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Guidance on Compiling the Coordinator's Record for Jurisdictional Opinions

Effective Date: July 9, 2013

What Is the Purpose of This Guidance? This Guidance provides internal, standardized direction on how to compile the administrative record for Jurisdictional Opinion (JO) and reconsideration decisions by a District Coordinator or Assistant District Coordinator (Coordinator), and how to upload this record to the Act 250 database, in accordance with the Interim Procedure on Jurisdictional Opinions and Reconsideration adopted by the Natural Resources Board on July 9, 2013 (Procedure). Act 11, effective July 1, 2013, provides that a Coordinator's JO or reconsideration decision cannot be appealed without reconsideration by the Board. Pursuant to the Procedure, any reconsideration by the Board will be based on the Coordinator's Record, and any additional evidence submitted (only allowed if there is a good reason why that information was not provided to the Coordinator).

What is the Coordinator's Record? The Coordinator's Record, as further described in the Procedure,¹ is the administrative record of all the materials and information considered, directly or indirectly, by the Coordinator, other than privileged or confidential information and advice, during the decision-making process. The Coordinator's Record includes all relevant materials, regardless of whether the information is favorable or unfavorable to the requestor.

Except for legal research, advice, and other attorney-client privileged or attorney work product information described below, all information considered by the Coordinator is part of the Coordinator's Record and must be documented and published online. The Coordinator's Record information may include materials that are not in the form of letters or materials submitted to the Coordinator. Examples include: printouts of any factual information found online, such as a tax map, a website advertising the project in question, or a relevant newspaper story or advertisement; copies of any emails from the requestor or other interested persons providing facts to the Coordinator; documentation of any information the Coordinator obtained verbally, such as a note or memo describing the conversation and information obtained; and documentation of any other factual information the Coordinator considered that is not privileged or confidential.

Privileged or confidential information, such as advice provided by Board staff, other attorney-client privileged information, or other confidential attorney work product, is not part of the Coordinator's Record. A requestor or other person providing information may also assert claims of privilege, such as for trade secrets. When questions arise about what documents to include in

¹ The Record for the initial JO is described in Subsection (A)(2) of the Procedure. The Record for the Coordinator's decision on any request to reconsider the JO is described in Subsection (B)(3) of the Procedure.

the Coordinator's Record, consult with Board legal counsel.

Why is Keeping the Coordinator's Record Important? Keeping the Coordinator's Record and publishing it online ensures that this information is available to everyone, including the parties and the public. It also ensures that the Coordinator's Record is available if there is a reconsideration request to the Board. This information can also be helpful in any appeal to the Superior Court, Environmental Division or subsequent appeal to the Vermont Supreme Court.

When to Upload to the ANR database?

Optimally, the Coordinator's Record will be compiled and published on the Act 250 database as documents are received, considered, or produced by the Coordinator during the decision-making process. Creating and maintaining the Coordinator's Record contemporaneously with the decision-making process ensures that issues raised and relevant factors identified during the process are addressed. The goal is to upload documents as they are received or issued, including documentation of other information obtained by the Coordinator, unless there is a question about whether they should be part of the Coordinator's Record. All documents must be uploaded prior to the issuance of the Coordinator's JO or decision on reconsideration.

What is the Naming Convention for Jurisdictional Opinions?

When uploading to the Act 250 database, the following naming convention shall be used for the "Project Number": JO [District Number] - [JO number (number consecutively from year to year)] (R) (if the Coordinator's JO is issued after reconsideration). Example: JO 7- 247(R).

What Materials Should Not Be Included in the Coordinator's Record?

Some examples of documents that do not need to be included in the Coordinator's Record are:

- Transitory records, including:
 - Records that appear in duplicate (e.g., multiple copies of the same email);
 - Electronic communications that do not contain factual information, a substantive analysis or discussion, or information documenting the decision-making process (e.g., emails about scheduling meetings or transmitting records);
- Materials that were not in the Coordinator's possession at the time of the decision.
- Documentation of any privileged or confidential information, such as legal advice or attorney work product provided by Board staff.

Approved by the Natural Resources Board, July 9, 2013