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Natural Resources Board / Act 250

Annual Report

Calendar Year 2022

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Vermont Natural Resources Board / Act 250

The Natural Resources Board (NRB) is an independent entity in the executive branch of Vermont state government whose primary function is to administer Act 250 (10 V.S.A. Chapter 151.) There are 29 full-time employee positions and about 70 citizen volunteers serving as [commissioners](#) and [board members](#) that support the work of the NRB's central and district offices.

The NRB consists of a full-time chair and four citizen volunteer members, plus up to five alternates. Board members are appointed by the Governor to 4-year staggered terms, except for the Chair, who serves at the pleasure of the Governor.

The Board's primary function is to administer Act 250, Vermont's land use and development law. The Board also promulgates rules, participates in appeals, and enforces against Act 250 violations. The NRB's staff serve nine district commissions from five district offices. District staff are responsible for issuing jurisdictional determinations and guiding applicants, the public, and district commissions through the application review process. The district commissions sit as three-member quasi-judicial bodies to review Act 250 applications. The commissions issue permit decisions based on the application and other filings if no hearing is requested, and hold contested case hearings when facts are disputed or unclear.

NRB's district coordinators, administrative staff, and attorneys support the commissions in their work. The attorneys' support consists of assisting the district commissions and coordinators on procedural and substantive issues that arise in Act 250 proceedings, including legal counsel, research, and document drafting. NRB participates as a party to Act 250 appeals before the Superior Court, Environmental Division.

Value Added by the Act 250 Program

Generations of Vermonters have valued Act 250's role in protecting Vermont's unique character, but the program's contributions extend well beyond scenery. Act 250 provides a comprehensive process for reviewing proposed land use projects that brings together input from numerous state agencies including the Agencies of Natural Resources (ANR); Agriculture, Food and Markets; Transportation (VTrans); and Commerce and Community Development, as well as regional planning and municipal officials. Final land use permits incorporate this input and provide an integrated framework for protecting the environment and Vermonters' quality of life, including critical elements that might not otherwise be afforded protection. Here are a few examples.

Habitat

As a participant in the Act 250 process, ANR often provides comments on the potential habitat impacts of proposed projects. In recent years, district commissions have utilized this input to craft land use permit conditions to protect habitat for a diverse array of species, ranging from rare plants to white-tailed deer to the State Endangered little brown bat. This critical habitat protection would not have been provided voluntarily or through municipal review alone.

Farmland

In coordination with state agriculture authorities, district commissions work to ensure that the state's best farmland is conserved for the future of Vermont's farm economy. Since its inception, Act 250 has directly preserved thousands of acres of farmland via permit conditions on permitted project sites. In areas where preserving prime farmland on or near a project site is impractical, Act 250 assesses mitigation fees, payable by developers to the Vermont Housing and Conservation Board (VHCB). In this way, over its history,

Act 250 permitting has provided millions of dollars to VHCB to help leverage the purchase of permanent conservation easements over tens of thousands of acres of working farmland across Vermont.

Rivers and Streams

In Vermont, there is no statewide law that protects streamside vegetation from development. Through Act 250 permit conditions, with input from the Vermont Fish & Wildlife Department, countless miles of rivers and streams have been permanently buffered with native plants, furthering Vermonters’ shared goal of safeguarding downstream water quality for fishing, swimming, and aquatic life in our cherished lakes and waterways.

Infrastructure

Act 250 partners with VTrans to impose equitable fees on development to fund critical transportation infrastructure projects in the communities most impacted by development. This process ensures that those projects that cause traffic and congestion pay a fair share of the cost of new infrastructure like traffic signals and road improvements that keep nearby traffic flowing smoothly and safely.

The following chart outlines just some of last year’s contributions to the Vermont landscape that most likely would not have occurred without Act 250.

Values Protected by Act 250 Permits: Calendar Year 2022

| | |
|--|-------------|
| Total acres of Prime Agricultural Soils protected by permit conditions | 89 acres |
| Total Prime Agricultural Soil Mitigation Payments assessed | \$260,800 |
| Total Traffic Mitigation Payments assessed | \$566,300 |
| Archeological sites addressed | 15 permits |
| Historic structures addressed | 16 permits |
| Wetlands and wetland buffers protected | 88 permits |
| Riparian zones (river and stream buffers) protected | 89 permits |
| Lake, pond, or large river buffers protected | 4 permits |
| Protection of drinking water Source Protection Areas addressed | 21 permits |
| Habitat areas addressed | 39 permits |
| Noise limitation conditions | 148 permits |
| Quarry or gravel pit reclamation conditions | 18 permits |

Act 250 Applications and Decisions

Applications “Deemed Complete”

The term "deemed complete" is the date upon which a district coordinator and technician deem an application to be both technically and administratively complete. Applications that are not sufficiently complete for a commission to review under the statute are returned to applicants with a clear outline of information that is missing or in need of clarification. Until an application is deemed complete, it is not presented to the district commission for review. This critical determination allows an application to move forward for review by the citizen-based district commission.

