

STATE OF VERMONT
Environmental Board and Agency of Environmental Conservation

MEMORANDUM OF UNDERSTANDING

The purpose of this Memorandum of Understanding is to define more precisely the relationship between the Board as a quasi-judicial entity and the Agency as a party and participant before the District Commissions and the Environmental Board.

The Environmental Board and District Commissions were created in 10 VSA, Chapter 151 (Act 250) as quasi-judicial bodies. In their quasi-judicial roles, the Board and Commissions receive evidence from parties that appear before them in public hearings and evaluate that evidence in accordance with the ten criteria. Parties before the District Commission are the municipality, municipal planning commissions, regional planning commissions, the applicant, adjoining property owners who request a hearing, persons who may either be adversely affected or will materially assist in the decision making, and state agencies which are directly affected.

The Agency of Environmental Conservation was created in Title 3, Chapter 51. The Agency consists of departments with specific responsibilities relating to issues arising under the ten environmental criteria of Act 250. The Agency therefore constitutes an affected state agency under Act 250. Within the Agency of Environmental Conservation, a committee known as the Act 250 Review Committee was created by Governor Deane Davis in 1971. This Committee serves as the major state coordinating component for state interests and input into Board and Commission hearings.

Title 3, Chapter 51, in defining the entities which would comprise the Agency of Environmental Conservation, includes the Environmental Board. While it is commonly understood that the Board's inclusion in the Agency was for administrative support only, it is important to know the extent to which the Board's quasi-judicial decision making function may be affected by its inclusion in the Agency.

The Vermont Supreme Court has analyzed this situation In Re: Wildlife Wonderland and concluded that there is no inherent conflict of interest since "... the Secretary of the Agency neither appoints, nor controls the Board ...". To insure that misunderstandings do not occur and to delineate the relationship between the Board and Agency and furtherance of the findings of the Vermont Supreme Court, the following language is agreed to:

1. The Environmental Board is an independent quasi-judicial body. Although it is by statute defined as part of the Agency of Environmental Conservation, the Agency does not exercise any control over appointments to the Board, or over Board administrative, regulatory,

or judicial functions. The Agency does, through its Division of Administration, provide administrative services such as mail delivery, bookkeeping, fund disbursement, and paperwork related to the processing of personnel and purchasing matters. Additionally, because of the concurrent jurisdiction the Board and Agency have over certain development projects, the Board and Agency share common office space in regional offices in order to provide convenience to the permit seeking public.

2. The Environmental Board is solely responsible for preparation and management of the Board's budget and appropriations. Where action of the Board in expenditure of funds will affect Agency property or programs, such as management of the regional offices presently shared by the Board and Agency, expenditure of funds shall be made through mutual agreement of the Board Chairman and the Secretary of the Agency. When agreement cannot be made on expenditures of such funds, the matter will be brought before the Governor or the Secretary of Administration for final resolution.

Dated at Montpelier, Vermont this 12TH day of July, 1978.

By Margaret P. Garland
Margaret P. Garland
Chairman, Environmental Board

By Brendan J. Whittaker
Brendan Whittaker, Secretary
Agency of Environmental Conservation

Approved:

By Richard W. Mallery
Richard W. Mallery, Secretary
Agency of Administration