



## ***ad hoc Commission on Act 250***

**Tuesday, January 28, 2020**

**9:00am to 10:30am**

**CCRPC Small Conference Room, 110 West Canal Street, Winooski**

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

### **Agenda**

**9:00 Welcome, Changes to the Agenda, Members' Items**

**9:05 Review Draft Comments on the Proposed Act 250 Bill**

- Proposed CCRPC Comments\*
- Proposed Discussion Draft Bill\*

**10:15 Next Steps and Set Next Meeting Date (if necessary)**

**10:30 Adjourn**

\* = Attachment

**NEXT MEETING: TBD**

# CCRPC Comments on VNRC/Administration proposed Act 250 Bill

**DRAFT – 1/24/2020**

Note: The comments herein include references to the “Discussion Document, Last Modified 1/14/2020, Version 1.1”

## **I. Act 250 Jurisdiction**

1. Section A, pg. 6 – This section proposes to include construction of improvements for commercial, industrial or residential use on ridgelines of at least 1,500’ elevation and within 200 feet below the ridgeline. *Comment:* CCRPC generally agrees with this approach, however it is difficult to understand the full breadth of this change without seeing a map of the area included.
2. Section B, pg. 6 to 7 – This section proposes to include new road/driveway construction of 2,000 feet in length as development subject to Act 250. *Comment:* CCRPC agrees with this approach.
3. Section C, pg. 7 to 21 – This section proposes to exclude development in designated Downtowns and Neighborhood Development Areas from Act 250 jurisdiction. *Comment:* CCRPC agrees with and appreciates this approach. However, development in both Growth Centers and New Town Center designations should also be excluded. These are also state approved growth areas and there is no need for Act 250 review. [Note - Unless these are already exempt? And CCRPC – want to go to our areas planned for growth?] Further, the conditions from previous Act 250 permits should be signed-off by Act 250; this shouldn’t be a responsibility of the municipalities. The proposal also includes underlying changes to the mixed income housing definitions; specification of unit types/bedrooms have been added which can be much more difficult to address and administer. It is unclear what these changes are being proposed.
4. Section D, pg. 21 – This section allows for a reduction in the project area for certain transportation projects for previously disturbed area. The idea is that these projects could then fall under the 10 acre jurisdictional trigger. *Comment:* CCRPC agrees with the concept of this adjustment and recommends that it be allowed for all commercial/industrial projects in certain geographic areas.
5. Section E, pg. 23 to 24 – This section proposes to expand Act 250 jurisdiction to commercial and industrial developments within 2,000 feet of interstate interchanges. *Comment:* CCRPC feels that this is not necessary. Further, it is unclear if the Regional Planning Commission role in the exemption is a one-time exemption for the whole area or needs to be done on a case by case basis.

## **II. Changes to Act 250 Criteria**

6. Section A & B, pg. 26 to 29 – These two sections propose changes to standardize regulation of river corridors in Act 250. *Comment:* CCRPC does not agree with this approach. The proposed language does not adequately address new and infill development in historic village areas that overlap with river corridor areas. CCRPC recommends that this issue be studied rather than changed this year, and/or ANR regulate these areas through a state permit program with appropriate infill in our already developed downtowns and villages.
7. Section E, pg. 30 to 32 – This section proposes to expand the Act 250 wildlife criteria to consider impacts to forest blocks and connecting habitat. *Comment:* CCRPC agrees with protection of

these resources, however, there needs to be clarity on how these resources will be defined. The recommendation from CCRPC is to refer to the local and regional plan maps for how these resources are defined, rather than the current broad definitions in the proposed bill.

8. Section G, pg. 33 to 34 – This section proposes modification to better address climate change. *Comment:* CCRPC feels that there should be one consistent energy code applied throughout the state, not a higher standard in Act 250 (the stretch energy code is proposed). Further, the proposed climate adaptation amendment is broad and unspecific. It will require guidance on how to meet this standard.
9. Section H, pg. 34 – This section proposes that a municipal plan must be approved by the Regional Planning Commission for consideration under Act 250 criteria. *Comment:* CCRPC agrees with this approach.

#### **IV. Act 250 Permit Conditions and Permit Process [should be III]**

10. Section A, pg. 36 – This section proposes a 30 day pre-application notice requirement to the public and affected agencies for larger Act 250 cases. The proposed bill contemplates rule making to determine when a pre-application process would be needed. *Comment:* CCRPC agrees with this approach; however, there are some process heavy components that may not be appropriate in Act 250, such as formal scheduling (pg. 37, lines 3 to 5).
11. Section C, pg. 40 – This section proposes to make all ANR permits have a presumption automatically. *Comment:* CCRPC agrees with and appreciates this approach.

#### **IV. Enhanced Natural Resources Board**

12. Section A. Creation of an Enhanced Natural Resources Board, starts on pg. 44 - This proposal recommends a professional three-person board to review major Act 250 applications instead of the current District Commissions. The three-person board would be joined by two regional commissioners who would hear applications and help decide on findings of fact, but would not participate in drafting conclusions of law, and not vote or help decide the case. Appeals of the Act 250 permits would go directly to the Supreme Court, rather than the Environmental Board. *Comments:* CCRPC agrees that consistency throughout the state and consolidation of appeals are benefits of this approach. **AND?**

**CHRIS ROY – thoughts on these next two? I'm having trouble understanding what the final process will be since I'm not looking at the full statute. Perhaps these aren't something to be concerned about?**

13. Section B. Conforming Changes to the Environmental Division, pg. 65, line 8 – 21 – Overall this section removes Act 250 permits from the jurisdiction of the Environmental Division, a necessary step in this 'consolidated appeal' concept. With these changes appellant status is unclear ("aggrieved person" versus "interested person"). "Interested person status" is a logical, higher bar to reach in order to appeal. It requires participation in the earlier approval process and limits the scope of who can appeal. *Comment:* CCRPC feels that "interested person" status should be obtained in order to appeal a decision of the Board to the Supreme Court.
14. Section B. Conforming Changes to the Environmental Division, pg. 68, line 16 to 18. Similarly, even under the new consolidated process, if no hearing was requested or held and a minor permit is issued it shouldn't be appealable. *Comment:* CCRPC feels that this should not be slated for deletion; only reference to District Commission should be amended.

## V. Reports and Miscellaneous Changes

15. Section A. Municipal and Regional Planning Review, pg. 71, line 15 to 17 – Overall this section requires ACCD to develop a report and recommendations with respect to the capabilities and development plan requirements under Act 250. *Comment:* CCRPC agrees that this issue should be further studied. However, this report will also include “how regional plans are reviewed and approved...” *Comment:* CCRPC agrees with this general concept and asks that this bill require consultation with VAPDA and VLCT on development of this portion of the report.
16. Section A. Municipal and Regional Planning Review, pg. 71, line 18 to 19 - This report will also include “whether designations of growth centers and new town centers should be appealable.” *Comment:* CCRPC feels that this is out of place, and not necessary for consideration of capability and development plan requirements. CCRPC recommends that this be removed from the proposed bill.

DRAFT

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1 **I. Act 250 Jurisdiction**

2 **A. Critical resource protection; Act 250 jurisdiction over ridgeline development**

3 1. *Topic summary.*

4 This section proposes to amend existing Act 250 jurisdiction to include the construction of  
5 improvements for commercial, industrial or residential use on ridgelines between 1,500' and  
6 2500', excluding improvements for forestry and agriculture. Construction of improvements  
7 above 2500' is already subject to Act 250 jurisdiction and will remain so. This proposal defines  
8 the physical characteristics of a 'ridgeline' and statewide GIS mapping will depict those defined  
9 areas across the landscape.

10

11 2. *Bill citation.*

12 Sec. 1 adding 10 V.S.A. 6001(3)(A)(xi) (see page 2).

13 3. *Proposed language.*

14 (xi) The construction of improvements for commercial, industrial or residential use at an

15 elevation of at least 1,500 feet and within 200 feet below the elevation of any portion of a

16 ridgeline. For purposes of this subdivision, "ridgeline" means the elongated crest or series of

17 crests at the apex or uppermost point of intersection between two opposite slopes or sides of a

18 mountain and includes all land. This subdivision shall not apply to the construction of

19 improvements for agricultural or forestry uses.

20 **B. Critical resource protection; Act 250 Jurisdiction over fragmentation**

21 1. *Topic summary.*

22 This section proposes to amend existing Act 250 jurisdiction to include new road construction of  
23 a certain length. Small-scale development has the potential to fragment intact forest blocks or  
24 connecting habitat if that development encroaches far from existing roads into undeveloped  
25 areas; however, Act 250's current jurisdictional triggers may not capture this type of  
26 development. This proposal requires an Act 250 permit for any new road and associated  
27 driveway that exceeds 2000' in length and provides access to a parcel greater than 1 acre.

28

29 2. *Bill citation.*

1 Sec. 1 adding 10 V.S.A. § 6001(3)(A)(xii) (see page 2).

2 3. *Proposed language.*

3 (xii) The construction of a road or roads and any associated driveways to provide access to or  
4 within a tract of land of more than one acre owned or controlled by a person. For the purposes of  
5 determining jurisdiction under this subdivision, any new development or subdivision on parcel of  
6 land that will be provided access by the road and associated driveways is land involved in the  
7 construction of the road. Jurisdiction under this subdivision shall not apply unless the length of  
8 road and any associated driveways, in combination, is greater than 2,000 feet. As used in this  
9 subdivision, “roads” shall include any new road or improvement to a Class IV road by a private  
10 person for the purpose of accessing a development or subdivision, including roads that will be  
11 transferred to or maintained by a municipality after their construction or improvement. For the  
12 purpose of determining the length of any road and associated driveways, the length of all other  
13 roads and driveways within the tract of land constructed within any continuous period of ten  
14 years commencing after July 1, 2020 shall be included. This subdivision shall not apply to a  
15 state or municipal road or a road used exclusively for agricultural or forestry purposes.

16 **C. Exemption for Development in Downtowns**

17 1. *Topic summary.*

18 This section proposes to amend existing Act 250 jurisdiction to exclude development in state  
19 designated Downtowns and Neighborhood Development Areas (NDA’s). Designated  
20 Downtowns and NDA’s are compact, previously developed areas with limited natural resource  
21 values. They are served by municipal sewer and water and governed by local zoning bylaws that  
22 are robust and promote smart growth. These areas support density, transit and other land use  
23 forms that mitigate climate change. Existing Act 250 permits in Downtowns and NDA’s would  
24 remain in effect until a material change is proposed, at which time the appropriate municipal  
25 panel would consider the change and render a decision based on municipal bylaws; any new  
26 municipal permit would address and/or incorporate all relevant conditions from the prior Act 250  
27 permit.

1  
2 *2. Bill citation.*

3 Sec. 1 adding 10 V.S.A. § 6001(3)(C)(v) (see page 4); Sec. 1 amending 10 V.S.A. § 6081(p) and  
4 (o) (see p. 25); Sec. 1 amending 10 V.S.A. § 6083a(d) (see page 29); Sec. 1 amending 10 V.S.A.  
5 § 6086b (see p. 53); Sec. 1. amending 10 V.S.A. § 6093(a)(1)(B)(ii) (see page 60); Sec. 9  
6 amending 24 V.S.A. § 4460 (see p. 82); Sec. 6. amending 24 V.S.A. § 2793 (see page 79); and  
7 Sec. 7. amending 24 V.S.A. § 2793e (see p. 80).

8 *3. Proposed language.*

9 Sec. 1. 10 V.S.A. § 6001 is amended to read:

10 \* \* \*

11 (3)(A) "Development" means each of the following:

12 \* \* \*

13 (C) For the purposes of determining jurisdiction under subdivision (3)(A) of this section, the  
14 following shall apply:

15 \* \* \*

16 (v) ~~Repealed. Permanently affordable housing. Notwithstanding subdivisions (3)(A)(iv) and (19)~~  
17 ~~of this section, jurisdiction shall be determined exclusively by counting affordable housing units,~~  
18 ~~as defined by this section, that are subject to housing subsidy covenants as defined in 27 V.S.A.~~  
19 ~~§ 610 that preserve their affordability for a period of 99 years or longer, provided the affordable~~  
20 ~~housing units are located in a discrete project on a single tract or multiple contiguous tracts of~~  
21 ~~land, regardless of whether located within an area designated under 24 V.S.A. chapter 76A.~~

22 \* \* \*

23 (27) "Mixed income housing" means a housing project in which the following apply:

- 1 (A) Owner-occupied housing. For not less than 15 years, at ~~At the option of the applicant,~~  
2 ~~owner-occupied housing may be characterized by either of the following:~~
- 3 ~~(i) at least 15 percent of the housing units have a purchase price that at the time of first sale does~~  
4 ~~not exceed 85 percent of the new construction, targeted area purchase price limits established~~  
5 ~~and published annually by the Vermont Housing Finance Agency; or~~
- 6 ~~(ii) at least 20 percent of~~ each type of the housing units, where the type is determined by the total  
7 number of bedrooms in the unit, have ~~has~~ a purchase price that ~~at the time of first sale~~ does not  
8 exceed ~~90 percent of the new construction, targeted area purchase price limits~~ for that same type  
9 of housing unit for households earning 85 percent of the area median income as established and  
10 published annually by the Vermont Housing Finance Agency.
- 11 (B) Rental housing. For not less than 15 years, at ~~At~~ least 20 percent of each type of the housing  
12 units, where the type is determined by the total number of bedrooms in the unit, that is ~~are~~ rented  
13 has a total annual cost of renting, including rent, utilities, parking fees, and any association fees,  
14 that does not exceed the max gross rent for that same type of housing unit for households earning  
15 80 percent of the area median income as established and published annually by the Vermont  
16 Housing Finance Agency. ~~constitute affordable housing and have a duration of affordability of~~  
17 ~~not less than 15 years.~~
- 18 (C) When calculating the percentage of housing units that must meet the applicable purchase  
19 price limits and total annual cost thresholds of subsections (A) and (B) of this section, the  
20 percentage shall be rounded up to the nearest whole number to avoid parts of units needing to be  
21 affordable and when there is only one unit within a unit type that unit shall be excluded from the  
22 percentage calculation.

\* \* \*

(29) “Permanently affordable housing” means a housing project in which the following apply:

(A) Owner occupied housing. At least 20 percent of each type of housing unit is subject to housing subsidy covenants as defined in 27 V.S.A. § 610 that require the subject housing units to meet the affordability thresholds set forth in subsection 27 of this section each time the unit is sold for not less than 99 years.

