



Date: April 5, 2021
To: House Natural Resources Fish & Wildlife Committee
From: Diane Snelling, Chair, Natural Resources Board/Act250
Re: Requested Technical Corrections (DR 21-0956)

I am submitting this memo to address concerns that resulted in the removal of some of the Act 250 specific provisions from technical corrections bill DR 21-0956.

The NRB has been working on a new improved online application and expanded database for nearly 5 years. Unfortunately, this project has taken longer than expected due to a variety of challenges. The new electronic system has requirements that make the following statutory changes necessary. These changes are only to accommodate the way the new system will function when the application and database are rolled out, and to ensure that NRB/Act250's is consistent with the statute.

1. Change to existing application requirements (10 V.S.A 6083): Current statutory language requires applicants to submit certain minimal documentation in support of their Act 250 permit applications. The proposed changes instead require that applicants include the information required by guidance that the Board periodically issues. As a result, the proposed changes mirror the existing language of Act 250 Rule 10(B), which requires the Board to issue periodic guidance on what information and documentation must be included in applications. The Board last updated its existing guidance, available on its website, on January 4, 2021. This guidance is much more detailed and thorough than the minimal list currently contained in 10 V.S.A. 6083. Consequently, the existing language of 10 V.S.A. 6083 is outdated and in need of improvement to match the current and more robust standards.
2. Change to notice provision (10 V.S.A. 6084(a)): The new system will allow the Act250 District Commission staff to take on the obligation to serve notice to statutory parties (Municipality, State Agencies) of a new Act250 permit electronically. Pursuant to the current statute, this is the responsibility of the applicant.
2. Extend existing deadlines under 11 days (various sections): The new system only recognizes calendar days. We are asking to adjust deadlines to accommodate the change from a mix of business days and calendar days, to just calendar days.

On April 1, 2021 the Commission removed changes 1 and 2 from DR 21-0956 out of concern that they would somehow facilitate the transfer of authority from District Commissions to the NRB. This is not accurate. None of these proposals change the authority of the District Commissions, and none of these changes authorizes the NRB to do anything that it does not already do.

First and as stated above, the NRB already has the authority to dictate what information and documents must be included in Act 250 applications. It has exercised this authority and issued guidance that is far more robust than the existing list of information and documents contained in 10 V.S.A. 6083.

Second, none of the changes to 10 V.S.A. 6084 take any authority away from the District Commissions. To the contrary, they impose additional obligations on the District Commissions. Instead of applicants providing notice to statutory parties, the District Commissions will provide that notice through the new online application and expanded database. Importantly, none of the proposed changes to 10 V.S.A. 6084 will alter anything about the way notice is provided to adjoining landowners. This is because there are no changes proposed to the portions of 6084 that require the applicants to provide the District Commission with a list of adjoining landowners and those portions that require the District Commission to provide notice to adjoining landowners. Because there are no changes to the way adjoining landowners receive notice, they can still receive paper notice if they do not have reliable access to the internet.

Finally, pursuant to 10 V.S.A. 6086 it is the District Commissions that does the substantive review of applications. This is evident in the first sentence of that section: “Before granting a permit, the District Commission shall find that the subdivision or development....” There are several other statutes in Act 250 that recognize District Commissions preside over Act 250 applications. For instance, here are just a few references:

1. 10 VSA 6084(b): “Upon an application being ruled complete, the District Commission shall determine whether to process the application as a major application...”
2. 10 VSA 6085(c)(1): “In proceedings before the District Commissions...”
3. 10 VSA 6087(a): “no application shall be denied by the District Commission unless...”
4. 10 VSA 6089: “Appeals of any act or decision of a District commission...”

The proposed technical changes do not include any changes to these sections.

Please let me know if you would like to talk in further detail regarding these proposed changes.