

Act 250: Vermont's Land Use Law

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Act 250 Overview

Requires a land use permit for any **subdivision** or **development**, any **substantial change** to a grandfathered development, and a permit amendment for any **material change** to a permitted project.

Requires that the proposed project comply with the 10 Criteria.

Administered by the Natural Resources Board; applications heard by the nine District Environmental Commissions.

Purpose of Act 250

To regulate land use to ensure that it does not harm the environment and that it promotes the general welfare through orderly growth and development.

“[T]he focus of the Act is not on barring development but on molding it to minimize its environmental impact.” *Southview Assocs. v. Bongartz*, 980 F.2d 84, 89 (2nd Cir. 1992) (Oakes, J.).

Act 250 Jurisdiction

An Act 250 permit is required for:

- Subdivisions of 10 lots or more, or 6 lots in towns without permanent zoning and subdivision regulations
- Commercial development on >1 or >10 acre tract
- State and municipal projects >10 acres disturbance e.g. highways and facilities
- Electric distribution, natural gas distribution, or communication lines and related facilities on rights-of-way or easements >1 or >10 acres.
- Housing projects with 10 or more units (except certain projects in designated downtowns)
- Communication towers $\geq 50'$ in height or $\geq 20'$ above existing structure
- All development above 2,500 feet
- Material change to an Act 250 permitted project
- Substantial changes to pre-existing (pre-1970) projects
- Thermal generation (biomass) plants

Development and Subdivision



Act 250 Exemptions

- Farming and logging below 2,500 feet
- Electric generation and transmission facilities regulated by the Public Service Board (PSB)
- Agricultural fairs and horse shows; no buildings; open to public for < 61 days per year
- Certain small scale and on-farm commercial composting facilities
- Adding or replacing communication lines on existing utility poles, or replacing existing utility poles with new poles < 10' higher (sunsets 7/1/2014)
- Other exemptions at 10 V.S.A. § 6001(3)(D)



The 10 Criteria

- Include air and water pollution, erosion, traffic, aesthetics, primary agricultural soils, energy conservation, public utility services, public investments, town and regional plan, etc.
- Certain ANR/DEC permits entitle applicants to a presumption of compliance with certain criteria (e.g., air or water pollution)

The 10 Criteria

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

Section 248

- Section 248 addresses environmental and public welfare concerns by incorporating most of Act 250's criteria.
- Section 248 requires “due consideration” of certain Act 250 criteria.
 - Act 250 generally requires denial of a permit if there is an unreasonable impact.
 - Section 248 allows the PSB to determine that the “public good” justifies the impact and issue a CPG.
- Act 250 provides rebuttable presumptions of compliance with some of those criteria from certain ANR/DEC permits. These presumptions are also applied through Section 248.

Act 250 Criteria incorporated into Section 248

- Act 250 Criteria 1 through 8: Air and water* pollution, water supply, erosion, transportation, impacts on schools and municipal services, and aesthetics
- Act 250 Criterion 9K: Public investments and facilities

* Section 248 also has separate criterion for Outstanding Resource Waters; Act 250 addresses ORW in Criterion 1, which generally requires compliance with Vermont Water Quality Standards.

Act 250 and Section 248

Not covered in 248:

- Criteria 9A – J & 9L*
- Criterion 10 (Section 248 gives due consideration to RPC and town planning commission recommendations; gas lines must comply with applicable regional plan provisions; service connections must comply with applicable municipal plan provisions)

* See next slide

Not covered in Act 250:

- Cost effectiveness of project vs. conservation/efficiency in meeting demand for service
- System stability and reliability
- Economic benefit to state and residents
- Purchases, investments & construction must comply with resource selection principles in least cost integrated plan
- Compliance with electric energy plan, unless separate natural gas facility or good cause to permit regardless of plan
- Undue adverse effect on Outstanding Resource Waters
- Solid waste management plan criterion for waste-to-energy facilities
- Economical transmission facilities
- Woody biomass requirements

