



**Act 250 Application Process
for Cities and Towns
October 28, 2022**

AGENDA

- **Brief Introductions**
- **Act 250 Jurisdiction over Municipal Projects**
- **The Act 250 Criteria**
- **Avoiding Delays**
- **Act 250 Application Review Process**
- **Questions?**

Training Ground Rules

- **Interrupt!**
- **Ask Questions.**

That's why we're here.

Copies of this presentation will be provided via email upon request.

When is an Act 250 Permit required?

- New Projects (“Original Jurisdiction”)
 - For projects never before permitted.
- Amendments
 - To allow changes to a permitted project.

Each category above has distinct jurisdictional thresholds for municipalities.

A group of four people and a dog are standing in a rocky, wooded area. One man in a plaid shirt and cap is holding a document and looking at it. A woman in a light blue shirt and cap is also looking at the document. A man in a blue checkered shirt is standing with his back to the camera. A woman in a light blue shirt and cap is standing on the right, holding a white folder. A black dog is standing in the middle ground. The background is a rocky hillside with dense green trees under a cloudy sky.

Determining Act 250 Jurisdiction

Act 250 District Coordinators are exclusively tasked with determining whether a project requires an Act 250 land use permit or a land use permit amendment.

If you are a municipal official,

- Feel free to reach out to [your district coordinator](#) at any time for guidance about whether a **municipal** project will require a permit or amendment.
- Please do not advise people about whether their project will require an Act 250 land use permit or an amendment.
- Feel free to refer people to their [Act 250 district coordinator](#) for guidance.

The jurisdictional triggers and thresholds that apply to municipalities are different than those that apply to the general public.

The following overview of jurisdictional categories is not intended to be comprehensive.

Original Jurisdiction over Municipal Projects

Original Jurisdiction Triggers for Municipalities

- Development utilizing more than 10 acres of land.
- Substantial change to a pre-1970 project.

Consult your district coordinator.

Development



Development undertaken by or for the municipality that will **involve more than 10 acres of land**

- Based on land used as part of the project, **not** the size of the tract.
- Not based exclusively on disturbance.
- Includes area of all: buildings, lawns, landscaping parking areas, roadways, pathways, fencing, rights of way, leach fields, sports fields, artificial ponds, stormwater infrastructure, etc.

