



ad hoc Commission on Act 250 Committee

Wednesday, January 23, 2019

5:30pm to 7:00pm

CCRPC Small Conference Room, 110 West Canal Street, Winooski

WIFI Info: Network = CCRPC-Guest; Password = ccrpc\$guest

Agenda

- 5:30** Welcome, Changes to the Agenda, Members' Items
- 5:35** Review of Previous CCRPC Work – [2014 CCRPC Permit Reform Policy](#)
- 5:45** Review of the [Legislative Commission Report and Draft Bill](#) (note the Report is at the bottom, the proposed bill is Appendix 4)
- 6:00** Review of Administration's Proposed Bill (attached to the packet)
- 6:15** Update 2014 Policy in Response to Proposed Act 250 Amendments
- 7:00** Adjourn

* = Attachment

NEXT MEETING: January 30th 5:30 to 7pm

Act 250 Modernization

What: The Natural Resources Board along with the Agencies of Commerce, Agriculture, Transportation, and Natural Resources have been working with the Act 47 (“Act 250 at 50”) Commission to evaluate opportunities to improve the Act 250 process and outcomes for Vermont. We look forward to working with the legislature to ensure that over the next 50 years Act 250 supports Vermont’s economic, environmental, and land use planning goals.

Why: The following recommendations, which were provided to the Commission, are of critical importance to protect Vermont’s environment while facilitating economic activity and development in suitable locations. Overall these recommendations are intended to focus Act 250’s attention on the locations and projects where environmental protection is most important and to promote development in other areas.

How: Key policy decisions to focus on during the 2019 session:

- Encouraging development in the State’s existing designated centers through the creation of an enhanced designation process that would remove Act 250 jurisdiction within the designated center provided the municipality can demonstrate that it has adopted municipal flood hazard planning and river corridor protections for the entire municipality, design review standards (including historic preservation), wildlife habitat protections, and coordinated capital investments .
- Creating a process to subject unique natural resource areas, such as contiguous blocks of primary agricultural soils, high-value forest blocks, and high-value connectivity habitat to Act 250 jurisdiction regardless of whether a project in such area would trigger jurisdiction under existing thresholds.
- Including impacts on forest blocks and connecting habitat in the review process under Act 250 Criterion 8 to address the issue of forest fragmentation, while giving due consideration to the positive effect of enterprises that add value to forest-derived commodities.
- Updating Act 250 Criterion 1(D) (floodways protections) for consistency with the State’s Flood Hazard Area and River Corridor Protection standards, eliminating potential confusion and ensuring that Act 250’s standards align with best practices.
- Clarifying the appropriate use and reliance on other state permits as evidence that various Act 250 criteria have been satisfied, to streamline and make the process more predictable.
- Clarifying the circumstances in which an Act 250 permit application fee waiver and/or partial refund are warranted.
- Recommending changes to support rural industrial park development with a simplified master plan process for obtaining construction approval and reduced fees when some impacts have already been reviewed.
- Allowing flexibility, when appropriate, in the hours of operation of value-added forest product businesses to respond to the logistical challenges these operations face due to climate change.
- Clarifying the circumstances in which an Act 250 permit or permit amendment is needed for recreational trails to ensure Vermont’s recreation economy remains compatible with environmentally responsible development.

- Exempting federal aid transportation projects, which require significant federal review and oversight, from Act 250 review.
- Updating Act 250 to recognize that modern Vermont farms increasingly rely on on-site agritourism and direct-to-customer businesses to remain economically viable, and that these activities should not trigger Act 250 jurisdiction.

1 H/S.

2 Introduced by

3 Referred to Committee on

4 Date:

5 Subject: Act 250; State designated centers; forest fragmentation; floodplains; flood hazard
6 areas; river corridors; industrial parks; value added forest product businesses; trails; Vermont
7 Agency of Transportation; accessory on-farm businesses.