Criteria 9A – 9H & 9L

9A – Impacts of growth

9B – Primary
agricultural soils

9C – Productive forest
lands

9D – Preservation of
earth resources

9E – Extraction of
earth resources

9F – Energy
conservation

9G – Private utility
services

9H – Costs of scattered
development

9J – Public utility
services

9L – Rural growth
areas

Act 250:

The Application Process

Application Review Process

7 Days

**Completeness Review
by District Coordinator**



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

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 . . . ”



Major



Minor

Major (hearing) vs. Minor (no hearing)

Major Applications

- Notice sent and published within 10 days of filing complete application
- Prehearing conference or hearing (may include site visit) within 40 days of filing application, no less than 10 days from publication
- Hearing recess order (optional) within 14 days of hearing
- Deliberations
- Decision issued within 20 days of completion of deliberations

Minor Applications

- Proposed permit is prepared and mailed and published with notice within 10 days of filing complete application
- 7 – 20 day public comment period for hearing requests
- If no hearing request, permit issues within 10 days
- If hearing is requested and substantial issues raised, application proceeds as a MAJOR with hearing within 20 days

Act 250 Hearings

Hearing Process and Party Status

Hearing Process

- Chair opens hearing, explains process
- Applicant presents overview
- District Commission accepts petitions for party status; makes preliminary determinations
- Applicant presents evidence under the 10 Criteria, including any expert witnesses (civil engineer, traffic expert, etc.)
- District Commission asks questions
- Parties have opportunity to ask questions (cross-examine)
- Parties have opportunity to present their own evidence, including expert witnesses
- Site visit may be taken before, during or after hearing
- Merits decision and final party status

Act 250 Statistics

- 600 – 700 applications submitted each year
- $\approx 96\%$ of applications are approved, with conditions, by the nine district commissions
- More than 80% of applications are processed as “minors” (no hearing)
- 62% of decisions are issued within 60 days

Act 250 Party Status

Who may participate in the
Act 250 hearing?

Parties by Right

- The applicant
- Landowner, if not applicant
- Municipality
- Municipal planning commission
- Regional planning commission
- Adjacent municipality and planning commission, if project is on a border
- Solid waste management district, if project is a waste facility
- Affected State agencies
 - ANR
 - AAFM
 - DHP
 - VTrans
 - etc.

Interested Parties

“ Any adjoining property owner or other person who has a particularized interest protected by this chapter that may be affected by an act or decision by a district commission.”

10 V.S.A. § 6085(c)(1)(E).

Unlike parties by right, these potential parties must request party status from the District Commission.

PARTY STATUS HIGHLIGHTS

- Act 250 is based on citizen participation.
- Act 250's party status test parallels federal law on standing. A reasonable possibility that one's interest may be affected allows that person to be a party.
- Act 250 also allows nonparties to participate as "Friends of the Commission."

Citizen participation – the heart of Act 250



ORGANIZATIONAL OVERVIEW:

The Natural Resources Board and
District Environmental Commissions

Natural Resources Board

NRB Chair

Full time, appointed by Governor

Land Use Panel

(Act 250)

- Four members appointed by Governor, not full-time employees
- Administers Act 250
- Promulgates Act 250 Rules
- Does Act 250 enforcement, some ANR enforcement in mixed cases
- Party by right in Act 250 appeals
- Can hear Master Plan applications from designated Growth Centers, and appeals of Act 250 permit application fee decisions