Example

- Construction of a brand-new school

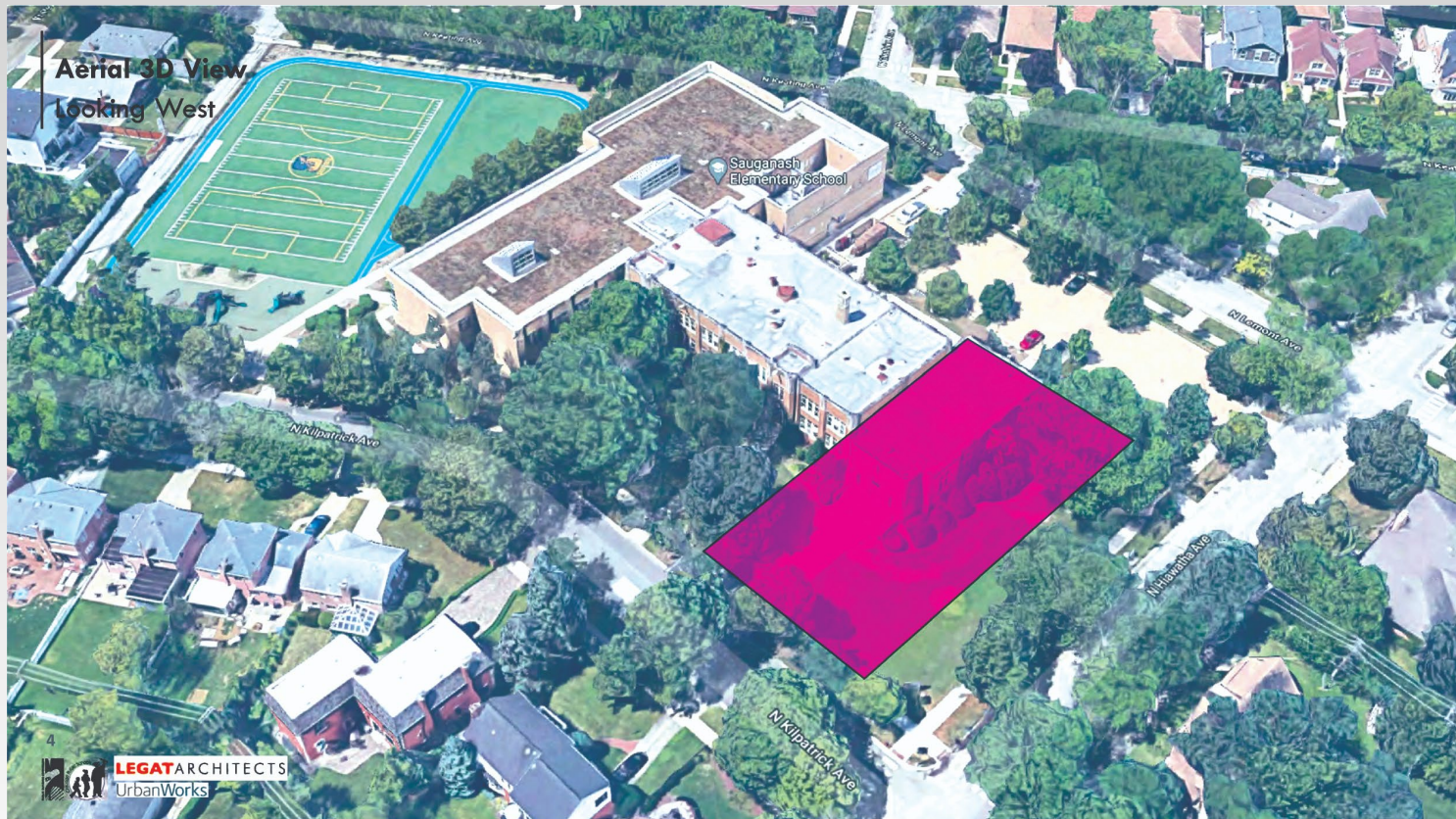


Substantial change to pre-1970 development

- *"Substantial change" means any cognizable change to a pre-existing development or subdivision which may result in significant adverse impact with respect to any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10). Act 250 Rule 2(C)(7).*
- Your district coordinator will opine on whether any change to a pre-1970 development constitutes a “substantial change.”

Example

- Construction of a large addition to a pre-1970 school.



The image shows several architectural blueprints and rolled-up plans. The blueprints are spread out on a surface, showing various technical drawings, lines, and text. The rolled-up plans are stacked on top of the blueprints, with some showing detailed cross-sections and other technical details. The overall scene is in a light, monochromatic color palette, emphasizing the technical nature of the documents.

Amendment Jurisdiction over Municipal Projects

**Amendment
Jurisdiction
Trigger for
Municipal
Projects**

- Material change to an Act 250-permitted project.

Consult your district coordinator.

Material change to a permitted municipal project

- *“Material change” means any cognizable change to a development or subdivision subject to a permit under Act 250 or findings and conclusions under 10 V.S.A. § 6086b, which has a significant impact on any finding, conclusion, term or condition of the project’s permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10). Act 250 Rule 2(C)(7).*
- Your district coordinator will opine on whether any change constitutes a “material change.”

Example

- Construction of a new athletic field at a post-1970 school with an existing Act 250 land use permit.



What kinds of municipal projects do not require an Act 250 land use permit?



New municipal projects that involve less than 10 acres of land

- Example: Construction of a new fire station that utilizes less than 10 acres of land.

Projects that expand the capacity or floor space of certain types of pre-1970 facilities by less than 10% are exempt from substantial change jurisdiction.

