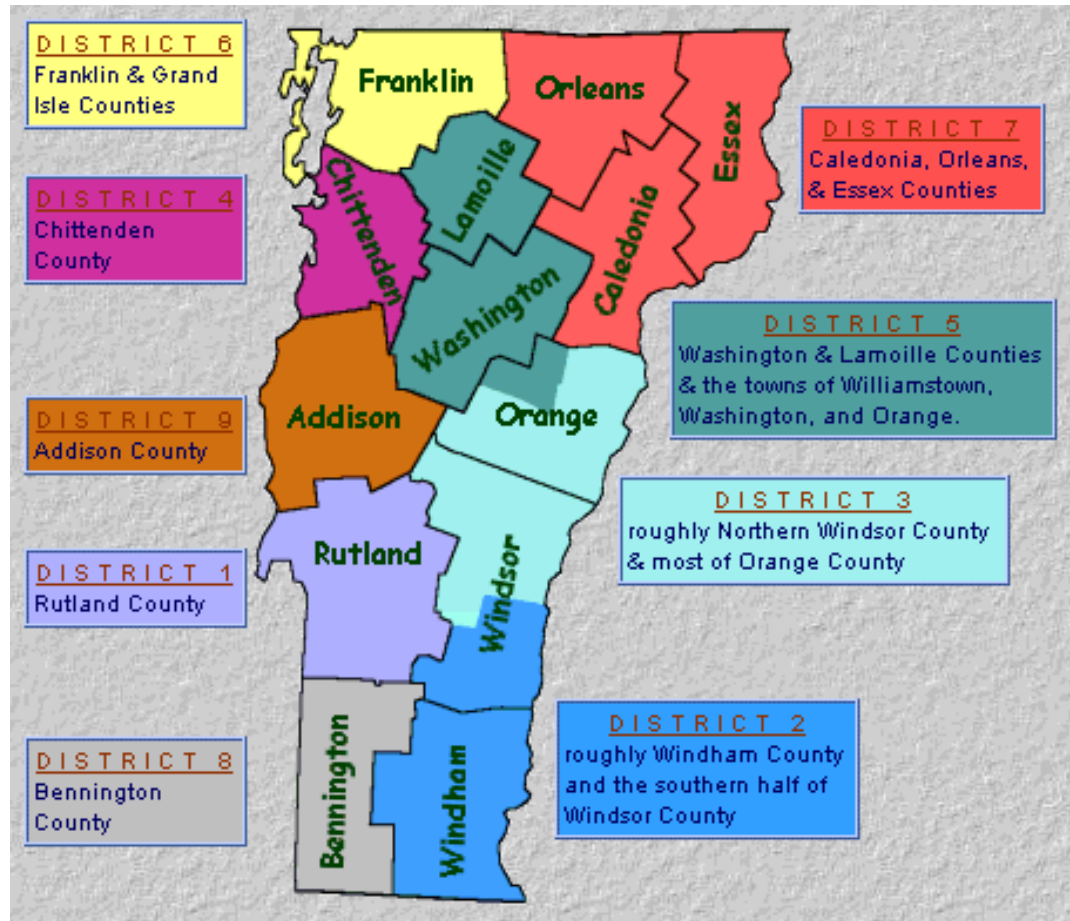


# Natural Resources Board

---



# 9 Environmental Districts






# ACT 250 JURISDICTION



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



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

The background features a series of concentric, overlapping circles in light gray and white, some solid and some dashed, creating a dynamic, circular pattern.

# 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.

The background features a series of concentric circles in light gray, some solid and some dashed, creating a ripple effect. A large blue callout box with a downward-pointing tail is centered on the page. Inside the box, the text "THE ACT 250 CRITERIA" is written in white, bold, uppercase letters.