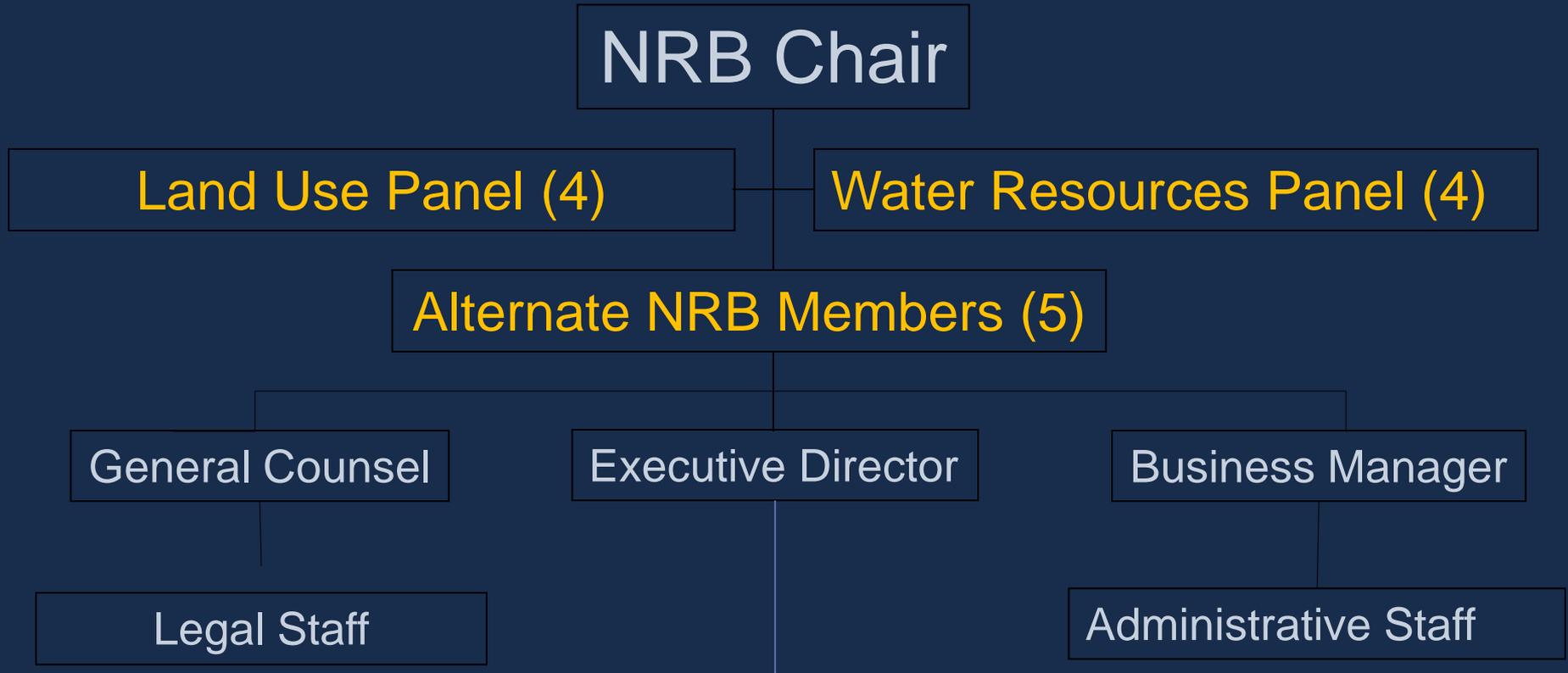
Water Resources Panel

- Four members, appointed by the Governor, not full time
- Rulemaking authority recently transferred to ANR
- Party by right in water permit appeals in Environmental Division