8 Statement of purpose of bill as introduced: The purpose of this bill is to promote the goals in the
9 State's Capability and Development Plan while reducing the amount of time and money
10 spent obtaining Act 250 and other State permits by:

- 11 1. Encouraging development in the State's existing designated centers through the
12 creation of an enhanced designation that would remove Act 250 jurisdiction within
13 the designated center.
- 14 2. **Creating a process to subject unique resource areas to Act 250 jurisdiction regardless**
15 **of whether a project in such area would trigger jurisdiction under existing thresholds.**
- 16 3. Including impacts on forest blocks and connecting habitat in the review process under
17 Act 250 Criterion 8.
- 18 4. Updating Act 250 Criterion 1(D) so that the terminology used therein is consistent
19 with the terminology used in the State's other permitting programs.
- 20 5. Defining what kind of evidence is sufficient to rebut permits that create presumptions
21 in Act 250.
- 22 6. Clarifying the circumstances in which an Act 250 permit application fee waiver and
23 partial refund may be warranted.

- 1 7. Allowing flexibility, when appropriate, in the hours of operation of value added forest
2 product businesses to respond to new logistical challenges climate change is
3 presenting.
- 4 8. Clarifying the circumstances in which an Act 250 permit is needed for recreational
5 trails to ensure Vermont's recreation economy remains compatible with
6 environmentally responsible development.
- 7 9. Exempt transportation projects that are supported, in whole or in part, by federal aid
8 from Act 250 review.
- 9 10. Updating activities excluded from the definition of development to recognize that
10 modern Vermont farms increasingly rely on on-site agritourism and direct-to-
11 customer business in order to remain economically viable, and these activities would
12 not constitute jurisdictional development up to a $\frac{3}{4}$ acre disturbance threshold.

13

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. Findings regarding forest based enterprises.

16 (a) The General Assembly finds that:

17 It is the policy of the State to promote the sustainable and economic management of its
18 forests and woodlands to protect long-term forest health, integrity and productivity, and
19 to maintain and conserve forest soil resources, protect water quality, and mitigate the
20 effects of climate change. The protection and conservation of forest resources is
21 achieved in large part through the promotion and protection of sustainable forest
22 management and the forest products economy, which in turn results in environmental and
23 economic benefits to the State. Therefore, it is in the public interest to promote and

1 protect the sustainable management of the state's forests and the state's forest products
2 industry and economy, including recognizing unique operational constraints associated
3 with forest based enterprises that add value to forest derived commodities, the effect of
4 conserving forest resources attributable to the forest products industry, and to ensure that
5 state regulations of such enterprises reflect a proper balance between economic
6 development of forest based enterprises and responsible land use practices.

7 Sec. 2. 10 V.S.A. § 6001 is hereby amended to read.

8 (3)(A)(v) The construction of improvements on a tract of land involving more than 10 acres that
9 is to be used for municipal, county, or State purposes, unless such improvements are
10 transportation projects funded, in whole or in part, by federal aid. In computing the amount of
11 land involved, land shall be included that is incident to the use such as lawns, parking areas,
12 roadways, leaching fields and accessory buildings.

13 * * *

14 (3)(A)(xi) The construction of improvements within a unique resource area. [Definition of
15 “unique resource area” and process for designating the same need to be developed. Process to
16 resemble the critical habitat designation process set forth in 10 V.S.A. § 5402a.]

17 * * *

18 (3)(D)(ix) The construction of improvements for transportation projects that are supported, in
19 whole or in part, by federal aid for municipal, county, or State purposes.

20 * * *

21 (3)(D)(x) The construction of improvements or land uses on a tract of land primarily devoted to
22 farming, as defined in subsections (22)(A)-(E) and (H) of this section, and which is subject to the
23 State's Required Agricultural Practices, provided:

1 result from a restriction on hours of operation, and shall impose only the minimum restriction
2 necessary to address any finding of undue adverse impact.

3 (d) The provisions of subparagraph (a) though (c) above shall apply to all applications for new
4 Act 250 permits. All existing Act 250 permits that currently include restrictions on the operation
5 of forest based enterprises shall be reexamined by the District Commission upon request of an
6 applicant who is seeking an amendment to that permit that is otherwise allowed under chapter
7 155 of Title 10. Any request to change existing permit restrictions on hours of operation and
8 seasonal restrictions shall not be subject to Act 250 Rule 34E.

