



NATURAL RESOURCES BOARD

10 Baldwin Street
Montpelier, VT 05633-3201

NATURAL RESOURCES BOARD MEETING

Tuesday, August 8, 2023, at 9:00 am

Board Members present in person or by Microsoft Teams:

Sabina Haskell, Chair
Brad Aldrich, Vice Chair
Don Turner, Member
Andrew Collier, Member

Board Members not present:

Steve Larrabee, Member

Staff present in person or by Microsoft Teams:

Alison Stone, General Counsel
Jenny Ronis, Associate General Counsel
Aaron Brondyke, State Coordinator
Christopher Kinnick, Enforcement and Compliance Officer
Madeline Cotter, Legal Technician
Rachel Lomonaco, Business Director

Members of the Public:

Matt Strassberg, Environmental Mediation Center

The Vermont Natural Resources Board (NRB) convened at 9:02 a.m. via Microsoft Teams, Chair Sabina Haskell presiding.

I. 9:02 a.m. Welcome and Introductions

Chair Haskell welcomed those in attendance and gave introductions for two meeting participants:

Madeline Cotter was recently hired as the new NRB Legal Technician. For the past year Ms. Cotter has worked for the NRB in the Essex Junction office, serving the District 4 Environmental Commission. Ms. Cotter started her new role as NRB Legal Technician in early July 2023.

Matt Strassberg from the Environmental Mediation Center is the lead facilitator for the Act 182 legislative study. Mr. Strassberg joined the meeting to give the Board an update on the progress of the study.

II. 9:08 a.m. Opportunity for public to comment and agenda and non-agenda items

Chair Haskell offered the public the opportunity to comment. No members of the public were present.



III. 9:11 a.m. Review and action on minutes of May 9, 2023

A motion to approve the minutes of the Tuesday, May 9, 2023 meeting was made by Mr. Aldrich, seconded by Mr. Collier and approved as follows.

Sabina Haskell - Yes
Brad Aldrich - Yes
Steve Larrabee – Not present
Don Turner - Yes
Andrew Collier – Yes

IV. 9:16 a.m. NRB office and budget updates

State Coordinator Aaron Brondyke provided an update on flood response related to the July 2023 severe storm. Executive Order #03-23 and Addendum #1 of Executive Order #03-23 waive certain land use permit conditions and Act 250 permitting requirements to assure availability of material for the use of State or municipalities to rebuild critical infrastructure impacted by the July 2023 severe storm. Specifically, Addendum #1 waives certain land use permit conditions on gravel pits, rock quarries, asphalt plants and concrete plants including operating hours, noise and blasting, crushing, limits on area, rate, depth, or volume of extraction, and related trucking. Addendum #1 also required the NRB to provide instructions and guidance for State and town contractors to document the use of material. The guidance is available on the NRB's website. Addendum #1 also prescribes that all gravel pits, rock quarries, asphalt plant and concrete plant operations must come into full compliance with land use permit requirements no later than October 15, 2023. The guidance advises operators to avoid sensitive areas and requests that operators certify the removal of any temporary infrastructure and reclamation of all operation areas utilized by November 15, 2023.

Chair Haskell provided an update on the FY25 budget timeline. Budget instructions will be issued by the end of the August. During September we will need to advise the Department of Finance and Management on all the legislative studies the NRB is currently participating in. The FY25 budget submission is due in October.

Chair Haskell also provided an update that the interagency environmental justice panel. The NRB has participated in several interagency meetings and the interagency panel will be drafting principals of community engagement for each agency to follow. Each participating agency was asked to contribute three possible principals of community engagement or areas of improvement. The NRB provided the following: (1) possible changes to rules and/or statute to update application noticing requirements, (2) the use of plain language in external communication materials, and (3) providing guidance to owners of multi-family residential properties to help them disseminate notice of Act 250 applications to their tenants. The NRB will also need to post a human rights complaint form on our website. Implementation could require statute updates through legislative action and/or rule updates.

V. 9:34 a.m. NRB reports

Business Director Rachel Lomonaco provided an update on the legislative study required under the FY24 Big Bill. The NRB is one of several agencies required to complete a study on fee revenue in relation to the Act 250 Permit Fund. Among other topics, the report will include an analysis of the revenues derived from each statutory fee in the previous five fiscal years, the number of instances each fee was paid and future projections of fee revenue. A draft of the report is due to the Joint Fiscal Office on October 15, 2023. The final report is due to the House and Senate Appropriations Committees on December 15, 2023.