(B) Rental housing. At least 20 percent of each type of housing unit meets the affordability thresholds in subsection 27 of this section for not less than 99 years.

~~"Affordable housing" means either of the following:~~

~~(A) Owner occupied housing for which the total annual cost of ownership, including principal, interest, taxes, insurance, and condominium association fees, does not exceed 30 percent of the gross annual income of a household at 120 percent of the highest of the following:~~

~~(i) the county median income, as defined by the U.S. Department of Housing and Urban Development;~~

~~(ii) the standard metropolitan statistical area median income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development; or~~

~~(iii) the statewide median income, as defined by the U.S. Department of Housing and Urban Development.~~

~~(B) Rental housing for which the total annual cost of renting, including rent, utilities, and condominium association fees, does not exceed 30 percent of the gross annual income of a household at 80 percent of the highest of the following:~~

- 1 ~~(i) the county median income, as defined by the U.S. Department of Housing and Urban~~  
2 ~~Development;~~  
3 ~~(ii) the standard metropolitan statistical area median income if the municipality is located in such~~  
4 ~~an area, as defined by the U.S. Department of Housing and Urban Development; or~~  
5 ~~(iii) the statewide median income, as defined by the U.S. Department of Housing and Urban~~  
6 ~~Development.~~

7 \* \* \*

- 8 (35) "Priority housing project" means a discrete project located on a single tract or multiple  
9 contiguous tracts of land that consists exclusively of:  
10 ~~(A) mixed income housing or mixed use, or any combination thereof, and is located entirely~~  
11 ~~within a designated downtown development district, designated new town center or; designated~~  
12 ~~growth center, or designated village center that is also a designated neighborhood development~~  
13 ~~area under 24 V.S.A. chapter 76A; or~~  
14 ~~(B) mixed income housing and is located entirely within a designated Vermont neighborhood or~~  
15 ~~designated neighborhood development area under 24 V.S.A. chapter 76A.~~

16 \* \* \*

17 Sec. 1. 10 V.S.A. § 6081(p) and (o) are amended to read:

18 § 6081. PERMITS REQUIRED; EXEMPTIONS

19 \* \* \*

- 20 (o) If a designation pursuant to 24 V.S.A. chapter 76A is removed, subsection (a) of this section  
21 shall apply to any subsequent substantial change to a development or subdivision ~~priority~~

1 ~~housing project~~ that was originally exempt pursuant to subdivision 6001(3)(A)(iv)(I) of this title  
2 or subsection (p) of this section on the basis of that designation.

3 (p)(1) No permit or permit amendment is required for any subdivision, development, or change  
4 to a project that is located entirely within a downtown development district designated pursuant  
5 to 24 V.S.A. § 2793 or a neighborhood development area designated pursuant to 24 V.S.A. §  
6 2793e. Upon receiving notice and a copy of the permit issued by the appropriate municipal  
7 panel pursuant to 24 V.S.A. § 4460(f) a previously issued permit for a development or  
8 subdivision located in a downtown development area or a new neighborhood area shall be  
9 extinguished.., ~~if the change consists exclusively of any combination of mixed use and mixed~~  
10 ~~income housing, and the cumulative changes within any continuous period of five years,~~  
11 ~~commencing on or after the effective date of this subsection, remain below any applicable~~  
12 ~~jurisdictional threshold specified in subdivision 6001(3)(A)(iv)(I) of this title.~~

13 \* \* \*

14 (v) ~~[Repealed]~~A permit or permit amendment shall not be required for a development or  
15 subdivision in a designated downtown development district for which the District Commission  
16 has issued positive findings and conclusions under section 6086b of this title on all the criteria  
17 listed in that section. A person shall obtain new or amended findings and conclusions from the  
18 District Commission under section 6086b of this title prior to commencement of a material  
19 change, as defined in the rules of the Board, to a development or subdivision for which the  
20 District Commission has issued such findings and conclusions. A person may seek a  
21 jurisdictional opinion under section 6007 of this title concerning whether such a change is a  
22 material change.



1 \* \* \*

2 Sec. 1. 10 V.S.A. § 6083a(d) is amended to read:

3 ~~(d) Neighborhood development area fees. Fees for residential development in a Vermont~~  
4 ~~neighborhood or neighborhood development area designated according to 24 V.S.A. § 2793e~~  
5 ~~shall be no more than 50 percent of the fee otherwise charged under this section. The fee shall be~~  
6 ~~paid within 30 days after the permit is issued or denied~~[Repealed].

7 Sec. 1. 10 V.S.A. § 6086b is amended to read:

8 § 6086b. [Repealed]~~DOWNTOWN DEVELOPMENT; FINDINGS~~

9 ~~Notwithstanding any provision of this chapter to the contrary, each of the following shall apply~~  
10 ~~to a development or subdivision that is completely within a downtown development district~~  
11 ~~designated under 24 V.S.A. chapter 76A and for which a permit or permit amendment would~~  
12 ~~otherwise be required under this chapter:~~

13 ~~(1) In lieu of obtaining a permit or permit amendment, a person may request findings and~~  
14 ~~conclusions from the District Commission, which shall approve the request if it finds that the~~  
15 ~~development or subdivision will meet subdivisions 6086(a)(1) (air and water pollution), (2)~~  
16 ~~(sufficient water available), (3) (burden on existing water supply), (4) (soil erosion), (5) (traffic),~~  
17 ~~(8) (aesthetics, historic sites, rare and irreplaceable natural areas), (8)(A) (endangered species;~~  
18 ~~necessary wildlife habitat), (9)(B) (primary agricultural soils), (9)(C) (productive forest soils),~~  
19 ~~(9)(F) (energy conservation), and (9)(K) (public facilities, services, and lands) of this title.~~

20 ~~(2) The request shall be complete as to the criteria listed in subdivision (1) of this subsection and~~  
21 ~~need not address other criteria of subsection 6086(a) of this title.~~

- 1 (A) The requestor shall file the request in accordance with the requirements of subsection  
2 6084(a) of this title and the requestor shall provide a copy of the request to each agency and  
3 department listed in subdivision (3) of this section.
- 4 (B) Within five days of the request's filing, the District Coordinator shall determine whether the  
5 request is complete. Within five days of the date the District Coordinator determines the request  
6 to be complete, the District Commission shall provide notice of the complete request to each  
7 person required to receive a copy of the filing under subdivision (2)(A) of this section and to  
8 each adjoining property owner and shall post the notice and a copy of the request on the Board's  
9 web page. The computation of time under this subdivision (2)(B) shall exclude Saturdays,  
10 Sundays, and State legal holidays.
- 11 (3) Within 30 days of receiving notice of a complete request:
- 12 (A) The State Historic Preservation Officer or designee shall submit a written recommendation  
13 on whether the improvements will have an undue adverse effect on any historic site.
- 14 (B) The Commissioner of Public Service or designee shall submit a written recommendation on  
15 whether the improvements will meet or exceed the applicable energy conservation and building  
16 energy standards under subdivision 6086(a)(9)(F) of this title.
- 17 (C) The Secretary of Transportation or designee shall submit a written recommendation on  
18 whether the improvements will have a significant impact on any highway, transportation facility,  
19 or other land or structure under the Secretary's jurisdiction.
- 20 (D) The Commissioner of Buildings and General Services or designee shall submit a written  
21 recommendation on whether the improvements will have a significant impact on any adjacent  
22 land or facilities under the Commissioner's jurisdiction.

1 ~~(E) The Secretary of Natural Resources or designee shall submit a written recommendation on~~  
2 ~~whether the improvements will have a significant impact on any land or facilities under its~~  
3 ~~jurisdiction or on any important natural resources, other than primary agricultural soils. In this~~  
4 ~~subdivision (E), "important natural resources" shall have the same meaning as under 24 V.S.A. §~~  
5 ~~2791.~~

6 ~~(F) The Secretary of Agriculture, Food and Markets or designee shall submit a written~~  
7 ~~recommendation on whether the improvements will reduce or convert primary agricultural soils~~  
8 ~~and on whether there will be appropriate mitigation for any reduction in or conversion of those~~  
9 ~~soils.~~

10 ~~(4) Any person may submit written comments or ask for a hearing within 30 days of the date on~~  
11 ~~which the District Commission issues notice of a complete request. If the person asks for a~~  
12 ~~hearing, the person shall include a petition for party status in the submission. The petition for~~  
13 ~~party status shall meet the requirements of subdivision 6085(c)(2) of this title.~~

14 ~~(5) The District Commission shall not hold a hearing on the request unless it determines that~~  
15 ~~there is a substantial issue under one or more applicable criteria that requires a hearing. The~~  
16 ~~District Commission shall hold any hearing within 20 days of the end of the comment period~~  
17 ~~specified in subdivisions (3) and (4) of this section. Subdivisions 6085(c)(1) (5) of this title shall~~  
18 ~~govern participation in a hearing under this section.~~

19 ~~(6) The District Commission shall issue a decision within 60 days of issuing notice of a complete~~  
20 ~~request under this section or, if it holds a hearing, within 15 days of adjourning the hearing. The~~  
21 ~~District Commission shall send a copy of the decision to each State agency listed in subdivision~~  
22 ~~(3) of this section, to the municipality, to the municipal and regional planning commissions for~~

1 ~~the municipality, and to each person that submitted a comment, requested a hearing, or~~  
2 ~~participated in the hearing, if any. The decision may include conditions that meet the standards~~  
3 ~~of subsection 6086(e) of this title.~~

4 ~~(7) The requestor may waive the time periods required under subdivisions (3), (4), and (6) of this~~  
5 ~~section as to one or more agencies, departments, the District Commission, the District~~  
6 ~~Coordinator, or other persons. Such a waiver shall extend the applicable and subsequent time~~  
7 ~~periods by the amount of time waived. In the absence of a waiver under this subdivision, the~~  
8 ~~failure of a State agency to file a written determination or a person to submit a comment or ask~~  
9 ~~for a hearing within the time periods specified in subdivisions (3) and (4) of this section shall not~~  
10 ~~delay the District Commission's issuance of a decision on a complete request.~~

11 Sec. 1. 10 V.S.A. § 6093(a)(1)(B)(ii) is amended to read:

12 (ii) For residential construction that has a density of at least eight units of housing per acre, of  
13 which at least eight units per acre or at least 40 percent of the units, on average, in the entire  
14 development or subdivision, whichever is greater, meets the definition of permanently affordable  
15 housing established in this chapter, no mitigation shall be required, regardless of location in or  
16 outside a designated area described in this subdivision (a)(1). ~~However, all affordable housing~~  
17 ~~units shall be subject to housing subsidy covenants, as defined in 27 V.S.A. § 610, that preserve~~  
18 ~~their affordability for a period of 99 years or longer. As used in this section, housing that is~~  
19 ~~rented shall be considered affordable housing when its inhabitants have a gross annual household~~  
20 ~~income that does not exceed 60 percent of the county median income or 60 percent of the~~  
21 ~~standard metropolitan statistical area income if the municipality is located in such an area.~~

22 Sec. 10. 24 V.S.A. § 4460 is amended to read:

1 § 4460. APPROPRIATE MUNICIPAL PANELS

2 \* \* \*

3 (f)(1) This subsection shall apply to a subdivision or development that:

4 (A) was previously permitted pursuant to 10 V.S.A. chapter 151;

5 (B) is located in a downtown development district or neighborhood development area designated  
6 pursuant to chapter 76A of this title; and

7 (C) has applied for a permit or permit amendment required by zoning regulations or bylaws  
8 adopted pursuant to this subchapter.

9 (2) The appropriate municipal panel reviewing a municipal permit or permit amendment  
10 pursuant to this subsection shall include conditions contained within a permit previously issued  
11 pursuant to 10 V.S.A. chapter 151 unless the panel determines that the permit condition pertains  
12 to any of the following:

13 (A) the construction phase of the project that has already been constructed.

14 (B) compliance with another state permit that has independent jurisdiction that addresses the  
15 condition in the previously issued permit.

16 (C) federal or state law that is no longer in effect or applicable.

17 (D) an issue that is addressed by municipal regulation and the project will meet the municipal  
18 standards.

19 (E) physical or use condition that is no longer in effect or applicable, or that will no longer be in  
20 effect or applicable once the new project is approved.

1 (3) After issuing or amending a permit containing conditions pursuant to this subsection, the  
2 appropriate municipal panel shall provide notice and a copy of the permit to the Natural  
3 Resources Board.

4 (3) The appropriate municipal panel's determinations shall be made following notice and  
5 hearing as provided in section 4464(a)(1) of this title and to those persons requiring notice  
6 pursuant to 10 V.S.A. § 6084(b). The notice shall explicitly reference the existing Act 250  
7 permit.

8 (4) The appropriate municipal panel's decision shall be issued in accord with section 4464(b) of  
9 this title and shall include specific findings with respect to its determinations pursuant to  
10 subdivision (f)(2) of this section.

11 (5) Any final action by the Appropriate Municipal Panel affecting a condition of a permit  
12 previously issued pursuant to 10 V.S.A. chapter 151 shall be recorded in the municipal land  
13 records.

14 Sec. 6. 24 V.S.A. § 2793 is amended to read:

15 § 2793. DESIGNATION OF DOWNTOWN DEVELOPMENT DISTRICTS

16 \* \* \*

17 (b) Within 45 days of receipt of a completed application, the State Board shall designate a  
18 downtown development district if the State Board finds in its written decision that the  
19 municipality has:

20 (1) Demonstrated a commitment to protect and enhance the historic character of the downtown  
21 through the adoption of a design review district, through the adoption of an historic district, or  
22 through the adoption of regulations that adequately regulate the physical form and scale of

1 development that the State Board determines substantially meet the historic preservation  
2 requirements in subdivisions 4414(1)(E) and (F) of this title, ~~or through the creation of a~~  
3 ~~development review board authorized to undertake local Act 250 reviews of municipal impacts~~  
4 ~~pursuant to section 4420 of this title.~~

5 \* \* \*

6 Sec. 7. 24 V.S.A. § 2793e is amended to read:

7 § 2793e. NEIGHBORHOOD PLANNING AREAS; DESIGNATION OF NEIGHBORHOOD  
8 DEVELOPMENT AREAS

9 \* \* \*

10 (c) Application for designation of a neighborhood development area. The State Board shall  
11 approve a neighborhood development area if the application demonstrates and includes all of the  
12 following elements:

13 \* \* \*

14 (7) The municipal bylaws allow minimum net residential densities within the neighborhood  
15 development area greater than or equal to four single-family detached dwelling units per acre,  
16 exclusive of accessory dwelling units, or no fewer than the average existing density of the  
17 surrounding neighborhood, whichever is greater. The methodology for calculating density shall  
18 be established in the guidelines developed by the Department pursuant to subsection 2792(d) of  
19 this title.