9 * * *

10 ~~(6) "Floodway" means the channel of a watercourse which is expected to flood on an average of~~
11 ~~at least once every 100 years and the adjacent land areas which are required to carry and~~
12 ~~discharge the flood of the watercourse, as determined by the secretary of natural resources with~~
13 ~~full consideration given to upstream impoundments and flood control projects.- "Flood Hazard~~
14 ~~Area" means the land in the flood plain within a community subject to a 1 percent or greater~~
15 ~~chance of flooding in any given year as determined by the Secretary of Natural Resources. The~~
16 ~~term has the same meaning as "area of special flood hazard" under 44 C.F.R. § 59.1.~~

17 ~~(7) "Floodway fringe" means an area which is outside a floodway and is flooded with an average~~
18 ~~frequency of once or more in each 100 years as determined by the secretary of natural resources~~
19 ~~with full consideration given to upstream impoundments and flood control projects.- "River~~
20 ~~corridor" means the land area adjacent to a river that is required to accommodate the dimensions,~~
21 ~~slope, planform, and buffer of the naturally stable channel and that is necessary for the natural~~
22 ~~maintenance or natural restoration of a dynamic equilibrium condition and for minimization of~~

1 fluvial erosion hazards, as delineated by the Agency in accordance with river corridor protection
2 procedures. (10 V.S.A. § 1422(12)).

3 * * *

4 (19)(A)(iv) A tract or tracts of land, owned or controlled by a person, any portion of which lies
5 within a unique resource area, and which have been partitioned or divided for the purpose of
6 resale into [insert number] or more separate lots within a period of five miles of any point on any
7 lot within any continuous period of five years.

8 * * *

9 (30)(A) "Designated center" means a downtown development district, village center, new town
10 center, growth center, ~~Vermont neighborhood~~, or neighborhood development area designated
11 under 24 V.S.A. chapter 76A.

12 (B) "Enhanced designation" means the process by which a designated center demonstrates
13 that the center has satisfied the requirements of 24 VSA sec. 2799, as well as the resulting
14 status.

15 * * *

16 (38) "Forest Based Enterprises" means enterprises that aggregate forest products from forestry
17 operations and add value through processing or marketing in the forest products supply chain or
18 directly to consumers through retail sales, including but not limited to sawmills; veneer mills;
19 pulp mills; pellet mills; producers of firewood, woodchips, mulch and fuel wood; and log and
20 pulp concentration yards. "Forest based enterprises" does not include facilities that purchase,
21 market, and resell finished goods, such as wood furniture, wood pellets, and milled lumber
22 without first receiving forest products from forestry operations.

1 (39) “Forest products” shall mean logs, pulpwood, veneer wood, bolt wood, wood chips, stud
2 wood, poles, pilings, biomass, fuel wood, maple sap or bark.

3 Sec. 3. 10 V.S.A. § 6081 is hereby amended to read.

4 (d) For purposes of this section, the following construction of improvements to preexisting
5 municipal, county, or State projects shall not be considered to be substantial changes and shall
6 not require a permit as provided under subsection (a) of this section:

7 * * *

8 (6) municipal, county, or State transportation projects that are supported, in whole or in
9 part, by federal aid.

10 * * *

11 (y) No permit or permit amendment is required for any subdivision or development in a
12 designated center that has enhanced designation at the time a complete application for a
13 municipal land use permit is filed. If enhanced designation is terminated, subsection (a) of this
14 section shall apply to any subsequent subdivision or development that meets the applicable
15 jurisdictional thresholds established in this chapter or the rules promulgated pursuant to section
16 6025 of this chapter.

17 (z) No permit or permit amendment is required for the construction of improvements for
18 municipal, county or State transportation projects that are supported, in whole or in part, by
19 federal aid.

20 Sec. 4. 10 V.S.A. § 6083a is hereby amended to read.

21 (a)(5) For projects involving the review of a master plan, the fee established in subdivision (1)
22 shall be due for any portion of the proposed project for which construction approval is sought
23 and a fee equivalent to \$0.10 per \$1,000.00 of total estimated construction costs in current

1 dollars shall be due for all other portions of the proposed project. If construction approval is
2 sought in future permit applications, the fee established in subdivision (1) shall be due, except to
3 the extent that it is waived in accord with subparagraph (f), below.~~in addition to the fee~~
4 ~~established in subdivision (1) of this subsection for any portion of the project seeking~~
5 ~~construction approval.~~

6 * * *

7 ~~(f) In the event that an application involves a project or project impacts that previously have been~~
8 ~~reviewed, the~~An applicant may request in writing that a District Commission~~petition the Chair~~
9 ~~of the District Commission to~~ waive all or part of ~~the~~an application fee.