- Pre-1970 public schools
- Pre-1970 drinking water facilities
- Pre-1970 wastewater treatment facilities
- Pre-1970 municipal buildings

10 V.S.A. § 6081(d)

- Example: Construction of a small addition (less than 10% floor space) to a historic Town Hall.



Water & Sewer Line Replacement

- Regular maintenance and replacement of water and sewer lines is exempt from substantial change jurisdiction, and does not require a permit.

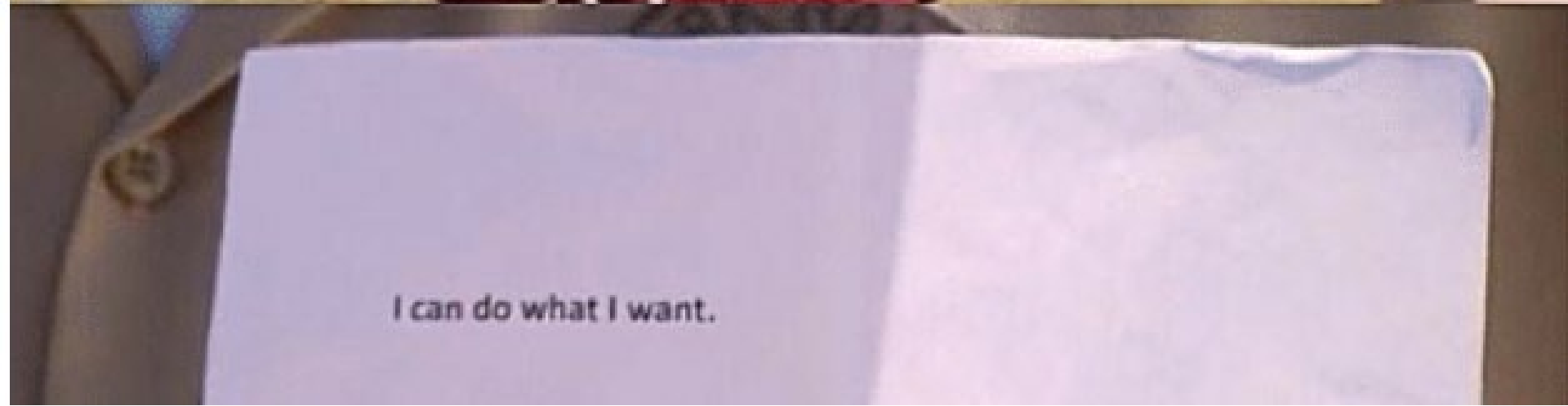
10 V.S.A. § 6081(e)

**Jurisdictional
Opinion:
Is there Act 250
Jurisdiction over
a particular
project?**

- Issued by your District Coordinator as a letter or form upon request.
- Anyone can request that the Coordinator reconsider the Jurisdictional Opinion within 30 days of issuance.
- Appeal to Environmental Division, Superior Court, within 30 days.



- Not to worry.
I have a permit.



I can do what I want.

THE ACT 250 CRITERIA

The 10 Criteria

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

10 V.S.A. § 6086(a)(1) – (10).



. . . but actually, 32 Criteria & Sub-criteria:

- Criterion 1: Air and water pollution
 - 1(A): Headwaters
 - 1(B): Waste disposal
 - 1(C): Water conservation
 - 1(D): Floodways
 - 1(E): Streams
 - 1(F): Shorelines
 - 1(G): Wetlands
- Criterion 2: Water supply
- Criterion 3: Impact on water supply
- Criterion 4: Erosion and capacity of soil to hold water
- Criterion 5: Transportation
 - 5(A): Traffic
 - 5(B): Transportation
- Criterion 6: Educational services
- Criterion 7: Municipal services
- Criterion 8: Aesthetics, scenic & natural beauty
 - Historic sites
 - Historic sites - archeology
 - Rare and irreplaceable natural areas
 - 8(A): Necessary wildlife habitat
- Criterion 9
 - 9(A): Impact of growth
 - 9(B): Primary agricultural soils
 - 9(C): Productive forest soils
 - 9(D): Earth resources
 - 9(E): Extraction of earth resources
 - 9(F): Energy conservation
 - 9(G): Private utility services
 - 9(H): Costs of scattered development
 - 9(J): Public utility services
 - 9(K): Public investments
 - 9(L): Settlement patterns (*formerly "Rural growth areas"*)
- Criterion 10: Local and regional plans