Matt Strassberg from the Environmental Mediation Center provided an update on the NRB legislative study required by Act 182 of 2022. Mr. Strassberg leads a team of five facilitators including himself, Maxine Grad a former Vermont State representative, Thomas Daniels from the University of Pennsylvania, Jack Kartez from the University of Southern Maine and Toby Berkman of the Consensus Building Institute, Inc. The study includes the use of a Steering Committee composed of planners, attorneys, engineers, environmental advocates, ANR staff and NRB staff among other members. In addition, there are Stakeholder Groups where members of the Steering Committee will be involved in conversations with a larger number of participants from similar backgrounds. Mr. Strassberg offered that the Steering Committee has met three times to-date and an orientation for the Stakeholders will be held later this week. The study is designed to be an iterative process where the Stakeholder Group informs the Steering Committee and vice versa. Stakeholder Group and Steering Committee Meetings will continue through August and September. The facilitator team will draft a report and two public meetings are planned to be held in October on the draft report.

Mr. Strassberg indicated that some share goals have emerged from the Steering Committee meetings including encouraging growth in designated areas, protection of sensitive areas and reduction of redundancy in permitting. Topics already covered have included the NRB governance structure, jurisdiction and location-based jurisdiction. In the NRB governance conversation the group examined how to enable the NRB in rulemaking especially given that the parttime nature of the roles, and some participants thought the NRB should hear some appeal cases but perhaps not exactly the Environmental Court structure. In the jurisdiction conversation the group examined whether lots and units are the best jurisdictional measure and some thought that while they may not be the best measure, they may be the most feasible. In the location-based jurisdiction conversation it was noted that there is already one location-based jurisdictional trigger of development above 2,500 ft of elevation. The group discussed the 2,500 ft elevation threshold, the possible expansion of jurisdiction in large forest tracts, and other topics like riparian corridors were also discussed. Mr. Strassberg included that other states have a tiered approach to jurisdiction where there are different triggers in downtowns, rural areas and sensitive resource areas. The facilitators are seeking input from the Steering Committee on that concept now. Topics for the future will include the capability and development plan.

Board Member Brad Aldrich asked how the facilitation team came together. Mr. Strassberg indicated that the NRB reached out to several organizations and after discussions asked if a team could be put together.

Chair Haskell included that there have already been conversations with Representative Sheldon and Representative Bongartz on the progress of the Act 182 study. The legislature is interesting in taking up Act 250 again next session.

Mr. Aldrich asked if there will be enough time to complete this study. Mr. Strassberg indicated that the project is full steam ahead and the hope is to have some shared goals and recommendations by December. Mr. Strassberg added that it may be difficult to have a solution on some topics. Mr. Aldrich asked if there could be a recommendation that a topic should be studied in the future and expressed concern that many studies have occurred over the past several years and they have not resulted in much change.

Chair Haskell offered that there are several concurrent legislative studies being prepared by the Agency of Commerce and Community Development and the Vermont Association of Planning and Development Agencies. There will be crossover between the Act 182 study and these concurrent studies.

Chair Haskell also included that we have drafted guidance on Act 47, or the HOME bill (S.100). We will revisit the draft guidance during the Board's September meeting.

VI. 9:57 a.m. Discussion of appeals, enforcement, and attorney-client memoranda.

Enforcement Officer Chris Kinnick provided an overview of the enforcement information for calendar year 2023. In 2023 to-date, 86 complaint investigations have been opened, of those 22 have been resolved and 11 cases have required formal action.

General Counsel Alison Stone and Associate General Counsel Jenny Ronis provided updates on appeal cases. There are four new appeal cases that have recently been filed for the NEWSVT landfill case in Coventry, the Baron case in Warren, the Forrester Road case in West Jamaica and the Morse Ascutney Lofts case in West Windsor. Ms. Stone and Ms. Ronis included that the Sugar Mountain Holding case was appealed to the Supreme Court, a request to reconsider the decision in the Burton case was made to the Environmental Court, two motions for injunction in the Costco case were denied and provided an update on the Sweet Quarry assurance of discontinuance.

VII. 9:34 a.m. NRB reports (continued)

Board Member Don Turner asked if appeals would be discussed during the Act 182 study and expressed that appeals and delay tactics can undermine the predictability of the Act 250 process. Ms. Stone offered that it's not just in Act 250 where appeals and delay tactics can be used. Mr. Strassberg added that appeals have been discussed in at least one Steering Committee meeting.

VNRC has provided information comparing the Environmental Court and the Environmental Board. Consistency and predictability are themes that come up in the study. Mr. Strassberg indicated that to-date there was not much consensus on the topic of appeals during conversations about governance structure conversations.

VIII. 10:15 a.m. Adjourn

At 10:15 a.m. a motion to adjourn was made by Mr. Turner, seconded by Mr. Aldrich and approved as follows.

Sabina Haskell - Yes

Brad Aldrich - Yes

Steve Larrabee – Not present

Don Turner – Yes

Andrew Collier - Yes