10 (1) In reviewing a request for a permit fee waiver, the District Commission shall
11 consider the following factors:

12 (i) Whether a portion of the project's impacts have been reviewed by it, the
13 Natural Resources Board, or the District Coordinator in a previous permit.

14 (ii) Whether the project is being reviewed as a major application, minor,
15 application, or administrative amendment. Should the review of an application be
16 changed from an administrative amendment or minor application to a major
17 application, the Commission may require the applicant to pay the previously
18 waived fee.

19 (iii) Whether the applicant intends on relying on any presumptions permitted
20 under Section 6086(d) of this title and has, at the time of the permit application,
21 already obtained the permits necessary to trigger such presumptions. Should a
22 presumption be rebutted, the Commission may require the applicant to pay the
23 previously waived fee.

1 (iv) Whether the applicant has engaged in any pre-application planning with the
2 district coordinator that will result in a decrease in the amount of time the District
3 Commission will have to consider the actual application.

4 (2) The District Commission shall issue a written decision in response to any application
5 for a fee waiver. The written decision shall address each of the factors in subsection
6 (f)(1).

7 (3) District Commission decisions regarding application fee waivers may be appealed to
8 the Natural Resources Board in accordance with Board rules.

9 ~~If an application fee was paid previously in accordance with subdivisions (a)(1) through (4) of~~
10 ~~this section, the Chair may waive all or part of the fee for a new or revised project if the Chair~~
11 ~~finds that the impacts of the project have been reviewed in an applicable master permit~~
12 ~~application, or that the project is not significantly altered from a project previously reviewed, or~~
13 ~~that there will be substantial savings in the review process due to the scope of review of the~~
14 ~~previous applications.~~

15 (g) A Commission or the Natural Resources Board may require any permittee to file a
16 certification of actual construction costs and may direct the payment of a supplemental fee in the
17 event that an application understated a project's construction costs. Failure to file a certification
18 or to pay a supplemental fee shall be grounds for permit revocation. A written request for an
19 application fee partial refund may be submitted to the District Commission to which the fee was
20 paid within 90 days of the date an applicant files a certification pursuant to this section showing
21 that the actual construction costs are less than the estimated construction costs upon which the
22 original permit fee was calculated.

23 Sec. 5. 10 V.S.A. § 6086 is hereby amended to read.

1 (a)(1)(D) ~~Floodways~~ Floodplains. A permit will be granted whenever it is demonstrated by the
2 applicant that, in addition to all other applicable criteria:

3 (i), the development or subdivision of lands within a ~~floodway~~ flood hazard area or river
4 corridor will not restrict or divert the flow of flood waters; cause or contribute to fluvial erosion;
5 and will not endanger the health, safety, and welfare of the public or of riparian owners during
6 flooding; ~~and~~

7 (ii) ~~the development or subdivision of lands within a floodway fringe will not~~
8 ~~significantly increase the peak discharge of the river or stream within or downstream from the~~
9 ~~area of development, and endanger the health, safety, or welfare of the public or riparian owners~~
10 ~~during flooding.~~

11 * * *

12 (a)(8) Will not have an undue adverse effect on the scenic or natural beauty of the area,
13 aesthetics, historic sites, ~~or~~ rare and irreplaceable natural areas, or forest blocks and connecting
14 habitat.

15 * * *

16 (d) State and local permits; presumptions.

17 (1) State permits.

18 (A) A District Commission shall ~~The Natural Resources Board may by rule~~ allow the
19 acceptance of a permit or permits ~~or approval~~ of any State agency with respect to
20 subdivisions (a)(1) through (5) of this section in lieu of evidence by the applicant. The
21 presumption established by this subdivision shall only apply to the issues addressed as a
22 part of the terms of the permit.