# THE ACT 250 CRITERIA

# The 10 Criteria

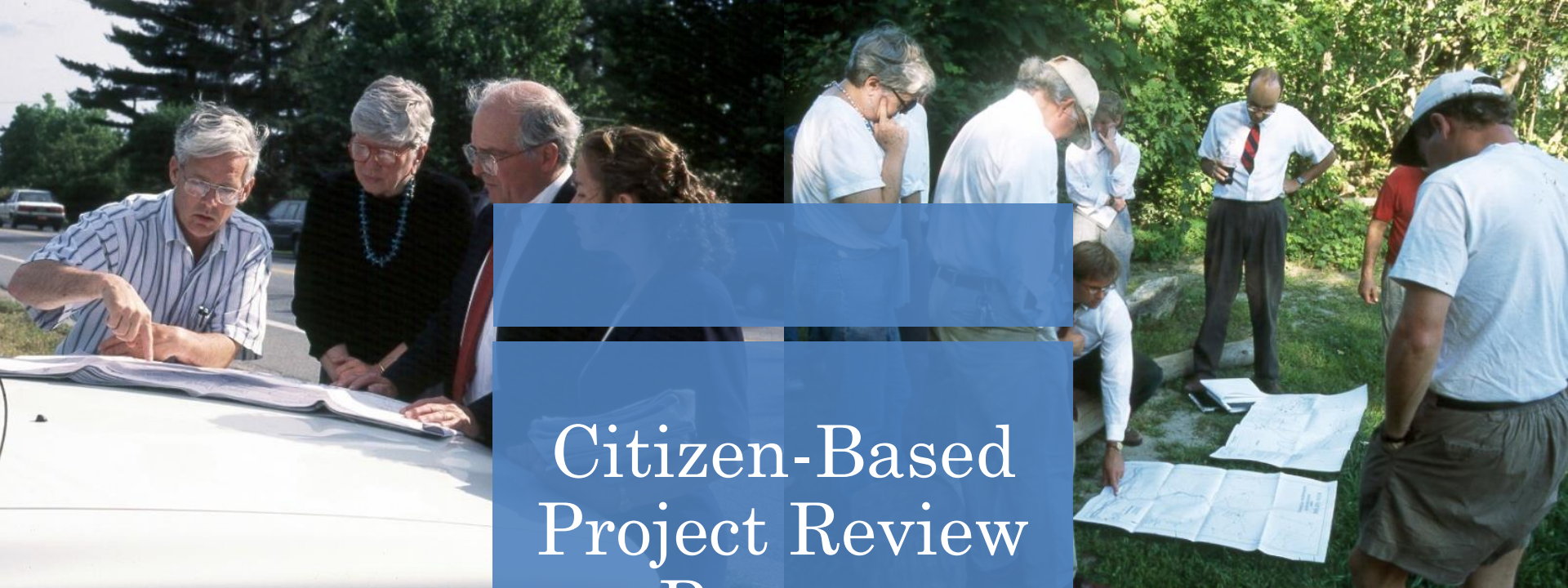
1. Air and Water Pollution
2. Water Supply
3. Impact on Existing Water Supplies
4. Soil Erosion
5. Transportation Safety and Congestion
6. Impact on Schools
7. Impact on Municipal Services
8. Wildlife Habitat, Historic Sites, and Aesthetics
9. Impact of Growth
10. Conformance with Local and Regional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

10 V.S.A. § 6086(a)(1) – (10).

# 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





# 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 commissioners must base decisions 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



# PARTY STATUS

10 V.S.A. § 6085 AND ACT 250 RULE 14

---

# WHY IS PARTY STATUS SO IMPORTANT?

---

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

*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 ALREADY A STATUTORY PARTY)

---

- “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

---

1



ANY PERSON

2



PARTICULARIZED  
INTEREST

3



MAY BE AFFECTED  
BY THE PROJECT

# I. ANY PERSON

---



Individual



Association



Corporation



Neighborhood association (whether or not incorporated)