Among the nine district commissions:

- 376 permit applications were deemed complete in CY 2022.
- 379 permit application-related decisions were issued in CY 2022.

Applications Deemed Complete per Year

| Application type | CY 2018 | CY 2019 | CY 2020 | CY 2021 | CY 2022 |
|---------------------------|------------|------------|------------|------------|------------|
| Major (Hearing Required) | 36 | 23 | 9 | 11 | 14 |
| Minor (No Hearing) | 192 | 220 | 191 | 248 | 218 |
| Administrative Amendments | 176 | 202 | 139 | 179 | 144 |
| TOTALS | 404 | 445 | 339 | 438 | 376 |

Decisions Issued

Of the 379 decisions issued in CY 2022, 148 (39%) were processed as administrative amendments, 210 (55%) as minor applications with no contested-case hearings, and 21 (6%) as major applications. Major applications require a public hearing for the review of a project’s conformance to the Act 250 criteria.

Application Decisions Issued per Year

| Application type | CY 2018 | CY 2019 | CY 2020 | CY 2021 | CY 2022 |
|---------------------------|------------|------------|------------|------------|------------|
| Major (hearing required) | 36 | 37 | 14 | 14 | 21 |
| Minor (no hearing) | 194 | 211 | 185 | 248 | 210 |
| Administrative amendments | 174 | 211 | 139 | 180 | 148 |
| TOTALS | 404 | 459 | 338 | 442 | 379 |

Data presented: only applications for which permits, findings, or permit denials were issued in the calendar year presented.

Denials

No applications were denied in CY 2022.

Permit Application Processing Performance Standards

Statutory and internal performance standards guide the performance of the district coordinators and commissions. Average CY 2022 performance is listed below compared to previous four years of data.

Performance Standards: Comparison with Prior Years in Average Calendar Days¹

| Category | Standard | CY 2018 | CY 2019 | CY 2020 | CY 2021 | CY 2022 |
|--|----------------|---------|---------|---------|---------|---------|
| All applications: Days of initial application completeness review (internal standard) | 7 days | 5 days | 7 days | 5 days | 9 days | 19 days |
| Minor applications: Days to issue after end of comment period or last item received (internal standard) | 10 days | 8 days | 7 days | 4 days | 3 days | 2 days |
| Major applications: Days to issue after adjournment | 20 days | 8 days | 8 days | 1 day | 4 days | 18 days |

| Category | Standard | CY 2018 | CY 2019 | CY 2020 | CY 2021 | CY 2022 |
|--|----------------|---------|---------|----------------------|---------|----------|
| (Act 250 Rule standard) | | | | | | |
| Major applications: Days from deemed complete to pre-hearing or hearing (statutory standard) | 40 days | 42 days | 50 days | 40 days ² | 59 days | 78 days |
| Minor-to-major applications: Days from end of comment period to pre-hearing or hearing (statutory standard) | 20 days | 22 days | 37 days | 19 days ² | 78 days | 104 days |

¹ Figures do not include time periods for decisions on motions to alter, decisions remanded from the court, corrections made to permits to clarify simple errors, formal abandonment proceedings, or application withdrawal proceedings for permit applications that had been inactive for years. Specifics on the omissions are available upon request.

² Figures do not include one application that followed the minor-to-major review process because that decision was issued without a hearing.

Average Days from Deemed Complete to Decision Issued per Year per Application Type

| Application type | CY 2018 | CY 2019 | CY 2020 | CY 2021 | CY 2022 |
|---------------------------|---------|---------|---------|---------|---------|
| Major (hearing required) | 256 | 245 | 205 | 296 | 362 |
| Minor (no hearing) | 92 | 83 | 88 | 100 | 98 |
| Administrative amendments | 16 | 8 | 8 | 15 | 7 |

Data presented: only applications for which permits, findings, or permit denials were issued in the calendar year presented.

Note: The application processing times reported above include time spent by applicants obtaining certain permits from other state agencies that are used to document compliance with several Act 250 criteria. This time can vary from several weeks to several months, and on occasion, a year or more. The board has broken down processing times by type of application review process [administrative amendment, minor review, major review, and applications that started as a Minor Review, but later went to hearing (major review)]. These figures do not include processing times for altered, remanded, corrected, or withdrawn permits.

Resources Required for Effective Performance

To be successful and effective, the Act 250 process must be responsive to the needs of all participants impacted by the program—applicants and parties, the public, and staff. Therefore, effective performance requires continuous review and improvement in the following areas:

- adequate staffing of staff positions and district commissions;
- up-to-date resources (Rules and guidance);
- training opportunities for internal and external stakeholders;
- efficient and accessible document management; and
- clear guidance and direction.