In order to issue a Land Use Permit for your project, a commission must issue positive findings under each criterion and sub-criterion outlined in the law.

The commissions must base their decisions exclusively on information submitted by the parties.

Avoiding Delays

- Incomplete applications.



- Hearings.



Citizen-Based Project Review Process

Act 250 is designed to facilitate citizen participation in the administration of environmental law.



Party Status

Act 250 is designed to facilitate **citizen participation** in the administration of environmental law.

- Public notice of applications
- Opportunity for people affected by the project to request party status and a hearing
- Party status establishes appeal rights



Statutory Parties

**10 V.S.A. §
6085(c)(1):**
**“The following
persons shall be
entitled to party
status:”**

The applicant

The landowner

The municipality in which the project site is located, and the municipal and regional planning commissions for that municipality

Municipalities and regional planning commissions adjacent to the project

State agencies affected by the project

How to facilitate a smooth Act 250 review and approval process

- Engage project **neighbors & stakeholders** early in the process.
 - Listen to their concerns.
 - If possible, address stakeholder concerns in project design.
- Meet with your Act 250 **district coordinator** during initial project scoping.
 - Design project with Act 250 criteria in mind.
 - Redesign the project if necessary to ensure that all Act 250 criteria are addressed.
- Send a **draft of your application** to your district coordinator for review and feedback.

Engagement on the front end can help to avoid . . .

- Letters from us, requesting additional application submissions.
 - To ensure that all Act 250 criteria are addressed, and that project is complete enough for the Commission to review.
- Hearings.
 - Scheduling delays.
 - Including Findings of Fact in the written decision.
- Appeals.
- Future land use permit violations.
 - Design project to minimize potential for violations.



Your Act 250 District Coordinator is your navigator.

Engage your coordinator early.

Their role in permitting is twofold:

- **Coordination:** To facilitate the review process for applicants, the Commission, & other parties (if any).
- **As a “Clerk:”** To draft the Commission’s written decision.



THE LAND USE PERMIT APPLICATION REVIEW PROCESS

Online Application & Database

- Launched February 2022.
- Uses [same platform](#) as many ANR applications.
- Applicant enters data into online forms that ultimately populate the [Act 250 Database](#) online.
- No paper forms accepted.
- [Our staff can help you with the process.](#)
- [Application Guide](#) online.

The screenshot shows the homepage of the Vermont Natural Resources Board's Act 250 Online Portal. The header includes the Vermont logo and the text "Agency of Natural Resources & Natural Resources Board (Act 250)". Navigation links for Home, Finder, Help, Sign In, and Register are visible. The main content area is titled "Natural Resources Board" and features a "Welcome to the Natural Resources Board's Act 250 Online Portal for Application and CACC Form Submission" message. A "Forms" section is partially visible on the left, with a "Select Organization" dropdown menu.

The screenshot displays the search interface for the Vermont Natural Resources Board's Act 250 database. The header includes the Vermont logo and the text "Natural Resources Board Fair...Consistent...Predictable!". Navigation links for HOME and AGENDA are present. A green box contains search instructions: "Search the entire database for Act 250 Projects: Be as specific as possible in your request, the search is limited to 1000 results." Below this, a paragraph explains the database's scope and provides a link for assistance: <https://nrb.vermont.gov/act250-program/district-staff-and-commissions>. Another paragraph mentions the ePUC filing system: <https://epuc.vermont.gov/?q=User>. The search form includes fields for Project Number, Project Name, Project Address, Town (with a dropdown menu set to "All Towns"), Participant Name, District (with a dropdown menu set to "All Districts"), Criteria, Description, Status Date From, and Status Date To. A "Status: You may check more than one." message is displayed at the bottom.