1 (B) In the case of permits issued by the Agency of Natural Resources, technical
2 determinations of the Agency shall be accorded substantial deference by the
3 Commissions.

4 (C) The acceptance of such permit, or permits shall create a presumption that the
5 application is not detrimental to the public health and welfare with respect to the specific
6 requirement for which it is accepted.

7 (2) Municipal permits.

8 (A) The Natural Resources Board may by rule allow ~~or~~ a permit or permits of a specified
9 municipal government with respect to subdivisions (a)(1) through (7) and (9) and (10) of
10 this section, or a combination of such permits or approvals, in lieu of evidence by the
11 applicant. The presumption established by this subdivision shall only apply to the issues
12 addressed as a part of the terms of the permit.

13 (B) A District Commission, in accordance with rules adopted by the Board, shall accept
14 determinations issued by a development review board under the provisions of 24 V.S.A.
15 § 4420, with respect to local Act 250 review of municipal impacts.

16 (C) The acceptance of such approval, positive determinations, permit, or permits shall
17 create a presumption that the application is not detrimental to the public health and
18 welfare with respect to the specific requirement for which it is accepted. ~~In the case of~~
19 ~~approvals and permits issued by the Agency of Natural Resources, technical~~
20 ~~determinations of the Agency shall be accorded substantial deference by the~~
21 ~~Commissions.~~ The acceptance of negative determinations issued by a development
22 review board under the provisions of 24 V.S.A. § 4420, with respect to local Act 250
23 review of municipal impacts shall create a presumption that the application is detrimental

1 to the public health and welfare with respect to the specific requirement for which it is
2 accepted. Any determinations, positive or negative, under the provisions of 24 V.S.A. §
3 4420 shall create presumptions only to the extent that the impacts under the criteria are
4 limited to the municipality issuing the decision. ~~Such a rule may be revoked or amended~~
5 ~~pursuant to the procedures set forth in 3 V.S.A., chapter 25, the Vermont Administrative~~
6 ~~Procedure Act.~~

7 (3) Rebutting Presumptions

8 (A) Except as provided in subdivision (d)(3)(B), permits may be rebutted by evidence
9 that is relevant and admissible.

10 (B) With respect to permits issued by a state agency that provide notice, the ability to
11 comment, and a right to appeal, prior to accepting evidence to rebut a permit the
12 Commission shall determine that the evidence:

13 (i) was not presented to the state agency issuing the permit that resulted in the
14 presumption;

15 (ii) was not capable of being discovered by due diligence prior to the issuance of the
16 permit;

17 (iii) is material; and

18 (iv) is not merely cumulative.

19 (4) Rulemaking. The Board shall have the authority to adopt rules to administer the
20 requirements of this subdivision. The rules adopted by the Board shall not approve the
21 acceptance of a permit or approval of ~~such an agency or a permit~~ of a municipal
22 government unless it satisfies the appropriate requirements of subsection (a) of this
23 section.

1 Sec. 6. 10 V.S.A. § 6093 is amended to read.

2 (a)(5) Notwithstanding the provisions of subdivisions (a)(1), (a)(2) and (a)(3) of this section
3 pertaining to a development or subdivision on primary agricultural soils or prime forest soils
4 within certain designated areas, the District Commission shall apply a mitigation credit for
5 development associated with enterprises that add value to forest-derived commodities using the
6 following formula.

7 (A) For every 1000 cords or equivalent tons or board feet of annual product produced
8 by an enterprise that adds value to a forest-derived commodity, the District
9 Commission shall apply a credit of 27 acres of conserved or mitigated land, or an
10 equivalent value of 27 acres of land if a deposit of an offsite mitigation fee into
11 the Vermont Housing and Conservation Trust Fund is required. The mitigation
12 ratio shall be 1:1.

13 (B) Applicants will certify the annual production of the facility through a certification
14 statement included with the application.

15 Sec. 7. 10 V.S.A. § 8503(b)(1) is hereby amended to read.

16 (b) This chapter shall govern:

17 (1) all appeals from an act or decision of a District Commission under chapter 151 of
18 this title, excluding appeals of application fee refund and waiver requests.