Changes Made to Improve Performance

Staffing

The NRB received American Rescue Plan Act (ARPA) State Fiscal Recovery (SFR) funds. With these funds, the NRB hired three temporary (three-year limited-service) positions—an executive director and two district coordinators—during the latter half of CY 2022. The executive director position will provide organizational leadership, operational management, and direction over the program, district commissions and district coordinators. The two new district coordinator staff positions will be employed on a state-wide basis to ensure consistency of service across the state for all projects. The addition of these positions will facilitate the review of ARPA-funded project without a delay to other projects.

Application Portal and Database System Improvements

In February 2022, NRB, in collaboration with the Agency of Digital Services (ADS), successfully launched a new web-based permit application-filing system that is integrated with NRB's existing publicly available web-based database. This new application portal allows applicants to file applications remotely while providing NRB with enhanced capabilities to collect and track important project data. The data and documents associated with any given Act 250 project are then made available to the public through NRB's web-based public database in real-time.

This new system allows the applicant to file applications online through a familiar public portal that the NRB shares with ANR. In addition, it provides a framework for the NRB to collect and store data in a consistent manner, and thereby allows for better querying and reporting of important information.

Planned Changes to Improve Performance

Act 182 Study: Necessary Improvements to Act 250

Under the directives of [Act 182](#), the Board will complete a study “on the necessary updates to the Act 250 program.” This study will include (1) an analysis of location-based jurisdiction, (2) how to use the Capability and Development Plan to meet statewide planning goals, (3) an assessment of board and district commission staffing, (4) sufficiency of permit fees to cover program costs, (5) review of incentives as related to permit fees, and (6) ability of program to assess its costs on applicants. This report is due to the relevant legislative committees on December 31, 2023.

Training, Guidance, and Rulemaking

The NRB intends to review and update various internal guidance documents and the Act 250 Rules. The changes and additions will focus on providing clarity to internal operations and external participation in the application review process. These changes will be accompanied by internal and external trainings.

Scanning Project

Through continued implementation of a 2021 SFR funding award, the NRB will complete a pilot project to digitize land use permit records in two of our nine district offices. Over 11,000 of over 35,000 paper records extending back to 1970 will be scanned. This includes over 2 million pages of documents and site plans. The overall goals of this record scanning project are to make our records readily available to the public and staff, to permanently preserve our land use permit records, and, over the long-term, to reduce NRB physical storage space.

Records Management Project

In 2021 and 2022, NRB worked with the Vermont State Archives and Records Administration (VSARA) to establish a records management work group to define procedures for records management, retention, and disposition. To date, NRB has completed six record schedules in collaboration with our partners at VSARA, including a new record schedule governing our land use permit records. In 2023, the NRB plans to continue this work and complete our full set of records schedules and develop a policy and manual to manage our records long-term. The overall goals of this project are to develop a consistent way to manage our records while fulfilling legal mandates, to permanently preserve our records, and over the long-term, to reduce our physical storage space.

NRB Special Fund

Permit Application Fees Collected

The NRB is funded by a combination of General Funds and Special Funds generated by Act 250 application fees. The NRB assesses permit application fees based on project construction costs, the number of subdivided lots created, the volume of earth resources extracted, and a supplemental fee at a reduced rate for the review of master plans involving phased development. State and municipal projects are exempt from fees, and residential development in a state-designated Vermont Neighborhood or Neighborhood Development Area is charged no more than 50% of the fee otherwise assessed. By statute, a permit application fee may not exceed \$165,000.00. In FY 2022, the NRB relied on Special Funds to cover 80% of its annual expenditures for personal service and operating costs, with the remaining 20% covered by General Funds.

Total permit application fees collected by Act 250 in the last five fiscal years:

| | |
|---------|----------|
| FY 2018 | \$1.773M |
| FY 2019 | \$2.135M |
| FY 2020 | \$2.091M |
| FY 2021 | \$1.726M |
| FY 2022 | \$2.596M |

Certification of Actual Construction Cost Fees Collected

Following the completion of project construction, each permittee is required to file a form certifying actual construction costs (CACCs) and pay any additional Act 250 permit fees due. Because CACC fees are directly related to the actual costs of construction, total annual fees can vary significantly from one year to the next. CACC fees collected for the last 5 years are presented below:

| | |
|---------|-----------|
| FY 2018 | \$105,421 |
| FY 2019 | \$161,355 |
| FY 2020 | \$212,608 |
| FY 2021 | \$60,799 |
| FY 2022 | \$83,730 |

New Act 250 Appeals in CY 2022

The NRB has statutory authority to participate as a party in Act 250 appeals to the Superior Court, Environmental Division. In CY 2022, the NRB participated in all appeals within its jurisdiction, including 10 Act 250 district commission decisions and 7 jurisdictional opinion appeals. No cases were appealed from the Superior Court, Environmental Division to the Vermont Supreme Court in 2022.