Step 1: Preapplication Phase

- Request a Jurisdictional Opinion from your district coordinator, if necessary.
- Meet early with your Act 250 district coordinator and prospective parties.
- Submit draft application to district coordinator for review.

Preapplication Phase: Engage with Stakeholders

- Agency of Natural Resources (ANR)
 - Wastewater & Public Water Supply
 - Stormwater
 - Wetlands
 - Fish & Wildlife
- Agency of Agriculture
- Agency of Transportation
- ACCD Division of Historic Preservation
- Efficiency Vermont
- Other Parties or Prospective Parties

All of these stakeholders will be invited to weigh-in on your project

Be sure to plan for:

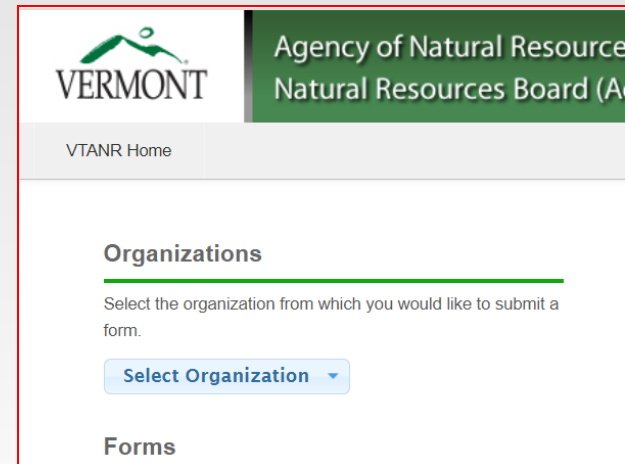
- Riparian Zones along all stream channels
- Wetland protection
- Historic resources, incl. archaeology
- Prime agricultural soil mitigation
- Traffic
- Energy efficient design
- Waste disposal & recycling, including building materials
- Do not commence demolition or construction before the permit is issued.

Plan your project with these elements in mind, or face potential delays

Step 2: Apply

- Once you submit it, your district coordinator will review your application to determine whether it is complete.
- If your application is not complete enough for the Commission to review, your coordinator will send you a letter letting you know what is needed to make it complete.
- Submit supplemental information for the record, if needed.