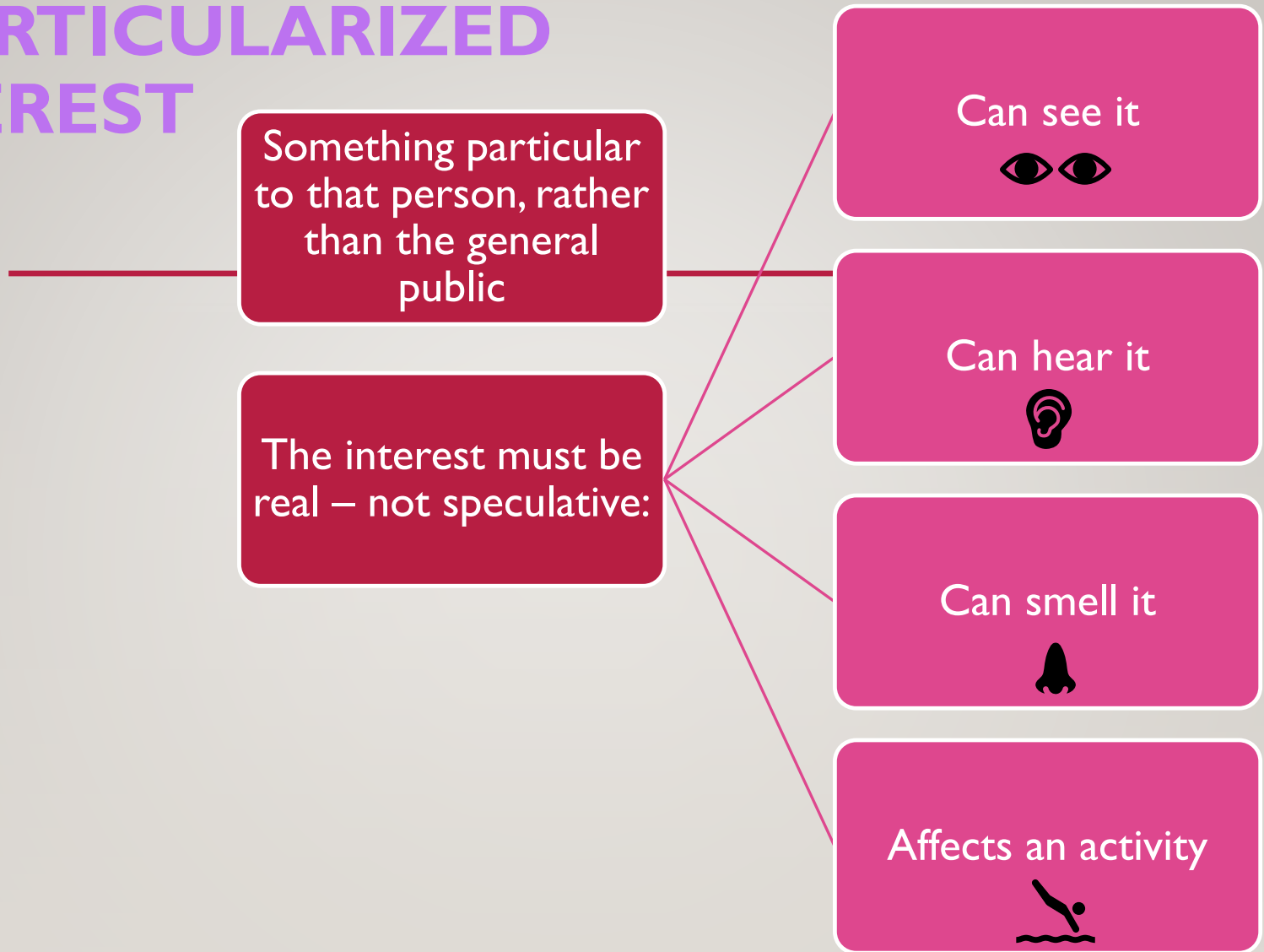
Partnership



Non-profit with affected members



## 2. PARTICULARIZED INTEREST



# 3. AFFECTED BY THE PROJECT

---

(ACT OR  
DECISION)

The person's concern or interest must be one that is protected by an Act 250 criterion:

- Aesthetics
- Noise
- Odors
- Runoff/water pollution
- etc.

Persons concerned about business competition or other issues beyond Act 250 are not parties.

# FINAL PARTY STATUS

---

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

The background features several concentric circles of varying radii, some solid and some dashed, creating a ripple effect. A blue callout box with a downward-pointing triangle at the bottom center is overlaid on the circles. The text inside the box is white and centered.

# THE LAND USE PERMIT APPLICATION REVIEW PROCESS

# Application Review Process

**10 Days**  
Completeness Review  
by District Coordinator



**10 Days**  
Application to Commission  
for Major/Minor  
Determination

Board Rule 51: . . . “ if the district commission determines that there is demonstrable likelihood that the project will not present significant adverse impact under any of the 10 criteria . . .”



**Major  
Review**

**Minor  
Review**



# Application Review Process

## *Minor Review*

**Notice and Proposed Permit Mailed and Published in local newspaper**  
**Within 10 days of filing of complete application**

**Comment Period for Hearing Request**  
**7 - 20 days**



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

**If Hearing is Requested:**  
**Application may be Processed**  
**as Major; Hearing is Scheduled**  
**Within 20 days of end of**  
**public comment period**

Your coordinator will keep you apprised of these deadlines.



# Application Review Process

## *Major Review*

**Notice Mailed and Published in local Newspaper**

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

**Prehearing Conference or Hearing; Site Visit**

**Within 40 days of applicant's filing of a complete application;  
not less than 10 days from notice publication date**

**Issue Hearing Recess Order**

**Within 14 days of hearing**

**Last Recess Item Received by Commission**

**Commission Deliberates and Decision Issued**

# 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 may ask 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

# Decisions and Permits



Decisions – applications are either approved with conditions or denied. Findings of Fact and Conclusions of Law are often 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 must be denied. Permits may not be denied under Criteria 5, 6 and 7 – but conditions can be applied under these criteria.



Nature of Permits – Land use permits (LUPs) run with the land; they are transferrable; contain project completion or expiration dates; can be declared abandoned by non-use.

# Appeals

Findings, conclusions, conditions and Jurisdictional Opinions may be appealed.

Appeals of District Commission and a District Coordinator decisions are heard by the Environmental Division; 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