20 (A) Regulations that adequately regulate the physical form and scale of development may be  
21 used to demonstrate compliance with this requirement.

1 (B) Development in the neighborhood development areas that is lower than the minimum net  
2 residential density required by this subdivision (7) shall not qualify for the benefits stated in  
3 subsections (f) and (g) of this section. ~~The district coordinator shall determine whether~~  
4 ~~development meets this minimum net residential density requirement in accordance with~~  
5 ~~subsection (f) of this section.~~

6 \* \* \*

7 (f) Neighborhood development area incentives for developers. Once a municipality has a  
8 designated neighborhood development area or has a Vermont neighborhood designation pursuant  
9 to section 2793d of this title, ~~any~~ a proposed development within that area shall be eligible for  
10 each of the benefits listed in this subsection. ~~These benefits shall accrue upon approval by the~~  
11 ~~district coordinator, who shall review~~ provided that the project meets the density requirements  
12 set forth in subdivision (c)(7) of this section ~~to determine benefit eligibility and issue a~~  
13 ~~jurisdictional opinion under 10 V.S.A. chapter 151 on whether the density requirements are met,~~  
14 as determined by the administrative officer, as that term is defined in 24 V.S.A. chapter 117.

15 These benefits are:

- 16 (1) The application fee limit for wastewater applications stated in 3 V.S.A. § 2822(j)(4)(D).  
17 (2) ~~The application fee reduction for residential development stated in 10 V.S.A. § 6083a(d).~~  
18 (3) The exclusion from the land gains tax provided by 32 V.S.A. § 10002(p).

19 \* \* \*

20 (h) Alternative designation. If a municipality has completed all of the planning and assessment  
21 steps of this section but has not requested designation of a neighborhood development area, an  
22 owner of land within a neighborhood planning area may apply to the State Board for



1 neighborhood development area designation status for a portion of land within the neighborhood  
2 planning area. The applicant shall have the responsibility to demonstrate that all of the  
3 requirements for a neighborhood development area designation have been satisfied and to notify  
4 the municipality that the applicant is seeking the designation. The State Board shall provide the  
5 municipality with at least 14 days' prior written notice of the Board's meeting to consider the  
6 application, and the municipality shall submit to the State Board the municipality's response, if  
7 any, to the application before or during that meeting. On approval of a neighborhood  
8 development area designation under this subsection, the applicant ~~may proceed to obtain a~~  
9 ~~jurisdictional opinion from the district coordinator under subsection (f) of this section in order to~~  
10 ~~obtain~~ shall be eligible for the benefits granted to neighborhood development areas, subject to  
11 approval by the Administrative Officer as set forth in subsection (f) of this section.

## 12 **D. Exemption for Certain Transportation Projects**

### 13 1. *Topic summary.*

14 This section proposes to amend the existing definition of development with respect to certain  
15 transportation projects. Currently, a transportation project is subject to Act 250 if the project is  
16 greater than 10 acres. This proposal authorizes a reduction in the project area by the area that is  
17 previously disturbed for federally funded projects that also meet several other limitations.  
18 Previously disturbed is defined to include several engineered features that are a part of  
19 transportation infrastructure. This section also requires changes to memoranda of understanding  
20 to protect primary agricultural soils and potential fishery impacts.

### 21 22 2. *Bill citation.*

23 Sec. 1 amending 10 V.S.A. § 6001(3)(A)(v) (see page 1); Sec. 4. adding 19 V.S.A. § 7(l) (see  
24 page 78); and Sec. 5 (see page 79).

### 25 3. *Proposed language.*

26 Sec. 1. 10 V.S.A. § 6001(3)(A)(v) is amended to read:

1 (v) The construction of improvements on a tract of land involving more than 10 acres that is to  
2 be used for municipal, county, or State purposes, In computing the amount of land involved;  
3 (I) land shall be included that is incident to the use such as lawns, parking areas, roadways,  
4 leaching fields and accessory buildings.  
5 (II) land that was previously disturbed as the result of construction of a transportation  
6 facility shall be excluded provided that the facility subject to this exclusion is a transportation  
7 facility, the project is funded in whole or in part by federal aid, and the project complies with the  
8 terms of the memorandum of understanding required by 19 V.S.A. § 7(l). This exclusion shall  
9 not apply to the creation of new or additional points of access to, or exit from, the interstate  
10 highway systems. For purposes of this subdivision, “previously disturbed” land that has been  
11 changed by previous installation of transportation facilities including roads, railroads, runways,  
12 trails, sidewalks, ditching, drainage features, ledge removal, utility work, clear zones or other  
13 similar features associated with such facilities.

14 \* \* \*

15 Sec. 4. 19 V.S.A. § 7(l) is added to read:

16 (l) The Secretary of Transportation and the Secretary of Agriculture, Food, and Markets shall  
17 enter a memorandum of understanding to ensure that any transportation project subject to the  
18 exclusion under 10 V.S.A. § 6001(3)(A)(v)(II) on a tract of land involving more than 10 acres  
19 meets the requirements to protect primary agricultural soils consistent with 10 V.S.A. §  
20 6086(a)(9)(B).

21 Sec. 5. REVISION OF STREAM CONSULTATION MEMORANDUM OF  
22 UNDERSTANDING

1 On or before July 1, 2021, the Secretary of Natural Resources and Secretary of Transportation  
2 shall revise the memorandum of understanding implementing the consultation process pursuant  
3 to 19 V.S.A. § 10(12) to require that a project’s proposed impact on fisheries is considered in the  
4 consultation process.

5 **E. Expanded Jurisdiction to Development Near Interstate Interchanges**

6 1. *Topic summary.*

7 This section proposes to amend Act 250 jurisdiction to require permits for commercial and  
8 industrial developments near points of access or exit from the interstate highway system. The  
9 jurisdictional radius can be modified by demonstrated that local planning processes address  
10 issues of concern with development in interstate exits.

11

12 2. *Bill citation.* Sec. 1 adding 10 V.S.A. § 6001(3)(A)(xiii) (see p. 2).

13 3. *Proposed language.*

14 Sec. 1. 10 V.S.A. § 6001(3)(A)(xiii) is added to read:

15 (xiii) The construction of improvements for commercial or industrial use within 2000 feet of a  
16 point of access to or exit from the interstate highway system as measured from the midpoint of  
17 the interconnecting roadways, unless a regional planning commission has determined, at the  
18 request of the municipality where the interchange is located or any municipality with land in the  
19 2,000ft radius, that municipal ordinances or bylaws applicable to properties around the  
20 interchange:

21 (I) Ensure that planned development patterns will maintain the safety and function of the  
22 interchange area for all road users, including non-motorized, for example, by limiting curb cuts,  
23 and by sharing parking and access points and parcels will be interconnected to adjoining parcels  
24 wherever physically possible.

1 (II) Ensure that development will be undertaken in a way that preserves scenic characteristics  
2 both at and beyond the project site. This shall include a determination that site and building  
3 design fit the context of the area.

4 (III) Ensure that development does not destroy or compromise necessary wildlife habitat or  
5 endangered species.

6 (IV) The uses allowed in the area will not impose a burden on the financial capacity of a town or  
7 the state.

8 (V) Allowed land uses must be of a type, scale, and design that complement rather than compete  
9 with uses that exist in designated downtowns, village centers, growth centers, or other regional  
10 growth areas. Principle retail should be discouraged or prohibited in highway interchange areas.

11 (VII) Development in this area may not establish or contribute to a pattern of strip development.  
12 Where strip development already exists, development in this area must be infill that minimizes  
13 the characteristics of strip development.

14 (VIII) Site design must use space efficiently by siting buildings close together, minimizing paved  
15 services, locating parking to the side and rear, and minimizing the use of one story buildings.

16 (IX) The allowed uses, patterns of development, and aesthetics of development in these areas  
17 must conform with the regional plan.

18 (X) The allowed uses, patterns of development, and aesthetics of development in these areas  
19 must be consistent with the goals of 24 V.S.A. §4302.

20 \* \* \*

## 21 **II. Changes to Act 250 Criteria**

### 22 **A. Floodways and Flood Hazard Areas**

1 1. *Topic summary.*

2 This section proposes to amend Act 250 modernizing the definitions of “floodway” and  
3 “floodway fringe” to “flood hazard area” and “river corridor.” These terms, and the  
4 corresponding changes to the Act 250 criteria, are consistent with the way the Agency of Natural  
5 Resources permits and regulates river corridors. It also brings the language of the Act into  
6 greater alignment with historic precedent of the Environmental Board and Courts with respect to  
7 these criteria.

8  
9 2. *Bill citation.*

10 Sec. 1 amending 10 V.S.A. § 6001(6) and (7) (see p. 4); and Sec. 1 amending 10 V.S.A. §  
11 6086(a)(1)(D) (see p. 42).

12 3. *Proposed language.*

13 Sec. 1. 10 V.S.A. § 6001(6) and (7) are amended to read:

14 (6) “Flood Hazard Area” has the same meaning as in section 752 of this title~~“Floodway” means~~  
15 ~~the channel of a watercourse which is expected to flood on an average of at least once every 100~~  
16 ~~years and the adjacent land areas which are required to carry and discharge the flood of the~~  
17 ~~watercourse, as determined by the Secretary of Natural Resources with full consideration given~~  
18 ~~to upstream impoundments and flood control projects.~~

19 (7) “River Corridor” has the same meaning as in section 752 of this title~~“Floodway fringe” means~~  
20 ~~an area which is outside a floodway and is flooded with an average frequency of once or more in~~  
21 ~~each 100 years as determined by the Secretary of Natural Resources with full consideration given~~  
22 ~~to upstream impoundments and flood control projects.~~

23 Sec. 1. 10 V.S.A. § 6086(a)(1)(D) is amended to read:

24 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

25 \* \* \*

1 (a) Before granting a permit, the ~~District Commission~~ Board, shall find that the subdivision or  
2 development:

3 (1) Will not result in undue water or air pollution. In making this determination it shall at least  
4 consider: the elevation of land above sea level; and in relation to the flood plains, the nature of  
5 soils and subsoils and their ability to adequately support waste disposal; the slope of the land and  
6 its effect on effluents; the availability of streams for disposal of effluents; and the applicable  
7 Health and Environmental Conservation Department regulations.

8 \* \* \*

9 (D) ~~Floodways~~ Flood hazard areas; river corridors. A permit will be granted whenever it is  
10 demonstrated by the applicant that, in addition to all other applicable criteria:

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

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

## 19 **B. Changes to the Permit program for Rivers**

### 20 1. *Topic summary.*

21 This section proposes to change the scope of the rivers permit program. This section proposes  
22 that in November 2021, the Rivers program matches Act 250 jurisdiction and in November 2023  
23 that the permit program expands to highest priority river corridors that are mapped and  
24 established by rule.

1  
2 2. *Bill citation.*

3 Sec. 1 amending 10 V.S.A. § 754 (see p. 76)

4 3. *Proposed language.*

5 Sec. 3. 10 V.S.A. § 754 is amended to read:

6 § 754. FLOOD HAZARD AREA RULES; USES EXEMPT FROM MUNICIPAL

7 REGULATION

8 (a) Rulemaking authority.

9 (1) On or before November 1, 2014, the Secretary shall adopt rules pursuant to 3 V.S.A. chapter  
10 25 that establish requirements for the issuance and enforcement of permits applicable to:

11 (i) uses exempt from municipal regulation that are located within a flood hazard area or river  
12 corridor of a municipality that has adopted a flood hazard bylaw or ordinance under 24 V.S.A.  
13 chapter 117; and

14 (ii) State-owned and -operated institutions and facilities that are located within a flood hazard  
15 area or river corridor.

16 (2) On or before November 1, 2022, the Secretary shall adopt rules pursuant to 3 V.S.A. chapter  
17 25 that designate highest priority river corridors and establish requirements for the issuance and  
18 enforcement of permits applicable to uses located in highest priority river corridors. Highest  
19 priority river corridors are those that provide critical floodwater storage or are highly vulnerable  
20 to flood related erosion.

21 (3) The Secretary shall not adopt rules under this subsection that regulate agricultural activities  
22 without the consent of the Secretary of Agriculture, Food and Markets, provided that the  
23 Secretary of Agriculture, Food and Markets shall not withhold consent under this subdivision

1 when lack of such consent would result in the State's noncompliance with the National Flood  
2 Insurance Program.

3 ~~(4)~~ (3) The Secretary shall seek the guidance of the Federal Emergency Management Agency in  
4 developing and drafting the rules required by this section in order to ensure that the rules are  
5 sufficient to meet eligibility requirements for the National Flood Insurance Program.

6 \* \* \*

7 (d) General permit. The rules authorized by this section may establish requirements for a general  
8 permit to implement the requirements of this section, including authorization under the general  
9 permit to conduct a specified use subject to regulation under this section ~~exempt from municipal~~  
10 ~~regulation~~ without notifying or reporting to the Secretary or an agency delegated under  
11 subsection (g) of this section.

12 \* \* \*

13 (f)(1) Permit requirement.

14 (A) Beginning November 1, 2014, a A person shall not commence or conduct a use exempt from  
15 municipal regulation in a flood hazard area or river corridor in a municipality that has adopted a  
16 flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 or commence construction of  
17 a State-owned and -operated institution or facility located within a flood hazard area or river  
18 corridor, without a permit issued under the rules required under subsection (a) of this section by  
19 the Secretary or by a State agency delegated permitting authority under subsection (g) of this  
20 section. When an application is filed under this section, the Secretary or delegated State agency  
21 shall proceed in accordance with chapter 170 of this title;



1 (B) Beginning November 1, 2021, a person shall not commence construction on a development  
2 or subdivision that is subject to a permit under 10 V.S.A. chapter 151 without a permit issued  
3 pursuant under the rules required under subsection (a) of this section by the Secretary or by a  
4 State agency delegated permitting authority under subsection (g) of this section;

5 (C) Beginning November 1, 2023, a person shall not commence or conduct a use that is located  
6 in a highest priority river corridor without a permit issued pursuant under the rules required  
7 under subsection (a) of this section by the Secretary or by a State agency delegated permitting  
8 authority under subsection (g) of this section.