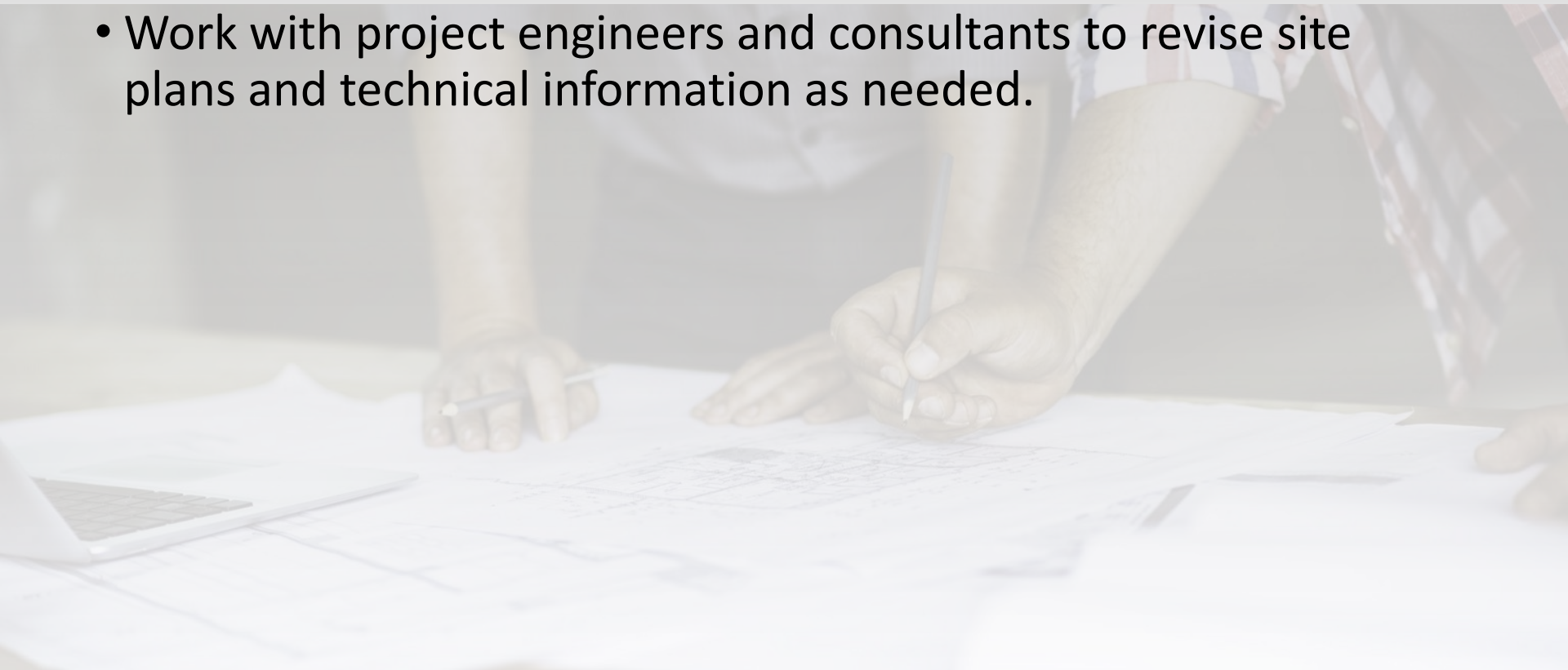
Your Act 250 district coordinator is happy to review a draft application before your formal submittal.



The screenshot shows the top of the VTANR website. The header includes the Vermont state logo and the text 'VERMONT' on the left, and 'Agency of Natural Resources' and 'Natural Resources Board (A)' on the right. Below the header is a navigation bar with 'VTANR Home'. The main content area is titled 'Organizations' and contains the instruction 'Select the organization from which you would like to submit a form.' followed by a blue dropdown menu labeled 'Select Organization'.

During Application Phase: Engage with Partners & Stakeholders

- If your application is incomplete, contact state agencies for any items required for application completeness.
- Work with project engineers and consultants to revise site plans and technical information as needed.



Step 3: Notice

- Once your district coordinator deems your application complete, your district commission will determine whether a hearing is necessary.
- The project will be noticed in a local newspaper for approximately 3 weeks.
- All adjoining property owners will receive written notice by mail.
- Prospective parties and statutory parties will have the opportunity to request a hearing.
- Statutory parties might submit comments to the Commission that require a response from the municipality.
 - State Agencies
 - Regional Planning Commissions

Step 4: Review

Two Potential Review Methods:

- Minor Review Process: the Commission considers any comments received on a noticed draft permit.
- Major Review Process: the Commission convenes a hearing and takes testimony on the application.