Appeals per Year

| Type of appeal | CY 2018 | CY 2019 | CY 2020 | CY 2021 | CY 2022 |
|--------------------------------------|----------|-----------|-----------|----------|-----------|
| JO appeals (district coordinators) | 3 | 6 | 7 | 2 | 7 |
| District commission decision appeals | 5 | 8 | 3 | 4 | 10 |
| TOTALS | 8 | 14 | 10 | 6 | 17 |

Compliance and Enforcement

The NRB is authorized to enforce Act 250 pursuant to the Environmental Enforcement Act, Title 10, Chapter 201. The NRB has direct authority to issue administrative orders (AOs), emergency AOs, assurances of discontinuance (AODs), and civil citations with respect to violations of Act 250. The NRB collaborates with ANR on mixed Act 250/ANR enforcement matters.

The NRB's Enforcement staff consists of the General Counsel, the Associate General Counsel, and two full-time Compliance and Enforcement Officers. The Chair of the Board directs the Board's enforcement program.

2022 Enforcement Activity

The NRB investigated approximately 179 complaints, including 103 new complaints received in 2022. Some of these complaints were not deemed violations, some were referred to ANR, and others resulted in enforcement action by the NRB. The Enforcement team addressed or initiated 41 formal enforcement actions. In addition, 77 alleged violations were resolved, including 11 cases resolved through formal enforcement, and 66 complaints were resolved without formal enforcement action through voluntary compliance or through determinations that no violation occurred or the NRB lacked jurisdiction.

The board assessed \$64,200 in penalties this year and assessed enforcement costs of approximately \$11,234. All assessed penalties are deposited in the General Fund. NRB enforcement costs are deposited in the Act 250 Special Fund. In addition to the assessment of penalties, several enforcement matters imposed compliance directives, such as restoration or reclamation activities.

The NRB Enforcement Program resolved cases this year through 4 AODs, 4 civil citations, and a settlement agreement through the Attorney General's Office. AODs are settlement agreements that often include civil penalties and compliance directives. Civil citations are tickets issued by the enforcement officers that levy fines of up to \$3,000 per citation. The enforcement team sent 15 Notices of Alleged Violation (NOAVs) in 8 different Act 250 Districts in 2022. NOAVs are warning letters that set out the facts of an alleged violation and invite a response. These often include compliance directives and may be followed up with further enforcement action, including penalties.

Enforcement Metrics

| | CY 2018 | CY 2019 | CY 2020 | CY2021 | CY 2022 |
|---|----------|------------------------|-----------------------|----------|-----------------------|
| New investigations opened | 93 | 60 | 86 | 107 | 103 |
| Formal enforcement actions initiated or ongoing | 6 | 16 | 21 | 34 | 41 |
| Violations resolved through formal enforcement | 9 | 13 | 9 | 14 | 11 |
| Violations and complaints resolved without formal enforcement | 38 | 25 | 44 | 51 | 66 |
| Total penalties assessed ¹ | \$47,895 | \$209,375 ² | \$35,800 | \$14,175 | \$64,200 |
| Total penalties collected ³ | \$41,920 | \$92,767 ⁴ | \$34,760 ⁵ | \$23,808 | \$72,579 ⁶ |
| Enforcement costs assessed ⁷ | \$3,407 | \$29,931 ⁸ | \$2,510 | \$5,604 | \$11,234 |

¹ All penalties assessed are deposited in the General Fund and include issued AODs, AOs, and civil citations.

² Total penalties assessed include NRB penalties of \$156,375 + ANR penalties of \$24,750 (for cases that included an ANR violation in which NRB took the lead) + Supplemental Environmental Project funds of \$28,250.

³ Total penalties collected may include penalties assessed in previous years that are on a payment plan.

⁴ CY 2019 total penalties collected include \$72,950 of NRB penalties + \$19,817 of NRB enforcement costs.

⁵ CY 2020 total penalties collected include \$28,323 of NRB penalties + \$6,437 of NRB enforcement costs.

⁸ CY 2022 total penalties collected include \$60,700 of NRB penalties + \$11,879 of NRB enforcement costs.

⁷ All NRB enforcement costs assessed are deposited in the Act 250 Special Fund.

⁸ Enforcement costs include costs for both NRB (\$27,928) and ANR (\$2,003).

Staffing Needs for the Coming Year

As stated above, NRB received ARPA SFR funds to fill three positions. In accordance with the Legislature's Act 182 Report directives, NRB will assess staffing levels required to effectively serve the public.



This document has been prepared pursuant to [10 V.S.A. Section 6083\(d\)](#), which requires that the Natural Resources Board submit a report annually to the General Assembly. In addition, a copy is made available to the Governor.