Alternates

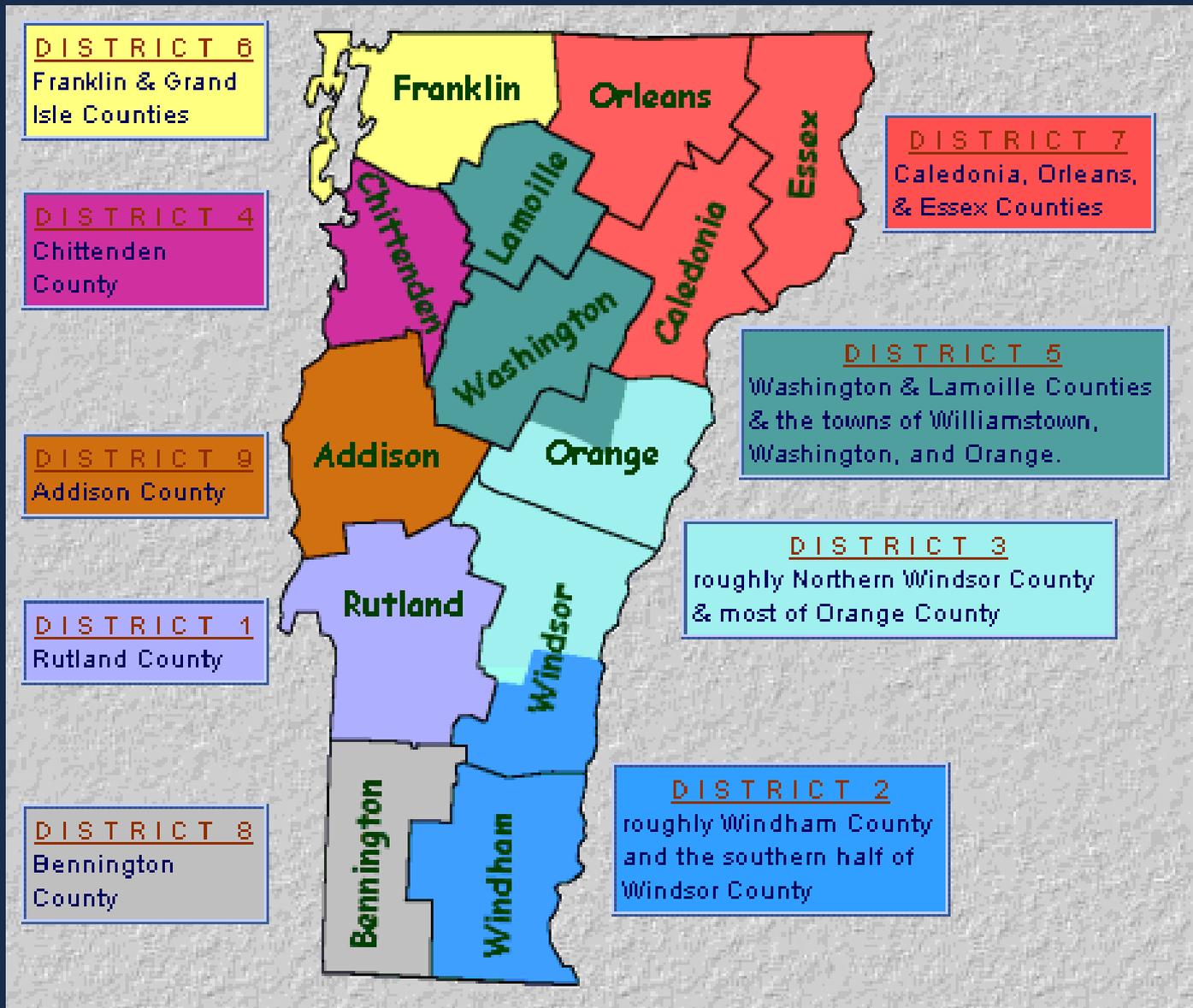
Up to four, appointed by Governor, who may sit on either panel

Natural Resources Board



9 District Environmental Commissions
- Chair + 2 members and 4 alternates; appointed by Governor; 2 – 4 year terms; members removable for cause only, Chairs serve at Governor's pleasure
- Nine District Coordinators and 2 Assistant Coordinators; also administrative support staff

9 Environmental Districts



District Commission and Staff

District Commission

- Quasi-judicial body
- Members appointed by Governor, not full-time employees
- Three regular members, up to four alternates
- Three commissioners sit on each case

District Coordinator

- Full-time staff to District Commission
- Issues jurisdictional opinions;
- Provides assistance to applicants, parties, and the general public
- All communications to the District Commission must be submitted to coordinator

District Office Support Staff

- Provide clerical and administrative support



Citizen-Based Review Process