9 \* \* \*

## 10 C. Transportation

### 11 1. *Topic summary.*

12 This section is consistent with the 2019 Committee Bill and proposes to modify the Act 250  
13 Transportation criteria to expand consideration of impacts to low-carbon forms of transportation,  
14 such as bicycle, pedestrian and transit infrastructure.

15  
16 2. *Bill citation.* Sec. 1 amending 10 V.S.A. § 6086(a)(5) (see p. 43).

### 17 3. *Proposed language.*

18 Sec. 1. 10 V.S.A. § 6086(a)(5) is amended to read:

19 (5)(A) Transportation. Will not cause unreasonable congestion or unsafe conditions with respect  
20 to use of the highways; waterways; railways; airports and airways; bicycle, pedestrian and  
21 transit infrastructure; and other means of transportation existing or proposed.

22 (B) ~~As appropriate, will~~ Will incorporate transportation demand management strategies and  
23 provide safe access and connections to adjacent lands and facilities and to existing and planned  
24 pedestrian, bicycle, and transit networks and services. ~~In determining appropriateness under this~~

1 subdivision (B), the District Commission shall consider whether However, such a strategy,  
2 access, or connection ~~constitutes a measure~~ may be declined upon a finding that a reasonable  
3 person would ~~take~~ not undertake the measure given the type, scale, and transportation impacts of  
4 the proposed development or subdivision.

#### 5 **D. Development Affecting Municipal and Educational Services**

##### 6 1. *Topic summary.*

7 This section proposes to require that a municipality provide the Board with impacts to  
8 educational, municipal, and governmental services within 90 days of receiving notice. If the  
9 municipality fails to respond, it creates a presumption of compliance with the criteria.

10

11 2. *Bill citation.* Sec. 1 amending 10 V.S.A. § 6086(a)(6) and (7) (see p. 44).

##### 12 3. *Proposed language.*

13 Sec. 1. 10 V.S.A. § 6086(a)(6) and (7) are amended to read:

14 (6) Will not cause an unreasonable burden on the ability of a municipality to provide educational  
15 services. If a municipality fails to respond to a request by the Board within 90 days as to the  
16 impacts, they will be presumed not to have an unreasonable burden on educational services.

17 (7) Will not place an unreasonable burden on the ability of the local governments to provide  
18 municipal or governmental services. If a municipality fails to respond to a request by the Board  
19 within 90 days as to the impacts, they will be presumed not to have an unreasonable burden on  
20 municipal or governmental services.

#### 21 **E. Protection of Forest Blocks and Connecting Habitat**

##### 22 1. *Topic summary.*

23 This section proposes to expand the Act 250 Wildlife criteria to consider impacts to forest blocks  
24 and connecting habitat. Maintaining intact forest blocks and the network of habitat that connects  
25 them is a critical climate change adaptation strategy. Fragmentation of these landscape features  
26 is an emerging issue in Vermont and this change to criteria, along with the expanded jurisdiction

1 over new, long roads proposed in Sec. 1.B, above, will provide Act 250 with effective tools to  
2 address this issue.

3  
4 *2. Bill citation.*

5 Sec. 1 adding 10 V.S.A. § 6001(38) and (39) (see p. 9); Sec. 1 amending 10 V.S.A. § 6086(a)(8)  
6 (see page 44); and Sec 1 amending 10 V.S.A. § 6088 (see p. 56).

7 *3. Proposed language.*

8 Sec. 1. 10 V.S.A. § 6001(38) and (39) are added to read:

9 (38) “Connecting habitat” refers to land or water, or both, that links patches of habitat within a  
10 landscape, allowing the movement, migration, and dispersal of animals and plants and the  
11 functioning of ecological processes. A connecting habitat may include recreational trails and  
12 improvements constructed for farming, logging, or forestry purposes.

13 (39) “Forest block” means a contiguous area of forest in any stage of succession and not  
14 currently developed for nonforest use. A forest block may include recreational trails, wetlands, or  
15 other natural features that do not themselves possess tree cover and improvements constructed  
16 for farming, logging, or forestry purposes.

17 Sec. 1. 10 V.S.A. § 6086(a)(8) is amended to read:

18 (8) Ecosystem protection; scenic beauty; historic sites.

19 (A) Will not have an undue adverse effect on the scenic or natural beauty of the area; aesthetics;  
20 or historic sites; ~~or rare and irreplaceable natural areas.~~

21 (B)(A) Necessary wildlife habitat and endangered species. A permit will not be granted unless if  
22 it is demonstrated by ~~any party opposing~~ the applicant that a development or subdivision will not  
23 destroy or significantly imperil necessary wildlife habitat or any endangered species; ~~and or, if~~  
24 such destruction or imperilment will occur:

- 1 (i) the economic, social, cultural, recreational, or other benefit to the public from the  
2 development or subdivision will ~~not~~ outweigh the economic, environmental, or recreational loss  
3 to the public from the destruction or imperilment of the habitat or species; ~~or~~  
4 (ii) all feasible and reasonable means of preventing or lessening the destruction, diminution, or  
5 imperilment of the habitat or species have ~~not~~ been or will not continue to be applied; or  
6 (iii) a reasonably acceptable alternative site is not owned or controlled by the applicant that  
7 ~~which~~ would allow the development or subdivision to fulfill its intended purpose.

8 (C) Will not result in an undue adverse impact on forest blocks, connecting habitat, or rare and  
9 irreplaceable natural areas. If a project as proposed would result in an undue adverse impact a  
10 permit may only be granted if effects are avoided, minimized, and mitigated in accordance with  
11 rules adopted by the Board.

12 Sec. 1. 10 V.S.A. § 6088 is amended to read

13 § 6088. BURDEN OF PROOF

14 (a) The burden shall be on the applicant with respect to subdivisions 6086(a)(1), (2), (3),  
15 (4), (8)(B) and (C), (9), and (10) of this title.

16 (b) The burden shall be on any party opposing the applicant with respect to subdivisions  
17 6086(a)(5) through (8)(A) of this title to show an unreasonable or adverse effect.

## 18 **F. Development Affecting Public Investments**

### 19 *1. Topic summary.*

20 This section proposes to add conserved land and land receiving benefits from the Vermont  
21 Housing Conservation Board. This proposal does not include all the various state programs  
22 being considered by the Committee in its deliberations last session, and focuses on more tangible  
23 and defined state benefit programs. The omission of other benefit programs is not intended to  
24 foreclose the Board from considering them under this criteria in future cases.

25

26 *2. Bill citation.* Sec. 1 amending 10 V.S.A. § 6086(a)(9)(K) (see p. 47).

1 3. *Proposed language.*

2 Sec. 1. 10 V.S.A. § 6086(a)(9)(K) is amended to read:

3 (K) Development affecting public investments. A permit will be granted for the development or  
4 subdivision of lands adjacent to governmental and public utility facilities, services, and lands,  
5 including highways, airports, waste disposal facilities, office and maintenance buildings, fire and  
6 police stations, universities, schools, hospitals, prisons, jails, electric generating and transmission  
7 facilities, oil and gas pipe lines, parks, hiking trails, ~~and~~ forest and game lands, lands conserved  
8 under chapter 155 of this title, and facilities or lands receiving benefits through the Vermont  
9 Housing Conservation Board under chapter 15 of this title, when it is demonstrated that, in  
10 addition to all other applicable criteria, the development or subdivision will not unnecessarily or  
11 unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or  
12 materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or  
13 enjoyment of or access to the facility, service, or lands.

14 **G. Climate Change**

15 1. *Topic summary.*

16 This section proposes to modify Act 250 criteria to better address climate change from both a  
17 mitigation and adaptation perspective by requiring compliance with the residential stretch code  
18 and by requiring project design, layout, and materials adequate to withstand the effects of climate  
19 change now and into the future.

20

21 2. *Bill citation.*

22 Sec. 1 amending 10 V.S.A. § 6086(a)(9)(F) (see page 47); and Sec. 1 adding 10 V.S.A. §  
23 6086(a)(9)(M) (see page 48).

24 3. *Proposed language.*

25 Sec. X. 10 V.S.A. § 6086(a)(9)(F) is added to read:

1 (F) Energy conservation. A permit will be granted when it has been demonstrated by the  
2 applicant that, in addition to all other applicable criteria, the planning and design of the  
3 subdivision or development reflect the principles of energy conservation, including reduction of  
4 greenhouse gas emissions from the use of energy, and incorporate the best available technology  
5 for efficient use or recovery of energy. An applicant seeking an affirmative finding under this  
6 criterion shall provide evidence that the subdivision or development complies with the applicable  
7 building energy standards under 30 V.S.A. § 51 or 53, including the stretch code for residential  
8 buildings adopted pursuant to 30 V.S.A. §51(d).

9 Sec. 1. 10 V.S.A. § 6086(a)(9)(M) is added to read:

10 (M) Climate adaptation. The development or subdivision will employ building orientation, site  
11 and landscape design, and building design that are sufficient to enable the improvements to be  
12 sited and constructed, including buildings, roads, and other infrastructure, to withstand and adapt  
13 to the effects of climate change, including extreme temperature events, wind, and precipitation  
14 reasonably projected at the time of application.

## 15 H. Consistency with Local and Regional Plans

### 16 1. *Topic summary.*

17 This topic largely follows the Commission and Committee’s recommendations with respect to  
18 changes to criterion 10 under Act 250. It proposes that a municipal plan must be approved under  
19 24 V.S.A. § 4350 for consideration under the criteria. It also clarifies that consideration includes  
20 land use maps that are a part of local and regional plans. It further requires that a municipal plan  
21 meet the planning goals of 24 V.S.A. chapter 117. There were many other planning  
22 considerations that warranted additional dialogue but the stakeholders were unable to reach  
23 consensus on their scope. In response to this, a report and stakeholder process has been proposed  
24 in Sec. 11 of the bill (page 84).

### 25 2. *Bill citation.*

26

1 Sec. 1 amending 10 V.S.A. § 6086(a)(10) (see page 48); and Sec. 8 amending 24 V.S.A. § 4382  
2 (see page 82).

3 *3. Proposed language.*

4 Sec. 1. 10 V.S.A. § 6086(a)(10) is amended to read:

5 (10) Local plans. Is in conformance with any duly adopted local ~~or~~ plan that has been approved  
6 under 24 V.S.A. § 4350, regional plan, or capital program under 24 V.S.A. ~~chapter 117~~ § 4430.

7 In making this finding, ~~if:~~

8 (A) The Board shall require conformance with the land use maps contained in the local and  
9 regional plans and with the written provisions of those plans.

10 (B) The Board shall decline to apply a provision of a local or regional plan only if the Board  
11 determines that the provision does not afford a person of ordinary intelligence with a reasonable  
12 opportunity to understand what the provision directs, requires, or proscribes.

13 (C) If the ~~District Commission~~ Board finds applicable provisions of the town plan to be  
14 ambiguous, the ~~District Commission~~ Board, for interpretive purposes, shall consider bylaws, but  
15 only to the extent that they implement and are consistent with those provisions, and need not  
16 consider any other evidence.

17 Sec. 8. 24 V.S.A. § 4382 is amended to read:

18 § 4382. THE PLAN FOR A MUNICIPALITY

19 (a) A plan for a municipality ~~may~~ shall be consistent with the goals  
20 established in section 4302 of this title and compatible with approved plans of other  
21 municipalities in the region and with the regional plan and shall include the following:

22 \* \* \*

1 **IV. Act 250 Permit Conditions and Permit Process**

2 **A. Enhanced Participation / 30 day Notice Requirement**

3 1. *Topic summary.*

4 This section proposes a new advance notice requirement for Act 250 permit applications. The  
5 purpose of this section is to give the public, affected agencies, and the Board an opportunity to  
6 review the project before filing an application with the Board. It also gives the applicant the  
7 benefit of receiving comments on an application prior to filing, enabling the applicant to address  
8 issues before filing an application. The notice period is 30 days. It does not apply to  
9 administrative amendments. The Board is authorized to adopt rules to identify classes of  
10 projects that are normally reviewed as minor projects and not subject to the advance notice  
11 requirement.

12

13 2. *Bill citation.*

14 Sec. 1 amending 10 V.S.A. § 6084 (see page 32).

15 3. *Proposed language.*

16 Sec. 1. 10 V.S.A. § 6084 is amended to read:

17 § 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF REVIEW

18 (a) The plans for the construction of any development or subdivision subject to the permitting  
19 requirements of this subchapter must be submitted by the petitioner to the municipal and regional  
20 planning commissions, affected state agencies, and adjoining landowners no less than 30 days  
21 prior to filing an application under this chapter, unless the municipal and regional planning  
22 commissions and affected state agencies waive such requirement.

23 (1) The municipal or regional planning commission may take one or more of the following  
24 actions:

25 (A) Hold a public hearing on the proposed plans. The planning commission may request that the  
26 applicant attend the hearing. The applicant shall have an obligation to comply with such a  
27 request.



1 (B) Make recommendations to the applicant within 30 days of the petitioner's submittal to the  
2 planning commission under this subsection.

3 (C) Once the application is filed with the Board, make recommendations to the Board by the  
4 deadline for submitting comments or testimony set forth in the applicable provision of this  
5 section, Board rule, or scheduling order issued by the Board.

6 (2) The application shall address the substantive written comments related to the criteria of  
7 subsection 6086(a) of this title received by the petitioner within 30 days of the submittal made  
8 under this subsection and the substantive oral comments related to those criteria made at a public  
9 hearing under subdivision (1) of this subsection.

10 (3) This subsection shall not apply to projects that have been designated as using simplified  
11 procedures pursuant to 6025(b)(1) or which are administrative amendments.