19 Sec. 8. Section 2799 is hereby added to 24 V.S.A. Ch. 76A.

20 **24 VSA § 2799. Enhanced Designation**

21 (a) Purpose. This section is intended to encourage a municipality to plan and regulate for
22 compact patterns of development and encourage development that is consistent with Vermont's
23 statewide land use goals and smart growth principles in specified designated centers by removing

1 Act 250 jurisdiction from enhanced State-designated downtowns, new town centers, growth
2 centers, neighborhood development areas, and village centers.

3 (b) Application and approval. A municipality, by resolution of its legislative body, may apply to
4 the State Board for enhanced designation for any designated downtown development district,
5 designated new town center, designated growth center, designated neighborhood development
6 area, or designated village center. The State Board shall issue an affirmative determination on
7 finding that the municipality meets the requirements of subsection (c) of this section.

8 (c) Enhanced designation requirements. To obtain an enhanced designation under this section, a
9 municipality must demonstrate that it has each of the following:

10 (1) An approved designated downtown development district, designated new town center,
11 designated growth center, designated neighborhood development area, or designated village
12 center;

13 (2) A municipal plan that is approved in accordance with section 4350 of this title;

14 (3) Municipal flood hazard planning, applicable to the entire municipality, in accordance
15 with section 4382(12) of this title and the guidelines issued by the Department pursuant to
16 section 2792(d) of this title;

17 (4) Flood hazard and river corridor bylaws, applicable to the entire municipality, that are
18 consistent with the standards established pursuant to 10 V.S.A sec. 755(b) (flood hazard) and
19 §1428(b) (river corridor);

20 (5) A capital budget and program pursuant to section 4430 of this title that make
21 substantial investments in the ongoing development of the designated area, are consistent with
22 the plan's implementation program, and are consistent with the smart growth principles defined
23 in section 2791(13) of this title;

1 (6) Municipal bylaws that do not include broad exemptions excluding significant private
2 or public land development from requiring a municipal land use permit;

3 (7) For enhanced designated downtown development districts and in addition to the
4 requirements of subsections (c)(1) through (6) of this section:

5 (A) Urban form bylaws for the enhanced designated center that further the smart
6 growth principles of this chapter and adequately regulate the physical form and scale of
7 development and conform to the guidelines established by the Department; and

8 (B) Historic preservation bylaws for established design review districts, historic
9 districts, or historic landmarks pursuant to 24 VSA sec 4414(1)(E) and (F) within for the
10 enhanced designated center that meet state historic preservation guidelines issued by the
11 Department pursuant to section 2792(d) of this title;

12 (8) For enhanced designated new town centers, growth centers, or neighborhood
13 development areas and in addition to the requirements of subsections (c)(1) through (6) of this
14 section, wildlife habitat planning and bylaws for the enhanced designated center that comply
15 with standards established by the Vermont Department of Fish and Wildlife;

16 (9) For enhanced designated village centers and in addition to the requirements of
17 subsections (c)(1) through (6) of this section:

18 (A) Urban form bylaws for the enhanced designated center that further the smart
19 growth principles of this chapter and adequately regulate the physical form and scale of
20 development and conform to the guidelines established by the Department;

21 (B) Historic preservation bylaws for established design review districts, historic
22 districts, or historic landmarks pursuant to 24 V.S.A. § 4414(1)(E) and (F) for the

1 enhanced designated center that meet state historic preservation guidelines issued by the
2 Department pursuant to section 2792(d) of this title;

3 (C) Permitted water and wastewater systems with the capacity to support
4 additional development within the enhanced designated center. The municipality shall
5 have adopted consistent policies, by municipal plan and ordinance, on the allocation,
6 connection, and extension of water and wastewater lines that include a defined service
7 area to support the enhanced designated center; and

8 (D) Adequate municipal staff to support coordinated comprehensive and capital
9 planning, development review, and zoning administration.

10 (10) If any party entitle to notice under subsection (d)(4)(A) of this section, or any resident
11 of the municipality, raises concerns about the municipality's compliance with the requirements
12 for the underlying designation, those concerns must be addressed as part of the municipality's
13 application.

14 (d) Process for issuing determinations of enhanced designation.

15 (1) A preapplication meeting shall be held with Department staff to review the program
16 requirements. The meeting shall be held in the municipality unless another location is agreed to
17 by the municipality.

