

STATE OF VERMONT
EXECUTIVE DEPARTMENT
EXECUTIVE ORDER NO. 02-21

[Reorganization of the Natural Resources Board]

WHEREAS, the Governor, pursuant to the Vermont Constitution Chapter II, Section 3 and 3 V.S.A. Section 2001 and Section 2002, may make such changes in the organization of the Executive Branch or in the assignment of functions among its units as he considers necessary for efficient administration; and

WHEREAS, the Constitution of Vermont, Chapter II, Section 6 provides that no bill, resolution or other thing which shall have been passed by one house of the General Assembly shall have the effect of or be declared to be a law without the concurrence of the other, ensuring no action by a single house, committee or agent of the General Assembly may be binding on the Executive Branch; and

WHEREAS, any organizational changes made by the Governor, pursuant to 3 V.S.A. Section 2001 and Section 2002, shall be subject to disapproval by both houses of the General Assembly; and

WHEREAS, it is desirable to reorganize the agencies, departments and divisions of government by better coordinating certain activities and improving the coordination and effectiveness of services to the public; and

WHEREAS, Act 250 has operated under the same administrative structure for over fifty years, consisting of District Environmental Commissions (“District Commissions”), administrative tribunals comprised of three volunteer members of the public, operating independently in 9 regions of the State; and

WHEREAS, from 1970 through 2004, the former Environmental Board oversaw the operations of the District Commissions and established policy precedents across the Act 250 enterprise through the issuance of decisions in appeals of Act 250 permits; and

WHEREAS, when the Natural Resources Board replaced the Environmental Board in 2004, the Natural Resources Board did not retain its ability to compel consistent application of policy and law across the nine District Commissions through the issuance of decisions in Act 250 appeals; and

WHEREAS, while Act 250 has served Vermont well, the scope and complexity of environmental, planning, and regulatory issues District Commission must consider has expanded significantly since 1970; and

WHEREAS, with complex emerging issues such as climate change, the interplay between Act 250 and other state and municipal regulatory programs, demographic challenges, and the growing economic divide between the rural and urban parts of our state, and with a current governance structure that lacks a unifying policy authority across the nine districts, restructuring

Act 250 presents an opportunity to maximize natural resource protections, enable well planned growth, increase predictability and reduce redundancy with other state regulatory programs; and

WHEREAS, a professional Natural Resources Board that decides major cases will have the capacity to consider and manage complex issues now and into the future, and, through their Orders, will establish precedent and policy resulting in the consistent application of Act 250 criteria statewide; and

WHEREAS, in each proceeding of the restructured Natural Resources Board, two members from the District Commission from the District where the proposed project is located will sit with the Natural Resources Board so regional considerations will continue to inform Act 250 decisions.

NOW THEREFORE, by virtue of the authority vested in me as Governor by the Constitution of the State of Vermont, Chapter II, Section 3 and Section 20, 3 V.S.A. chapter 41 and 32 V.S.A. § 704a, I, Philip B. Scott, do hereby reorganize the Natural Resources Board and its District Commissions as follows:

1. As of July 1, 2021, a restructured Natural Resources Board made up of three full-time professional members is hereby created to professionalize and modernize the current governance structure, to unify policy authority across the nine District Commissions, to maximize natural resource protections, to enable well-planned growth, to increase predictability and uniformity and reduce redundancy and inconsistency with other state regulatory programs.
2. As of July 1, 2021, the Natural Resources Board created in 10 V.S.A. § 6021 consisting of five members appointed by the Governor (the “Original Board”) is hereby abolished and all the duties, responsibilities and authority of the Original Board are hereby transferred to a reconstituted Natural Resources Board made up of three full time professional members as established in Section 3 below.
3. As of July 1, 2021, the Natural Resources Board shall consist of three full-time professional voting members which shall have all the duties, responsibilities, and authority of the Original Board and such duties, responsibilities and authority as set forth in this Order.

The members shall include a Chair and two additional members who shall be appointed by the Governor with the advice and consent of the Senate. In making these appointments, the Governor and the Senate shall give consideration to experience, expertise or skills relating to the environment or land use, as well as geographic, gender, ethnic and racial diversity. Following initial appointments, the three members shall serve six-year staggered terms.

Initial appointments shall be made prior to July 1, 2021. For initial appointments, the Chair shall be appointed to a six-year term, one member shall be appointed to a four-year term and the third member shall be appointed to a two-year term. Each of

the three members shall be a full-time employees, exempt from the classified service, serving at the pleasure of the Governor.

When a particular application comes before the Board, two members from the District Commission from the District where an application being reviewed was located shall become voting members of the Board solely with respect to that matter. The two District Commission members shall be selected by the applicable Chair of the District Commission.

4. As of July 1, 2021, the authority of each of the District Commissions in 10 V.S.A. § 1084(b), to determine whether a complete application shall be processed as a major application with a required public hearing or a minor application, shall be transferred to the Natural Resources Board, acting without District Commissioners.
5. As of July 1, 2021, the authority of each of the District Commissions to determine whether to issue an administrative amendment shall be transferred to the Natural Resources Board, acting without District Commissioners.
6. As of July 1, 2021, all authority of each of the District Commissions in Title 10 relating to any application determined to be a major application or a minor application where a hearing is requested, shall be transferred to the Natural Resources Board.
7. As of July 1, 2021, the provisions of Title 10 and the rules, policies and procedures of the Natural Resources Board relating to applications determined to be major applications or minor applications where a hearing is requested shall be deemed to refer to and shall be applicable to the Natural Resources Board.
8. An applicant who has received a Jurisdictional Opinion from a District Coordinator may, within 30 days from the issuance of the opinion, request reconsideration of the Jurisdictional Opinion by the Natural Resources Board, acting without the District Commissioners.
9. All complete applications filed with a District Commission prior to July 1, 2021 shall remain under the jurisdiction of the applicable District Commission until resolution of the application.

This Executive Order shall be submitted to the General Assembly pursuant to 3 V.S.A. § 2002. This Executive Order shall take effect on April 15, 2021, unless disapproved by both houses of the General Assembly.



WITNESS my name hereunto subscribed and the Great Seal of the State of Vermont hereunto affixed at Montpelier this 14th day of January, 2021.

A handwritten signature in blue ink, reading "Philip B. Scott", written over a horizontal line.

Philip B. Scott
Governor

By the Governor:

A handwritten signature in black ink, reading "Brittney L. Wilson", written over a horizontal line.

Brittney L. Wilson
Secretary of Civil and Military Affairs

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Date: January 14, 2021