

# ACT 250 BRIEF INTRO 10 VSA CHAPTER 151 ROUND 2

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# THE LAND USE REVIEW BOARD

- 1970- Environmental Board- appellate body for District Commission decisions
  - 9 members; 4 year terms, Chair 2 yr terms
  - Its original members included a natural-science professor, an architect, a realtor, a community leader and homemaker, a county extension agent, a ski area operator, an engineer, a businessman, and a county sheriff.
- Water Resources Board- heard appeals on water related permits
- 2004- Environmental Board and Water Resources Board combined into the Natural Resources Board; appeals transferred to the Environmental Division of the Superior Court
  - NRB- full-time Chair, members received per diems for work on Board issues
  - Skills/expertise relating environment and land use
  - Water Resource Panel and Land Use Panel- 4 members on each
    - WRP had rulemaking authority for water laws; LUP had authority over Act 250 permit process
- 2012- Panels dissolved- NRB remains in charge of Act 250; ANR gains authority over water rules and permits

# THE LAND USE REVIEW BOARD

- 2024- NRB renamed Land Use Review Board
- 5 full-time Board members including Chair
- experience, expertise, or skills relating to one or more of the following areas: environmental science; land use law, policy, planning, and development; and community planning. All candidates shall have a commitment to environmental justice.
- Apply to Land Use Review Board Nominating Committee (§6032) who does initial interviews and compiles a list to send to Governor, who then appoints members for 5 yr terms; advice and consent of Senate
- Only removable for cause by rest of Board members
- Administrative authority over Act 250 program; given authority to review and approve RPC maps and Tier 1A areas

## MORE TYPES OF JURISDICTION

Originally, Act 250 permits had expiration dates; Decision in 1984 that actually, permits are perpetual because jurisdiction covers both the construction and use of the improvements

Amendment jurisdiction- **Material change** and **Substantial change**

If a project/parcel with an existing Act 250 permit makes a material change, it will need a permit amendment.

The analysis for what constitutes a material change as proposed for an already permitted project requiring a permit amendment is similar to the analysis used for a substantial change—"there must be a cognizable change that will have a significant impact on a finding or condition or may result in significant adverse impact on any of the [applicable] Act 250 criteria."

# JURISDICTION

## §6081- Exemptions- Pre-existing development

(b) shall not apply to a subdivision exempt under the regulations of the Department of Health in effect on January 21, 1970 or any subdivision which has a permit issued prior to June 1, 1970 under the Board of Health regulations, or has pending a bona fide application for a permit under the regulations of the Board of Health on June 1, 1970, with respect to plats on file as of June 1, 1970 provided such permit is granted prior to August 1, 1970. Subsection (a) of this section shall not apply to development which is not also a subdivision, which has been commenced prior to June 1, 1970, if the construction will be completed by March 1, 1971. Subsection (a) of this section shall not apply to a State highway on which a hearing pursuant to 19 V.S.A. § 222 has been held prior to June 1, 1970. Subsection (a) of this section shall not apply to any telecommunications facility in existence prior to July 1, 1997, unless that facility is a "development" as defined in subdivision 6001(3) of this title. Subsection (a) of this section shall apply to any **substantial change** in such excepted subdivision or development.

"Pre-existing development" should be evaluated under the "substantial change" analysis

A "substantial change" is defined as "any change in a development or subdivision which may result in significant impact with respect to any of the [ten] criteria."

# JURISDICTION

## §6081- Exemptions

(c) No permit or permit amendment is required for activities at a solid waste management facility authorized by a provisional certification issued under section 6605d of this title; however, development at such a facility that is beyond the scope of that provisional certification is not exempt from the provisions of this chapter.

# MAJOR V. MINOR PERMITS

- § 6084. Notice of application; hearings; commencement of review
- (b) Upon an application being ruled complete, the District Commission shall determine whether to process the application as a major application with a required public hearing or process the application as a minor application with the potential for a public hearing in accordance with Board rules.
- Act 250 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,” then an application may be reviewed in accordance with this rule as a “minor application.”
- For major applications, 14 days notice for scheduled hearing or prehearing conference; Any hearing or prehearing conference shall be held within 40 days of receipt of a complete application; after hearing, District Commission shall deliberate; must issue permit decision w/in 20 days of close of deliberations
- For minors, anyone who got notice may request hearing or District Commission has to discretion to hold one within 20 days of the end of the public comment period specified in the notice of minor application review if the District Commission determines that it is appropriate to hold a hearing for a minor application; if no hearing is requested or held, must issue permit within 60 days; 6084(g)- small sawmills and operations automatic minor permit