18 (2) An application by the municipality must include the information and analysis required
19 by the Department's guidelines established pursuant to section 2792 of this title on how to meet
20 the requirements of 24 VSA § 2799 (c).

21 (3) The Department shall establish a procedure for submission of a draft application that
22 involves review and comment by all the parties to be noticed in subdivision (4)(A) of this

1 subsection and shall issue a pre-application memo incorporating the comments to the applicant
2 after receipt of a draft preliminary application.

3 (4) After receipt of a complete final application, the State Board shall convene a public
4 hearing, held in the municipality, to consider whether to issue a determination of enhanced
5 designation under this section.

6 (A) The Department shall post notice of the Board's meeting on the Agency's
7 website at least 35 days in advance of the Board's meeting and provide it to the
8 municipality. The municipality shall publish notice of the meeting at least 30 days in
9 advance of the Board's meeting by publication in a newspaper of general publication in
10 the municipality, and delivered physically or electronically, with proof of receipt or by
11 certified mail, return receipt requested to the Agency of Natural Resources; the Natural
12 Resources Board; the Division for Historic Preservation; the Agency of Agriculture,
13 Food, & Markets; the Agency of Transportation; the Regional Planning Commission; the
14 Regional Development Corporations; and the entities providing educational, police, and
15 fire services to the municipality. The notice shall also be posted by the municipality in or
16 near the municipal clerk's office and in at least two other designated public places in the
17 municipality, and on the websites of the municipality and the Agency of Commerce and
18 Community Development. The municipality shall also certify in writing that the notice
19 required by this subsection has been published, delivered, and posted within the specified
20 time.

21 (B) No defect in the form or substance of any requirements of this subsection
22 shall invalidate the action of the State Board where reasonable efforts are made to
23 provide adequate posting and notice. However, the action shall be invalid when the

1 defective posting or notice was materially misleading in content. If an action is ruled to
2 be invalid by the Superior Court or by the State Board itself, the Department shall
3 provide, and the municipality shall issue new posting and notice, and the State Board
4 shall hold a new hearing and take a new action.

5 (5) The State Board may recess the proceedings on any application pending submission
6 of additional information. The State Board shall close the proceedings promptly after all parties
7 have submitted the requested information.

8 (6) The State Board shall issue its determination in writing. The determination shall
9 include explicit findings on each of the requirements set forth in subsection (c), above.

10 (e) Review of enhanced designation status.

11 (1) Length of designation. Initial determination of enhanced status may be made at any
12 time. Thereafter review of an enhanced designation shall be reviewed concurrently with the next
13 periodic review conducted of the underlying designated downtown, new town center, growth
14 center, or neighborhood development area approved under this chapter.

15 (2) The State Board, on its motion, may review compliance with the enhancement
16 requirements at more frequent intervals.

17 (3) If at any time the State Board determines that the enhanced designated area no longer
18 meets the standards for an enhanced status established in this section, it shall take one of the
19 following actions:

20 (A) require corrective action within a reasonable time frame; or

21 (B) terminate the enhancement.

22 (4) If the underlying designation terminates, the enhanced status also shall terminate.

23 (f) Appeal.

1 (1) An interested person may appeal any act or decision of the State Board under this
2 section to the Natural Resources Board within 30 days of the act or decision.

3 (2) For the purposes of this section, an interested person means any one of the following:

4 (A) A person owning title to or occupying property within or abutting the
5 designated center;

6 (B) The municipality making the application or a municipality that adjoins the
7 municipality making the application.

8 (C) The regional planning commission for the region that includes the designated
9 center or a regional planning commission whose region adjoins the municipality in which
10 the designated center is located;

11 (D) Any 20 persons who by signed petition allege that the decision is not in accord
12 with the requirements of this chapter, and who own or occupy real property located
13 within the municipality in which the designated center is located or an adjoining
14 municipality. The petition must designate one person to serve as the representative of the
15 petitioners regarding all matters related to the appeal, who must have participated in the
16 public hearing described in subsection (d)(4) of this section.

17 **Sec. 9. Recreational Trails**

18 Sec. 10. Effective Date.

19 This act shall take effect on passage.