12 \* \* \*

## 13 **B. Conditions on Forest Processing**

### 14 1. *Topic summary.*

15 This is the one area where the Administration and VNRC were unable to reach consensus. There  
16 is agreement with respect to the proposed changes in 6086(c)(2)(A) and (B) related to conditions  
17 on permitted hours of operation at forest processing facilities. The parties are near agreement  
18 with respect to the proposed changes in 6086(c)(3) related to permitted hours for delivery of  
19 wood that is used for heat. With respect to how forest processing facilities mitigate primary  
20 agricultural soils, VNRC and the Administration could not reach agreement and have proposed  
21 two alternatives for the committee.  
22

23 2. *Bill citation.* Sec. 1 adding 10 V.S.A. § 6001(40) and (41) (see page 9); Sec. 1 amending 10  
24 V.S.A. § 6086(c) (see page 49); and Sec. 1 adding 10 V.S.A. § 6093(c) (see page 63).

### 25 3. *Proposed language.*

26 Sec. X. 10 V.S.A. § 6001(39) and (40) are added to read:

1 (40) “Forest-based enterprise” means an enterprise that aggregates forest products from forestry  
2 operations and adds value through processing or marketing in the forest products supply chain or  
3 directly to consumers through retail sales. “Forest-based enterprise” includes sawmills; veneer  
4 mills; pulp mills; pellet mills; producers of firewood, woodchips, mulch and fuel wood; and log  
5 and pulp concentration yards. “Forest-based enterprise” does not include facilities that purchase,  
6 market, and resell finished goods, such as wood furniture, wood pellets, and milled lumber,  
7 without first receiving forest products from forestry operations.

8 (41) “Forest product” means logs, pulpwood, veneer wood, bolt wood, wood chips, stud wood,  
9 poles, pilings, biomass, fuel wood, maple sap, and bark.

10 Sec. 1. 10 V.S.A. § 6086(c) is amended to read:

11 (c) Permit conditions.

12 (1) A permit may contain such requirements and conditions as are allowable proper exercise of  
13 the police power and ~~which~~ that are appropriate within the respect to subdivisions (a)(1) through  
14 (10) of this section, including those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i),  
15 4463(b), and 4464, the dedication of lands for public use, and the filing of bonds to ~~insure~~ ensure  
16 compliance. The requirements and conditions incorporated from Title 24 may be applied whether  
17 or not a local plan has been adopted. General requirements and conditions may be established by  
18 rule of the ~~Natural Resources~~ Board.

19 (2) Permit conditions on a forest-based enterprise.

20 (A) A permit condition restricting a forest-based enterprise’s hours of operation shall only be  
21 imposed when the absence the condition would result in an impact under the criteria pursuant to  
22 subdivision (a)(1), (5), or (8) of this section.

1 (B) Permits issued for a forest-based enterprise shall allow the enterprise to ship and receive  
2 forest products, including delivery from the forestry operation to the enterprise, during hours  
3 outside permitted hours of operation, including nights, weekends, and holidays, for a minimum  
4 of 60 days per year unless there would be an impact under the criteria pursuant to subdivision  
5 (a)(1) or (5) of this section.

6 (C) In making a determination for conditions under this subdivision (2) as to whether an impact  
7 exists, the Board shall consider the benefits to forests, forest resources resulting from the forest-  
8 based enterprise, and the impact to the operation of the forest-based enterprise that would result  
9 from a condition and conditions shall impose the minimum restriction necessary to address the  
10 undue adverse impact.

11 (3) Permit conditions on the delivery of wood fuels used for heat. Permits issued for a forest-  
12 based enterprise that produces wood chips, pellets, cord wood, and other fuel wood used for heat  
13 shall authorize the shipment from the enterprise of wood heat fuels to the end user during hours  
14 outside permitted hours of operation, including nights, weekends, and holidays from October 1  
15 through April 30 of each year.

16 (4) Forest-based enterprises holding a permit may request an amendment to existing permit  
17 conditions related to hours of operation and seasonal restrictions to be consistent with  
18 subdivisions (2) and (3) of this subsection. Requests for condition amendments under this  
19 subsection shall not be subject to Act 250 Rule 34E.

20 Sec. 1. 10 V.S.A. § 6093 amended to read:

21 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

22 \* \* \* Alternative 1 \* \* \*

1 (c) Mitigation and offsets for forest-based enterprises. Notwithstanding any provision of this  
2 chapter to the contrary, a conversion of primary agricultural soils by a forest-based enterprise  
3 permitted under this chapter shall:

4 (1) entitled to a ratio of 1:1 protected acres to acres of affected primary agricultural soil; and

5 (2) be allowed to mitigate impacts to primary agricultural soil by:

6 (A) paying a mitigation fee computed according to the provisions of subdivision (1) of this  
7 subsection (a); or

8 (B) in accordance with a methodology developed by the Commissioner of Forests, Parks, and  
9 Recreation, show that the forest based enterprise will offset the impacts to primary agricultural  
10 soils through conservation of an equivalent or greater acreage of forested area.

11 \* \* \*Alternative 2 \* \* \*

12 (c) Mitigation and offsets for forest-based enterprises. Notwithstanding any provision of this  
13 chapter to the contrary, a conversion of primary agricultural soils by a forest-based enterprise  
14 permitted under this chapter shall be entitled to a ratio of 1:1 protected acres to acres of affected  
15 primary agricultural soil.

## 16 **C. Presumptions for ANR permits in Act 250 Proceedings**

### 17 *1. Topic summary.*

18 Currently, State permits receive a presumption in Act 250 if the Natural Resources Board adopts  
19 those permit programs in a rule as having a presumption. This section proposes to make all  
20 permits have a presumption automatically without adoption in a rule. This does not affect the  
21 treatment of municipal permits before the Board. It also does not alter the weight of the  
22 presumption given to State permits.

### 24 *2. Bill citation.*

25 Sec. 1 amending 10 V.S.A. § 6086(d) (see page 50).

1 3. *Proposed language.*

2 Sec. 1. 10 V.S.A. § 6086(d) is amended to read:

3 (d) State and local permits; presumptions.

4 (1) State permits.

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

9 (B) In the case of permits issued by the Agency of Natural Resources, technical determinations  
10 of the Agency shall be accorded substantial deference by the Board.

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

14 (2) Municipal permits.

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

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

1 (C) The acceptance of such approval, positive determinations, permit, or permits shall create a  
2 presumption that the application is not detrimental to the public health and welfare with respect  
3 to the specific requirement for which it is accepted. ~~In the case of approvals and permits issued~~  
4 ~~by the Agency of Natural Resources, technical determinations of the Agency shall be accorded~~  
5 ~~substantial deference by the Commissions.~~ The acceptance of negative determinations issued by  
6 a development review board under the provisions of 24 V.S.A. § 4420, with respect to local Act  
7 250 review of municipal impacts shall create a presumption that the application is detrimental to  
8 the public health and welfare with respect to the specific requirement for which it is accepted.  
9 Any determinations, positive or negative, under the provisions of 24 V.S.A. § 4420 shall create  
10 presumptions only to the extent that the impacts under the criteria are limited to the municipality  
11 issuing the decision. ~~Such a rule may be revoked or amended pursuant to the procedures set forth~~  
12 ~~in 3 V.S.A., chapter 25, the Vermont Administrative Procedure Act.~~

13 (3) Rulemaking. The Board shall adopt rules to administer the requirements of this subsection.

14 The rules adopted by the Board shall not approve the acceptance of a permit or approval of such  
15 an agency or a permit of a municipal government unless it satisfies the appropriate requirements  
16 of 14 subsection (a) of this section.

17 \* \* \*

18  
19 **D. Act 250 Permit Fees; Industrial Parks**

20 1. *Topic summary.*

21 This section clarifies the existing process to waive or reduce Act 250 application fees for  
22 development in Industrial Parks where a master plan has been completed. Master planning at  
23 industrial parks allows for an up front and comprehensive review of all potential site constraints  
24 and impacts, which makes the review of individual construction permit applications simpler,

1 faster and more predictable. Clarifying that a fee waiver is available for construction permits in  
2 Industrial Parks where master planning has occurred, will encourage master planning at these  
3 sites.

4  
5 *2. Bill citation.*

6 Sec. 1 amending 10 V.S.A. § 6083a(a)(5) and (f) (see page 29 and 31).

7 *3. Proposed language.*

8 Sec. 1. 10 V.S.A. § 6083a(a)(5) and (f) are amended to read:

9 (5) For projects involving the review of a master plan, the fee established in subdivision (1) of  
10 this section shall be due for any portion of the proposed project for which construction approval  
11 is sought and a fee equivalent to \$0.10 per \$1,000.00 of total estimated construction costs in  
12 current dollars in addition to the fee established in subdivision (1) of this subsection for any  
13 portion of the project seeking construction approval shall be due for all other portions of the  
14 proposed project. If construction approval is sought in future permit applications, the fee  
15 established in subdivision (1) of this subsection shall be due, except to the extent that it is waived  
16 pursuant to subsection (f) of this section.

17 amended to read:

18 ~~(f) In the event that an application involves a project or project impacts that previously have been~~  
19 ~~reviewed, the~~ An applicant may petition in writing the Chair of the Board District Commission to  
20 waive all or part of the application fee. If an application fee was paid previously in accordance  
21 with subdivisions (a)(1) through (4) of this section, the Chair may waive all or part of the fee for  
22 a new or revised project if the Chair finds that the impacts of the project have been reviewed in  
23 an applicable master permit application, or that the project is not significantly altered from a  
24 project previously reviewed, or that there will be substantial savings in the review process due to

1 ~~the scope of review of the previous applications.~~ In reviewing this petition, the Board shall  
2 consider the following:

3 (A) Whether a portion of the project's impacts have been reviewed by the Board in a previous  
4 permit.

5 (B) Whether the project is being reviewed as a major application, minor application, or  
6 administrative amendment.

7 (C) Whether the applicant relies on any presumptions permitted under subsection 6086(d) of this  
8 title and has, at the time of the permit application, already obtained the permits necessary to  
9 trigger such presumptions. If a presumption is rebutted, the Board may require the applicant to  
10 pay the previously waived fee.

11 (D) Whether the applicant has engaged in any preapplication planning with the district  
12 coordinator that will result in a decrease in the amount of time the Board will have to consider  
13 the application.

14 (2) The Board shall issue a written decision in response to any application for a fee waiver. The  
15 written decision shall address each of the factors in subdivision (1) of this subsection.

16 (3) If the classification of an application is changed from an administrative amendment or minor  
17 application to a major application, the Board may require the applicant to pay the previously  
18 waived fee.

## 19 **IV. Enhanced Natural Resources Board**

### 20 **A. Enhanced Natural Resources Board**

21 1. *Topic summary.*

22 This section proposes:



- 1 a. The creation of a professional natural resources board (Board) consisting of a chair, two  
2 permanent members, and two regional commissioners. The two regional commissioners are  
3 from the area where the project is located and sit on the Board to make factual findings with  
4 respect to a case. The bill proposes that the Board members have experience in land use, natural  
5 resources, economic development, or environmental justice areas. The bill also directs the  
6 Governor when making selections to the Board to consider gender, racial, and economic  
7 diversity in the appointment process.
- 8 b. The chair and two permanent board members are independent and the structure is designed to  
9 be insulated from political interference. The chair and two members are selected using the  
10 judicial nominating committee. All board members, including regional commissioners, serve six  
11 year terms and are removable only for cause and are subject to increased ethical standards.
- 12 c. All Act 250 applications would be filed with administrative districts. Administrative districts  
13 would make jurisdictional opinions; make determinations as to whether an application was a  
14 major, minor, or administrative amendment; and issue permit decisions (and amendments) for  
15 administrative amendments and minor permits. Decisions by the administrative district would be  
16 made by the district coordinator.
- 17 d. The Board would have original jurisdiction over contested cases for major permit application  
18 review. Hearings for major applications would need to be held in the location where the project  
19 is located unless the parties agree to an alternate location. Hearings would need to be open and  
20 accessible to the public. The Board would also have original jurisdiction over all for cause permit  
21 amendments or permit revocations. The Board would have appellate jurisdiction over  
22 jurisdictional opinions; downtown board designations of designated downtowns and new  
23 neighborhood areas; and regional planning commission approvals of municipal plans and review  
24 of municipal zoning ordinances for purposes of interstate exit jurisdiction. When rendering a  
25 decision, the regional commissioners would be voting members on factual issues but not on Act  
26 250 policy or legal interpretations. This is to provide a regional perspective as to the project but  
27 also consistency to Act 250 policy regardless of where the project is located.
- 28 e. Appeals from the Board are directly to the Supreme Court, in the same manner that the  
29 previous environmental board decisions were directly appealed.

30

31 *2. Bill citation.*

32 Sec. 1 amending 10 V.S.A. §§ 6021 (see p.12), 6025, (see p. 15), 6026 (see p. 16), 6027 (see p.  
33 18), 6084 (see p. 32), 6087 (see p. 56) and 6089 (see p. 57).

34 *3. Proposed language.*

35 Sec. 1. 10 V.S.A. § 6021 is amended to read:

36 § 6021. BOARD; VACANCY, REMOVAL

37 (a) A Natural Resources Board is created.

- 1 (1) The Board shall consist of a Chair, two members, and two regional commissioners. Members  
2 of the Board and regional commissioners shall not be required to be admitted to the practice of  
3 law in this State. ~~five members appointed by the Governor, with the advice and consent of the~~  
4 Senate, so that one appointment expires in each year. In making these appointments, Governor  
5 and the Senate shall give consideration to experience, expertise, or skills relating to the  
6 environment or land use the
- 7 (A) The Chair of the Board shall be nominated, appointed, and confirmed in the manner of a  
8 Superior judge.
- 9 (B) With respect to the two permanent members of the board, whenever a vacancy occurs, public  
10 announcement of the vacancy shall be made. The Governor shall submit at least five names of  
11 potential nominees to the Judicial Nominating Board for review. The Judicial Nominating Board  
12 shall review the candidates in respect to judicial criteria and standards only and shall recommend  
13 to the Governor those candidates the Board considers qualified. The Governor shall make the  
14 appointment from the list of qualified candidates. The appointment shall be subject to the  
15 consent of the Senate.
- 16 (C) With respect to a regional commissioner, the Governor shall appoint two commissioners and  
17 one alternate for each administrative district established under section 6026 of this title. When  
18 making these selections, the Governor shall give preference to former Environmental Board,  
19 Natural Resources Board, or District Commission members.
- 20 (D) A member wishing to succeed himself or herself in office may seek reappointment under the  
21 terms of this section.

1 (E) When making and confirming appointments under this section the Governor and the Senate

2 shall give consideration to:

3 (i) experience, expertise, or skills relating to the environmental science, natural resources law

4 and policy, land use planning, community development, racial equity, or environmental justice.