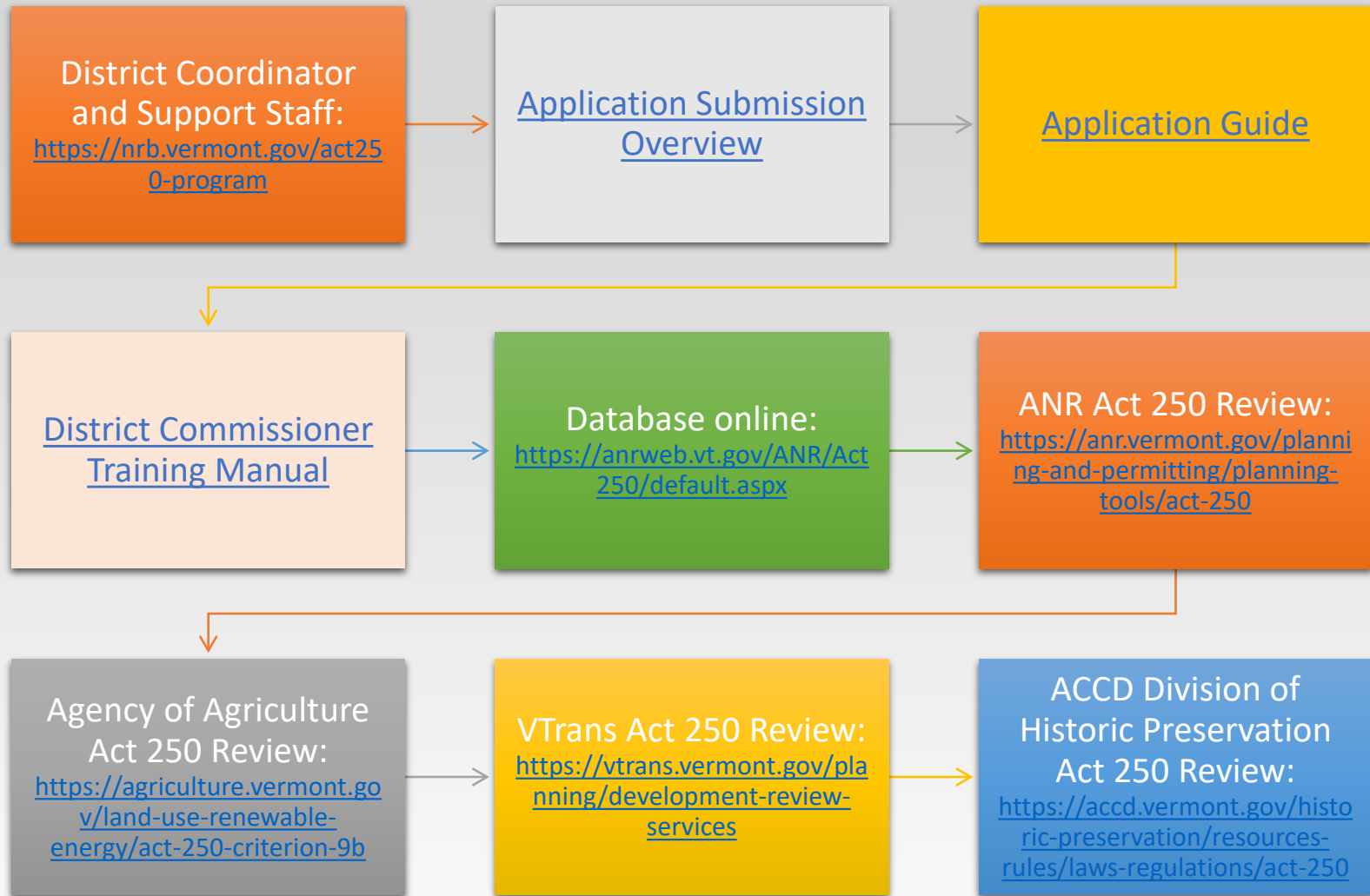
During Review Phase: Engage with Stakeholders

- In either a minor or major review context, your district commission might ask you to submit responses to comments from statutory parties.
 - State Agencies
 - Regional Planning Commissions
- If a hearing is scheduled, you should arrive prepared to respond to issues raised orally, in agency filings, or in party status petitions.

Step 5: Deliberation and Decision

- If a Minor Review proceeds with few comments, a decision can be issued following final commission deliberations in the form of a permit with conditions.
- If a hearing is held (Major Review), it will take longer for the Commission to issue a decision. Post-hearing filings are commonplace, and the Commission must draft findings of fact and conclusions of law, as well as a permit, if the project is approved.

RESOURCES



Questions?