5 (ii) the overall membership of the Board to ensure that it includes racial, ethnic, gender, and

6 economic diversity.

7 ~~(A)~~ (F) The Governor shall appoint a chair and two permanent members of the Board, a position

8 ~~that shall be a full-time position~~ positions.

9 ~~(B)~~ (G) Following initial appointments, the chair, the members, and regional commissioners;

10 ~~except for the Chair,~~ shall be appointed for terms of four six years.

11 (H) Notwithstanding 3 V.S.A. § 2004, or any other provision of law, the Chair, two members of

12 the Board, and regional commissioners may be removed only for cause.

13 (I) When the chair, a board member or a regional commissioner who hears all or a substantial

14 part of a case retires from office before such case is completed, he or she shall remain a member

15 of the Board for the purpose of concluding and deciding such case, and signing the findings,

16 orders, decrees, and judgments therein. A retiring chair shall also remain a member for the

17 purpose of certifying questions of law if appeal is taken. For such service, he or she shall receive

18 a reasonable compensation to be fixed by the remaining members of the Board and necessary

19 expenses while on official business.

20 (J) A case shall be deemed completed when the Board enters a final order therein even though

21 such order is appealed to the Supreme Court and the case remanded by that Court to the Board.

1 Upon remand the Board then in office may in its discretion consider relevant evidence including  
2 any part of the transcript of testimony in the proceedings prior to appeal.

3 (K) The Chair shall have general charge of the offices and employees of the Board.

4 ~~(2) The Governor shall appoint up to five persons, with preference given to former~~  
5 ~~Environmental Board, Natural Resources Board, or District Commission members, with the~~  
6 ~~advice and consent of the Senate, to serve as alternates for Board members.~~

7 ~~(A) Alternates shall be appointed for terms of four years, with initial appointments being~~  
8 ~~staggered.~~

9 ~~(B) The Chair of the Board may assign alternates to sit on specific matters before the Board, in~~  
10 ~~situations where fewer than five members are available to serve.~~

11 (b) Any vacancy occurring in the membership of the Board shall be filled by the Governor for  
12 the unexpired portion of the term.

13 (c) Hearing officers. One Board member or any officer or employee of the Board duly appointed  
14 by the Chair of the Board may inquire into and examine any matter within the jurisdiction of the  
15 Board.

16 (1) A hearing officer may hold any hearing on any matter within the jurisdiction of the Board.

17 (2) Hearings conducted by a hearing officer shall be in accordance with 3 V.S.A. §§ 809–814. A  
18 hearing officer may administer oaths and exercise the powers of the Board necessary to hear and  
19 determine a matter for which the officer was appointed. A hearing officer shall report his or her  
20 findings of fact in writing to the Board in the form of a proposal for decision. A copy shall be  
21 served upon the parties pursuant to 3 V.S.A. § 811. However, judgment on those findings shall  
22 be rendered only by a majority of the Board.

1 \* \* \*

2 Sec. 1. 10 V.S.A. § 6025 is amended to read:

3 § 6025. RULES

4 (a) The Board may adopt rules of procedure for the administration of this chapter itself and the  
5 District Commissions. When adopting rules of procedure under this subsection, the Board shall  
6 make reasonable efforts that the processes maximize pro se participation.

7 \* \* \*

8 Sec. 1. 10 V.S.A. § 6026 is amended to read:

9 § 6026. ~~DISTRICT COMMISSIONERS~~ ADMINISTRATIVE DISTRICTS

10 (a) For the purposes of the administration of this chapter, the State is divided into five ~~nine~~  
11 administrative districts.

12 (1) District No. 1, comprising Bennington and Rutland Counties ~~administrative district 1 as~~  
13 ~~provided in 3 V.S.A. § 4001.~~

14 (2) District No. 2, comprising Orange, Windsor, and Windham Counties ~~administrative district 2~~  
15 ~~as provided in 3 V.S.A. § 4001.~~

16 (3) District No. 3, comprising Caledonia, Essex, and Orleans Counties ~~administrative district 3 as~~  
17 ~~provided in 3 V.S.A. § 4001.~~

18 (4) District No. 4, comprising Addison and Chittenden Counties ~~administrative district 4 as~~  
19 ~~provided in 3 V.S.A. § 4001, excluding the towns of Addison, Bridport, Bristol, Cornwall,~~  
20 ~~Ferrisburgh, Goshen, Leicester, Lincoln, Middlebury, Monkton, New Haven, Orwell, Panton,~~  
21 ~~Ripton, Salisbury, Shoreham, Starksboro, Vergennes, Waltham, Weybridge, and Whiting.~~

1 (5) District No. 5, comprising Lamoille and Washington Counties administrative district 5 as  
2 provided in 3 V.S.A. § 4001.

3 (6) District No. 6, comprising Franklin and Grand Isle Counties administrative district 6 as  
4 provided in 3 V.S.A. § 4001.

5 ~~(7) District No. 7, comprising administrative district 7 as provided in 3 V.S.A. § 4001.~~

6 ~~(8) District No. 8, comprising administrative district 8 as provided in 3 V.S.A. § 4001.~~

7 ~~(9) District No. 9, comprising the towns of Addison, Bridport, Bristol, Cornwall, Ferrisburg,  
8 Goshen, Leicester, Lincoln, Middlebury, Monkton, New Haven, Orwell, Panton, Ripton,  
9 Salisbury, Shoreham, Starksboro, Vergennes, Waltham, Weybridge, and Whiting.~~

10 ~~(b) A District Environmental Commission is created for each district. Each District Commission  
11 shall consist of three members from that district appointed in the month of February by the  
12 Governor so that two appointments expire in each odd-numbered year. Two of the members shall  
13 be appointed for a term of four years, and the Chair (third member) of each District shall be  
14 appointed for a two-year term. In any district, the Governor may appoint not more than four  
15 alternate members from that district whose terms shall not exceed two years, who may hear any  
16 case when a regular member is disqualified or otherwise unable to serve.~~

17 ~~(c) Members shall be removable for cause only, except the Chair who shall serve at the pleasure  
18 of the Governor.~~

19 ~~(d) Any vacancy shall be filled by the Governor for the unexpired period of the term.~~

20 Sec. 1. 10 V.S.A. § 6027 is amended to read:

21 § 6027. POWERS

- 1 (a) The Board ~~and District Commissions each~~ shall have the power, with respect to any matter  
2 within its jurisdiction, to:
- 3 (1) administer oaths, take depositions, subpoena and compel the attendance of witnesses, and  
4 require the production of evidence;
- 5 (2) allow parties to enter upon lands of other parties for the purposes of inspecting and  
6 investigating conditions related to the matter before the Board ~~or Commission~~;
- 7 (3) enter upon lands for the purpose of conducting inspections, investigations, examinations,  
8 tests, and site evaluations as it deems necessary to verify information presented in any matter  
9 within its jurisdiction;
- 10 (4)(A) authorize itself or the Agency of Agriculture, Food, and Markets, Agency of Commerce  
11 and Community Development, Agency of Natural Resources or Agency of Transportation to  
12 retain legal counsel, official stenographers, expert witnesses, advisors, temporary employees, and  
13 other research, scientific, or engineering services in addition to its regular personnel for a  
14 specific proceeding. With respect to the Agencies, additional personal may be retained only after  
15 approval of the Governor and after notice to the applicant. The Agency retaining the additional  
16 personnel shall fix the amount of compensation and expenses to be paid to the personnel retained  
17 under this subdivision. Costs of additional personnel obtained under this subdivision may be  
18 allocated to the applicant by the Agency or the Board.
- 19 (B) authorize the Agency of Agriculture, Food, and Markets, Agency of Commerce and  
20 Community Development, Agency of Natural Resources or Agency of Transportation to allocate  
21 the portion of its costs and expenses to the applicant of the costs of regular employees

1 participating in the proceeding. The costs of regular employees shall be computed on the basis of  
2 working days within the salary period.

3 (C) with respect to costs and expenses allocated to an applicant under subdivisions (A) and (B)  
4 of this subdivision, the Board shall, upon petition of an applicant to which costs are proposed to  
5 be allocated, review and determine, after opportunity for hearing, having due regard for the size  
6 and complexity of the project, the necessity and reasonableness of such costs, and may amend or  
7 revise such allocations. Nothing in this section shall confer authority on the Board to select or  
8 decide the personnel, the expenses of whom are being allocated, unless such personnel are  
9 retained by the Board. Prior to allocating costs, the Board shall make a determination of the  
10 purpose and use of the funds to be raised hereunder, identify the recipient of the funds, provide  
11 for allocation of costs to the applicant, indicate an estimated duration of the retention of  
12 personnel whose costs are being allocated, and estimate the total costs to be imposed. With the  
13 approval of the Board, such estimates may be revised as necessary. From time to time during the  
14 progress of the work of such additional personnel, the agency retaining the personnel shall render  
15 to the applicant detailed statements showing the amount of money expended or contracted for in  
16 the work of such personnel, which statements shall be paid by the applicant into the State  
17 Treasury at such time and in such manner as the agency may reasonably direct; and

18 (5) apply for and receive grants from the federal government and from other sources.

19 (b) The Board shall have the powers of a court of record in the determination and adjudication of  
20 all matters over which it is given jurisdiction. It may render judgments, make orders and decrees,  
21 and enforce the same by any suitable process issuable by courts in this State. The Board shall



1 have an official seal on which shall be the words, "State of Vermont. Natural Resources Board.  
2 Official Seal."

3 (c) The Board shall allow all members of the public to attend each of its hearings unless the  
4 hearing is for the sole purpose of considering information to be treated as confidential pursuant  
5 to a protective order duly adopted by the Board.

6 (1) The Board shall make all reasonable efforts to ensure that the location of each hearing is  
7 sufficient to accommodate all members of the public seeking to attend.

8 (2) The Board shall ensure that the public may safely attend the hearing, including obtaining  
9 such resources as may be necessary to fulfill this obligation.

10 (d) The Board shall hear all matters within its jurisdiction and make its findings of fact. It shall  
11 state its rulings of law when they are excepted to. Upon appeal to the Supreme Court, its findings  
12 of fact shall be accepted unless clearly erroneous. In all proceedings, questions of law shall be  
13 decided by the Chair and the two members. Questions of fact shall be decided by the Board,  
14 including the regional commissioners. Mixed questions of law and fact shall be deemed to be  
15 questions of law. The Chair alone shall decide which are questions of law, questions of fact, and  
16 mixed questions of law and fact. Written or oral stipulations of fact submitted by the parties shall  
17 establish the facts related therein, except that the Chair, in his or her discretion, may order a  
18 hearing on any such stipulated fact. Neither the decision of the Chair under this subsection nor  
19 participation by a regional commissioner in a ruling of law shall be grounds for reversal unless a  
20 party makes a timely objection and raises the issue on appeal.

21 ~~(e)~~ (e) The Natural Resources Board may designate or establish such regional offices as it deems  
22 necessary to implement the provisions of this chapter and the rules adopted hereunder. The

1 Natural Resources Board may designate or require a regional planning commission to receive  
2 applications, provide administrative assistance, perform investigations, and make  
3 recommendations.

4 ~~(d) At the request of a District Commission, if~~ (f) If the Board Chair determines that the  
5 workload in ~~the requesting~~ an administrative district is likely to result in unreasonable delays ~~or~~  
6 ~~that the requesting District Commission is disqualified to hear a case,~~ the Chair may authorize  
7 ~~the District Commission~~ of another district to ~~sit in the requesting district~~ to consider one or  
8 more applications.

9 ~~(e) The Natural Resources~~ (g) The Board may by rule allow joint hearings to be conducted with  
10 specified State agencies or specified municipalities.

11 ~~(f)~~ (h) The Board may publish or contract to publish annotations and indices of ~~the decisions of~~  
12 ~~the Environmental Division~~ its decisions, and the text of those decisions. The published product  
13 shall be available at a reasonable rate to the general public and at a reduced rate to libraries and  
14 governmental bodies within the State.

15 ~~(g)~~ (i) The Natural Resources Board shall manage the process by which land use permits are  
16 issued under section 6086 of this title, may initiate enforcement on related matters, under the  
17 provisions of chapters 201 and 211 of this title, and may ~~petition the Environmental Division for~~  
18 , consistent with rules adopted by the Board, hear petitions for revocation of land use permits  
19 issued under this chapter. Grounds for revocation are:

20 (1) noncompliance with this chapter, rules adopted under this chapter, or an order that is issued  
21 that relates to this chapter;

22 (2) noncompliance with any permit or permit condition;

1 (3) failure to disclose all relevant and material facts in the application or during the permitting  
2 process;

3 (4) misrepresentation of any relevant and material fact at any time;

4 (5) failure to pay a penalty or other sums owed pursuant to, or other failure to comply with, court  
5 order, stipulation agreement, schedule of compliance, or other order issued under Vermont  
6 statutes and related to the permit; or

7 (6) failure to provide certification of construction costs, as required under subsection 6083a(a) of  
8 this title, or failure to pay supplemental fees as required under that section.

9 ~~(h) The Natural Resources Board may hear appeals of fee refund requests under section 6083a of~~  
10 ~~this title.~~

11 ~~(i) The Chair, subject to the direction of the Board, shall have general charge of the offices and~~  
12 ~~employees of the Board and the offices and employees of the District Commissions.~~

13 ~~(j) The Natural Resources Board may participate as a party in all matters before the~~  
14 ~~Environmental Division that relate to land use permits issued under this chapter.~~

15 ~~(k) [Repealed.]~~

16 ~~(j)(4) A District Commission~~ The Board may reject an application under this chapter that  
17 misrepresents any material fact and may after notice and opportunity for hearing award  
18 reasonable attorney's fees and costs to any party or person who may have become a party but for  
19 the false or misleading information or who has incurred attorney's fees or costs in connection  
20 with the application.

21 ~~(m)~~ (k) After notice and opportunity for hearing, a ~~District Commission~~ the Board may withhold  
22 a permit or suspend the processing of a permit application for failure of the applicant to pay costs

1 assessed under 3 V.S.A. § 2809 related to the participation of the Agency of Natural Resources  
2 in the review of the permit or permit application.

3 (l) The Board may delegate authority to district coordinators determinations as to whether  
4 applications are minor or major permits, minor permit and minor amendment decisions,  
5 administrative amendments, and any additional authority to district coordinators necessary for  
6 the effective administration of this chapter.

7 Sec. 1. 10 V.S.A. § 6084 is amended to read:

8 § 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF REVIEW

9 \* \* \*

10 ~~(b) On or before the date of~~ Upon the filing of an application with the ~~District Commission~~  
11 ~~Board,~~ the applicant ~~Board~~ shall send notice by electronic means ~~and a copy of the initial~~  
12 application to the owner of the land if the applicant is not the owner; the municipality in which  
13 the land is located; the municipal and regional planning commissions for the municipality in  
14 which the land is located; the Vermont Agency of Natural Resources; and any adjacent Vermont  
15 municipality and municipal and regional planning commission if the land is located on a  
16 municipal or regional boundary. The applicant shall furnish to the ~~District Commission~~ Board  
17 ~~the names of those furnished notice by affidavit, and shall post~~ send by electronic means, a copy  
18 of the notice ~~in~~ to the town clerk's office of the town or towns in which the project lies. The town  
19 clerk shall post the notice in the town office. The applicant shall also provide a list of adjoining  
20 landowners to the ~~Board~~ District Commission. Upon request and for good cause, the ~~District~~  
21 ~~Commission~~ Board may authorize the applicant to provide a partial list of adjoining landowners  
22 in accordance with Board rules.

1 ~~(b)(c)~~ Upon an application being ruled complete, the ~~District Commission~~ Board shall determine  
2 whether to process the application as a major application ~~with a required public hearing and~~  
3 transferred to the Board for review or process the application as a minor application ~~with the~~  
4 potential for a public hearing in accordance with Board rules.

5 (1) For major applications, the ~~District Commission~~ Board shall provide notice not less than 10  
6 days prior to any scheduled hearing or prehearing conference to: the applicant; the owner of the  
7 land if the applicant is not the owner; the municipality in which the land is located; the municipal  
8 and regional planning commissions for the municipality in which the land is located; any  
9 adjacent Vermont municipality and municipal and regional planning commission if the land is  
10 located on a municipal or regional boundary; adjoining landowners as deemed appropriate by the  
11 ~~District Commission~~ Board pursuant to ~~the its rules of the Board~~, and any other person the  
12 ~~District Commission~~ Board deems appropriate.

13 (2) For minor applications, the ~~District Commission~~ administrative district shall provide notice  
14 of the commencement of application review to the persons listed in subdivision (1) of this  
15 subsection.

16 (3) For both major and minor applications, ~~the District Commission shall also provide such~~  
17 notice and a copy of the application shall be provided to: ~~the Board and~~ any affected State  
18 agency, and with respect to minor applications the Board; the solid waste management district in  
19 which the land is located, if the development or subdivision constitutes a facility pursuant to  
20 subdivision 6602(10) of this title; and any other municipality, State agency, or person the ~~District~~  
21 ~~Commission~~ reviewing entity deems appropriate.

1 ~~(e)~~(d) Anyone required to receive notice of commencement of minor application review pursuant  
2 to subsection ~~(c)~~(b) of this section may request that an application be treated as a major a hearing  
3 by filing a request within the public comment period specified in the notice pursuant to Board  
4 rules. The ~~District Commission~~ Board, on its own motion, may order ~~a hearing~~ that an  
5 application be treated as a major and transferred to it within 20 days of notice of commencement  
6 of minor application review.

7 ~~(d)~~(e) Any hearing or prehearing conference for a major application shall be held within 40 days  
8 of receipt of a complete application; or within 20 days of the end of the public comment period  
9 specified in the notice of minor application review if the ~~District Commission~~ Board determines  
10 that it is appropriate to treat the application as a major application ~~hold a hearing for a minor~~  
11 ~~application.~~ Any hearing required shall be held in the municipality where the project is located  
12 unless the parties agree to an alternate location. When conducting hearings and prehearing  
13 conferences, the Board shall exercise reasonable flexibility with its rules of procedure and of  
14 evidence to maximize pro se participation while ensuring the fairness of the proceeding.

15 \* \* \*

16 Sec. 1. 10 V.S.A. § 6087 is amended to read:

17 § 6087. ~~DENIAL OF APPLICATION~~ FINAL DECISION ON PERMITS

18 (a) No application shall be denied by the Board ~~District Commission~~ unless it finds the proposed  
19 subdivision or development detrimental to the public health, safety, or general welfare.

20 (b) A permit may not be denied solely for the reasons set forth in subdivisions 6086(a)(5), (6),  
21 and (7) of this title. However, reasonable conditions and requirements allowable in subsection  
22 6086(c) of this title may be attached to alleviate the burdens created.

1 (c) A denial of a permit shall contain the specific reasons for denial. A person may, within six  
2 months, apply for reconsideration of his or her permit which application shall include an  
3 affidavit to the Board District Commission and all parties of record that the deficiencies have  
4 been corrected. The Board District Commission shall hold a new hearing upon 25 days notice to  
5 the parties. The hearing shall be held within 40 days of receipt of the request for reconsideration.

6 (d) The Board may deny an application without prejudice if the applicant fails to respond to an  
7 incomplete determination or recess order within six months of its issuance.

8 (e) When making a final determination with respect to a minor application, an administrative  
9 district shall apply precedent from the Board when rendering its final decision.

10 Sec. 1. 10 V.S.A. § 6089 is amended to read:

11 § 6089. APPEALS

12 (a) Appeals of certain actions to the Natural Resources Board.

13 (1) Applicability. The following acts or decisions are appealable de novo to the Board:

14 (A) A jurisdictional opinion issued by a district coordinator;

15 (B) A determination that an application is a minor application or administrative amendment by a  
16 district coordinator;

17 (C) A determination by a regional planning commission with respect to the scope of Act 250  
18 jurisdiction pursuant to subdivision 6001(3)(A)(xiii);

19 (D) A determination by a regional planning commission that a municipal plan is consistent with  
20 the regional plan pursuant to 24 V.S.A. § 4350;

21 (E) A determination by the downtown development board designating a downtown development  
22 district or neighborhood development district pursuant to 24 V.S.A. chapter 76A.

1 (2) Procedure.

2 (A) An appeal under this subsection may be brought by any person aggrieved as defined in 10  
3 V.S.A. § 8502(7).

4 (B) A notice of appeal must be filed within 30 days of the act or decision.

5 (C) The Board shall conduct all appeals under this section as contested cases pursuant to 3  
6 V.S.A. chapter 25 and procedural rules adopted by the Board.

7 (b) Appeals of decisions of the Board. A party to a cause who feels aggrieved by the final order,  
8 judgment, or decree of the Board may appeal to the Supreme Court. However, the Board, in its  
9 discretion and before final judgment, may permit an appeal to be taken by any party to the  
10 Supreme Court for determination of questions of law in such manner as the Supreme Court may  
11 by rule provide for appeals before final judgment from a Superior Court. Notwithstanding the  
12 provisions of the Vermont Rules of Civil Procedure or the Vermont Rules of Appellate  
13 Procedure, neither the time for filing a notice of appeal nor the filing of a notice of appeal, as  
14 provided herein, shall operate as a stay of enforcement of an order of the Board unless the Board  
15 or the Supreme Court grants a stay under the provisions of section 14 of this title.

16 ~~Appeals of any act or decision of a District Commission under this chapter or a district~~  
17 ~~coordinator under subsection 6007(c) of this title shall be made to the Environmental Division in~~  
18 ~~accordance with chapter 220 of this title. For the purpose of this section, a decision of the Chair~~  
19 ~~of a District Commission under section 6001e of this title on whether action has been taken to~~  
20 ~~circumvent the requirements of this chapter shall be considered an act or decision of the District~~  
21 ~~Commission.~~

22 **B. Conforming changes to the Environmental Division**



1 1. *Topic summary.*

2 This section makes conforming changes to 10 V.S.A. chapter 220 (consolidated appeals) to  
3 remove Act 250 permits from the jurisdiction of the environmental division.

4  
5 2. *Bill citation.*

6 Sec. 1 amending 10 V.S.A. §§ 8502 (see p. 68), 8503 (see p. 69), and 8504 (see p. 70).

7 3. *Proposed language.*

8 Sec. 30. 10 V.S.A. chapter 220 is amended to read:

9 Chapter 220: Consolidated Environmental Appeals

10 \* \* \*

11 § 8502. DEFINITIONS

12 As used in this chapter:

13 (1) ~~"District Commission" means a District Environmental Commission established under~~  
14 ~~chapter 151 of this title.~~

15 (2) ~~"District coordinator" means a district environmental coordinator attached to a District~~  
16 ~~Commission established under chapter 151 of this title.~~

17 (3) "Environmental Court" or "Environmental Division" means the Environmental Division of  
18 the Superior Court established by 4 V.S.A. § 30.

19 (4) ~~"Natural Resources Board" or "Board" means the Board established under chapter 151 of this~~  
20 ~~title.~~

21 (5) (2) "Party by right" means the following:

22 (A) the applicant;

23 (B) the landowner, if the applicant is not the landowner;

1 (C) the municipality in which the project site is located, and the municipal and regional planning  
2 commissions for that municipality;

3 (D) if the project site is located on a boundary, any Vermont municipality adjacent to that border  
4 and the municipal and regional planning commissions for that municipality;

5 (E) the solid waste management district in which the land is located, if the development or  
6 subdivision constitutes a facility pursuant to subdivision 6602(10) of this title;

7 (F) any State agency affected by the proposed project.

8 ~~(6)~~ (3) "Person" means any individual; partnership; company; corporation; association; joint  
9 venture; trust; municipality; the State of Vermont or any agency, department, or subdivision of  
10 the State, any federal agency, or any other legal or commercial entity.

11 ~~(7)~~ (4) "Person aggrieved" means a person who alleges an injury to a particularized interest  
12 protected by the provisions of law listed in section 8503 of this title, attributable to an act or  
13 decision by ~~a district coordinator, District Commission,~~ the Secretary, or the Environmental  
14 Division that can be redressed by the Environmental Division or the Supreme Court.

15 ~~(8)~~ (5) "Secretary" means the Secretary of Natural Resources or the Secretary's duly authorized  
16 representative. As used in this chapter, "Secretary" shall also mean the Commissioner of  
17 Environmental Conservation, the Commissioner of Forests, Parks and Recreation, and the  
18 Commissioner of Fish and Wildlife, with respect to those statutes that refer to the authority of  
19 that commissioner or department.

20 § 8503. APPLICABILITY

21 \* \* \*

22 (b) ~~This chapter shall govern:~~

1 ~~(1) all appeals from an act or decision of a District Commission under chapter 151 of this title,~~  
2 ~~excluding appeals of application fee refund requests;~~

3 ~~(2) appeals from an act or decision of a district coordinator under subsection 6007(c) of this title;~~

4 ~~(3) appeals from findings of fact and conclusions of law issued by the Natural Resources Board~~  
5 ~~in its review of a designated growth center for conformance with the criteria of subsection~~  
6 ~~6086(a) of this title, pursuant to authority granted at 24 V.S.A. § 2793c(f).~~

7 ~~(e)~~ This chapter shall govern all appeals arising under 24 V.S.A. chapter 117, the planning and  
8 zoning chapter.

9 ~~(d)~~ (c) This chapter shall govern all appeals from an act or decision of the Environmental  
10 Division under this chapter.

11 ~~(e)~~ (d) This chapter shall not govern appeals from rulemaking decisions by the Natural Resources  
12 Board under chapter 151 of this title or enforcement actions under chapters 201 and 211 of this  
13 title.

14 ~~(f)~~ (e) This chapter shall govern all appeals of acts or decisions of the legislative body of a  
15 municipality arising under 24 V.S.A. chapter 61, subchapter 10, relating to the municipal  
16 certificate of approved location for salvage yards.

17 ~~(g)~~ (f) This chapter shall govern all appeals of an act or decision of the Secretary of Natural  
18 Resources that a solid waste implementation plan for a municipality proposed under 24 V.S.A. §  
19 2202a conforms with the State Solid Waste Implementation Plan adopted pursuant to section  
20 6604 of this title.

21 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

1 (a) ~~Act 250 and~~ Agency appeals. Within 30 days of the date of the act or decision, ~~any person~~  
2 ~~aggrieved by an act or decision of the Secretary, a District Commission, or a district coordinator~~  
3 ~~under the provisions of law listed in section 8503 of this title, or any party by right, may appeal~~  
4 ~~to the Environmental Division,~~ except for an act or decision of the Secretary under subdivision  
5 6086b(3)(E) of this title or governed by section 8506 of this title.

6 (c) Notice of the filing of an appeal.

7 (1) ~~Upon filing an appeal from an act or decision of the District Commission, the appellant shall~~  
8 ~~notify all parties who had party status as of the end of the District Commission proceeding, all~~  
9 ~~friends of the Commission, and the Natural Resources Board that an appeal is being filed. In~~  
10 ~~addition, the appellant shall publish notice not more than 10 days after providing notice as~~  
11 ~~required under this subsection, at the appellant's expense, in a newspaper of general circulation in~~  
12 ~~the area of the project which is the subject of the decision.~~

13 (2) Upon the filing of an appeal from the act or decision of the Secretary under the provisions of  
14 law listed in section 8503 of this title, the appellant shall provide notice of the filing of an appeal  
15 to the following persons: the applicant before the Agency of Natural Resources, if other than the  
16 appellant; the owner of the land where the project is located if the applicant is not the owner; the  
17 municipality in which the project is located; the municipal and regional planning commissions  
18 for the municipality in which the project is located; if the project site is located on a boundary,  
19 any adjacent Vermont municipality and the municipal and regional planning commissions for  
20 that municipality; any State agency affected; the solid waste management district in which the  
21 project is located, if the project constitutes a facility pursuant to subdivision 6602(10) of this  
22 title; all persons required to receive notice of receipt of an application or notice of the issuance of

1 a draft permit; and all persons on any mailing list for the decision involved. In addition, the  
2 appellant shall publish notice not more than 10 days after providing notice as required under this  
3 subsection, at the appellant's expense, in a newspaper of general circulation in the area of the  
4 project which is the subject of the decision.

5 (3) In the case of appeals under 24 V.S.A. chapter 117, notice shall be as required under 24  
6 V.S.A. § 4471.

7 (d) Requirement to participate before ~~the District Commission or the Secretary.~~

8 ~~(1) Participation before District Commission. An aggrieved person shall not appeal an act or~~  
9 ~~decision that was made by a District Commission unless the person was granted party status by~~  
10 ~~the District Commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in the~~  
11 ~~proceedings before the District Commission, and retained party status at the end of the District~~  
12 ~~Commission proceedings. In addition, the person may only appeal those issues under the criteria~~  
13 ~~with respect to which the person was granted party status. However, notwithstanding these~~  
14 ~~limitations, an aggrieved person may appeal an act or decision of the District Commission if the~~  
15 ~~Environmental judge determines that:~~

16 ~~(A) there was a procedural defect that prevented the person from obtaining party status or~~  
17 ~~participating in the proceeding;~~

18 ~~(B) the decision being appealed is the grant or denial of party status; or~~

19 ~~(C) some other condition exists which would result in manifest injustice if the person's right to~~  
20 ~~appeal was disallowed.~~

21 ~~(2) Participation before the Secretary.~~

1 ~~(A)~~ An aggrieved person shall not appeal an act or decision of the Secretary unless the person  
2 submitted to the Secretary a written comment during the comment period or an oral comment at  
3 the public meeting conducted by the Secretary. In addition, the person may only appeal issues  
4 related to the person's comment to the Secretary.

5 ~~(A)(i)~~ To be sufficient for the purpose of appeal, a comment to the Secretary shall identify each  
6 reasonably ascertainable issue with enough particularity so that a meaningful response can be  
7 provided.

8 ~~(B)(ii)~~ The appellant shall identify each comment that the appellant submitted to the Secretary  
9 that identifies or relates to an issue raised in his or her appeal.

10 ~~(C)(iii)~~ A person moving to dismiss an appeal or an issue raised by an appeal pursuant to this  
11 subdivision (1) ~~(A)~~ shall have the burden to prove that the requirements of this subdivision (1)  
12 ~~(A)~~ are not satisfied.

13 (2)~~(B)~~ Notwithstanding the limitations of subdivision (1) ~~(2)(A)~~ of this subsection, an aggrieved  
14 person may appeal an act or decision of the Secretary if the Environmental judge determines  
15 that:

16 (A)(i) there was a procedural defect that prevented the person from commenting during the  
17 comment period or at the public meeting or otherwise participating in the proceeding;

18 (B)(ii) the Secretary did not conduct a comment period and did not hold a public meeting;

19 (C)(iii) the person demonstrates that an issue was not reasonably ascertainable during the review  
20 of an application or other request that led to the Secretary's act or decision; or

21 (D)(iv) some other condition exists which would result in manifest injustice if the person's right  
22 to appeal was disallowed.

1 ~~(e) Act 250 jurisdictional determinations by a district coordinator.~~

2 ~~(1) The appellant shall provide notice of the filing of an appeal to each person entitled to notice~~  
3 ~~under subdivisions 6085(c)(1)(A) through (D) of this title, to each person on an approved~~  
4 ~~subdivision 6085(c)(1)(E) list, and to the Natural Resources Board.~~

5 ~~(2) Failure to appeal within the time required under subsection (a) of this section shall render the~~  
6 ~~decision of the district coordinator under subsection 6007(c) of this title the final determination~~  
7 ~~regarding jurisdiction under chapter 151 of this title unless the underlying jurisdictional opinion~~  
8 ~~was not properly served on persons listed in subdivisions 6085(c)(1)(A) through (D) of this title~~  
9 ~~and on persons on a subdivision 6085(c)(1)(E) list approved under subsection 6007(c) of this~~  
10 ~~title.~~

11 ~~(f)~~ Stays.

12 (1) The filing of an appeal shall automatically stay the act or decision in the following situations:

13 (A) acts or decisions involving stream alteration permits or shoreline encroachment permits  
14 issued by the Secretary;

15 (B) the denial of interested person status by a board of adjustment, planning commission, or  
16 development review board.

17 (2) Upon petition by a party or upon its own motion for a stay of an act or decision, the  
18 Environmental Division shall perform the initial review of the request and may grant a stay. Any  
19 decision under this subsection to issue a stay shall be subject to appeal to the Supreme Court  
20 according to the Rules of Appellate Procedure.

21 ~~(g)~~ (f) Consolidated appeals. The Environmental Division may consolidate or coordinate  
22 different appeals where those appeals all relate to the same project.

1 ~~(h)~~ (g) De novo hearing. The Environmental Division, applying the substantive standards that  
2 were applicable before the tribunal appealed from, shall hold a de novo hearing on those issues  
3 which have been appealed, except in the case of:

4 (1) a decision being appealed on the record pursuant to 24 V.S.A. chapter 117;  
5 (2) a decision of the Commissioner of Forests, Parks and Recreation under section 2625 of this  
6 title being appealed on the record, in which case the court shall affirm the decision, unless it  
7 finds that the Commissioner did not have reasonable grounds on which to base the decision.

8 ~~(i) Deference to Agency technical determinations. In the adjudication of appeals relating to land  
9 use permits under chapter 151 of this title, technical determinations of the Secretary shall be  
10 accorded the same deference as they are accorded by a District Commission under subsection  
11 6086(d) of this title.~~

12 ~~(j)~~ (h) Appeals of authorizations or coverage under a general permit. Any appeal of an  
13 authorization or coverage under the terms of a general permit shall be limited in scope to whether  
14 the permitted activity complies with the terms and conditions of the general permit.

15 ~~(k)~~ (i) Limitations on appeals. Notwithstanding any other provision of this section:

16 ~~(1) there shall be no appeal from a District Commission decision when the Commission has  
17 issued a permit and no hearing was requested or held, or no motion to alter was filed following  
18 the issuance of an administrative amendment;~~

19 ~~(2)~~ a municipal decision regarding whether a particular application qualifies for a recorded  
20 hearing under 24 V.S.A. § 4471(b) shall not be subject to appeal;

21 ~~(3) if a District Commission issues a partial decision under subsection 6086(b) of this title, any  
22 appeal of that decision must be taken within 30 days of the date of that decision.~~



1 ~~(j)(4)~~ Representation. The Secretary may represent the Agency of Natural Resources in all  
2 appeals under this section. ~~The Chair of the Natural Resources Board may represent the Board in~~  
3 ~~any appeal under this section, unless the Board directs otherwise.~~ If more than one State agency,  
4 ~~other than the Board,~~ either appeals or seeks to intervene in an appeal under this section, only the  
5 Attorney General may represent the interests of those agencies of the State in the appeal.

6 ~~(k)(m)~~ Precedent. Prior decisions of the Environmental Board, Water Resources Board, and  
7 Waste Facilities Panel shall be given the same weight and consideration as prior decisions of the  
8 Environmental Division.

9 ~~(l)(n)~~ Intervention. Any person may intervene in a pending appeal if that person:  
10 (1) appeared as a party in the action appealed from and retained party status;  
11 (2) is a party by right;  
12 (3) ~~is the Natural Resources Board;~~  
13 ~~(4)~~ is a person aggrieved, as defined in this chapter;  
14 ~~(4) (5)~~ qualifies as an "interested person," as established in 24 V.S.A. § 4465, with respect to  
15 appeals under 24 V.S.A. chapter 117; or  
16 ~~(5) (6)~~ meets the standard for intervention established in the Vermont Rules of Civil Procedure.

17 ~~(m) (o)~~ With respect to review of an act or decision of the Secretary pursuant to 3 V.S.A. § 2809,  
18 the Division may reverse the act or decision or amend an allocation of costs to an applicant only  
19 if the Division determines that the act, decision, or allocation was arbitrary, capricious, or an  
20 abuse of discretion. In the absence of such a determination, the Division shall require the  
21 applicant to pay the Secretary all costs assessed pursuant to 3 V.S.A. § 2809.

1 ~~(o)(p)~~ Administrative record. The Secretary shall certify the administrative record as defined in  
2 chapter 170 of this title and shall transfer a certified copy of that record to the Environmental  
3 Division when:  
4 (1) there is an appeal of an act or decision of the Secretary that is based on that record; or  
5 (2) there is an appeal of a decision of a District Commission and the applicant used a decision of  
6 the Secretary based on that record to create a presumption under a criterion of subsection 6086(a)  
7 of this title that is at issue in the appeal.

8 \* \* \*

## 9 **V. Reports and Miscellaneous Changes**

### 10 **A. Municipal and regional planning review.**

#### 11 1. *Topic summary.*

12 This section requires that the Agency of Commerce and Community Development develop a  
13 report and recommendations with respect to the capabilities and development plan requirements  
14 under Act 250 and report to the General Assembly by January 15, 2021.

#### 15 16 2. *Bill citation.*

17 Sec. 11 (see p. 83)

#### 18 3. *Proposed language.*

19 Sec. 11. VERMONT REGIONAL AND MUNICIPAL PLANNING REVIEW

20 (a) On or before December 15, 2020, the Natural Resources Board, in consultation with the  
21 Agency of Commerce and Community Development, shall develop shall publish a draft report,  
22 with recommendations, that addresses:

- 1 (1) whether Sec. 7 of No. 85 of the Acts and Resolves of 1973 (capability and development  
2 findings) should be incorporated into 10 V.S.A. chapter 151 and what changes should be made,  
3 if any, to the capability and development findings.
- 4 (2) whether the State should update the capability and development plan authorized by 10 V.S.A.  
5 chapter 151, subchapter 3. If the recommendation is to update the capabilities and development  
6 plan, the Agency shall provide a schedule and budget for the proposed update.
- 7 (3) whether 10 V.S.A. chapter 151 should require the creation of capability and development  
8 maps. If the recommendation is to require the creation of capability and development maps, the  
9 Agency shall identify the resources and land uses to be mapped and provide a schedule and  
10 budget for the proposed update.
- 11 (4) makes recommendations on how capability and development findings, the capability and  
12 development plan, and capability and development maps would be used in permitting under 10  
13 V.S.A. chapter 151 and how these would relate to the criteria considered under 10 V.S.A. §  
14 6086(a).
- 15 (5) how regional plans are reviewed and approved, including any existing or new administrative  
16 body to conduct that review; If a review is recommended, what State Agency should perform  
17 that review.
- 18 (6) whether designations of growth centers and new town centers should be appealable. If these  
19 designations are appealable, what tribunal should hear the appeal.
- 20 (b) The Natural Resources Board shall have a public comment period of at least 30 days on the  
21 draft report required by subsection (a) of this section. The Board shall hold at least one public  
22 informational meeting on the draft report. Notice provided by the Board shall include affected

1 state agencies, municipalities, regional planning commissions, the Vermont Planners  
2 Association, the Vermont Planning and Development Association, and other interested persons.  
3 (c) On or before March 1, 2021, the Natural Resources Board shall provide a final report to the  
4 House Committee on Natural Resources and Energy and Senate Committee on Natural  
5 Resources and Energy. The final report shall incorporate recommendations from the public  
6 engagement process under subsection (b) of this section and shall contain a response to  
7 stakeholder comments as a part of the final report.

## 8 **B. Review of Environmental Permit Appeals**

### 9 1. *Topic summary.*

10 This section requires that the Agency of Natural Resources review and make recommendations  
11 on whether appeals of Agency permits should be on the record. The Agency is required to  
12 conduct a stakeholder process in making these recommendations.  
13

### 14 2. *Bill citation.*

15 Sec. 12 (see p. 84)

### 16 3. *Proposed language.*

17 Sec. 11. VERMONT ENVIRONMENTAL APPEALS REVIEW

18 On or before January 15, 2021, the Secretary of Natural Resources shall make recommendations  
19 to the House Committees on Natural Resources, Fish, and Wildlife and Judiciary and the Senate  
20 Committees on Natural Resources and Energy and Judiciary as to whether permits issued by the  
21 Secretary should be reviewed on the administrative record developed by the Secretary and the  
22 presumptions provided to the Agency permits before the Natural Resources Board. In making  
23 these recommendations, the Secretary shall consult with lawyers and other interested persons  
24 who participate in Agency of Natural Resources Permitting processes.

1 **C. Transition and Effective Dates**

2 1. *Topic summary.*

3 This section makes establishes the effective dates and transition to the new enhanced natural  
4 resources board.

5  
6 2. *Bill citation.*

7 Sec. 13 (see p. 86)

8 3. *Proposed language.*

9 Sec. 12. EFFECTIVE DATES; TRANSITION

10 (a) Secs. 3, 11, 12, and this section shall take effect on July 1, 2020.

11 (b) The remainder of this Act shall take effect on November 1, 2022, except that:

12 (1) The authority to make appointments to the Enhanced Natural Resources Board shall take  
13 effect on passage and all appointments shall be made on or before December 15, 2020.

14 (2) The authority for municipalities to request modifications to the area established pursuant to  
15 10 V.S.A. § 6003(3)(A)(xiii) shall take effect on passage. Any appeal of a decision of a regional  
16 planning commission shall be calculated as if the decision were made on November 1, 2022.

17 (c) Terms of Board members. For the initial appointment of Board members:

18 (1) The Chair of the Board shall be appointed for a term of six years;

19 (2) One member of the Board shall be appointed for a term of four years and one member of the  
20 Board shall be appointed for a term of two years;

21 (3) Each administrative district shall have one regional commissioner appointed for a term of six  
22 years, one regional commissioner appointed for a term of four years, and one alternate appointed  
23 for a term of two years.

1 (d) Terms of existing Natural Resources Board members. The terms of any Natural Resources  
2 Board member not appointed consistent with the requirements of 10 V.S.A. § 6021(a)(1)(A) or  
3 (B) of this Act shall expire on October 31, 2022.

4 (e) Terms of District Commissioners.

5 (1) A district commission shall continue to remain in effect until all applications before it as of  
6 October 31, 2022 have been resolved and final permits have been issued in those matters.

7 (2) An application shall be deemed resolved when the Commission issues a final permit even if a  
8 final permit is appealed. Upon remand the Board then in office may in its discretion consider  
9 relevant evidence including any part of the transcript of testimony in the proceedings prior to  
10 appeal.

11 (d) Rulemaking. On or before November 1, 2022, the Enhanced Natural Resources Board shall:

12 (1) adopt rules of procedure pursuant to 10 V.S.A. § 6025(a);

13 (2) adopt rules, in consultation with the Secretary of Natural Resources, for the administration of  
14 10 V.S.A. § 6086(a)(8)(C), including how an applicant can avoid and mitigate impacts to  
15 necessary wildlife habitat, forest blocks, connecting habitat, rare and irreplaceable natural areas  
16 and endangered species.

17